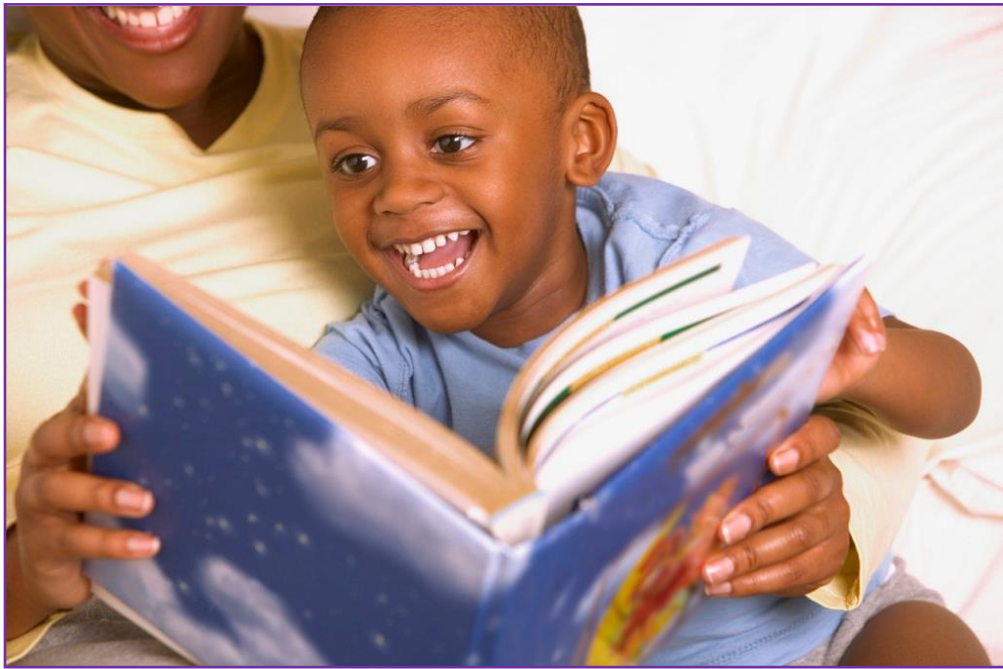


**Office of Children  
and Family Services**

# **Child Care Subsidy Program**

**Participant Manual**





**Office of Children  
and Family Services**

# **Child Care Subsidy Program**

**Participant Manual**

**This document is provided under a contractual agreement between the**

**New York State Office of Children and Family Services  
Division of Administration  
Bureau of Training and Development**

**AND**

**Professional Development Program  
Rockefeller College  
University at Albany  
State University of New York**

**Acknowledgement**

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**April 2018**



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### Day 1:

#### **Welcome, Introduction, and Pre-Assessment**

#### **Unit 1: Screening and Application**

Lesson 1: Overview of the Child Care Subsidy Program

Lesson 2: The Application Process

#### **Unit 2: Programmatic and Income Requirements**

Lesson 1: Categories of Eligible Families

Lesson 2: Income and Residency Requirements for Low-Income Families

#### **Unit 3: Verification and Redetermination**

Lesson 1: Verification and Documentation of Eligibility

### Day 2:

#### **Unit 3: Verification and Redetermination, continued**

Lesson 2: Redetermining Eligibility

#### **Unit 4: Payment Processing**

Lesson 1: Determining Payment Amounts

Lesson 2: Issuing and Monitoring Payments

Lesson 3: Handling Child Care Overpayments

#### **Unit 5: Provider Types and District Responsibilities**

Lesson 1: Provider Information

Lesson 2: District Responsibilities Regarding Child Care Providers

#### **Closing, Review, Q & A**

There will be a 15 minute break in the morning and afternoon and an hour for lunch.

Thank you for your flexibility.

## Websites

### **NYS Child Care Regulations**

[http://www.ocfs.state.ny.us/main/childcare/daycare\\_regs.asp](http://www.ocfs.state.ny.us/main/childcare/daycare_regs.asp)

### **Local Social Services Districts Child Care Section of the Child and Family Services Plans**

<http://www.ocfs.state.ny.us/main/childcare/plans/plans.asp>

### **Professional Development Program**

*Schedule of trainings and documents pertaining to Child Care Subsidy*

<https://www.ccs.pdp.albany.edu/>

## **General Interest Phone Numbers**

### **Division of Child Care Services**

**Merideth Bastiani**, Director, Child Care Subsidy Program

Phone: (518) 402-3001

Email: [Merideth.Bastiani@ocfs.ny.gov](mailto:Merideth.Bastiani@ocfs.ny.gov)

**Joe Ziegler**, Child Care Subsidy Program

Phone: (518) 402-6520

Email: [Joe.Ziegler@ocfs.ny.gov](mailto:Joe.Ziegler@ocfs.ny.gov)

**Maryellen DeCicco**, Child Care Subsidy Program

Phone: (518) 408-3395

Email: [Maryellen.DeCicco@ocfs.ny.gov](mailto:Maryellen.DeCicco@ocfs.ny.gov)

**Aruni Singh**, Child Care Subsidy Program

Phone: (518) 473-0676

Email: [Aruni.Singh@ocfs.ny.gov](mailto:Aruni.Singh@ocfs.ny.gov)

**Ann Haller**, Legally-Exempt Enrollment

Phone: (518) 408-0759

Email: [Ann.Haller@ocfs.state.ny.us](mailto:Ann.Haller@ocfs.state.ny.us)

**Christine Anderson**, Legally-Exempt Enrollment

Phone: (518) 408-3269

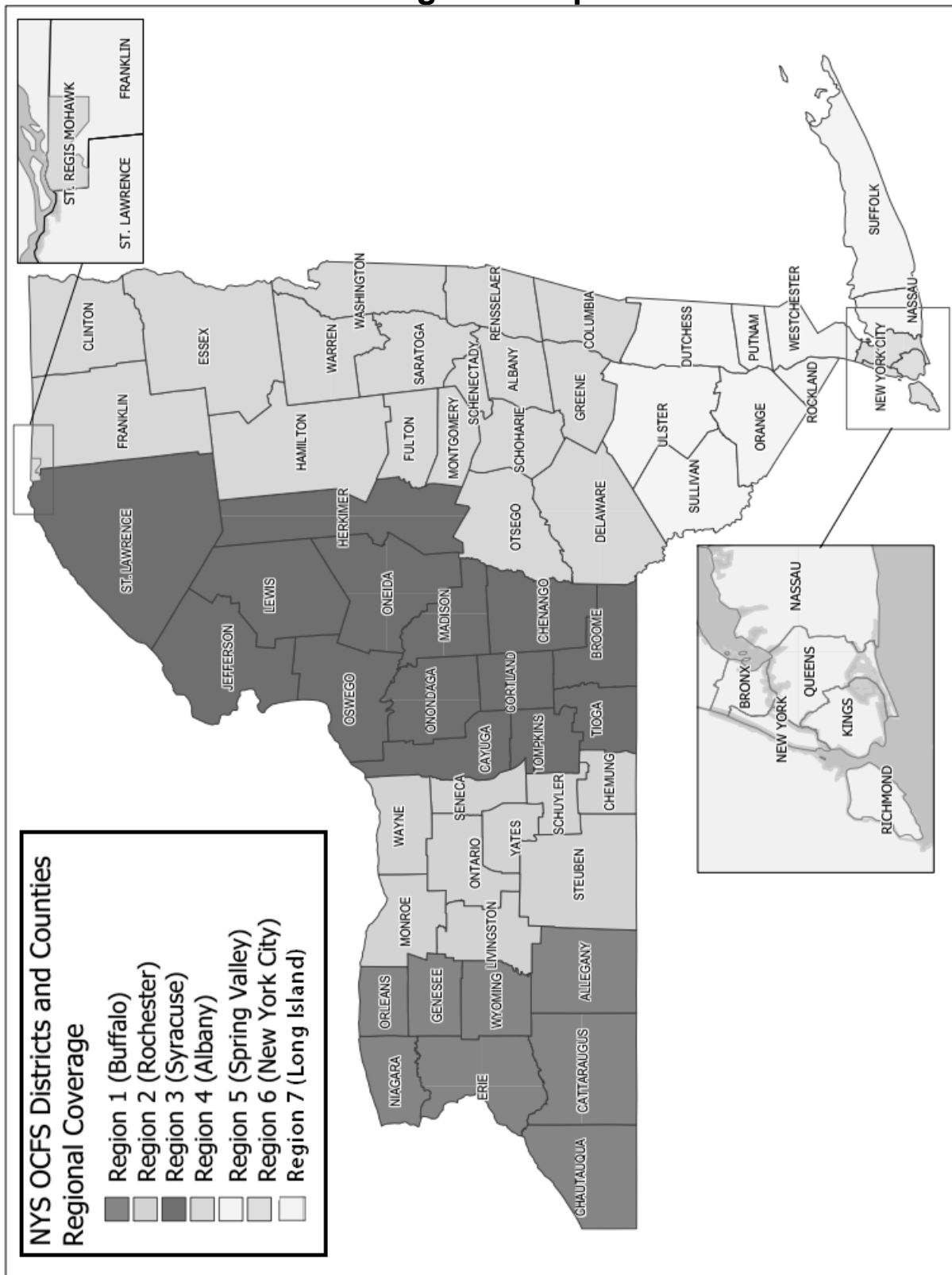
Email: [Christine.Anderson@ocfs.ny.gov](mailto:Christine.Anderson@ocfs.ny.gov)

**Jessica Breitenbach**, Legally-Exempt Enrollment

Phone: (518) 474-9454



# Regional Map



## **OCFS Division of Child Care Services Regional Office Listings**

### **ALBANY REGIONAL OFFICE**

52 Washington Street  
Room 309 South Building  
Rensselaer, NY 12144  
Telephone: (518) 402-3038

**Serving the counties of: Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington**

### **BUFFALO REGIONAL OFFICE**

Room 545  
5th Floor  
Ellicott Square Building  
295 Main Street  
Buffalo, NY 14203  
Telephone: (716) 847-3828

**Serving the counties of: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming**

### **LONG ISLAND REGIONAL OFFICE**

Perry Duryea State Office Building  
250 Veterans Memorial Highway, Suite 2A-20  
Hauppauge, NY 11788  
Telephone: (631) 342-7100  
Fax: (212) 383-1811

**Serving the counties of: Nassau, Suffolk**

### **NEW YORK CITY REGIONAL OFFICE**

80 Maiden Lane, 23<sup>rd</sup> Floor  
New York, NY 10038  
Telephone: (212) 383-1415

**Serving the counties of: Bronx, Kings, New York, Richmond, and Queens**

**ROCHESTER REGIONAL OFFICE**

259 Monroe Avenue, 3<sup>rd</sup> Floor

Monroe Square

Rochester, NY 14607

Telephone: (585) 238-8531

**Serving the counties of: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates**

**SPRING VALLEY REGIONAL OFFICE**

11 Perlman Drive, Pascack Plaza

Spring Valley, NY 10977

Telephone: (845) 708-2400

**Serving the counties of: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester**

**SYRACUSE REGIONAL OFFICE**

The Atrium

100 S. Salina Street, Suite 350

Syracuse, NY 13202

Telephone: (315) 423-1202

**Serving the counties of: Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins**

## New York State Enrollment Agency Listing

### Region 1: Buffalo

**Allegany County Community Opportunities and Rural Development, Inc.  
(ACCORD)**

**Counties Served: Allegany, Cattaraugus, Wyoming**

19 South Main Street

Belmont, New York 14813

**Phone:** (585) 268-7605, Ext. 1231

**Fax:** (585) 365-2749

**Website:** <http://www.accordcorp.org>

**Chautauqua Opportunities, Inc.**

**Counties Served: Chautauqua**

402 Chandler Street

Jamestown, NY 14701

**Phone:** (716) 661-9430 Ext. 227

**Fax:** (716) 661-9436

**Website:** [www.chautauquaopportunities.com](http://www.chautauquaopportunities.com)

**Child Care Resource Network**

**Counties Served: Erie**

1000 Hertel Avenue

Buffalo NY 14216

**Phone:** (716) 877-6666 Ext. 3031

**Fax:** (716) 877-6205

**Website:** [www.wnychildren.org](http://www.wnychildren.org)

**Community Action of Orleans and Genesee, Inc.**

**Counties Served: Genesee, Orleans**

409-11 East State Street

Albion, New York 14411

**Phone:** (585) 343-7798

**Fax:** (585) 343-4063

**Website:** [www.caoginc.org](http://www.caoginc.org)

**Niagara Community Action Program, Inc.**

**Counties Served: Niagara**

1521 Main Street

Niagara Falls, New York 14305

**Phone:** (716) 285-8572 Ext. 105

**Fax:** (716) 285-9693

**Website:** [www.childcareofniagara.com](http://www.childcareofniagara.com)

## Region 2: Rochester

### **Chemung County Child Care Council, Inc.**

**Counties Served: Chemung**

1580 Lake Street—Suite 200

Elmira, New York 14901

**Phone:** (607) 734-3941

**Fax:** (607) 737-7293

**Website:** [www.chemchildcare.com](http://www.chemchildcare.com)

### **Child and Family Resources, Inc.**

**Counties Served: Ontario, Seneca, Yates**

263 Lake Street

Penn Yan, New York 14527

**Phone:** (315) 781-1491 Ext. 2210

**Fax:** (315) 536-9918

**Seneca:** 115 Fall Street, Seneca Falls, NY 13148

**Ontario:** 671 S. Exchange Street, Geneva, NY 14456

**Website:** [www.cfresources.org](http://www.cfresources.org)

### **Child Care Council, Inc.**

**Counties Served: Monroe, Livingston, Wayne**

595 Blossom Road., Suite 120

Rochester, NY 14610

**Phone:** (585) 654-4742

**Fax:** (585) 654-4721

**Website:** [www.childcarecouncil.com](http://www.childcarecouncil.com)

### **Pro Action of Steuben and Schuyler, Inc.**

**Counties Served: Steuben and Schuyler**

117 East Steuben Street, Suite 11

Bath, NY 14810

**Phone:** (607) 776-2125

**Fax:** (607) 776-4873

**Website:** [www.proactioninc.org](http://www.proactioninc.org)

## Region 3: Syracuse

### **Child Care Council of Cooperative Extension**

**Counties Served: Madison, Oneida, Herkimer**

121 Second Street

Oriskany, NY 13424

**Phone:** (315) 798-5911

**Fax:** (315) 736-2580

**Website:** <http://www.cceoneida.com>

**Child Care Solutions, Inc.**

**Counties Served: Cayuga, Onondaga**

6724 Thompson Road

Syracuse, NY 13211

**Phone:** (315) 446-1220 Ext. 319

**Fax:** (315) 446-2010

**Website:** [www.childcaresyracuse.org](http://www.childcaresyracuse.org)

**Child Development Council**

**Counties Served: Cortland/Tompkins**

609 West Clinton Street

Ithaca, New York 14850

**Phone:** (607) 273-0259

**Fax:** (607) 273-3141

**Web:** [www.childdevelopmentcouncil.org](http://www.childdevelopmentcouncil.org)

**Community Action Planning Council of Jefferson County, Inc.**

**Counties Served: Jefferson, Lewis**

518 Davidson Street

Watertown, NY 13601

**Phone:** (315) 782- 4900 Ext. 240

**Fax:** (315) 788-8251

**Website:** [www.capcjc.org](http://www.capcjc.org)

**Family Enrichment Network, Inc.**

**Counties Served: Broome, Tioga and Chenango**

24 Cherry Street

Johnson City, New York 13790

**Phone:** (607) 723-8313 Ext. 872

**Fax:** (607) 723-6173

**Website:** [www.familyenrichment.cc](http://www.familyenrichment.cc)

**Integrated Community Planning Council of Oswego County, Inc.**

**Counties Served: Oswego**

317 West 1st Street, Suite 111

Oswego, New York 13126

**Phone:** (315) 343-2344 Ext. 19

**Fax:** (315) 343-0442

**Website:** [www.icpoc.org](http://www.icpoc.org)

**St. Lawrence Child Care Council, Inc.**

**Counties Served: St. Lawrence**

314 Ford Street

Ogdensburg, NY 13669

**Phone:** (315) 393- 6474

**Fax:** (315) 394-6809

**Website:** <http://www.stlawrencechildcare.org>

## Region 4: Albany

### **Adirondack Community Action Programs, Inc.**

**Counties Served: Essex**

P.O. Box 848, 7572 Court Street – Suite 2

Elizabethtown, New York 12932

**Phone:** (518) 873-3207 Ext. 235

**Fax:** (518) 873-6845

**Website:** <http://www.acapinc.org>

### **Capital District Child Care Coordinating Council, Inc.**

**Counties Served: Albany, Rensselaer, Saratoga, Schenectady, Fulton,**

**Montgomery**

91 Broadway

Menands, NY 12204

**Phone:** (518) 426-7181 Ext. 318

**Fax:** (518) 426- 9649

**Website:** [www.cdcccc.org](http://www.cdcccc.org)

### **Child Care Coordinating Council of the North Country, Inc.**

**Counties Served: Clinton, Franklin**

P.O. Box 2640, 194 US Oval

Plattsburgh, NY 12901

**Phone:** (518) 561- 4999

**Fax:** (518) 561- 6956

**Website:** <http://www.cccnc.org>

### **Delaware Opportunities, Inc.**

**Counties Served: Delaware**

35430 State Highway 10

Hamden, NY 13782

**Phone:** (607) 723-8313 Ext. 872

**Fax:** (607) 746- 1605

**Website:** [www.delawareopportunities.org](http://www.delawareopportunities.org)

### **Family of Woodstock, Inc.**

**Counties Served: Columbia, Greene (Ulster)**

P.O. Box 3516, 39 John Street

Kingston, NY 12402

**Phone:** (845) 331-7080

**Fax:** (845) 331-0526

**Website:** [www.familyofwoodstockinc.org](http://www.familyofwoodstockinc.org)

### **Schoharie County Community Action Program, Inc.**

**Counties Served: Schoharie and Otsego**

795 East Main Street, Suite 5

Cobleskill, New York 12043

**Phone:** (518) 234-2568

**Fax:** (518) 234-3507

**Website:** [www.sccapinc.org](http://www.sccapinc.org)

**Southern Adirondack Child Care Network, Inc.**  
**Counties Served: Hamilton, Warren, Washington**  
88 Broad Street  
Glens Falls, NY 12801  
**Phone:** (518) 798-7972 Ext. 210  
**Website:** [www.saccn.org](http://www.saccn.org)

**Fax:** (518) 812- 0799

## Region 5: Spring Valley

**Child Care Council of Dutchess & Putnam, Inc.**  
**Counties Served: Dutchess, Putnam**  
70 Overocker Road  
Poughkeepsie, NY 12603  
**Phone:** (845) 473-4141 Ext. 222  
**Website:** <http://www.childcaredutchess.org>

**Fax:** (845) 473-4161

**Child Care Council of Orange County, Inc.**  
**Counties Served: Orange**  
40 Matthews Street, Suite 103  
Goshen, NY 10924  
**Phone:** (845) 294-4012 Ext. 222  
**Website:** [www.childcarecounciloc.org](http://www.childcarecounciloc.org)

**Fax:** (845) 294-4045

**Child Care Council of Westchester, Inc.**  
**Counties Served: Westchester**  
313 Central Park Avenue  
Scarsdale, NY 10583  
**Phone:** (914) 761-3456 Ext. 123  
**Website:** [www.childcarewestchester.org](http://www.childcarewestchester.org)

**Fax:** (914) 761-1957

**Child Care Resources of Rockland, Inc.**  
**Counties Served: Rockland**  
235 North Main Street, Suite 11  
Spring Valley, NY 10977  
**Phone:** (845) 425-0009 Ext. 417  
**Website:** [www.childcarerockland.org](http://www.childcarerockland.org)

**Fax:** (845) 425-5312

**Family of Woodstock, Inc.**  
**Counties Served: Ulster (Columbia, Greene)**  
P.O. Box 3516, 39 John Street  
Kingston, NY 12402  
**Phone:** (845) 331-7080 Ext. 132  
**Website:** [www.familyofwoodstockinc.org](http://www.familyofwoodstockinc.org)

**Fax:** (845) 331-0526



**Sullivan County Child Care Council, Inc.**

**Counties Served: Sullivan**

P.O. Box 186

Ferndale, NY 12734

**Phone:** (845) 292- 7166 Ext. 302

**Website:** [www.scchildcare.co](http://www.scchildcare.co)

**Fax:** (845) 292- 1755

## **Region 6: New York City**

**WHEDCO**

**Counties Served: New York City**

1309 Louis Nine Boulevard

Bronx, NY 10459

**Phone:** (347) 708-7800

**Website:** <http://www.whedco.org>

**Fax:** (718) 619-8207

## **Region 7: Long Island**

**Child Care Council of Nassau, Inc.**

**Counties Served: Nassau**

99 Quentin Roosevelt Blvd., Suite 201

Garden City, NY 11530

**Phone:** (516) 358- 9250

**Website:** [www.childcarenassau.org](http://www.childcarenassau.org)

**Fax:** (516) 358-9287

**Child Care Council of Suffolk, Inc.**

**Counties Served: Suffolk**

60 Calvert Avenue

Commack, New York 11725

**Phone:** (631) 462-0303

**Website:** [www.childcaresuffolk.org](http://www.childcaresuffolk.org)

**Fax:** (631) 462-1617



# Unit 1

## Screening and Application

**Unit Importance** During the screening process, clients are provided with an explanation of the purpose and philosophy of the Child Care Subsidy program and a description of their rights and responsibilities when they receive child care assistance.

Workers need to know policy related to client and agency responsibilities in the application process in order to:

- Explain to clients the goals of the Child Care Subsidy program and client rights and responsibilities
- Follow policy as they process client applications

---

**Unit Overview** This unit reviews the importance of orienting the Child Care Subsidy training participants with the necessary information and procedures to allow the continuance of program integrity.

This unit covers the following lessons:

- Overview of the Child Care Subsidy program
- The Application Process

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## Lesson 1: Overview of the Child Care Subsidy Program

- Lesson Importance** This lesson provides you with the background information you need:
- To explain the purpose and philosophy of the Child Care Subsidy program
  - To identify where to find the appropriate laws, regulations, Administrative Directives (ADMs), Informational Letters (INFs), and Local Commissioner Memorandums (LCMs) governing child care policy

- 
- Lesson Overview** This lesson covers the following topics:
- Welfare Reform and the Child Care Subsidy Program
  - New York State Child Care Block Grant
  - Laws, Regulations, and Policy Directives Governing the Child Care Subsidy Program

- 
- Lesson Objectives** By the end of this lesson, you will be able to:
- Describe the legislative intent of the New York State Child Care Block Grant and its relationship to welfare reform
  - Describe the philosophy of the Child Care Subsidy program as it relates to Temporary Assistance and Low-Income clients
  - Identify the policies and regulations governing the Child Care Subsidy program

## Welfare Reform and the Child Care Subsidy Program

- Goals of the Child Care Subsidy Program** New York State (NYS) Child Care Subsidy policy supports the goals of personal responsibility and self-sufficiency by:
- Removing child care as a barrier to working
  - Encouraging personal responsibility
  - Empowering clients to make informed child care decisions by supplying information about providers and quality care
  - Setting minimum health and safety standards for child care provider

## New York State Child Care Block Grant

- Introduction** As a result of welfare reform, the federal government provided money for child care to states in the form of a block grant. The New York State Child Care Block Grant (NYSCCBG):
- Restructured child care from a system with seven separate and distinct funding streams to a consolidated program
  - Developed consistency in the rules governing child care, thereby making it easier for the state and local departments of social services to administer a unified program
  - Allowed social services districts to establish locally identified priorities, reflective of the specific needs of their communities
  - Guaranteed a subsidy to families in receipt of Temporary Assistance (TA) who are meeting their work requirements and to working parent/caretakers transitioning from assistance
  - Guaranteed child care subsidies to families who apply and are found eligible for TA but choose Child Care In Lieu of TA

**Funding Sources**

The NYSCCBG is comprised of the following:

- All the federal child care funds appropriated under Title IV-A of the federal Social Security Act
- Additional funds the social services districts choose to transfer from the Flexible Fund for Family Services (FFFS)
- Any NYS funds appropriated for child care subsidies, and for activities to increase the availability and quality of child care programs

---

**Requirements**

Current county requirements for using funds from the block grant are outlined in 17-OCFS-LCM-11, *New York State Child Care Block Grant Subsidy Program Allocations SFY 2017-2018*, **Tab 1 of the Regulations and Resources Manual (RRM)** and include:

- Parental choice
- Reimbursement levels
- Maintenance of effort (MOE) levels for spending
- County assurance of compliance with programmatic and procedural requirements at federal and state levels

A copy of this Local Commissioner Memorandum (LCM) is included in **Tab 1(RRM)**.

---

**Parental Choice**

Parent/caretakers must be given discretion in selecting or arranging for the purchase of child care services from any eligible provider.

The district must inform applicants/recipients that they may choose:

- A child day care provider with whom the Local Department of Social Services (LDSS) has contracted
- A Licensed, Registered, or enrolled, Legally-Exempt provider

## Lesson 1: Overview of the Child Care Subsidy Program

- Reimbursement Levels** Counties will be reimbursed with NYSCCBG funds up to the district allocation as follows:
- 75% for families receiving TA (the county pays the other 25%)
  - 100% for all other eligible families

---

**Maintenance of Effort** Social services districts using NYSCCBG funds must maintain district spending for child care services at a level established by the Office of Children and Family Services (OCFS) in accordance with New York statute.

The most current levels are given in 17-OCFS-LCM-11, *New York State Child Care Block Grant Subsidy Program Allocations SFY 2017-2018*, found in **Tab 1 (RRM)** of the Regulations and Resources manual.

## Laws, Regulations, and Policy Directives Governing the Child Care Subsidy Program

**Introduction** The Child Care Subsidy Program is governed by:

- Federal Law
- NYS Social Services Law
- Federal and New York State Regulations
- Administrative Directives (ADM)
- Local Commissioner Memorandums (LCM)
- Informational Letters (INF)

Below is a list of the most current source documents you may want to consult when you are trying to determine what course of action to take with a particular case.



**Social  
Services Law**

Social Services Law, Article 6, *Children*, Title 5C, Sections 410 – u through 410 - z, governs the Child Care Subsidy program.

Social Services Law, Article 5, *Assistance & Care*, Title 9 – B, sections 332 – a, 334 and 335 contain additional requirements relative to child care for TA applicants and recipients.

---

**Regulation**

The most important regulations as contained within New York State Code, Rules and Regulations (NYCRR), Title 18, which govern the delivery of child care services include:

- Part 418, *Day Care Centers*
- Part 417, *Family Day Care Homes*
- Part 416, *Group Family Day Care Homes*
- Part 415, *Child Care Services*
- Part 414, *School-Age Child Care*
- Part 405, *Purchase of Services by Social Services Districts*
- Part 404, *Determination and Re-determination of Eligibility for Social Services*
- Part 403, *Program Requirements for Social Services*
- Part 358, *Fair Hearings, Notice Requirements*
- Part 628, *State Reimbursement*

## Lesson 1: Overview of the Child Care Subsidy Program

### Administrative Directives

Administrative Directives (ADMs) issued by either NYS OCFS or NYS Office of Temporary and Disability Assistance (OTDA) related to child care include:

- 17-OCFS-ADM-06, *Providing Services to Children of Undocumented Immigrants*
- 14-ADM-05, *Automated Information Exchange Agreement between OTDA, OCFS, DOH, and DOL—Unemployment Insurance Benefit Information*
- 14-ADM-04, *Employment and Resource Exemption Changes Authorized by Chapter 58 of the Laws of 2014*
- 12-ADM-01, *Requirement to Make Information Available to Non-Parent Caregivers Relating to Available Services and Assistance Programs*
- 05-OCFS-ADM-03, *Child Care Subsidy Program*
- 04-OCFS-ADM-01, *Guaranteed Child Care in Lieu of Temporary Assistance, Payment During Breaks in Activities, Eligibility for Family in Post-Secondary Education, No Application for Transitional Child Care*
- 91-ADM-34, *Child Care Reimbursement of Payments for Children with Special Needs*

**Note:** The rates in 91-ADM-34 are outdated; however, the definitions are in effect.

**Note:** There are changes to Child Care in Lieu of TA. Please refer to the Commissioner Letter, *Changes to the Law Regarding Child Care in Lieu of Temporary Assistance* in **Tab 4 (RRM)** and 04-OCFS-ADM-01, Attachment A in **Tab 4 (RRM)**, as well as the Child Care In Lieu of TA income requirements chart.

### Local Commissioner Memorandums

Local Commissioner Memorandums (LCMs) include:

- 18-OCFS-LCM-03, *Guidelines for Preparing the Child and Family Services Plan*
- 18-OCFS-LCM-02, *State Minimum Wage Increase and Its Effect Upon Child Care Assistance*

## Unit 1: Screening and Application

- 18-OCFS-LCM-01, *Application for Child Care Assistance and How to Complete the Application for Child Care Assistance Revisions*
- 17-OCFS-LCM-11, *New York State Child Care Block Grant Subsidy Program Allocations SFY 2017-2018*
- 17-OCFS-LCM-10, *SFY 2017-18 Social Services Block Grant (Title XX) Allocations*
- 17-OCFS-LCM-05, *Child Care Services for Families Experiencing Homelessness and Differential Payment Rates*
- 17-OCFS-LCM-01, *Child Care Providers Deduction of Union Dues in Social Services Districts Other Than New York City*
- 16-LCM-09, *Revisions to the LDSS-2921, PUB-1301, LDSS-3174, PUB-1313, LDSS-4148A-C, LDSS-4826, LDSS-4826A, LDSS-4942, and LDSS-2291*
- 16-OCFS-LCM-18, *Child Care Market Rates 2016*
- 16-OCFS-LCM-03, *30-Day Client Notification for Child Care Subsidy and Revised Client Notices*
- Commissioner Letter, January 28, 2015, *Sixty Day Notice Regarding Child Care Assistance*
- Memorandum, January 23, 2015, *CSEA Fair Share Payments*
- 14-OCFS-LCM-12, *Excludable Income for Financial Eligibility for Child Care Subsidy*
- 14 OCFS-LCM-04, *Child Care Subsidy Fraud Regulations*
- 14-OCFS-LCM-01, *Website Postings of Changes to Child Care Services*
- 12-OCFS-LCM-03, *Kinship Guardian Assistance Program Payments—Excludable Income for Child Care Subsidy Program Eligibility*
- 12-OCFS-LCM-01, *Changes to the Legally-Exempt Child Care Provider Enrollment Process*
- 10-LCM-17-T, *Use and Protection of Confidential Information*
- Memorandum, July 30, 2009: *Repeal of Child Support Requirement for Child Care Assistance*

## Lesson 1: Overview of the Child Care Subsidy Program

- 09-OCFS-LCM-07, *Training Programs for Dislocated Worker, One-time Disbursement Under the American Recovery and Reinvestment Act of 2009, Enhanced Market Rate for Legally Exempt Family and In-Home Child Care Providers*
- 07-OCFS-LCM-05, *Adoption and Foster Care Subsidies: Excludable Income for Child Care Subsidy*
- Commissioner Letter, October 3, 2007, *Changes to the Law Regarding Child Care in Lieu of Temporary Assistance*
- Memorandum, May 13, 2004, *Mandatory Child Care Notices*
- 03-OCFS-LCM-17, *In-Home Child Care Providers as Employers*
- 92-LCM-138, *Child Care Certificate Program*

### Informational Letters

Informational Letters (INFs) include:

- 18-OCFS-INF-01, *2018 Income Standards for the Child and Family Services Plan*
- 17-OCFS-INF-07, *Clarification on the Financial Eligibility Requirements for Transitional Child Care*
- 15-OCFS-INF-10, *Child Care Subsidy Program Improper Authorization for Payment Review*
- 14-OCFS-INF-05, *Revision of OCFS-LDSS-4700 Enrollment Form for Provider of Legally-Exempt Group Child Care*
- 12-OCFS-INF-01, *Sharing Confidential Client-identifiable Information Between Child Protective Services (CPS) and Protective Services for Adults (PSA)*
- 10-OCFS-INF-10, *Law 19, Invalidating Puerto Rican Birth Certificates*
- 02-OCFS-INF-05, *Child Care Case Referrals to FEDS and EVR*
- 02-OCFS-INF-01, *Former Family Assistance Families Eligible for Transitional Child Care Guarantee*
- 01-OCFS-INF-08, *For Child Assistance Program (CAP) Families Eligible for Transitional Child Care Guarantee or/and Transitional Medicaid/CAP MA Guarantee*

## Lesson 2: The Application Process

- Lesson Importance** This lesson describes policies related to the processing of client applications and will assist you in:
- Explaining client and social services district responsibilities in the application process
  - Explaining client rights
  - Assisting the client in completing the *Application for Certain Benefits and Services*

- 
- Lesson Overview** This lesson covers the following topics:
- *Application for Certain Benefits and Services*
  - Sections Required for the Child Care Subsidy Program
  - *Application for Child Care Assistance*
  - Client Responsibilities at Application
  - Social Services District Responsibilities at Application
  - Client Rights
  - Guidelines for Determining Availability of Child Care for Temporary Assistance Clients

- 
- Lesson Objectives** By the end of this lesson, you will be able to:
- Describe the purpose and structure of the *Application for Certain Benefits and Services* as it relates to the Child Care Subsidy program
  - Describe the purpose of the *Application for Child Care Assistance*
  - Describe client's rights and responsibilities in the application process
  - List Temporary Assistance and Non-Temporary Assistance families' rights and responsibilities when receiving child care assistance
  - Inform clients about their rights and responsibilities and about the different types of child care providers available to them

## The Application for Certain Benefits and Services

**Introduction** Clients who want to apply for child care assistance use the *Application for Certain Benefits and Services* (LDSS-2921), which can also be used to apply for:

- Public Assistance (Temporary Assistance)
- Medicaid
- Supplemental Nutrition Assistance Program (SNAP)
- Child Care Assistance
- Child Care in Lieu of Public Assistance
- Services, Including Foster Care
- Emergency Assistance

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**The Application Packet**

Clients applying for child care assistance are given an application packet. New York State (NYS) requires the following material be given to all clients applying for TA or Services programs:

- *Application for Certain Benefits and Services*, LDSS-2921
- *Instructions for Completing the Application for Certain Benefits and Services*, PUB-1301
- *Book 1: What You Should Know About Your Rights and Responsibilities*, LDSS-4148A
- *Book 2: What You Should Know About Social Services Programs*, LDSS-4148B
- *Book 3: What You Should Know if You Have an Emergency*, LDSS-4148C

**Note:** In addition to what the state requires, social services districts often include other information or forms in the application packet.

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**Prohibition Against Requiring a New Application**

Districts must ensure that families who are transitioning from TA and meet the criteria set forth below suffer no break in child care services and do not have to apply for Transitional Child Care. This requirement pertains only to cases where the parent or caretaker relative is receiving Child Care Subsidy at the time of case closing.

The district must determine the parent's/caretaker's need for child care and eligibility for the transitional guarantee before closing the TA case. If the parent/caretaker has a continuing need for child care and is eligible for the Transitional Child Care guarantee, the district must continue the family's child care subsidies without interruption by authorizing Transitional Child Care.

Transitional Child Care assistance must be guaranteed to the parent/caretaker for a period of 12 months after TA has been terminated or ended if the parent or caretaker relative meet the following criteria:

- Needs child care for an eligible child under 13 years of age in order to enable a parent/caretaker to engage in work, and
- Has income of no more than 200% of the State Income Standard (SIS), and
- Has been in receipt of TA or Child Assistance Program (CAP) in three of the six months prior to the TA case being closed, and
- Had his or her TA terminated as a result of:
  - Increased income from employment, or
    - Former CAP recipients who are ineligible for Safety Net Assistance (SNA) due to the income limits are deemed to meet this criteria at the time their five-year limit for TA expires regardless of whether their income increased
  - Increased income from child support, or
  - The parent voluntarily ended assistance and is no longer financially eligible for TA
    - Former Family Assistance (FA) recipients who do not apply for SNA benefits prior to their FA case closing are deemed to have voluntarily ended their TA
    - Additionally, a parent/caretaker who fails to recertify, but otherwise meets the eligibility criteria for the transitional guarantee, shall be considered to have voluntarily ended assistance

**Note:** For more information on Transitional Child Care, see 04-OCFS-ADM-01 and 17-OCFS-INF-07.

- Purpose**            The *Application for Certain Benefits and Services* serves multiple purposes. It provides:
- The means for the Local Department of Social Services (LDSS) to meet regulatory requirements
  - A means for applicants to state their needs and circumstances
  - Information to register the application into the Welfare Management System (WMS) and the Child Care Time and Attendance System (CCTA)
  - An audit trail for approval, denial, or withdrawal of the application
  - Signatures attesting that the information in the document is true and that client responsibilities are understood

- 
- Structure of the Application**            The *Application for Certain Benefits and Services* is divided into sections:
- Applicant information (white areas) to be completed by the client
  - Case information (gray areas) to be completed by the worker
  - Important information about client responsibilities
  - Client certifications and signatures
  - NYS agency-based voter registration form

**Note:** It is important that the workers not make any changes on the applicant’s section of the form or, if the worker does make changes, the client should initial the changes.

## Sections Required for the Child Care Subsidy Program

**Introduction**            The *Application for Certain Benefits and Services* and information on how to complete it is contained in 16-LCM-09, *Revisions to the LDSS-2921, PUB-1301, LDSS-3174, PUB-1313, LDSS-4148A-C, LDSS-4826, LDSS-4826A, LDSS-4942, and LDSS-2291*, and in PUB-1301, *Instructions for Completing the New York State Application for Certain Benefits and Services*.



**Page 1,  
Accommodations for  
Applicants with  
Disabilities**

The gray section at the top of the page allows the worker to enter general case information, including the eligibility determination and authorization period for the application.

The white section allows applicants who are blind, seriously visually impaired, or require other accommodations to complete the application to request the application in an alternative format.

**Page 2,  
General  
Applicant  
Information**

**Sections 1-5** of the *Application for Certain Benefits and Services* are filled out by the applicant. The applicant is asked to:

- Indicate the programs for which the applicant is applying
- Identify the applicant’s primary language and the language in which notices should be provided
- Identify the name and address of the applying individual, as well as directions to the residence in case a home visit needs to be made
- Indicate if the applicant is in need of SNAP benefits, including emergency benefits
- Indicate if a list of circumstances applies to the applicant

**Page 3,  
Household  
Information**

**Section 6** of the *Application for Certain Benefits and Services* requests household information from the applicant.

<b>Parent/ Caretaker Information</b>	<b>Purpose</b>
<b>Names and dates of birth of all people living in the household</b>	Helps determine who is required to be in the case and whether they meet the age requirements for eligibility  Used to search the WMS database for person’s history
<b>Other names</b>	Used to search the WMS database for prior history

**Page 4,  
Race/  
Ethnicity  
Information**

**Section 7** of the *Application for Certain Benefits and Services* requests race/ethnicity information from the applicant.

This information is voluntary and is not required to complete the application.

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**Page 5  
Citizenship  
Certification**

**Sections 8-9** of the *Application for Certain Benefits and Services* requests citizenship information for everyone who is applying or required to apply.

For applicants who are applying for Child Care Assistance only, the citizenship certification only needs to be completed for the children receiving services.

For applicants who are applying for Foster Care, the citizenship certification only needs to be completed for the children who will be receiving Foster Care.

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**Page 6,  
Child Support  
and Non-  
Custodial  
Parent  
Information**

**Section 10** of the *Application for Certain Benefits and Services* requests information regarding child support, as well as the name and location of the non-custodial parent.

This section does not have to be completed if the applicant is only applying for Child Care Assistance and if not in receipt of Temporary Assistance (TA).

---

**Page 7,  
Additional  
Household  
Information**

**Sections 11-14** of the *Application for Certain Benefits and Services* asks for the following information:

- The tax filing/dependent status for each individual living in the household
  - Absent/deceased spouse information
  - Absent child information, for children under the age of 21 living someplace else
  - Teen parent information
- 

**Pages 8-9,  
Income  
Information  
and  
Immigration  
Status**

**Section 15** of the *Application for Certain Benefits and Services* requests information concerning the earned and unearned income received by anyone living in the household. This information is used to determine income eligibility for low-income clients.

The eligibility worker performs initial data entry to determine income eligibility for services and produces the Services Financial Eligibility Display / Turnaround (SFED/T) from this section.

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**Pages 8-9,  
Income  
Information  
and  
Immigration  
Status**

**Section 15** also requests the applicant complete deductions that may allow certain clients requesting Medicaid to reduce their countable income.

This section does not have to be completed by applicants who are not applying for Medicaid.

**Section 16** requests step-parent resources and income, as well as immigration status sponsor information from anyone who is living in the household.

This immigration status sponsor information does not have to be completed by applicants for Child Care Assistance who are not in receipt of Temporary Assistance (TA).

---

**Pages 10-11,  
Employment  
Information,**

**Section 17** of the *Application for Certain Benefits and Services* asks for current and previous employment information and is recorded by the client and documented by the worker. Complete information is essential as earned income will be calculated to determine eligibility.

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**Page 12,  
Education and  
Training,**

**Section 18** of the *Application for Certain Benefits and Services* requests information on previous and current participation in school or training programs.

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**Pages 13-15,  
Resources,  
Medical  
Information**

**Sections 19-20** of the *Application for Certain Benefits and Services* requests household resources and medical information.

These sections do not have to be completed by applicants who are applying for Child Care Assistance and who are not applying for either Temporary Assistance (TA) or Medicaid.

---

**Pages 15-16,  
Shelter  
Information**

**Section 21** of the *Application for Certain Benefits and Services* requests shelter information from the applicant.

This section does not have to be completed by applicants who are applying for Child Care Assistance and who are not applying for Temporary Assistance (TA)

## Lesson 2: The Application Process

**Page 16, Other Expenses**      **Section 22** of the *Application for Certain Benefits and Services*, which requests other household expense information, does not have to be completed by applicants who are applying for Child Care Assistance and who are not applying for Temporary Assistance (TA).

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**Page 17-18, Other Information**      **Section 23** of the *Application for Certain Benefits and Services* collects additional information from the applicant.

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**Pages 19-25, Notices, Assignments, Authorizations, and Consents**      **Pages 19-25** of the *Application for Certain Benefits and Services* contain important information about the client's responsibilities when receiving assistance.  
Of special significance for all recipients of child care are the following statements:

- Agreement to inform the agency immediately of any changes in needs, income, property, child care provider, living arrangements, or address
- Consent to any investigation by the LDSS to confirm or verify the information given
- Certification that all statements are true, under penalty of perjury

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**Signatures, Page 25**      **Page 25** of the *Application for Certain Benefits and Services* requires the following applicants to sign the application:

- Spouses, on family applications
- Head of household, in a single parent/caretaker family
- Authorized representative, on behalf of an applicant who is incapable due to physical or mental incapacity

By signing the application, the applicant certifies all information is true and that he or she has read and understands the sections regarding client rights and responsibilities.

## Application for Child Care Assistance

**Application for Child Care Assistance** Districts may elect to make the *Application for Child Care Assistance* (OCFS-6025) and the instructions, *How to Complete the Application for Child Care Assistance* (OCFS-6026) available to parents/caretakers applying for child care assistance only. Applicants applying for both Temporary Assistance (TA) and Child Care Assistance, or Child Care in Lieu of TA must use the LDSS-2921, *Application for Certain Benefits and Services*.

District may also elect to create a local equivalent child care application, which must be approved by OCFS prior to distribution and use. For more information on the *Application for Child Care Assistance* and the requirements for creating a local equivalent application, please refer to 18-OCFS-LCM-01, *Application for Child Care Assistance and How to Complete the Application for Child Care Assistance Revisions*.

Districts must also continue to inform all applicants of their rights and responsibilities through the inclusion of:

- Book 1: *What You Should Know About Your Rights and Responsibilities* (LDSS-4148A)
- Book 2: *What You Should Know About Social Services Programs* (LDSS-4148B)
- Book 3: *What You Should Know if You Have an Emergency* (LDSS-4148C)

## Client Responsibilities at Application

**Introduction** Client responsibilities are outlined in:

- Book 1: *What You Should Know About Your Rights and Responsibilities* (LDSS-4148A)
- Book 2: *What You Should Know About Social Services Programs* (LDSS-4148B)
- Book 3: *What You Should Know If You Have an Emergency* (LDSS-4148C)

## Lesson 2: The Application Process

### Client Responsibilities

All applicants for child care services must:

- Complete the application by providing accurate, complete, and current information regarding family income and composition, child care arrangements, and any other circumstances related to the family's eligibility for child care services
- Select a provider, and if selecting a Legally-Exempt provider, supply the Legally-Exempt provider enrollment form and documents to an Enrollment Agency (EA) to determine provider's eligibility

Low-Income families:

- Must contribute toward the cost of child care services by paying a family share based upon the family's income. The minimum family share is \$1.00

TA Families:

- No family share is required for recipients of TA, unless they are repaying an overpayment

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### TA Requirements Related to Locating a Provider

When locating a provider, TA clients must:

- Let their caseworker know what they have done to locate a provider on their own
- Ask for assistance in finding a provider if they cannot find one on their own
- Demonstrate that they have followed up on the two mandated referrals provided to them
- Demonstrate their inability to find appropriate, accessible, affordable, or suitable child care

TA clients who cannot satisfactorily demonstrate that suitable child care is not available will be sanctioned if they fail to participate in their work activity.

**Cooperating with Child Support Enforcement**

TA clients are required to cooperate with the Child Support Enforcement Unit. TA clients who meet the district's definition of "engaged in work" or "participating in work activities" have a child care guarantee regardless of whether they meet the cooperation standard.

Transitional Child Care, Child Care In Lieu of TA, and Low-Income clients should be *encouraged* to pursue child support. Active pursuit of child support is no longer a requirement for child care assistance.

A memorandum sent to all Commissioners, *Repeal of Child Support Requirements for Child Care Assistance, July 30, 2009*, announced the repeal of the child support requirement for non-TA applicants and recipients.

## **Social Service District Responsibilities at Application**

**Introduction**

LDSS responsibilities at application are spelled out in

- New York State Code, Rules and Regulations, Title 18, Part 404, *Determination and Re-determination of Eligibility*
- 05-OCFS-ADM-03, *Child Care Subsidy Program*
- 16-LCM-09, *Revisions to the LDSS-2921, PUB-1301, LDSS-3174, PUB-1313, LDSS-4148A-C, LDSS-4826, LDSS-4826A, LDSS-4942, and LDSS-2291*
- 17-OCFS-LCM-11, *New York State Child Care Block Grant Subsidy Program Allocations SFY 2017-2018*
- The district's responsibilities include:
  - Assist the client in the application process
  - Provide educational information about different types of providers and criteria for selection
  - Make a timely eligibility decision and send a timely notice of the decision
  - Inform clients of their rights and responsibilities

## Lesson 2: The Application Process

**Assist Client** The worker should offer assistance to the client in completing the application process. The worker can offer assistance with filling out the application or obtaining verification.

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**Provide Educational Information** Districts give assurances that they will provide educational information about different types of providers and criteria to help parent/caretakers select a suitable provider.

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**Inform Clients of Rights and Responsibilities** Districts are required to inform applicants of their rights and responsibilities.

This is accomplished through the following documents:

- *Book 1: What You Should Know About Your Rights and Responsibilities* (LDSS-4148A)
- *Important Information About Child Care* (LDSS-4647) (optional)
- *Application for Certain Benefits and Services* (pages 19 - 25)

In addition, the child care eligibility worker should be prepared to use clear and understandable language to further explain these rights to the client.

---

**Inform TA Clients of Their Rights and Responsibilities** Social services districts are responsible for informing TA clients of:

- Their responsibility for locating a child care provider
- Their right to demonstrate they cannot find appropriate, accessible, suitable, and affordable child care
- Their right to continue receiving TA when they have demonstrated that they cannot meet their work requirements because they cannot find appropriate, accessible, suitable, and affordable child care
- Their responsibility to continue looking for child care and reporting back to the district on their efforts



**Front End Detection System/Eligibility Verification Review**

Front End Detection System (FEDS) and Eligibility Verification Review (EVR) are fraud and abuse control programs designed to prevent and/or identify fraud and overpayments.

Each districts must identify in its Child and Family Services Plan and FEDS Plan the criteria that will be used to determine which Child Care Subsidy applications suggest a higher than acceptable risk for fraudulent or erroneous Child Care Subsidy payments and procedures for referring such applications to the district’s FEDS unit. Workers should be alert to potential indicators of fraud and make referrals to FEDS and/or EVR, when appropriate.

Reference for the implementation of FEDS and/or EVR for a child care case is found in 02-OCFS-INF-05, *Child Care Case Referrals to FEDS and EVR*, located in **Tab 9 (RRM)**.

---

**Make Eligibility Decision**

Eligibility decisions must be made within 30 calendar days of the date of the application.

Written notice of the eligibility decision must be sent within 15 calendar days after the determination has been made.

## Client Rights

**Introduction**

Client rights are outlined in *Book 1: What You Should Know About Your Rights and Responsibilities* (LDSS-4148A).

---

**Rights Shared by TA and Low-Income Clients**

- Rights all applicants or recipients of Child Care Subsidy have are:
- Parental choice
  - Non-discrimination rights
  - Right to look at their own records
  - Conference and fair hearing rights

## Lesson 2: The Application Process

### **Information on Parental Choice**

Parent/caretakers must be invested with the freedom to choose and to monitor the care for their children. The information given out at application is designed to help parent/caretakers make the best choice, and to help them monitor the quality of child care they have selected. Parent/caretakers of eligible children should receive information about:

- The available types of care
- Their right to visit and observe their children while in care
- How to choose a provider
- How to file a complaint if they feel a provider is violating the laws and regulations governing child care

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### **Non-Discrimination**

Any family eligible for services shall not be denied that service or discriminated against in the use of the service on the basis of race, sex, religion, or any other factors prohibited by law.

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### **Right to Look at Record**

Clients have the right to look at their case record during working hours. If documents are needed for a fair hearing they have the right to receive free copies.

---

### **Right to a Conference of Fair Hearing**

Clients who are not satisfied with a child care eligibility decision have the following recourse:

- Contact their child care case worker to understand how and why the decision was made
- Request a conference in which another worker reviews the decision. This is a district review process
- Request a fair hearing

A fair hearing gives the client and the district the opportunity to present their versions of the facts to an administrative law judge, who will make a finding of fact. A written decision detailing the outcome is given to the client and the LDSS.

**Right to a Conference of Fair Hearing (cont'd)**

Clients have 60 days from the date of the notice to ask for a fair hearing and 10 days from the date of mailing postmark to ask for aid continuing.

While the fair hearing decision is pending, clients are eligible for aid continuing. Aid continuing means benefits continue unchanged. If clients lose their fair hearing, they are required to pay back the amount of the aid continued. Districts should inform clients of this when they request a fair hearing.

---

**Rights Specific to TA Clients**

TA clients have specific rights related to child care, work requirements, and TA assistance, including the right to:

- Demonstrate the inability to locate appropriate, accessible, suitable, and/or affordable child care
  - Receive a referral for at least two eligible licensed or registered providers when they cannot find one on their own
- 

**TA Client Right to Information**

TA clients have the right to receive information about how to locate a child care provider when they apply for TA. If they cannot locate needed child care on their own, this information can be provided in a number of ways.

Two ways this might be done are by providing:

- The name and telephone number of a Child Care Resource and Referral Program (CCR&R), Enrollment Agency (EA), or other similar programs, or
  - A list with the names, addresses, and telephone numbers of child care providers
- 

**TA Client Right to Choose**

TA clients who demonstrate an inability to find a child care provider on their own must be provided with two choices of eligible licensed and registered providers.

At least one of these choices must be a provider who is licensed or registered with the NYS Office of Children and Family Services (OCFS) or the New York City Department of Health.

**TA Client Failure to Comply with Work Requirement**

TA clients must be informed that:

- Their benefits cannot be reduced or terminated if the client fails to comply with their work requirement due to a documented lack of child care
- The time they are excused from their work activity still counts toward their 60-month limit of federally funded TA

**Note:** *Book 1: What You Should Know About Your Rights and Responsibilities* (LDSS-4148A) has a section entitled “Rights Regarding Child Care” that explains if a client is unwilling to accept child care services from either provider referred by the district, does not demonstrate such child care is not appropriate, accessible, suitable, affordable, and the client fails to comply with applicable work requirements, then the district may reduce or terminate TA benefits.

## **Guidelines for Determining Availability of Child Care for TA Clients**

**Introduction**

Districts vary as to who may perform a particular job function. The TA, employment, or child care worker might be the one to decide if the TA applicant or recipient may be excused from work due to the lack of affordable, accessible, appropriate, or suitable child care as stipulated in 18 NYCRR 415.8, *Child Care Services*.

The worker charged with making the decision may want to consult with you about the availability of child care in the area where the client lives and is expected to work.

**Available Child Care**

Criteria	Definition
<b>Appropriate Care</b>	Means the provider is open the hours and days needed for the individual to meet participation requirements or engage in work activities, and is willing to care for the children, including any special needs.
<b>Accessible Care</b>	Means the parent/caretaker is able to get to the location by driving a motor vehicle or by public transportation within a reasonable distance of home or work. Reasonable distance is locally defined in the Child and Family Services Plan.
<b>Affordable Care</b>	Means the parent/caretaker has sufficient money to pay his or her share of child care costs, if any (currently TA clients are not required to pay a family share). Affordability may come into play if available provider charges over the market rate or if the parent/caretaker is reimbursing an overpayment via family share.
<b>Suitable Care</b>	Means the physical and mental condition of the provider and the physical condition of the provider's home is not detrimental to the health and safety of the child.

**Conditions for Excusing from Work**

It is the responsibility of the LDSS to determine that a client has demonstrated an inability to locate needed child care. In order to be excused from the work requirement, all of the following conditions must be met:

- Attestations regarding the inability to find appropriate, accessible, affordable, or suitable providers must be submitted by the client
- The LDSS must determine the validity of the attestations
- New attestations must be submitted periodically, based on the client's employability plan, verifying the client's continuing attempt to locate child care

## Practice A: Assisting the TA Client with the Availability of Child Care

**Directions:** Read the case study and answer the questions.

Sheila is a TA client with three children: 3 year old Nicholas, 2 year old Benjamin and 8 month old Jeanne.

She has found a job as an aide in a nursing home, which will begin in two weeks. Her work schedule is Sunday through Thursday with varying hours; however, usually in the evening.

The CCR&R gave her two referrals, both of which will provide weekend care. The closest is 2.4 miles from her home. Sheila does not have a car and relies on public transportation.

1. What are some factors that need to be considered to determine the availability of care?
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  
2. What would have to be verified in order for Sheila to be excused from work?
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  
3. What could you do to help Sheila find child care?
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_

## Unit 2

### Programmatic and Income Requirements

**Unit Importance** This lesson explains policy related to the determination of programmatic, residency, and income eligibility for child care services. As an eligibility worker you need to know the policy in order to:

- Explain eligibility criteria to clients
- Determine client programmatic and income eligibility

---

**Unit Overview** This unit consists of the following lessons:

- Categories of Eligible Families
- Income and Residency Requirements for Low-Income Families

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## Lesson 1: Category of Eligible Families

**Lesson Importance** This lesson will help you determine whether a family meets the requirements for eligible families under the New York State Child Care Block Grant or Title XX.

This decision will affect:

- The factors in a client's situation that need verification before a case can be opened
- The authorization codes you use to designate which funding sources will be used to make the payments

---

**Lesson Overview**

Topics in this lesson include:

- Introduction to Child Care Eligibility
- Families Eligible for a Child Care Guarantee
- Families Eligible When Funds are Available
- Families Eligible When Funds are Available and Included in the District Child and Family Services Plan
- Title XX Eligibility

---

**Lesson Objectives**

By the end of this lesson, participants will be able to:

- Distinguish Temporary Assistance families from Non-Temporary Assistance families
- Identify the category of an eligible family
- Describe criteria for qualifying under Title XX money
- Determine the category of eligible family for which the family qualifies

## Introduction to Child Care Eligibility

**Broad Categories of Eligibility** Title 5-C of Social Services Law, *Block Grant for Child Care*, section 410, defines the three broad categories of eligible families entitled to participate in the New York State Child Care Block Grant (NYSCCBG):

- Families eligible for a child care guarantee
- Families eligible when funds are available
- Families eligible when funds are available and the district has included them in its Child and Family Services Plan

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**Title XX Eligibility** Families may also be eligible for child care services funded under Title XX of the federal Social Security Act if the family is listed in the district's Child and Family Services Plan, and

- The child is in need of child care as a preventive service, or
- The family meets one or more of the criteria set forth in the three categories of eligible families specified in the NYSCCBG

17-OCFS-LCM-10, *SFY 2017-18 Social Services Block Grant (Title XX) Allocations, Tab 1 (RRM)*, contains a list of the actual dollar amounts allocated to each Local Department of Social Services (LDSS).

**Factors Affecting Eligibility**

Families are determined eligible for child care services based on many factors including:

- The reason for child care (so the parent/caretaker can work or engage in work activities, to protect the child, to prevent harm to the child, etc.)
- The relationship of the parent/caretaker to the child
- The age of the child
- The needs of the child (the child may have special needs or be under court supervision)
- The eligibility of the provider
- The income of the family
- The family's Temporary Assistance (TA) status
- The family's eligibility for a child care guarantee

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**Temporary Assistance Families vs. Low-Income Families**

During the initial stage of screening, it should be determined if the applicant applying for child care is a:

- TA applicant, recipient, or family transitioning from TA
- Low-Income applicant, recipient, or family who meets other eligibility criteria
- Individual who may choose Child Care In Lieu of TA

The determination of whether a client fits under TA or services category affects:

- The paper work used to communicate to the Welfare Management System (WMS)
- The authorization codes
- What the worker tells the client about his or her rights and responsibilities

## Lesson 1: Category of Eligible Families

**Definitions** Important definitions related to eligibility are outlined in 18 NYCRR 415, *Child Care Services*, **Tab 6**, and in 05-OCFS-ADM-03, *Child Care Subsidy Program*, **Tab 8**. These include:

- Child care services
- Eligible child
- Caretaker and caretaker relative
- Person in loco parentis
- Child Care Services Unit (CCSU)
- Engaged in work
- Seeking employment
- Eligible providers

---

### **Child Care Services**

Child care services means care provided by an eligible provider:

- On a regular basis, either in or away from the child's residence, for less than 24 hours per day
- On a limited basis for 24 or more consecutive hours, when services are provided because of a short-term emergency or to allow the caretaker to participate in an activity as outlined by the district, if the district has indicated this in its Child and Family Services Plan

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### **Eligible Child**

An eligible child is a child who resides with a caretaker in an eligible family and who:

- Is under 13, for all types of child care services
- Turns 13 during a school year, for services provided under Title XX, and remains eligible until the end of the school year
- Is under 18 and has special needs or is under court supervision
- Is under 19, a full-time student in a secondary school or in an equivalent level of vocational or technical training, and has special needs or is under court supervision

**Introduction to Special Needs**

During their initial contact with the agency, applicants should be informed about:

- How a child may qualify as a child with special needs
- How a provider may be eligible for additional payment due to the costs incurred because of the special needs child
- The parent/caretaker's responsibility to obtain verification of the special need by a recognized specialist

---

**Caretaker**

A caretaker is defined as the child's:

- Parent
- Legal guardian
- Caretaker relative
- Any other person in loco parentis to the child

---

**Caretaker Relative**

A caretaker relative is defined as any person who is a parent or other relative who exercises responsibility for day-to-day care and is living with the child. Such relatives are those related to the parents or step-parents of the child, through blood or marriage, within the 3<sup>rd</sup> degree of consanguinity, including:

- Siblings, step-siblings
- Grandparents, great-grandparents, great-great grandparents
- Aunts and uncles to the third degree
- The child's first cousin

**Note:** This is the same definition as listed in NYCRR 369.2, as used within the context of eligibility for family assistance. A full listing of those who may be considered a caretaker relative are listed in 05-OCFS-ADM-03, *Child Care Subsidy Program*, located in **Tab 8**.

## Lesson 1: Category of Eligible Families

**Person in Loco Parentis** Individuals are considered to be in loco parentis if they are the child's guardian, caretaker relative, or any other person with whom the child lives who has assumed responsibility for the day-to-day care and custody of the child.

---

**Child Care Services Unit** The Child Care Services Unit (CCSU) definition replaces the former Services Family Unit. This concept defines which individuals must be included in the unit to determine eligibility.

---

**Engaged in Work** For a TA client, engaged in work means the individual:

- Is working according to the definition set forth in the district employment plan that has been approved by New York State Office of Temporary and Disability Assistance (NYS OTDA)

For a non-TA client, engaged in work means that the individual:

- Is earning wages at a level equal to or greater than the minimum amount required under federal and state labor law for the type of employment, or
- Is self-employed and is able to demonstrate that such self-employment produces personal income equal to or greater than the minimum wage or has the potential for growth in earnings to produce such an income within a reasonable period of time

---

**Seeking Employment** For a person not receiving TA, seeking employment means:

- Making in person job applications
- Going on job interviews
- Registering with the NYS Department of Labor to obtain job listings
- Participating in other job seeking activities as approved by the LDSS

**Eligible  
Provider**

Eligible providers include:

- Validly licensed (outside NYC) or permitted by the NYCDOH (NYC boroughs) Day Care Centers (DCC), or properly registered School-Age Child Care (SACC) programs
- A public school district operating a child care program which meets state and federal requirements pursuant to a contract with a LDSS
- A registered Family Day Care (FDC)
- A licensed Group Family Day Care (GFDC)
- A Legally-Exempt provider of Family or In-Home Child Care enrolled with a Legally-Exempt Enrollment Agency (EA)
- A Legally-Exempt provider of Group Child Care enrolled with a Legally-Exempt EA

Eligible providers do NOT include:

- Members of the TA Filing Unit
- Adult members of the CCSU who are not the child's siblings
- Parents or stepparents

For services provided under Title XX funds, an eligible provider must be licensed or registered and have a contract or letter of intent from the district. All other providers are not eligible for services provided under Title XX funds.

## Families Eligible for a Child Care Guarantee (Category One)

**Introduction** Under the NYSCCBG, districts are required to guarantee child care services under specific situations for persons who are qualified for, or are current or former recipients of, TA. Guarantees are for:

- TA families participating in a required activity
- TA recipients who meet the definition of engaged in work
- Working families who choose Child Care In Lieu of TA
- Transitional Child Care (TCC) services

---

**Purpose of Guarantee** These guarantees for child care services support and reinforce the notion of personal responsibility, as well as the increased level of work requirements as established by federal and state welfare reform. All of these opportunities to provide child care are directly related to assisting the household to achieve or maintain self-sufficiency.

---

**TA Applicants and Recipients Complying with Required Activity** A family that has applied for, or is in receipt of, TA when services are needed for a child under 13 in order to enable the child's custodial parent or caretaker relative to participate in required employment activities, including:

- Orientation
- Assessment
- Assigned work activities, such as work experience, job readiness training, subsidized employment, job search, on the job training, vocational training and education, or community service

The guarantee applies to all the children of the custodial parent or caretaker, regardless of the child's status as part of the TA filing unit.



**TA Recipients Engaged in Work** A family that is in receipt of TA when services are needed for an eligible child under age 13 to enable the custodial parent or caretaker relative to engage in work. Engaged in work means the individual is involved in work activities as defined by the social services district in the district's employment plan submitted to and approved by the NYS OTDA.

---

**Guaranteed Child Care In Lieu of TA** Applies to families whose income is at or below the amount that would allow them to become or remain eligible for TA; their resources must also be within TA limits.

They must be engaged in work, have a need for child care for a child under age 13, and must use an eligible child care provider.

---

**Eligibility Requirements for Child Care In Lieu of TA** The parent or caretaker relative:

- Has applied for and would be otherwise eligible for TA by completing the application, and
- Chooses to receive child care In Lieu of TA or voluntarily closes his or her TA case while still eligible for TA

---

**Programmatic Eligibility** Eligibility requirements differ for TA clients and those who choose Child Care In Lieu of TA. Families who choose Child Care In Lieu of TA do not have to meet certain requirements, including:

- Domestic Violence (DV) screening
- Drug/alcohol screening
- Sign a property lien

## Lesson 1: Category of Eligible Families

### Child Care In Lieu of TA When Engaged in Work

A parent or caretaker relative will be considered “engaged in work” if he or she meets the following criteria:

- The parent/caretaker must be earning at least minimum wage unless he or she is employed in a job where minimum wage is made by the combination of wages and tips, or the employment is exempt from minimum wage rules, and
- The parent(s)’ gross earned income must be equal to or greater than the amounts listed below or, if employed in a job exempt from minimum wage rules and paying less than minimum wage, he or she must meet the minimum number of work hours listed.

General Minimum Wage Rate Schedule						
Location	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	2021*
NYC - Big Employers (of 11 or more)	\$11.00	\$13.00	\$15.00			
NYC - Small Employers (10 or less)	\$10.50	\$12.00	\$13.50	\$15.00		
Long Island & Westchester	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of New York State Workers	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	*

\* Annual increases for the rest of the state will continue until the rate reaches \$15 minimum wage (and \$10 tipped wage). Starting 2021, the annual increases will be published by the Commissioner of Labor on or before October 1. They will be based on percentage increases determined by the Director of the Division of Budget, based on economic indices, including the Consumer Price Index (see [www.ny.gov](http://www.ny.gov) ).

See Commissioner Letter, *Changes to Law Regarding Child Care In Lieu of Temporary Assistance* for more information.

**Eligibility Requirements for Transitional Child Care** Transitional Child Care (TCC) assistance is guaranteed to the parent/caretaker relative for a period of 12 months after the TA case has closed, including CAP (Child Assistance Program), when the following criteria are met:

Criteria for Transitional Child Care			
The family received TA, or Child Care In Lieu of TA in at least three of the six months prior to the case closing or becoming TA ineligible, <u>and</u>	The family includes an eligible child that is under 13 who needs child care so the child's parent or caretaker relative can be engaged in work, <u>and</u>	The family has income at or below 200% of the SIS, <u>and</u>	The TA or CAP case closed for a reason that meets specific criteria.

**Specific Criteria for Case Closing**

The TA or CAP case must have closed for one of the following reasons:

- TA case was closed due to increased income from employment, child support, or the family voluntarily ended its assistance and its income is above the TA limit, or
- TA case was closed due to the five-year cash time limit and the family does not apply for Safety Net Assistance (SNA), or
- TA case was closed due to the five-year cash time limit and the family is in the 45-day application period before receiving recurring SNA benefits, or
- CAP case was closed due to the five-year cash time limit and the case is found to be income ineligible for SNA non-cash benefits (case type 17)

**Note:** Families who become ineligible for TA due to an increase in resources do not meet the eligibility criteria for the TCC guarantee. This information can be found in 04-OCFS-ADM-01, **Tab 4 (RRM)**.

## Lesson 1: Category of Eligible Families

**Transitional Child Care** Families with closed TA cases that do not apply for SNA are deemed to have voluntarily ended their TA benefits and therefore are potentially eligible for TCC, provided they meet all the criteria. The district must use the information available from the TA case record to determine eligibility for TCC. The district may not require the family to submit a new application. The district may however, contact the family to verify existing information or to obtain new information.

When a family applies for SNA after the TA case was closed due to the 60-month time limit, the family may be eligible for TCC only during the 45-day application waiting period. The district:

- Should use the application for SNA to determine the eligibility
- Must consider eligibility for other categories of eligible families under NYSCCBG, if the family is not eligible for TCC

Once the SNA case opens, such a family is eligible for guaranteed child care if the assistance is needed in order for the parent or caretaker relative to participate in work activities as required by the LDSS. If the family is found ineligible for SNA, then the family would remain eligible for TCC for the remainder of its 12 month time period.

## Families Eligible When Funds Available (Category Two)

**Introduction** Certain children and families are eligible as long as funds are available under the NYSCCBG program or any district funds appropriated for such programs. Under this category are:

- TA families needing care for older children who have special needs or are under court supervision
- TA and Low-Income families with a teen parent who needs to attend high school or an equivalency program
- Low-Income working families with income up to 200% of the SIS who also must meet additional criteria

**TA Families  
Needing  
Care for an  
Older Child**

Child care services must be provided to applicants and recipients of TA with a child 13 and older:

- When the custodial parent or caretaker relative is working or required to engage in work activities, such as orientation, assessment, or approved work activities, and
- The child has special needs as defined in 91-ADM-34 (see **Tab 12**), or
- The child is under court supervision

---

**TA Families  
with Teen  
Parent or  
Needing  
Protection**

A family in receipt of TA must also receive Child Care Subsidy when child care is necessary:

- To allow a teenage parent to attend high school or an equivalency program, or
- When the child's parent or caretaker relative is
  - Physically or mentally incapacitated, or
  - Has family duties away from home necessitating his or her absence

---

**Low-Income  
Families**

Families with income up to 200% of the SIS when:

- Child care services are needed for the child's parent/caretaker to engage in work, or
- To enable a teen parent to attend high school or an equivalency program

## **Families Eligible When Funds Available and the District Includes in the Child and Family Services Plan (Category Three)**

**Introduction** Districts must provide child care services for an eligible child in an eligible family:

- To the extent the district continues to have funds available under the district's allocation for NYSCCBG or any district funds appropriated for such program
- Providing the district has listed such families as eligible in its Child and Family Services Plan

Below is a list of the full range of families that may be eligible if the district has listed those families in its Child and Family Services Plan. Workers need to know which families are listed in their district's Child and Family Services Plan and Annual Plan Update.

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**TA Family in Additional Approved Activity** A family receiving TA may be eligible when child care services are necessary for a parent or caretaker relative to participate in an approved activity in addition to his or her required work activity.

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**TA Family with Sanctioned Parent** A family receiving TA may be eligible when child care services are necessary for a sanctioned parent or caretaker relative to participate in unsubsidized employment, provided the parent or caretaker relative receives earned wages at a level equal to or greater than the minimum amount under federal and state labor law, even if the parent or caretaker relative is not meeting the work requirement.

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**Family with Illness or Emergency** Families with income up to 200% of the SIS when child care services are needed because the child's caretaker is physically or mentally incapacitated, or has family duties away from home.

**Families  
Who Need  
Care to  
Protect the  
Child**

A family receiving TA or with income up to 200% of the SIS, when child care services are needed for the child to be protected because the child's caretaker is:

- Participating in an approved substance abuse treatment program, or in screening or assessment activities for such a program
- Homeless or receiving services for victims of Domestic Violence (DV) and needs child care to participate in an approved work activity or screening for DV, or assessment of the need for services for victims of DV
- In an emergency situation of short duration, including cases where the caretaker's absence from the home is necessary because of extenuating circumstances such as fire, eviction from a home, seeking living quarters, or providing chore/housekeeping services for an elderly or disabled relative

A family with income up to 200% of the SIS when child care services are needed for the child to be protected because the child's caretaker is:

- Physically or mentally incapacitated, or
- Has family duties away from home necessitating his or her absence

A family with an open child protective services case when it is determined on a case-by-case basis that such child care is needed to protect the child (without regard to income).

## Lesson 1: Category of Eligible Families

### Families Attending Programs Beyond High School

A caretaker in a family receiving TA or with income up to 200% of the SIS needing child care may attend:

- A two-year program, other than one with a specific vocational sequence, leading to an associate's degree, or
- A four year college or university program leading to a bachelor's degree; as long as the parent/caretaker is also working at least 17 and 1/2 hours per week and earning wages at a level equal to or greater than the minimum required by federal and state law while pursuing the course of study

Clients will meet these eligibility requirements only if:

- The program is reasonably expected to improve the earning capacity of the caretaker, and
- The caretaker can demonstrate his or her ability to successfully complete the course of study

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### Low-Income Families Participating in Activities as Selected in the District's County Plan

A family with income up to 200% of the SIS when child care services are needed for the caretaker to participate in an activity that is a necessary part of a plan for the family's self-support, including:

- Actively seeking employment for a period up to six months (as defined in the district's Child and Family Services Plan)
- Education or vocational activities, including attendance in an allowable secondary or post-secondary program
- A program to train workers in an employment field that currently is or is likely to be in demand in the near future, if the caretaker documents that he or she is a dislocated worker and is registered in such a program

See **Tab 6**, 18 NYCRR 415.2(a)(3)(vii)(c) for the regulations that pertain to dislocated workers.



## Title XX

### Title XX Eligibility

Families may also be eligible for child care services funded under Title XX of the federal Social Security Act:

If the family is listed in the district's Child and Family Services Plan, and

- The child is in need of child care as a child preventive service, or
- The family meets one or more of the criteria set forth in the three categories of eligible families specified in the NYSCCBG

See *17-OCFS-LCM-10, SYF 2017-18 Social Services Block Grant (Title XX) Allocations in Tab 1(RRM)* for more information on Title XX funding.

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### Requirements

When Title XX money is used for child care, there are special requirements related to:

- Type of provider
- Payment of provider
- Upper income level
- Additional coverage for children

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### Type of Provider

The provider must be a private, not-for profit corporation, unless the district can demonstrate that conveniently accessible non-profit facilities are unavailable or unable to provide the required care and the Commissioner of the Office of Children and Family Services (OCFS) approves the purchase of said care.

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### Payment of Provider

Payment of the provider must be made by a Purchase of Services contract or a letter of intent in accordance with 18 NYCRR 405, *Purchase of Services by Social Service Districts*.

**Title XX  
Upper  
Income  
Levels**

A LDSS may establish in its Child and Family Services Plan upper income levels for families receiving child care services under Title XX above 200% of the SIS provided that the income levels do not exceed:

- 275% of the income standard for a family of one or two
- 255% of the income standard for a family of three
- 225% of the income standard for a family of four or more

---

**Additional  
Coverage**

A child who turns 13 years of age during a school year may continue to receive child care services under Title XX through the end of the school year, as long as the child care is provided by a licensed or registered provider with whom the district has a contract or a letter of intent.

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**Providers of  
Care for  
Children  
with Special  
Needs**

Providers of care for children with special needs may be Licensed Registered, or enrolled Legally-Exempt providers.

In order to assist children with special needs, districts are no longer required, as per 91-ADM-34, *Child Care Reimbursement for Children with Special Needs*, to request approval from OCFS to apply the special needs market rate to enrolled, Legally-Exempt providers funded under the NYSCCBG subsidy program. All the other requirements of 91-ADM-34 still apply.

Special needs are defined in 91-ADM-34, *Child Care Reimbursement for Children with Special Needs*, located in **Tab 4 (RRM)**, and include:

- Visual impairment
- Deafness
- Hard of hearing
- Orthopedic impairment
- Emotional disturbance
- Mental retardation

- Learning disability
- Speech impairment
- Health impairment
- Autism
- Multiple handicaps

See 91-ADM-34, *Child Care Reimbursement for Children with Special Need* for more information. **Tab 4 (RRM)**.

## Priority Populations

**Priority Populations** For child care services funded under the NYSCCBG, each district must give priority to the following federally-mandated populations:

- Families with very low income—each district must outline in its Child and Family Services Plan an income level at or below 200% of the SIS which will constitute the upper income level for families with very low income.
- Families with children who have special needs

For Child Care Services funded under the NYSCCBG or under Title XX, each district may choose to establish local priorities in their Child and Family Services Plan, provided the established priorities allow equitable access to child care assistance funds for eligible families. Additional information on priority populations may be found in 18 NYCRR 415.2(d), **Tab 6**.

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### Case Openings

When a LDSS has insufficient funds to maintain the current caseload or to open cases for all eligible families, the district may limit opening cases for those families that have lower priorities in order to serve families with higher priorities.

The district must describe how it will select cases to be opened in its Child and Family Services Plan. However, the district must open cases for families who are eligible for a child care guarantee.

## Lesson 1: Category of Eligible Families

### **Case Closings**

When a LDSS has insufficient funds to maintain the current caseload or to open cases for all eligible families, a district may discontinue funding to those families who are not eligible for a child care guarantee and who have lower priorities in order to serve families with higher priorities. The district must describe how it will select cases to be closed in its Child and Family Services Plan.

If no priorities are established beyond the federally-mandated priorities and all funds are committed, case closings must be based on the length of time in receipt of services. The length of time used may be based either on the longest or shortest time receiving services, but must be consistent for all families.

## Practice A: Determining Category of Eligible Family

**Directions:** Using the following case studies, determine what category of eligible family the applicant qualifies for and why. For each of the cases, assume that income eligibility has been established.

### Case 1

#### Part A

Ms. Jackson has been on TA for six months and has recently found a full-time job.

Her mother previously watched her children at no charge, however due to health problems she is unable to do this on a full-time basis.

Her TA worker has done a budget and determined that Ms. Jackson is still income eligible for TA.

Ms. Jackson states that she needs help with her child care for her 8 month old son Michael and her 2 year old daughter Janet.

**Category:** \_\_\_\_\_ **Why:** \_\_\_\_\_

#### Part B

Eight months later, Ms. Jackson reports an increase in pay. After recalculating her budget, it is determined she is no longer income eligible for TA and her case will be closed in 10 days.

**Category:** \_\_\_\_\_ **Why:** \_\_\_\_\_

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### Case 2

Ms. Price called her LDSS office to explain that she is having a problem paying for her child care for her three children who are all under the age of 13. She explains that she works full-time and receives no help from her ex-husband.

**Category:** \_\_\_\_\_ **Why:** \_\_\_\_\_

**Lesson 1: Category of Eligible Families**

**Case 3** Mr. Riley just received custody of his 3 year old daughter, 5 year old daughter, and 8 year old son because the children's mother is in drug rehab.

Mr. Riley works full-time and needs help with child care.

**Category:** \_\_\_\_\_ **Why:** \_\_\_\_\_

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**Case 4** Ms. Jones is a 17 year old trying to obtain her GED. She is four months away from completing her requirements.

Her friend can no longer babysit her two daughters under three.

The children's father previously supported her, but he left them two weeks ago and she now has no means of support. Ms. Jones moved in with her mother, who does not receive TA.

**Category:** \_\_\_\_\_ **Why:** \_\_\_\_\_

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**Case 5** Ms. Thompson has been in receipt of child care assistance and receives TA. She has recently been sanctioned and her TA benefit has been decreased due to her failure to meet the work requirement. She is employed only 15 hours per week, but is required to participate at a level of 30 hours per week.

**Category:** \_\_\_\_\_ **Why:** \_\_\_\_\_

**Case 6**

**Part A**

Sally Thomas is currently employed full-time and receives child support for two of her three children. She earns minimum wage. She is struggling to meet her expenses and has come to the agency to apply for cash assistance.

A quick scratchpad budget calculation shows that she will be eligible for a small grant, but after discussing the eligibility requirements with the pre-screener, she decides not to proceed, but requests assistance with child care subsidy only.

**Category:** \_\_\_\_\_ **Why:** \_\_\_\_\_

**Part B**

Sally reports an increase in her earned income seven months later and it is determined that she would no longer be income eligible for TA.

**Category:** \_\_\_\_\_ **Why:** \_\_\_\_\_

## Lesson 2: Income and Residency Requirements for Low-Income Families

**Lesson Importance** Income is one of the requirements for a family to be eligible for the Child Care Subsidy programs.

This lesson will help you:

- Identify whose income should count
- Separate countable from excludable income
- Determine whether a family meets the applicable income standards
- Determine the family share

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**Lesson Overview**

Topics in this lesson include:

- Residency Requirements
- Determining Child Care Services Unit
- Determining Income Eligibility
- Calculating Income Eligibility and Family Share

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**Lesson Objectives**

By the end of this lesson, participants will be able to:

- Describe residency requirements for Low-Income clients
- Determine the Child Care Services Unit based upon household composition
- Determine sources of household income and separate countable and excludable income by regulation
- Determine income eligibility and family share for a family using manual calculations



## Residency Requirements

**Introduction** There are very strict requirements that applicants who are not citizens of the United States must meet in order to receive most forms of assistance provided by any LDSS. For child care assistance, verification is required to document the child in need of services is residing in the U.S. legally.

---

**Eligible  
Child and  
Citizenship**

Based on 18 NYCRR 403:

- A child is eligible for Child Care Subsidy if the child is a U.S. citizen or is lawfully residing in the United States
- There are no requirements for duration of residency or citizenship imposed as a condition of eligibility
- The child cannot be denied child care assistance because of the residency status of the child's parent/caretakers or custodial relatives

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**Ineligible  
Child**

An ineligible child is:

- A child illegally residing in the U.S., or
- A child whose residency status cannot be verified (until such time as they are able to present verification of an eligible status)

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**Provider  
Status**

It is not required that the citizenship status of the provider be explored as there is no requirement that the provider hold any particular citizen or alien status in order to be approved.

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**Verification  
of Alien  
Status**

The parent/caretaker must provide verification that the child is lawfully residing in the U.S. This verification would be supplied by documents from the United States Citizenship and Immigration Services (USCIS).

## Lesson 2: Income and Residency Requirements for Low-Income Families

**County Residence is Required** The county which administers subsidy to a family should be the county where that family resides. Documentation and verification of residency is required.

### Determining the Child Care Services Unit

**Introduction** In order to be certain that the appropriate income is used to calculate eligibility, it is vital to examine the household composition of each case. This involves more than verifying the number of individuals residing in the same dwelling. This also means evaluating the relationship of each individual to one another.

**Child Care Services Unit** The Child Care Services Unit (CCSU) refers to those adults and children who reside in the same household and who must be considered as a unit for purposes of determining a family's eligibility for child care services. Also considered in this determination are individuals who would normally be part of the unit but are temporarily absent from the home, such as minors attending school away from home. The CCSU is defined as follows:

Situation	CCSU
An unmarried individual residing together with his or her own children and a child in common	All individuals are part of the unit
Parent under age 21 residing with his/her parents	Parent and child are in unit, but not the child's grandparents
18, 19, or 20 year old residing with parent/caretaker and minor siblings	18, 19, or 20 year old included in CCSU at the district's option if in Child and Family Services Plan
Eligible child with a non-parent/caretaker	Child only
Unmarried individuals residing together and no children in common	Each parent/caretaker will be considered a separate unit with his or her own child(ren)

- Definition of Adult** For the purpose of determining the CCSU, an adult is any person 18 years of age or older, unless:
- The individual meets the definition of a child with special needs, or
  - The district has specified in an approved Child and Family Services Plan that they want to include an 18, 19, or 20 year old in the same CCSU as his or her parent/caretaker, either by:
    - Including all 18, 19, and 20 year olds, (can be just one age group), or
    - Including only the 18, 19, or 20 year olds, (can be just one age group) if the inclusion of that individual would benefit the family

---

**Case/Unit Members as Providers** It is important to note that members of the Temporary Assistance (TA) unit and adult members of the CCSU of an eligible child (except the child's siblings) are NOT considered eligible providers.

## Practice B: Determining the Child Care Services Unit

**Directions:** Review the following case studies and determine which individuals are and are not a part of the CCSU. Be prepared to explain your answers.

### Case 1

Mary Ellen Jones lives with her boyfriend and their 1 year old child. She also has four other children from a previous relationship ranging in age from 3 to 18. Ms. Jones and her boyfriend are both employed and she claims to be in need of child care for all of her children, except the 18 year old who works part time and attends college.

Individuals who ARE a part of the CCSU	Individuals who ARE NOT a part of the CCSU
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

**How I Know:**

**Case 2**

Mr. and Mrs. Gutierrez are married with five children. They reside together with their sister-in-law in Rockland County. Mr. and Mrs. Gutierrez are not legally residing in the U.S. Four of their children were born in Mexico and they have no documentation of legal residence in the U.S. The youngest child was born in this country. They are requesting child care subsidy for all five children due to their employment.

Individuals who ARE a part of the CCSU	Individuals who ARE NOT a part of the CCSU
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

**How I Know:**

**Lesson 2: Income and Residency Requirements for Low-Income Families**

**Case 3**

Mrs. Horne has legal custody of her two young grandchildren, both under the age of 5, due to the fact that the whereabouts of their father is unknown and the mother is in jail. Mrs. Horne is employed full-time in a high-level management position, but is requesting child care subsidy for the two children.

Individuals who ARE a part of the CCSU	Individuals who ARE NOT a part of the CCSU
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

**How I Know:**

## Determining Income Eligibility

**Introduction** Families who meet programmatic eligibility for child care services must also be income eligible.

- TA families already meet income requirements by virtue of meeting the income requirements for TA
- Low-Income families funded using New York State Child Care Block Grant (NYSCCBG) money must be at no more than 200% of the State income standard
- Families funded using Title XX money must meet the income requirements set forth by Title XX

Information regarding income determinations including countable and excluded income and income eligibility calculation can be found in 18 NYCRR 404.5, **Tab 7**.

---

**Evaluation of Income** Once the CCSU has been determined, all income for the members of the CCSU must be evaluated as to its amount and source. As part of this evaluation, the worker will separate countable from excludable income.

Countable income is then used to determine both eligibility and parent/caretaker share (family share) for services cases.

If the family is receiving TA, there is no separate income eligibility test or calculation.

## Lesson 2: Income and Residency Requirements for Low-Income Families

### Countable Income

The following is a summary of income to be counted in the eligibility calculation. These sources of income include, but are not limited to:

- Wages, salary, tips, commission (current earnings) of anyone in the CCSU 18 years of age or older, unless a child is under the age of 18 and is legally responsible for the child or children for which child care assistance is sought
- Net income from self-employment
- SSI and Social Security Benefits
- Dividends and interest income
- Net income from rental property
- TA grant
- Pensions and annuities
- Benefits from most government programs, such as
  - NYS Disability
  - Worker's Compensation
  - Railroad Retirement Benefits
  - Veterans Pensions and benefits
  - Unemployment Insurance Benefits
- Child support and alimony

**Note:** For a more complete listing of countable income, refer to 18 NYCRR 404.5(b)(5), *Determination and Redetermination of Eligibility*, **Tab 7** and 05-OCFS-ADM-03, *Child Care Subsidy Program*, **Tab 4 (RRM)**.



**Excluded  
Income**

Monies excluded from the calculation of eligibility determination include, but are not limited to:

- Per capita payments to funds held in trust based on a court requirement
- Capital gains
- Money from the sale of real and personal property
- Bank withdrawals
- Money borrowed and gifts
- Loans, grants, and scholarships for educational purposes (including Federal Work Study)
- Tax refunds
- Allowable cost of producing self-employment income
- Earned income of a dependent child under the age of 18 who is not legally responsible for the child or children for which the child care assistance is sought
- Lump sum inheritances or insurance payments
- Adoption and foster care subsidies
- Child care child support payments

**Note:** For a more complete listing of excludable income refer to:

- 18 NYCRR 404.5(b)(6) pgs.10-12, *Determination and Redetermination of Eligibility, Tab 7*
- 07-OCFS-LCM-05, *Adoption and Foster Care Subsidies: Excludable Income for Child Care Subsidy Eligibility, Tab 5(RRM)*
- 05-OCFS-ADM-03, *Child Care Subsidy Program, Tab 8*
- 09-OCFS-LCM-07, III.B., **Tab 8 (RRM).**

---

**Resources**

Financial eligibility for child care services is based on an income eligibility determination only. No exploration of resources is to be made and no lien or encumbrances can be required or imposed against the property of an applicant or recipient for services.

## Lesson 2: Income and Residency Requirements for Low-Income Families

### Income Determination

The determination of countable monthly gross income is based on

- Income received not less than one month, and not more than three months, prior to application
- If the income fluctuates significantly, then the computation must be based on three to six months of income
- Computation of monthly income is based on a factor of 4 and 1/3 of weekly or 2 and 1/6 of bi-weekly income

See 404.5(b)(2)-(4), **Tab 7**, for more information.

---

### Self-Employment Income

A client who is self-employed shall have net income, after allowable deductions, used to determine eligibility.

Allowable expenses, or deductions, include:

- Cost of inventory
- Rent, heat, and utility expenses
- Depreciation charges
- Wages and salaries paid to employees
- Business taxes (but not personal income taxes)

See 404.5(b)(5)(ii), **Tab 7**, for more information.

---

### Self-Employment Farming

In determining countable income from farm self-employment, allowable expenses to be deducted include:

- Cost of seed, fertilizer, and other farming supplies
- Cash wages paid to employees
- Depreciation charges
- Rent costs
- Farm taxes (not state and federal income taxes)

See 404.5(b)(5)(iii), **Tab 7**, for more information.

---

**Verification of Self-Employment Income** In order to determine countable net business income for a self-employment enterprise, it is essential that the client keep up to date and accurate business records.

Often, a best source for verification is the client's IRS income tax records, supplemented by any additional information, such as a business ledger kept by the client.

If records are difficult to decipher, speak with available personnel within your social services district that may be able to assist in the IRS process (such as your Legal, TA, or Accounting Divisions).

## Calculating Income Eligibility and Family Share

**Introduction** The worker may determine income eligibility either through manual calculation of income or through the use of WMS at data entry.

## Lesson 2: Income and Residency Requirements for Low-Income Families

**Manual Computation of Eligibility** Use the following procedure to manually determine if a family is income eligible for child care services.

Step	Action
1	Determine members of the CCSU.
2	Separate countable from excluded income.
3	Convert countable income to a monthly figure by use of the $4 \frac{1}{3}$ or $2 \frac{1}{6}$ calculation. <ul style="list-style-type: none"><li>• Weekly income is converted to monthly by multiplying by <b>4.333</b></li><li>• Bi-weekly income is converted to monthly by multiplying by <b>2.166</b></li></ul>
4	Convert countable gross monthly income to annual income by multiplying by 12.
5	Round annual income by using the following protocol: .01 to .24 round down to 0 .25 to .50 round up to .50 .51 to .74 round down to .50 .75 to .99 round up to the next .00
6	Compare the family's countable gross annual income to the appropriate size of family on the <i>200% of State Income Standard Table</i> (or the LDSS Title XX standards for Title XX calculations). <ul style="list-style-type: none"><li>• If annual income is less than the figure on the table, the family is income eligible for child care services</li><li>• If family income is over the figure on the table, the family is not income eligible</li></ul>

**Resources** Use the following materials to clarify and support your income eligibility decisions.

**Child Care Services Unit**

The Child Care Services Unit is defined in the following:

- 18 NYCRR 403, **Tab 2**
- 18 NYCRR 404, **Tab 7**
- 05-OCFS-ADM-03, **Tab 8**

---

**Determine Income Eligibility**

Determination of Income Eligibility procedures are defined in the following:

**Countable:** 18 NYCRR 404, **Tab 7**

05-OCFS-ADM-03, **Tab 8**

**Excluded:** 18 NYCRR 404, **Tab 7**

07-OCFS-LCM-05, **Tab 4 (RRM)**

05-OCFS-ADM-03, **Tab 8**

09-OCFS-LCM-07, III.B., **Tab 8 (RRM)**

Desk Aid: *Determine Income Eligibility*

Desk Aid: *Doing the Math*

---

**Rounding**

The establishment of the rounding to the nearest 50 cent criteria started in 1987 with a letter to all Commissioners when the state instituted the current methodology for family share.

In 90-ADM-31 the methodology with the rounding criteria was included as attachment K. This ADM has not been cancelled.

---

**100% Income**

The 100% income standard is currently found in 16-OCFS-INF-01, **Tab 5 (RRM)**.

**Lesson 2: Income and Residency Requirements for Low-Income Families**

<b>State Income Standard</b>	<b><u>FAMILY SIZE</u></b>	<b><u>200% INCOME STANDARD</u></b>	<b><u>100% INCOME STANDARD</u></b>
	1	\$24,120	\$12,060
	2	\$32,480	\$16,240
	3	\$40,840	\$20,420
	4	\$49,200	\$24,600
	5	\$57,560	\$28,780
	6	\$65,920	\$32,960
	7	\$74,280	\$37,140
	8	\$82,640	\$41,320
	Additional Family Size	\$ 8,360 per person	\$4,180 per person

**Note:** The State Income Standard is traditionally updated annually and announced through 17-OCFS-INF-02, **Tab 5**.

**Example of Income Eligibility Determination**

Stephanie has applied for child care assistance to help pay for day care for her two young children while she is attending a full-time vocational training program, which has been approved by the child care worker.

Stephanie has presented verification of receipt of \$340.00 per week in Unemployment Insurance Benefits, and \$110.00 per week in child support. Additionally, she has indicated that she received a \$374.00 income tax refund last week

1. How many people are in the Child Care Services Unit? \_\_\_\_\_
2. What is the Gross Monthly Income? \_\_\_\_\_
3. What is the Gross Yearly Income? \_\_\_\_\_
4. Is the family income eligible? \_\_\_\_\_

**Manual Calculation Procedure (Outside NYC)**

Use the following procedure to manually calculate the family share (Outside NYC):

Step	Action
1	Subtract 100% of the State Income Standard for the appropriate household size from the family's annual gross income.
2	Multiply the remaining income (if any) by a factor of 10 to 35 % (as defined within each LDSS Child and Family Services Plan).
3	Divide that amount by 52 to determine a weekly share.
4	Round weekly share using the following protocol: .01 to .24 round down to 0 .25 to .50 round up to .50 .51 to .74 round down to .50 .75 to .99 round up to the next .00 If the fee calculates to less than \$1, the family share will be \$1 since that is the established minimum.

**Note:** In NYC, the family share is determined using the *Child Care Fee Schedule*. In order to determine the family share using this chart, you must know the family size, the monthly gross income, and the type of care (i.e. full-time or part-time).

**Example of Family Share Calculation**

So returning to Stephanie and her family:

You approved Stephanie, on p. 40, for child care assistance for her two young children while she attends a full-time vocational training program, which has been approved by the child care worker.

Now, you have to determine Stephanie's family share.

1. What is the family's Monthly Gross Income? \_\_\_\_\_
2. What is Stephanie's family share? \_\_\_\_\_

**Using WMS to Calculate Eligibility**

At full data entry, WMS is able to calculate income eligibility and the family share, provided all income information has been provided. Eligibility criteria will be reported on the *Services Turnaround Authorization Document*.

Step	Action
1	<p>On page 3 of the <i>Common Application</i>, in the field labeled “EL Code,” enter code 14.</p> <p>This tells WMS to determine eligibility by comparing income listed on page 6 of the application to the State income standard.</p>
2	<p>On page 6 of the <i>Common Application</i>:</p> <ul style="list-style-type: none"> <li>• “LN No” – record the line number of the individual receiving the income</li> <li>• “Source Code” – assign a WMS source code which describes the source of the income</li> <li>• “Amount” – record the amount of the income</li> <li>• “Period” – record the frequency of the receipt of the benefit, i.e., weekly, bi-weekly, etc.</li> </ul>

**Limitations to Using WMS**

Although in many instances, it may be preferable to use WMS to perform the calculation, as described, there are limitations to its use:

- If fee calculated is \$1.00 or less, WMS will display the mandatory minimum fee of \$1.00, provided eligible code 14 is entered.
- WMS will not calculate a fee for MA only cases, even though a family share is required.



## Unit 3

### Verification and Redetermination

**Unit Importance** Activities related to verification and redetermination when processing an application are extremely important. Districts are required, per 18 NYCRR 404(d)(i), *Determination and Redetermination of Eligibility, Tab 7*, to make eligibility decisions within 30 days of application. Working parent/caretakers, or Temporary Assistance clients fulfilling Office of Temporary and Disability Assistance work requirements, do not want to jeopardize their jobs or their assistance.

This lesson will allow you to process cases more efficiently and will help you:

- Evaluate verification documents
- Document the case record
- Take appropriate case actions when a family's circumstances change
- Send appropriate notices

---

**Unit Overview** This unit consists of the following lessons:

- Verification and Documentation of Eligibility
- Redetermining Eligibility

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## Lesson 1: Verification and Documentation of Eligibility

**Lesson Importance** You need to know how to verify the facts of the case and document the case record in order to:

- Establish and document eligibility
- Allow funds to be correctly utilized
- Provide an audit trail of decisions made on the case

---

**Lesson Overview** Topics in this lesson include:

- The Verification Process
- Verification of Lawful Residence
- Verification of Programmatic Eligibility
- Verification of Special Needs
- Documenting Child Care Cases
- Guidelines for Using the Application to Document Low-Income Cases

---

**Lesson Objectives** By the end of this lesson, participants will be able to:

- Describe the purpose of verification and documentation
- Determine whether a family meets the verification requirements for the program under which it is eligible
- Describe guidelines for adequate documentation
- Document a low-income case record

## The Verification Process

**Introduction** Applicants for any and all programs administered by the Local Department of Social Services (LDSS) are required to provide verification of their circumstances in order to validate eligibility and benefit level.

---

**What Needs To Be Verified** Low-Income child care clients need to verify general eligibility factors such as:

- Identity
- Household composition
- Age of child
- Relationship of caretaker to child
- Absence of parent/caretaker
- Resident status of child
- Income
- Reason for child care
- Special needs (if applicable)

---

**An Ongoing Process** Documentation and verification requirements occur throughout the life cycle of a case, including at the time of:

- Application
- Redetermination
- Anytime, when changes in circumstances are reported

Certain documentation, such as documents verifying identity, date of birth, marital status, relationship, and citizenship, will be copied and placed in the case record upon application, and will not have to be presented again.

**Client's  
Respon-  
sibility**

The applicant or recipient is expected to:

- Verify his or her claim
- Provide verification
- Bear the burden of proof

---

**District  
Respon-  
sibility**

When child care eligibility is being determined, the LDSS is expected to:

- Evaluate documents presented for verification
- Provide assistance in locating documents, when applicable
- Document the case record by copying documents and recording appropriate notes in the case record
- Document relevant information in the shaded sections of the *Application for Certain Benefits and Services* (unless the agency is using an alternative method to document the case record)

---

**District  
Assistance**

Examples of actions the district may take to assist clients in obtaining verification are:

- Calling landlord to verify household composition information
- Providing assistance when the client is unable to obtain required verification, such as obtaining out of county/state birth certificate

## Verification of Lawful Residence

**Introduction** Any child who is legally residing in the United States is eligible for child care services under New York State Child Care Block Grant (NYSCCBG), as long as the family meets other financial and programmatic eligibility requirements. Verification documents of legal residence in the U.S. can include:

- Proof of citizenship
- U.S. Passport or Certificate of Naturalization
- Resident Alien Card
- Visa

Possession of any of these above documents proves legal residence in the U.S.

---

**Citizenship** Anybody who has a birth certificate issued in the United States or any U.S. Territories, such as Puerto Rico and Guam, is a citizen or a legal resident (see, 10-OCFS-INF-10 Law 191 *Invalidating Puerto Rican Birth Certificates, Tab 6 (RRM)*, regarding updates to Puerto Rico's birth certificates. **Note:** The date for valid birth certificates will be September 30, 2010).

An individual is a U.S. citizen:

- By birth in the U.S., or
- Through derivation from U.S. parents when a child is born abroad, or
- Through naturalization after meeting the necessary requirements

**U.S.  
Passport/  
Certificate of  
Naturaliza-  
tion**

A United States Passport and/or Certificate of Naturalization are documents that are issued to persons who are citizens of the United States by birth, naturalization, derivation, or adoption.

- There are approximately 15 different valid versions of the U.S. passport
- There have been many different versions of the Certificate of Naturalization, though there are two common versions

---

**Resident  
Alien Card**

There are two types of Resident Alien Cards:

- Permanent Resident Card
- Temporary Resident Card

---

**Permanent  
Resident  
Card**

There are currently two valid versions of the Permanent Resident Card.

- *Resident Alien Card*, Form I-551, was introduced in January 1977. The card was also known as the *Alien Registration Card*







- The machine-readable visa, which is a sticker applied to the passport page



## Verification of Programmatic Eligibility

**Introduction** To verify the category of eligible family, clients need to present evidence that they meet the criteria as defined in 18 NYCRR 415.2, *Child Care Services, Tab 6*.

---

**Families Guaranteed Child Care** Families who are guaranteed child care need to provide proof of the following:

- Age of child needing care
- Special needs of child needing care (if applicable)
- Participation in work related requirements such as orientation, assessment, or assigned work activities
- Employment
- For transitioning families only, when income at or below 200% of New York State State Income Standard (NYS SIS)

## Lesson 1: Verification and Documentation of Eligibility

Families eligible for the child care guarantee include TA clients engaged in work, TA clients participating in a required activity, clients choosing Child Care In Lieu of TA, and Transitional Child Care clients.

---

### **Families Eligible When Funds Are Available**

Families eligible when funds are available need to provide proof of one or more of the following:

- Age of child needing care
- Special needs of child needing care
- Participation in an approved work related activity or work
- School attendance for teenage parent
- Disability, incapacity, or necessary absence of parent/caretaker from home
- Income at or below 200% of the NY SIS (for Low-Income clients)
- Requirement of parent/caretaker to participate in an approved activity including participation in a substance abuse program or screening for or assessment of risk for victims of Domestic Violence (DV), or in an emergency situation such as being homeless, seeking living quarters, or caring for an elderly parent

---

### **Low-Income Clients Listed in Child and Family Services Plan**

Low-Income families who fit the category of eligible families listed in the Child and Family Services Plan may need to provide proof of one or more of the following:

- Income at or below 200% of the NY SIS
- Participation in an approved substance abuse treatment program or in screening for or assessment of the need for such a program
- Homeless; receiving services for victims of DV and needs services to participate in DV screening or assessment; in an emergency situation such as a fire, being dispossessed from a home, seeking living quarters; or providing services for an elderly or disabled relative

- Participating in an approved educational program that is reasonably expected to improve the earning capacity of the caretaker while continuing to be employed at wages equal to or greater than the minimum wage
- Services needed to protect a child because the child's caretaker is physically or mentally incapacitated or has family duties away from home necessitating his or her absence
- Actively seeking employment and registered with New York State Department of Labor (NYS DOL) Division of Employment Services
- Attendance at an approved secondary or post-secondary education program
- Dislocated worker status and current registration in a training program in a field that is in demand or is likely to be in demand in the near future

## Verification of Special Needs

**Introduction** During the initial contact with the LDSS, applicants should be informed about:

- How a child may qualify as a child with special needs
- How a provider may be eligible for additional payment due to costs incurred because of the special needs child
- The parent/caretaker's responsibility to obtain verification of the special need by a recognized specialist

Families who have a child with special needs must provide proof of that need given by an appropriate specialist.

## Lesson 1: Verification and Documentation of Eligibility

### Categories of Need

Special needs are defined in 91-ADM-34, **Tab 12**, and include:

- Visual impairment
- Deafness
- Hard of hearing
- Orthopedic impairment
- Emotional disturbance
- Mental retardation
- Learning disability
- Speech impairment
- Health impairment
- Autism
- Multiple handicaps

---

### Visual Impairment

A visual handicap:

- Adversely affects a child's ability to function normally
- Includes impairments that result in a child having partial sight or blindness

An ophthalmologist, optometrist, or physician must make the diagnosis of the child's condition.

---

### Deafness

A hearing impairment:

- Is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification
- Adversely affects the child's ability to function normally

An audiologist, otolaryngologist, or physician must make the diagnosis of the child's condition.

**Hard of Hearing**

A hearing impairment:

- May be permanent or fluctuating
- Not included in the definition of the term deaf
- Adversely affects the child's ability to function

An audiologist, otolaryngologist, or physician must make the diagnosis of the child's condition.

---

**Orthopedic Impairment**

A physical handicap:

- Resulting from a severe orthopedic impairment which adversely affects a child's ability to function normally
- Includes impairments caused by congenital anomaly, impairments caused by disease and impairments from other causes

A physician, orthopedist, or neurologist must make the diagnosis of the child's condition.

---

**Emotional Disturbance**

Emotional disturbance is defined as an inability to learn which cannot be explained by intellectual, sensory, or health factors and which causes a child to exhibit, to a marked degree, one or more of the following characteristics over a long period of time:

- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers
- Inappropriate types of behavior or feelings under normal circumstances
- A general pervasive mood of unhappiness or depression
- A tendency to develop physical symptoms or fears associated with personal or school problems

A psychologist, psychiatrist or other clinically trained NYS qualified mental health professional must make the diagnosis of a child as emotionally disturbed.

## Lesson 1: Verification and Documentation of Eligibility

### **Mental Retardation**

Mental retardation is:

- General intellectual functioning that is determined to be 1.5 standard deviations or more below the mean of the general population
- Results in an individual psychological deficit in a child's ability to adapt to her/his learning environment

A psychologist or physician must make the diagnosis of the child's condition.

---

### **Learning Disability**

A learning disability:

- A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations
- Includes such conditions as perceptual handicaps, brain injury, neurological impairment, minimal brain dysfunction, dyslexia and developmental aphasia
- Includes a child who exhibits a discrepancy of 50 percent or more between expected achievement and actual achievement determined on an individual basis
- Does not include learning problems that are primarily the result of visual, hearing or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage

A psychologist, special education professional, psychiatric social worker, or other mental health professional must diagnose the child's condition.

**Speech Impairment**

A speech impairment is:

- A communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, which adversely affects the child's ability to function normally
- Does not include speech and language differences attributed to cultural, ethnic, bilingual, or dialectical difference or being non-English speaking

A speech or language pathologist, audiologist, otolaryngologist, or physician must diagnose the child's condition.

---

**Health Impairment**

A health impairment is:

- A chronic or acute health problem that limits a child's strength, vitality or alertness
- Adversely affects a child's ability to function normally

A physician or other medical professional must diagnose the child's condition.

---

**Autism**

Autism is a behaviorally defined syndrome that occurs in children of all levels of intelligence. Autism:

- Includes severe disturbances of developmental rates and/or sequences of responses to sensory stimuli, of speech, language, or cognitive capacities, and of the ability to relate to people, events and objects
- Typically manifested prior to 30 months of age

A psychologist, psychiatrist or other clinically trained and NYS qualified mental health professional must diagnose the child's condition.

---

**Multiple Handicaps**

Two or more handicapping conditions resulting in multi-sensory or motor deficiencies and developmental lags in the cognitive, affective, or psychomotor areas may result in the interference in the child's ability to function normally. A physician or other medical specialist must diagnose the child's condition.

---

## Lesson 1: Verification and Documentation of Eligibility

**Written Request** Districts may submit written requests for Office of Children and Family Services (OCFS) approval of any category of special needs not previously defined.

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**Providers of Child Care for Children With Special Needs** 91-ADM-34, **Tab 12**, requires that providers of care for children with special needs must be a Licensed, Registered, or enrolled Legally-Exempt provider.

## Documenting Child Care Cases

**Definition** Documentation of the criteria and conditions essential for eligibility is part of eligibility determination process. Documentation means:

- Collection
- Evaluation
- Recording of information necessary to determine eligibility

---

**Purpose** Documentation of child care eligibility factors and case actions provide:

- Information to support your eligibility decision
- Information to you, coworkers, and your supervisor about actions taken on the case, allowing others to work on your case should you be absent
- A paper trail should the client request a fair hearing
- Appropriate records for the purpose of audit by appropriate state and federal agencies.



**Guidelines** The following guidelines should be applied when recording case notes:

- Be factual
- Refrain from giving opinions or subjective evaluation of the facts
- Be clear, concrete, and complete
- Avoid irrelevant details
- Base any impression on observable and specific facts
- Support your eligibility decision

## Guidelines for Using Application to Document Low-Income Clients

**Introduction** All the eligibility factors such as the family size, the amount and source of all income, the need for services, as well as all requisite programmatic factors should be documented. Documentation includes:

- Worker notes on the shaded parts of the *Application for Certain Benefits and Services*
- Case Record Notes
- Completion of a Services Plan for clients eligible under Title XX for protective, preventive, or foster care services

## Lesson 1: Verification and Documentation of Eligibility

### Application for Certain Benefits and Services

### The Shaded Sections of the *Application for Certain Benefits and Services*

LDSS-2021 Statewide (Rev. 7/16)														DO NOT WRITE IN THE SHADED AREAS OF THIS APPLICATION														PAGE 1					
CENTER/OFFICE	APPLICATION DATE	UNIT ID	WORKER ID	CASE TYPE	SERV. IND.	CASE NUMBER	REGISTRY NUMBER	VERS.	DISTRICT	SUFFIX	SNAP SUFFIX	CATEGORY	LANG.	NUMBER REUSE INDICATOR																			
CASE NAME						EFFECTIVE DATE		DISPOSITION		SERVICES TRANSACTION TYPE																							
ELIGIBILITY DETERMINED BY (WORKER):						DATE		ELIGIBILITY APPROVED BY (SUPERVISOR):		DATE		DENIAL REASON CODE		WITHDRAWAL		SIGNATURE OF PERSON WHO OBTAINED ELIGIBILITY INFORMATION																	
DATE RECEIVED BY AGENCY						EMPLOYED BY:		<input type="checkbox"/> SOCIAL SERVICES DISTRICT <input type="checkbox"/> PROVIDER AGENCY SPECIFY:																									
PA AUTHORIZATION PERIOD				MA AUTHORIZATION PERIOD				SNAP AUTHORIZATION PERIOD				SERVICES AUTHORIZATION PERIOD																					
FROM TO				FROM TO				FROM TO				FROM TO																					
<b>NEW YORK STATE APPLICATION FOR CERTAIN BENEFITS AND SERVICES</b> If you are blind or seriously visually impaired and need this application in an alternative format, you may request one from your social services district. For additional information regarding the types of formats available and how you can request an application in an alternative format, see the instruction book (PUB-1301 Statewide), available at <a href="http://www.otda.ny.gov">www.otda.ny.gov</a> or <a href="https://www.health.ny.gov/">https://www.health.ny.gov/</a> .																																	
If you are blind or seriously visually impaired, would you like to receive written notices in an alternative format? <input type="checkbox"/> Yes <input type="checkbox"/> No																																	
If yes, check the type of format you would like: <input type="checkbox"/> Large Print; <input type="checkbox"/> Data CD; <input type="checkbox"/> Audio CD; <input type="checkbox"/> Braille, if you assert that none of the other alternative formats will be equally effective for you.																																	
If you require another accommodation, please contact your social services district.																																	
<small>We are committed to assisting and supporting you in a professional and respectful manner. You are responsible for participating in activities, including work activities for Public Assistance and the Supplemental Nutrition Assistance Program, where required, so you can become self-sufficient. Whenever you see "Public Assistance" or "PA" on the application, it means "Family Assistance" and/or "Safety Net Assistance." We call both programs "Public Assistance." These PA programs are meant to assist you only until you can fully support yourself and your family. Please refer to the instruction book (PUB-1301 Statewide) and "What You Should Know" Books 1, 2 and 3 (LDSS-4148A, LDSS-4148B, and LDSS-4148C) when completing this application, and contact your social services district with any questions.</small>																																	
<small>When you see "MA" on the application, it means "Medicaid." You may apply for MA using this application only if you are also applying for Public Assistance or the Supplemental Nutrition Assistance Program at the same time. If you wish to only apply for MA, you can go online at <a href="https://nystateshealth.ny.gov/">https://nystateshealth.ny.gov/</a> and/or call 1-855-355-5777 for more information or to apply, or you may use the MA-only paper application - Form DOH-4220, which your worker can give you, or call MA help line at 1-800-541-2831. If you want to apply only for the Medicare Savings Program (MSP), you must apply with Form DOH-4328, which your worker can provide to you. If you have an immediate need for personal care services, you should apply for MA separately using the DOH-4220 MA application form.</small>																																	

The shaded section of the *Application for Certain Benefits and Services* allows case workers to document all aspects of the child care subsidy case directly on the application. The application allows the worker to document certain requirements for eligibility, lists referrals that can be made for the applicant, and allows for the recording of documentation provided by the client.

Page 1

The shaded part of the *Application for Certain Benefits and Services* provides space for the services worker to document various aspects of the child care case.

Top part of page 1:

CENTER OFFICE	APPLICATION DATE	UNIT ID	WORKER ID	CASE TYPE	SERV. IND.	CASE NUMBER	REGISTRY NUMBER	VERS.	DISTRICT	SUFFIX	FS SUFFIX	CATEGORY	LANG.	NUMBER REUSE INDICATOR	
CASE NAME							LIFELINE EFFECTIVE DATE	DISPOSITION		SERVICES TRANSACTION TYPE					
ELIGIBILITY DETERMINED BY (WORKER):				DATE	ELIGIBILITY APPROVED BY (SUPERVISOR):			DATE	REASON CODE	WITHDRAWAL	DZ	TD	REOPEN	DE	RECERTIFICATION
DATE RECEIVED BY AGENCY		EMPLOYED BY:		<input type="checkbox"/> SOCIAL SERVICES DISTRICT		<input type="checkbox"/> PROVIDER AGENCY		SPECIFY:							
TA AUTHORIZATION PERIOD				MA AUTHORIZATION PERIOD				FS AUTHORIZATION PERIOD				SERVICES AUTHORIZATION PERIOD			
FROM		TO		FROM		TO		FROM		TO		FROM		TO	

The shaded areas on p. 1 allows the worker to identify the applicant's basic case information, case eligibility determination, and the applicant's authorization period for each program.

Pages 3-4

These pages of the *Application for Certain Benefits and Services* provide space to document household information:

- Household Members
- Date of birth
- Relationship to Applicant
- Social Security Number
- Race/Ethnicity
- Alien information/Citizenship

# Lesson 1: Verification and Documentation of Eligibility

## Page 4

SECTION 7 – RACE/ETHNICITY – Providing this information is voluntary. It will not affect the eligibility of the persons applying or the level of benefits received. The reason for requesting this information is to ensure that program benefits are distributed without regard to race, color, or national origin.										ENTER APPROPRIATE CODES									
LN	RACE/ETHNICITY							CLIENT IDENTIFICATION NUMBER	REL	SSN	SFUI	MS	SI	LA	EM	CI	EL		
	H	I	A	B	P	W	U												
01																			
02																			
03																			
04																			
05																			
06																			
07																			
08																			

ANTICIPATED FUTURE ACTION			CASE TYPE	RELATED CASE NUMBERS	CONSIDER	REQUESTED	DOCUMENTATION	IN FILE
LINE NO.	CODE	DATE						
					<input checked="" type="checkbox"/> Relationship <input checked="" type="checkbox"/> Filing Unit <input checked="" type="checkbox"/> Legally Responsible Relative <input checked="" type="checkbox"/> Single Economic Unit <input checked="" type="checkbox"/> SNAP Household Composition <input checked="" type="checkbox"/> SNAP Aged/Disabled Individual <input checked="" type="checkbox"/> Photo ID <input checked="" type="checkbox"/> AFIS (PA Only) <input checked="" type="checkbox"/> CBIC/PIN <input checked="" type="checkbox"/> RFI/OCA <input checked="" type="checkbox"/> Health Insurance		Photo ID Birth Verification Marriage License Social Security Card Code 9 Resolution Immigration Status Multi-Suffix/Co-op Case Notice (Single Economic Unit Questionnaire)	
SERVICE ELIGIBILITY PROCESS CODE			NEEDED	REFERRALS	COMPLETED			
SFUI	CODE	SFUI		Legal				
SFUI	CODE	SFUI		Services				
				SSA				
				NYSaH				
				Chronic Care/SSI-Related				
				MA-Only				
				Medicare Savings Program				

## Pages 5-12

These pages of the *Application for Certain Benefits and Services* provide space to document other aspects of the application, including:

- Certification of citizenship/immigration status
- Child Support Referral
- Tax Filing/Dependent Status
- Absent Parent/Deceased Spouse Information
- Absent Child Information
- Teen Parent Information
- Income and Deductions
- Step-parent and Immigration Status Sponsor Information
- Employment Information
- Education and Training

**Page 13** This page allows the worker to document any resource information for TA or Child Care in Lieu of TA clients.

---

**Page 14-15** Medical information, such as the disability of a parent/caretaker or a child, may be relevant to your decision to the granting of child care subsidy. Any relevant documentation would be recorded on this page.

---

**Pages 15-16** Provides space for the applicant to record information about shelter expenses and lists additional expenses. Although not particularly relevant to a child care decision, corresponding documentation would be narrated in the shaded sections.

---

**Page 17-18** Case record notes provides space for a narrative summary of client and provider contacts, including:

- Phone calls
- Interviews
- Items requested, received, and/or sent

Each entry should give the specifics including date, time, and purpose of contact and results.

---

**Pages 19-25** These pages contain important information that must be read regarding:

- Privacy Act Statement
- Penalties
- Warnings
- Required documentation
- Consent/Certification
- Signature

## Lesson 1: Verification and Documentation of Eligibility

**Content of the Service Plan** Besides required documentation, a completed service plan is a necessary prerequisite to the determination of eligibility of Title XX, protective, preventive or foster care services.

The minimum data needed for a child care service plan includes:

- Names of the applicant and applying child(ren)
- Description of immediate home situation
- Reason/need for care
- Type of care needed
- Planned hours of care
- Goal of services

The service plan and its goal(s) should be evaluated at six month intervals.

## Lesson 2: Redetermining Eligibility

**Lesson Importance** It is the client's responsibility to report changes in his or her situation as soon as they occur and the child care worker's responsibility to evaluate how these changes affect the client's eligibility.

This lesson will help you:

- Determine how changes in a family's circumstances affect the eligibility for child care
- Complete tasks associated with redetermination, which must occur no less frequently than every 12 months
- Send appropriate notices to client
- Communicate client's eligibility status to Enrollment Agency

---

**Lesson Overview** This lesson describes how changes in a family's situation may affect its eligibility for child care services.

It consists of four topics:

- Changes in Client Circumstances
- Changes Affecting Eligibility
- Redetermination
- Notifying the Client
- Notifying the Enrollment Agency

---

**Lesson Objectives** By the end of this lesson, you will be able to:

- Take appropriate case actions as a family's circumstances change
- Verify eligibility at the redetermination period
- Send appropriate notices to client
- Communicate client's eligibility status to Enrollment Agency

## Changes in Client Circumstances

**Introduction** Changes in client circumstances between authorization periods may require a redetermination of eligibility—potentially resulting in an increase, decrease, or ineligibility for Child Care Subsidy.

---

### Timely Reporting

Recipients of child care services are required to report immediately changes in:

- Financial circumstances
- Living arrangements, including household composition
- Employment/other approved activities
- Child care provider
- Other circumstances affecting eligibility

Failure to report changes in a timely way may lead to overpayments for which recovery must be attempted and to the denial of services.

**Note:** Regulations governing the reporting of changes are found in 18 NYCRR 415, *Child Care Service*, **Tab 6**. It should be stressed to the client that any change in his or her circumstances should be reported immediately to aid in the accuracy of case decisions.

---

### How Changes Are Reported

There are a number of ways clients can report changes to you, including:

- Face-to-face interview
- By mail
- Through a phone call

---

### District Time Frame

Local Departments of Social Services (LDSS) have 30 days from an indication of a change in an individual's circumstances to make a redetermination of eligibility and send appropriate notification.



## Changes Affecting Eligibility

**Introduction** Some of the most important changes affecting eligibility for child care include:

- Change in employment, including work hours, money earned, or required work activities
- Change in household composition or in marital status
- Change in residence
- Change in status of children, such as age or disability
- Change of client status in a training or school program
- Change in Temporary Assistance (TA) status
- Need for substance abuse assessment or treatment
- Development of an emergency situation such as fire, eviction, domestic violence

---

**Employment** Changes in employment need to be reported to the social services district because:

- Changes in work hours may impact the amount of child care necessary to be provided
- Changes in income may impact income eligibility
- Changes in income may impact child care service payment amount and family share amount

When a client reports a change in employment, she/he needs to submit to the district verification of the new employment information.

---

**Household Composition** Changes in household composition may affect who is required to be in the Child Care Services Unit (CCSU) and ultimately whose income is to be used in the eligibility calculation. Proof of residence and relationship of household members are important in sorting out who is required to be in the CCSU.

## Lesson 2: Redetermining Eligibility

### **Marital Status**

Changes in marital status may impact:

- Household composition and the decision regarding the CCSU, which ultimately impacts the calculation of income eligibility, and family share

The client may be asked to submit:

- Copy of divorce papers
- Copy of agreement of separation
- Copy of new marriage certificate

---

### **Residence**

A change in residence may affect:

- Household composition
- District responsibility (jurisdiction)

---

### **Status of Child**

Changes in the status of a child affecting eligibility include:

- Birth of a child
- Child turning 13
- Onset of a special need
- Court ordered supervision
- Change of residence, including foster care placement
- Child with special needs, or under court supervision, turning 18 or 19

**Child Care Provider**

Changes in Legally-Exempt provider information may impact payment eligibility and the amount or method of payment used by the social services district.

A new Legally-Exempt enrollment form must be completed by the parent/caretaker and provider and submitted to the Legally-Exempt Enrollment Agency (EA) to determine whether or not the new provider meets the regulatory requirements to provide Legally-Exempt care to children receiving Child Care Subsidy.

---

**Status in Training or School Program**

Changes in the client's status in a training program may affect eligibility for child care. For example, the client may have completed the program and no longer be eligible for child care, or may have reduced the number of hours in school. Clients may need to submit:

- Proof of continued attendance, or
- Proof of completion of school/training program

---

**TA Status**

Tracking a change in TA status is very important because:

- It may affect the category of eligibility to which a family is assigned
- It allows working families to have a smooth transition from TA without causing a disruption in child care arrangements

When a TA case is closing or the recipient volunteers to close a TA case, the worker:

- Must inform the former recipient of potential eligibility for Transitional Child Care (TCC) benefits
- Enter correct Welfare Management System (WMS) coding to see that the accurate time frames for TCC, if eligible
- May not require the submission of a new application merely because the applicant is no longer eligible for TA or no longer eligible for a child care guarantee

## Lesson 2: Redetermining Eligibility

### In Lieu Of Cases

For cases receiving Child Care In Lieu of TA, a change in income may impact the category of eligible family for which that case is entitled to receive funding. This will require ongoing monitoring, requiring:

- The family to immediately report income and resource changes, and
- The worker to determine continued TA eligibility

As discussed in Unit 2, when the income exceeds TA standards, the family will then be entitled to up to 12 months of the TCC guarantee, provided other programmatic requirements are met.

**Note:** Families whose income fluctuates significantly do not have to report changes in income until the next redetermination so long as income continues to fluctuate during the eligibility period.

## Redetermination

**Introduction** Continuing eligibility for child care services must be verified as often as case factors indicate but no less frequently than every 12 months. This process of verifying eligibility is referred to as redetermination.

Redetermination of eligibility for child care services is governed by 18 NYCRR 415.4(a) & (b), *Social Service District Responsibilities*, **Tab 6**, and certain sections of 18 NYCRR 404.1(d), *Time Periods*, **Tab 6**.

**Identification of Cases Due for Redetermination** WMS tracks case expiration dates and provides a listing of these cases. Designated staff reviews the list, set up appointments, and mails out application packets.

---

**What to Review at Redetermination** All factors concerning need and eligibility for child care services must be re-evaluated and verified during redetermination.

Clients have to submit documents such as:

- A new application form, signed and dated
- Proof of income
- Verification from employer listing the working hours
- Proof of incapacity of a parent/caretaker, if applicable
- School/training program attendance report
- Copy of birth certificate if adding a new child
- Proof of residence

A signed and dated family share agreement is not required but is a very good practice.

The clients do not have to re-submit:

- Birth certificate if no child added
- Marriage certificate if no change in marital status

## Lesson 2: Redetermining Eligibility

**District Role** Each agency must undertake the following tasks:

- Notify client of need to verify eligibility
- Review application and case record
- Conduct interview, if needed
- Evaluate and document factors of eligibility
- Make necessary changes to the appropriate WMS Authorization Change Form
- Process case without lapse of benefits
- Notify parent/caretaker of eligibility status
- Notify the EA of the client's eligibility status
- Establish procedures to enable families to retain child care services without interruption as long as the families remain eligible for such services by transferring families from one unit of the district to another when necessary (for example, from Employment or TA to Services) without requiring a new or separate application form

---

**Client Role** At redetermination each client is responsible for:

- Completing a new application form
- Appearing for redetermination interview, if needed
- Reporting any changes since the last determination
- Providing verification of eligibility factors as identified by the worker

---

**Provider Role** Legally-Exempt provider enrollment information is updated every 12 months by the completion of a new enrollment form.

The EA will notify enrolled providers of the requirement to complete a new enrollment form.

## Practice A: Determining What Verification is Needed

**Directions:** Read the following cases and determine:

1. What needs to be verified to determine eligibility?
2. What type of documentation the client will need to present?
3. What is going to be effected due to life changes?

**Case 1**

Daisy has one child and works at a movie theater part-time in the afternoon, earning minimum wage. Daisy’s husband, the child’s father, recently died. She applies for TA and child care subsidy. The worker determines she is TA eligible and informs Daisy she is eligible for TA, however, Daisy prefers Child Care in Lieu of TA.

What needs to be verified?	What can be used?

**Lesson 2: Redetermining Eligibility**

**Case 2**

Three months later, Daisy calls to report that she has received authorization to reduce her part-time job hours so she can attend a vocational program. In addition, her boyfriend has moved in with her. They are planning to move out of county next month.

What needs to be verified?	What can be used?

**Case 3**

Maria is from Cuba and has two children. She lives with and works for her boyfriend who has a small business and is not the father of the children. Her mother and two sisters are also living with her. She needs to travel on business about twice a month. She is applying for child care for both children.

What needs to be verified?	What can be used?



**Case 4**

Samantha Smith, 17 and in receipt of TA and child care subsidy, resides with her 8-month-old son and the child’s father. Samantha called to let you know that she just graduated from high school and is scheduled to complete job screening and assessment; her live-in boyfriend got a full-time job; and her grandmother, who works for a local convenience store, has just moved in with them.

What needs to be verified?	What can be used?

**Case 5**

Three months later, Samantha called to report that the child’s father has moved out and that her mother, who lives in the next town, just had a heart attack. Samantha and her siblings have to take turns looking after their mother. Samantha’s share is two hours every night. Given these new circumstances, what else needs to be verified?

What needs to be verified?	What can be used?

## Notifying the Client

**Introduction** Districts must provide notification to TA and Low-Income applicants/recipients on actions related to their application for Child Care Subsidy and/or Child Care Subsidy benefits. Required notices are in **Tab 7 (RRM)**.

Notices sent to clients must meet certain criteria, depending on the types of action taken:

- All notices must be **adequate**, that is, they must contain certain required information
- When certain actions are involved, the notice must be both **adequate and timely**

---

### Revised Forms

The revised standard forms are included in **Tab 7 (RRM)**. They are:

- LDSS-4779, *Approval of Your Application for Child Care Benefits*
- LDSS-4780, *Denial of Your Application for Child Care Benefits*
- LDSS-4781, *Notice of Intent to Change Child Care Benefits and Family Share Payments*
- LDSS-4782, *Notice of Intent to Discontinue Child Care Benefits*
- LDSS-4783, *Delinquent Family Share for Child Care Benefits*
- LDSS-4784, *Approval of Your Redetermination for Child Care Benefits*
- LDSS-4785, *Approval of Your Transitional Child Care Benefits*
- OCFS-4773, *Child Care Eligibility Re-Determination Coming Due*
- LDSS-7009, *Notice of Child Care Assistance Overpayment and Repayment Requirements*
- LDSS-7010, *Notice of Fraud Determination, Disqualification for Child Care Benefits and Repayment Plan*

Two copies of each form (except for the *Delinquent Family Share for Child Care Benefits*) are sent to the applicant/recipient so that one copy can be used for a fair hearing request and one copy can be retained for his or her personal records.

**Approval of  
Child Care  
Benefits**

The *Approval of Your Application for Child Care Benefits* form must be sent to applicants/recipients for initial and continuing eligibility within **15 calendar days** after the determination has been made. Written notice is not required when a face-to-face interview is conducted at redetermination as long as benefits remain the same.

---

**Denial of  
Child Care  
Benefits**

Notice of a denial must be sent within **15 calendar days** after the determination has been made to notify applicants that they are not eligible to receive child care benefits because:

- The applicant is not programmatically eligible
  - The applicant's income that exceeds allowable levels
  - The applicant has not provided adequate documentation
  - Child care benefits are not available due to the lack of funds
- 

**Notice of  
Intent to  
Change  
Child Care  
Benefits**

The *Notice of Intent to Change Child Care Benefits* form must be sent at least **10 calendar days** before the proposed action becomes effective when the change involves a reduction of benefits or changes in the manner of payment forces the client to change child care arrangements. This notice must be sent to notify clients of:

- Increase in benefit level
- Reduction due to increased income, change in the hours of employment, change in child's age, overpayment recovery, changes in provider or provider rate, decreased market rate
- Change in the manner of payment that forces the client to change child care arrangements

## Lesson 2: Redetermining Eligibility

### Notice of Intent to Discontinue Benefits

The *Notice of Intent to Discontinue Benefits* must be sent at least **10 calendar days** before the case closing. This notice must be sent to notify clients that their child case is being closed due to such circumstances as:

- Change in financial circumstances or living arrangements that makes the family ineligible for child care benefits
- Termination of employment without “good cause” in transitional cases
- Failure to meet employment-related activity requirements for TA
- Change in activities from approved activity to unapproved activity
- Failure to pay or make an arrangement satisfactory to the district to make full payment of all delinquent family share
- Failure to provide required documentation by client

**Note:** Child care services may also be discontinued because of unavailability of funding if the family is not eligible for a child care guarantee and is in a lower priority group as established in the district’s Child and Family Services Plan.

---

### Delinquent Family Share Model Form

The *Delinquent Family Share Model Form* is used to notify recipients that they are delinquent in paying their family share for child care services and of the consequences of non-payment (discontinuance). Before an action can be taken the appropriate notice, *Notice of Intent to Change* or *Notice of Intent to Discontinue Child Care Benefits*, must be sent to recipient. This form also serves to:

- Identify the delinquent amount, time frame for paying, and where overdue fees should be paid
- Notify the client of the option of making “satisfactory” arrangements in lieu of payment in full

- Definition of Adequate Notice** Adequate notice means a notice of action which must include required information, including, but not limited to:
- An acceptance of an application for services
  - A description of the action being taken
  - The specific regulations upon which the action is based
  - The effective date of the intended action
  - The right to request an agency conference
  - Notice of fair hearing rights
  - Right to access case records and obtain copies of documents
- 

**Definition of Timely Notice** Timely notice means a notice which is mailed at least **10 calendar days** before the date upon which the proposed action is to become effective.

When a reduction or termination of benefits is involved, notices must be sent in a timely fashion by the district.

---

- When Adequate Notices Are Sent** Adequate notices are sent when the district proposes to:
- Approve (including at redetermination) or deny an application for child care service, or
  - Increase the amount of child care benefits, or
  - Make a change in the manner of payment and the change does not result in the discontinuance, suspension, reduction or termination of child care services or force the recipient to make changes in child care arrangements

Adequate notices should be sent as soon as possible after a decision has been made about a proposed action.

## Lesson 2: Redetermining Eligibility

### When Adequate and Timely Notices Are Sent

Adequate and timely notices must be sent when the district proposes to:

- Take any action to discontinue, suspend or reduce child care services, or
- Make a change in the manner of payment when the change results in discontinuance, suspension, reduction or termination of child care services or forces the recipient to make changes in child care arrangements

---

### Local Equivalent Forms

Districts wishing to use local equivalent of the required forms must first receive the approval from the Division of Child Care Services (DCCS) **before** the forms are used. It is imperative that local equivalents meet the standards of “adequate” and “adequate and timely” notice.

Local equivalents must also inform the applicants of their rights to a conference and/or a fair hearing, including:

- Address and telephone number to request a fair hearing
- Time limits to request a fair hearing
- Where to obtain free legal assistance
- How to obtain access to their files and copies of documents, and
- Information about aid continuing

The client notification forms are to be used by TA workers unless the district has a local equivalent combining TA and child care issues. This type of local equivalent has to be submitted to DCCS for approval **before** it is used for child care cases.

## Unit 4

# Payment Processing

**Unit Importance** Once a case is open and a provider begins care, payments must be monitored as the client or provider's circumstances change.

This lesson will help you:

- Determine family share and payment amount based on applicable market rates
- Monitor payments and make payment adjustments
- Identify the steps in the recovery process and under what circumstances an overpayment can be recovered

---

**Unit Overview**

This unit contains the following lessons:

- Determining Payment Amounts
- Issuing and Monitoring Payments
- Handling Child Care Overpayments

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## Lesson 1: Determining Payment Amounts

**Lesson Importance** The writing of correct payment lines verifies that federal and state money is properly spent and that payments go out in a timely way.

This lesson will help you:

- Determine the payment amount
- Select a payment method
- Complete payments lines, using proper coding

---

**Lesson Overview** This lesson continues the discussion of processing the case by reviewing instructions on how to determine child care costs and information on billing procedures, as well as related activities associated with payment processing, including the method for authorizing benefits through the Welfare Management System (WMS).

This lesson contains the following topics:

- Determining Market Rate
- Determining Rates for Specialized Circumstances
- Policy Related to Family Share
- Selecting the Payment Method
- Completing Payment Lines

---

**Lesson Objectives** By the end of this unit, participants will be able to:

- Complete payment lines to ensure payment is made
- Describe payment ceiling based on market rate
- Describe different types of payment methods
- Determine the reimbursement amount for child care, including situations where reimbursement over market rate is allowable
- Determine reimbursement levels in specialized situations
- Describe policy governing family share, if applicable
- Describe the required fields and correct codes for payment lines

## Determining Market Rate

**Introduction** Payments for child care services under the New York State Child Care Block Grant (NYSCCBG) and under Title XX must be for the actual cost of care up to the applicable market rate.

Market rates are traditionally updated every two years. The current applicable market rates are outlined in 18 NYCRR 415.9, “Rates”, **Tab 6** and 16-OCFS-LCM-18, *Child Care Market Rates 2016*, **Tab 10**, for the current market rates.

---

**Actual Cost of Care** The actual cost of care is the usual rate charged by the provider for non-subsidized care up to the applicable market rate as updated in 18 NYCRR 415.9, **Tab 6**, and as described in 16-OCFS-LCM-18.

In the case where a district has negotiated a contract rate with individual providers that is less than the charge to non-subsidized families, the contracted rate is considered the actual cost of care.

In the case where a provider is serving only subsidized children, and does not have a contract with the Local Department of Social Services (LDSS), then the actual cost of care is the current rate the provider receives from the LDSS. However, if the provider requests payment for a higher cost of care and can clearly document:

1. In the recent past a higher rate was received for non-subsidized children, or
2. Costs solely related to or attributable to the child care services have increased in the previous 12 months. Costs related to compliance and personal salary are generally not considered (see 16-OCFS-LCM-18)

then the LDSS can establish that rate as the actual cost of care.

**Child Support Child Care Payments**

The cost of care must be further adjusted if there is a child support child care payment being made to the parent/caretaker for the child in care or directly to the provider.

The child care portion of the child support payment must be deducted from the provider’s usual rate for child care. Then the family share may be deducted from the balance to arrive at the child care benefit amount.

For example:

Provider’s Actual Cost of Care	200.00
Market Rate	150.00
Non-Custodial Parent Child Care payment	<u>-50.00</u>
Balance of Cost of Care	<b>100.00</b>
Balance of Cost of Care	100.00
Family Share	<u>-15.00</u>
Child Care Subsidy Benefit Amount	<b>85.00</b>

**Note:** The deduction of the child support child care payment is deducted from the actual cost of care unless the cost of care exceeds the market rate.

## Lesson 2: Issuing and Monitoring Payments

- Market Rate**     Market rates:
- Are determined by the New York State Office of Children and Family Services (NYS OCFS)
  - Establish a ceiling for state and federal reimbursement for payment for child care services
  - Must be sufficient to ensure equal access to child care for subsidized children
  - Take into account the variations in costs of providing care in different settings and to different age groups

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**How Market Rate Was Established**     In accordance with federal regulatory requirements, OCFS contracted with a market research firm to conduct a telephone survey of a sample of regulated providers. Data from the survey was analyzed and the rates from the survey were clustered into five distinct groupings of districts. Market rates were then established for each cluster at the 75<sup>th</sup> percentile.

As per 16-OCFS-LCM-18, the rates in each group are differentiated by:

- Type of provider
- Age of child
- Duration of care

**Note:** Also see 18 NYCRR 415.9, **Tab 6**.

<b>Type of Provider</b>	<p>Market rates vary according to the type of provider, which includes different rates for:</p> <ul style="list-style-type: none"><li>• Licensed or Registered Day Care Centers and Legally-Exempt Group Child Care</li><li>• Registered Family Day Care providers</li><li>• Licensed Group Family Day Care providers</li><li>• Registered School-Age Child Care programs</li><li>• Legally-Exempt Family and In-Home Child Care, Standard rate</li><li>• Legally-Exempt Family and In-Home Child Care, Enhanced rate</li></ul>
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<b>Age of Child</b>	<p>Market rates are also differentiated by the age of the child.</p> <p>For Day Care Centers, School-Age Child Care, and Legally-Exempt Group Care, the age categories are:</p>
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- Under 1 ½ years
- 1 ½ through 2 years
- 3 years through 5 years
- 6 years through 12 years

For Family Day Care, Group Family Day Care, and Legally-Exempt Family Child Care and In-Home Child Care, the age categories are:

- Under 2 years
- 2 years
- 3 years through 5 years
- 6 years through 12 years

**Note:** When a child moves from one age category to another, the new market rate limit should be applied at the beginning of the full month following the child's birthday.

## Lesson 2: Issuing and Monitoring Payments

**Duration of Care** Market rates are also differentiated by the duration of the care, which is defined as weekly, daily, part-day, or hourly. Below are definitions of these different payment units:

<b>Payment Unit</b>	<b>Definition</b>
<b>Weekly</b>	When care is provided for 30 or more hours over the course of five or fewer days in a single week
<b>Daily</b>	When care is provided for at least six but fewer than 12 hours per day for less than 30 hours in a single week
<b>Part-day</b>	When care is provided for at least three but fewer than six hours per day
<b>Hourly</b>	When care is provided for fewer than three hours per day

**Determining Payment Unit**

Guidelines for selecting the applicable payment unit are governed by whether the provider has a purchase of services contract or not.

Provider	Care for 30 or More Hours per Week	Care for 30 or Less Hours per Week
Has no purchase of service contract or other written agreement	<ul style="list-style-type: none"> <li>• If routinely charges a weekly rate to non-subsidized, <u>must use weekly market rate</u></li> <li>• If routinely charges a daily rate to non-subsidized, <u>must use weekly market rate divided by 5.</u></li> </ul>	<p><u>Must use applicable rate based on duration of care:</u></p> <ul style="list-style-type: none"> <li>• Daily</li> <li>• Part-day</li> <li>• Hourly</li> <li>• Or a combination</li> </ul>
Has purchase of service contract or other written agreement	<p><u>Always apply the contract rate. The rate set by the local district for such contracts must be within the weekly market rate, or the weekly market rate divided by five if paying on a daily basis.</u></p>	<p><u>Must use applicable rate based on duration of care:</u></p> <ul style="list-style-type: none"> <li>• Daily</li> <li>• Part-day</li> <li>• Hourly</li> <li>• Or a combination</li> </ul>
Day Care Center or School-Age Child Care program not routinely charging an hourly basis		<p><u>Must use part-day rate when care is provided for three hours or less per day before and/or after school.</u></p>

## Determining Rates in Specialized Circumstances

**Enhanced Market Rates** An enhanced market rate is established for Legally-Exempt Family Child Care and In-Home Child Care providers that have completed ten or more hours of training annually as established in the LDSS Child and Family Services Plan.

A standard market rate is traditionally established every two years for Legally-Exempt Family Child Care and In-Home Child Care providers that have not completed 10 or more hours of training by OCFS.

When notified by the Enrollment Agency (EA) that a Legally-Exempt Family Child Care or In-Home Child Care provider has completed 10 or more hours of training, the district must apply the enhanced market rate and send OCFS/LDSS-4781, *Notice of Intent to Change Child Care Benefits, Tab 7 (RRM)*, to the parent/caretaker. The district must apply the enhanced rate no later than the beginning of the first full month for 12 months following the date the district was notified by the EA of the approval of the enhanced rate.

In order to receive the enhanced market rate beyond the approved period, the provider must complete an additional ten or more hours of training. The EA will notify the district if the provider has completed an additional 10 or more hours of training.

For those cases in which the district has not been notified by the EA that a Legally-Exempt Family Child Care or In-Home Child Care provider is eligible for the enhanced market rate, the district must apply the standard market rate.

**Note:** See 09-OCFS-LCM-07, *Attachment B, Tab 8 (RRM)*.



**Differential Payment Rates**

Districts are allowed to establish higher payment rates for Registered and Licensed providers for:

- Providers that have been accredited by a nationally recognized child care organization
- Providers who offer services during non-traditional hours

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**Guidelines for Differential Rates**

Differential rates must be indicated in the Child and Family Services Plan. Payment rates:

- May be up to 15% higher than the applicable market rates
- May be different percentages for accredited programs than for programs offering services during non-traditional hours
- Cannot exceed 15% to any one provider

**Note:** A district may request a waiver to establish a payment rate that is in excess of 15% above the market rates upon showing that 15% maximum is insufficient to provide access within the district.

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**Special Needs**

The Federal Family Support Act of 1988 recognized the need for making higher child care payments for children with special needs and allowed states to establish separate statewide limits for care of these children when the increased payments are the result of increased costs associated with meeting the special care needs of such children.

However, higher child care payments for children with special needs are not allowed to cover:

- Special educational
- Therapeutic, or
- Other services not directly related to the provision of appropriate child care

**Note:** Payment rates for children with special needs are also traditionally updated every two years.

## Lesson 2: Issuing and Monitoring Payments

### Statewide Limits: Special Needs

The statewide limit for children with special needs is based on the amount of time of care per week. The market rate for children with special needs:

Payment unit	Statewide Limit
Weekly	\$ 371.00
Daily	\$ 60.00
Part-Day	\$ 40.00
Hourly	\$ 17.00

The payment of a higher rate for child care services for children with special needs can only be made when both of the following are true:

- A child meets one or more of the definitions of special needs
- The provider incurs additional costs as a result of caring for such children

**Note:** Please refer to 16-OCFS-LCM-18, **Tab 10**, p. 14.

**Multiple Providers**

Payment for care provided by more than one provider during the course of a single day or week will be made to each provider for the actual cost up to the applicable market rate for each when the family can reasonably justify the need for multiple providers.

**Example:** Ms. Smith needs care for her 5 year old son David when she goes to her day job five days a week. She works a second job and also needs care Tuesday and Thursday night.

Provider	Hours of Care Provided	Payment
Kids Choice Day Care Center	9:30am to 4:30pm Monday through Friday	Up to one weekly market rate
Mr. Johnson	6:00pm to 9:30pm on Tuesday and Thursday	Up to two part-day market rates

**Note:** Please refer to 18 NYCRR Part 415.9(h), **Tab 6**, for instructions when payment to multiple providers would exceed one weekly market rate. Please also refer to 16-OCFS-LCM-18, p 8.

**Excessive Hours by Single Provider**

When child care services are provided by a single provider in excess of one weekly or daily period, payment for the additional child care services will be based on the actual cost of additional care up to the applicable rates.

**Note:** Please refer to 16-OCFS-LCM-18, p 7.

Provider	Hours of Care Provided	Payment
Mrs. Jones	Eight hours per day, Monday through Saturday	Up to one weekly market rate plus one daily market rate

## Lesson 2: Issuing and Monitoring Payments

### **Trans- portation Fee**

Districts, at their option, may make payments for eligible families for transportation to and from a child care provider, providing this option has been listed in their Child and Family Services Plan.

Districts who have elected a transportation option:

- Will be reimbursed for transportation expenses charged by a child care provider that are separate and apart from the regular rate charged by the provider, or
- May make arrangements using other providers of transportation services

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### **Client Residence Change**

When a family who is guaranteed child care services moves from one district to another:

- The former district pays for the month of the move and the first full month thereafter, using the market rate for the district in which the provider is located
- The new district picks up payments beginning with the second full month the family lives in the district

When a family, who is eligible when funds are available or when included in district's Child and Family Services Plan, moves to another district:

- The former district is no longer responsible for the child care services payment as soon as the family moves out
- The parent/caretaker has to re-apply in the new district if child care is still needed

**Jurisdiction** The social services district where the family resides is normally responsible for providing child care services. However, in some Temporary Assistance (TA) circumstances, jurisdiction remains with the district where the family or child formerly resided.

Special circumstances include:

- Client participating in an approved activity in another county
- Child placed in foster care in another county

**Note:** Please see 05-OCFS-ADM-03, **Tab 8**, p 37.

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**Required Activity in Another County** When a parent or caretaker relative participates in a substance abuse program in another district, the district requiring or approving the activity pays for the child care services that are needed while the parent or caretaker relative is in treatment.

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**Foster Care in Another County** When a child is placed in foster care in a district outside of the district where the child resided at the time of placement, and the foster parent needs child care services for approved or required activities of the foster parent, the district placing the child pays for the child care services.

## Policy Related to Family Share

**Definition** Family share is the weekly amount paid towards the costs of the authorized child care services by the child's parent/caretaker as per 18 NYCRR 404.6, **Tab 7**.

Family share is required of Low-Income families, but not TA families.

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**Rules Governing Sliding Fee Scale**

In establishing family share, districts:

- May use a sliding fee from 10% to 35%, as indicated in the district's Child and Family Services Plan
- Must use the same percentage factor for all families receiving child care services in the district
- Must charge a minimum weekly fee of one dollar to each family unit required to pay a fee
- May charge no more than one fee per family regardless of the number of children in the family receiving child care services
- Districts may change their family share by amending their Child and Family Services Plan, which requires approval from OCFS **prior** to implementation

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**District's Responsibility**

The district is responsible for determining the manner of collecting family share and must advise the parent/caretaker in writing, at the time of the initial eligibility determination and each re-determination, of the:

- Required family share amount
- Date(s) such family share is due
- Payment procedure to be followed

The notice of family share requirements must be included in the written notice of eligibility.

**Methods of  
Collecting  
Family Share**

Family share may be collected from the parent/caretaker by either:

- The provider, or
- The district

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**Provider  
Collection**

If the provider is responsible for collecting the family share:

- Any required family share must be deducted from the amount made to the provider, and
- The parent/caretaker pays the family share directly to the provider

A provider must be notified when a parent/caretaker is required to pay family share to the provider. Such notification to the provider must contain:

- The amount of the family share, and
- The date(s) the family share is due

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**District  
Collection**

If the district assumes this responsibility, the district will:

- Collect the family share from the parent/caretaker, and
- Make full payment to the provider

## Lesson 2: Issuing and Monitoring Payments

**Handling Delinquency** If a family share is not paid by the specified date, the district, or the provider, when appropriate, must immediately give written notice of the family share amount past due in person or by mail to the recipient. Such notice must include:

- A warning of impending termination of the service for continued non-payment, and
  - Specification of the time period within which such payment must be made, or
  - The time period within which the satisfactory arrangement for such payment must be made

**Note:** Such time period may be no less than **seven** days and no more than **30** days, **unless** the district has determined other satisfactory arrangements for payment. A sample of OCFS-LDSS-4783, *Notice of Delinquent Family Share for Child Care Benefits* is provided in **Tab 7**.

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**Termination** Failure of the parent/caretaker or caregiver to pay the family share must lead to termination of the service for which the family share was imposed and not paid unless, prior to the termination of such services:

- Payment of the full amount of the delinquent family share is received, or
- Satisfactory arrangements have been made for the service recipient to make full payment of the delinquent family share

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**Protective and Preventive Exception** All Low-Income families are required to pay a family share. However, failure to pay family share must **not** be a basis for denial or discontinuance of services as part of a plan:

- Of protective services for a child, or
- For preventing placement of a child in foster care



**Notice Requirement** The district must give written notice of termination of service in person or by mail to the recipient. Such notice must state that the service will be terminated **10** days subsequent to the date of notice.

Copies of the warning and termination notices must be maintained in the recipient's case record.

## Selecting Payment Method

**Overview** Payment methods are outlined in 18 NYCRR 415.5, *Child Care Services*, **Tab 6**. Payment for child care services provided under the NYSCCBG Program can be made by one or more of the following methods:

- Advanced cash payment
- Cash reimbursement
- Voucher
- Purchase of services contract or letter of intent

Payment goes to either the parent/caretaker or the provider.

Attendance and payment records must be monitored for all providers receiving payment for child care services regardless of the method of payment.

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**Payment for Legally-Exempt In-Home Child Care** To reinforce the fact that only the parent/caretaker is responsible for paying providers, OCFS recommends that districts consider issuing checks only in the parent/caretakers name when a Legally-Exempt In-Home provider is used.

If the district is changing the method of direct payment, then OCFS-LDSS-4781, *Notice of Intent to Change Child Care Benefits* (LDSS-4781) must be issued to the recipient.

## Lesson 2: Issuing and Monitoring Payments

### Payment to Provider

Payment may be made directly to the provider through:

- Purchase of Services contract or letter of intent
- Advance cash payment, cash reimbursement, or vouchers

Regulated or Legally-Exempt child care providers must be enrolled with the LDSS before payment can be made.

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### Required Use of Purchase of Services

When NYSCCBG funding covers the services for protective only cases, **no** Purchase of Service contract is required.

However, for child care services provided under Title XX, payment must be made through a Purchase of Services contract or letter of intent. This includes child care to:

- Prevent foster care placement
- Provide preventive services
- Provide protective services for children who have been reported neglected, abused, or maltreated

**Note:** Letters of intent may be used only for Family Day Care providers.

**Contents of  
Purchase of  
Service  
Contract**

A Purchases of Services contract must have the following elements:

- A definite effective and termination date
- A detailed description of the services to be provided and the methods of provision
- A specific dollar rate
- Method of payment
- Statement that the provider meets applicable standards
- Location where services are provided
- Provider's responsibilities and rights
- Dated and executed by authorized worker

All contracts should be reviewed at least every six months for verification of conformance.

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**Child Care  
Certificate  
Payment  
System**

The district must issue a child care certificate directly to the parent/caretaker when the parent/caretaker does not have a child care provider. The parent/caretaker may use it only to arrange for child care services from any eligible provider.

The child care certificate must be available in all districts except New York City which developed a state approved local equivalent to the child care certificate program.

A copy of 92-LCM-138, *Child Care Certificate Program* is found in, **Tab 8 (RRM)**.

## Lesson 2: Issuing and Monitoring Payments

**Certificate Validity Time Limit** A child care certificate is valid for a 30 day period following the date of issue.

During this period, the family:

- May present the certificate to any eligible provider, or
- May request another certificate in order to continue to try to self-arrange care if unable to locate care during 30 days, or
- May ask the district to arrange care

## Completing Payment Lines

**Introduction** In writing payment lines to authorize child care payments for an eligible household, the worker will utilize the appropriate document:

For TA cases,

- The Application Turnaround Document (LDSS-3636), or
- The Authorization Change Form (LDSS-3209)

For Services cases, or TA cases opened on services Welfare Management System (WMS)

- The *Services Financial Eligibility Documents/Turnaround (SFED/T)*, or
- The *Services Authorization* (LDSS-2970)

**TA Child  
Care  
Payment  
Line**

For TA cases, screens 6 - 9 are used to record all payment lines related to:

- Cash benefits
- Restricted benefits
- Supplemental Nutrition Assistance Program (SNAP) benefits
- Child care

Child care payments are included in the listing of all eligible payments for the TA case and are then entered into screen 9 of the WMS Non-Services authorization process. Payment type codes are selected in accordance with the type of child care provided.

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**Low-Income  
Child Care  
Payment  
Line**

As in the TA process, the worker uses either the *SFED/T* or the *WMS Services Authorization* form and uses codes to identify the appropriate Purchase of Service for child care.

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**Coding**

In selecting the appropriate codes for authorization of child care payment, the following references are to be used:

- For TA cases, the WMS Non-Services Code Cards (LDSS – 4398)
- For Services cases, the WMS/Services Coding Guide (WMS/SVC – 80)

As with any reference guide, it is important to be certain of using the most current version, as codes may change over time.

## Practice A: Determining Market Rate and Payment Amount

**Directions:** Review the following cases and determine the applicable market rates. For the purposes of the practice cases assume today's date is October 22.

### Case 1

Bill, a 22 month old boy with documented autism, lives in Erie County. He goes to Star Day Care Center for four hours a day, three days a week and works with a one-on-one aide that was hired to work with Bill because of his documented need for additional supervision around other children.

Bill also goes to Mrs. Brown, a Legally-Exempt provider, at night for two hours a day, three days a week, where he works with a physical therapist.

1. What is the applicable rate for Star Day Care? \_\_\_\_\_
2. What is the applicable rate for Mrs. Brown? \_\_\_\_\_

**Work Area:**

**Case 2**

Scott is celebrating his 18-month birthday today. He is having a party at the nationally accredited Star Day Care Center in Albany where he attends six hours a day, three days a week.

Scott's custodial parent receives \$25.00 a week in child support for child care expenses from the non-custodial parent. The provider's rate is \$55.00/daily for children under 3 years.

1. What is the applicable market rate now? \_\_\_\_\_
2. For next month? \_\_\_\_\_
3. What amount should the district pay? \_\_\_\_\_

**Work Area:**

## Lesson 2: Issuing and Monitoring Payments

### Case 3

Samantha, a 2 year old from Erie County, will be celebrating her 3<sup>rd</sup> birthday next month in Albany County with her mother where they have moved to in order for her mother to attend a 6 month residential drug rehabilitation center as ordered by her TA case worker in Erie county.

Samantha currently attends the group family day care, Tiny Miracles Day Care Center, 3 hours per day 4 days per week while her mother attends treatment.

1. Who is going to pay for October? \_\_\_\_\_  
What rate? \_\_\_\_\_
2. Who is going to pay for November? \_\_\_\_\_  
What rate? \_\_\_\_\_
3. Who is going to pay for December? \_\_\_\_\_  
What rate? \_\_\_\_\_

### Work Area:



**Case 4**

Beth, a 13 month old, is receiving guaranteed child care service provided by an In-Home babysitter for five hours a day, three days a week.

Her family is moving from Monroe County to Steuben County on the 5<sup>th</sup> of November. She will go to a Day Care Center after the move for six hours a day Monday through Friday.

In December, Beth will also attend the same Day Care Center on Saturdays for 3 hours.

1. Who is going to pay for November? \_\_\_\_\_  
What rate? \_\_\_\_\_
2. Who is going to pay for December? \_\_\_\_\_  
What rate? \_\_\_\_\_
3. Who is going to pay for January? \_\_\_\_\_  
What rate? \_\_\_\_\_

**Work Area**

## Lesson 2: Issuing and Monitoring Payments

**Lesson Importance** The Child Care Subsidy Program needs to be monitored carefully to ensure that federal and state money is spent appropriately and paid to those for whom it was intended.

This lesson will help you:

- Monitor whether payments should be made
- Cross check the correct amount of payment
- Identify when payments should be made to providers

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**Lesson Overview** The topics in this lesson include:

- Cross Checking Child Care Attendance Against Parent/Caretaker Activity
- Reimbursement for Temporary Absences
- Reimbursement for Absences in Extenuating Circumstances
- Reimbursement When a Program is Closed
- Issuing Payments to Providers

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**Lesson Objectives** By the end of this lesson, you will be able to:

- Monitor a child's attendance against the provider's billing and the parent/caretaker participation in activities as selected in the district's county plan to determine if payments should be made
- Describe guidelines for making payments when a child is temporarily absent from child care
- Determine if payments should be made to providers from program closures
- Identify under which circumstances providers may be eligible or ineligible for subsidy payment

## Cross Checking Child Care Attendance Against Parent/Caretaker Activities

**Introduction** The requirement for local districts to monitor attendance records before making payment for child care services is outlined in 18 NYCRR 415.4, *Local District Responsibility*. Monitoring needs to occur to make sure payments are being made for legitimate activities.

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**Participation in Employment or Approved Training Activities** On a regular basis, districts need to monitor parent/caretaker participation in employment or a training activity as selected in the district's county plan.

The parent/caretaker must provide:

- Documentation of hours worked, or
- Documentation related to a training activity including:
  - The name of the institution offering or conducting the training program
  - The course of study to be pursued
  - The specific vocational or rehabilitative goal
  - The duration of the training per day, including no more than a total of three hours per day to commute to and from the training location
  - Progress reports to show that the parent/caretaker is progressing satisfactorily towards the established goal(s)

## Lesson 2: Issuing and Monitoring Payments

### Reviewing Attendance Records

On a periodic basis, the district must review the child's attendance record to see that the hours of attendance in child care are reasonably related to the hours of employment or participation in an activity. In the review, the worker checks:

- The child's attendance records against the parent/caretaker's work or activity hours to make sure the payment does not exceed the needed hours of care, allowing:
  - Travel time to and from the work or activity location
  - Time for delivery and pick-up of the child
  - Up to eight hours of child care services to enable the parent/caretaker who works a second or third shift to sleep, provided this has been identified in the local district's Child and Family Services Plan
- The child's attendance records against the attendance records from in the provider. In the case of multiple providers, the worker should check to make sure there is no overlap in child care

Since providers will submit signed records of the children's attendance with the bills, it is very important to educate/train the providers on standard billing procedures established by the district to minimize turnaround time and allow prompt payment.

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### Child Care During Breaks in Activities

Districts must provide child care subsidies for Temporary Assistance (TA) recipients during breaks in work or an approved activity. Payment for child care during approved or allowed breaks in activities is mandated and is limited to a period of up to two weeks. However, child care may be authorized for up to one month if the child care arrangements would be lost if not continued, and the employment or approved activity is scheduled to begin within that one-month period. There are no limits on the number of approved or allowed breaks for which child care may be authorized, so long as the recipient is participating as required in his or her work or approved activity.

A copy of this information can be found in 04-OCFS-ADM-01, Section B, "*Payment During Breaks in Activities*", located in **Tab 4 (RRM)**.

## Practice B: Determining If Attendance Record Warrants Payment

**Directions:** Read the following case studies and examine the attendance records and bills submitted to determine if payment is warranted for the child care services claimed and give reasons for your decisions.

**Case 1** Wendy has one child. She works in a grocery store from 8:00 am to 4:00 pm Monday through Tuesday and from 10:00pm to 6:00 am on Thursdays.  
The provider submitted a bill for 30 hours a week.

<p><b>Peter Piper Day Care</b> <i>We lead when others follow</i> 135 Rockefeller Street Warrensburg, NY 12345</p>	<p><b>INVOICE</b></p> <p>INVOICE #101 DATE: OCTOBER 6, 2010</p>
<p><b>FOR: WENDY CALABRESE</b> Re: Lilly Calabrese</p>	
<b>DESCRIPTION</b>	<b>AMOUNT</b>
Child Care provided for minor child Lilly Calabrese as scheduled by mother Wendy	30 hours
TOTAL	30 hours
<p>If you have any questions concerning this invoice, contact Torie at 1.800.WeCare</p> <p style="text-align: center;"><b>Thank you for your business!</b></p>	

**Work Area:**

**Lesson 2: Issuing and Monitoring Payments**

**Case 2** Mary is attending an approved training program three mornings a week from 8:00am to 12:00pm on Mondays, Wednesdays, and Fridays. She is also working part time from 1:00pm to 5:00pm on Mondays, Wednesdays, Fridays and Saturdays. The following attendance report #1 is from Peter Pan Day Care and attendance report #2 is submitted by Mrs. Brown, who babysits in Mary's house when Mary works.

**Attendance Report #1 from Peter Pan Day Care:**

<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>
	7:30am-12:30pm	7:30am-12:30pm	7:30am-12:30pm	7:30am-12:30pm	7:30am-12:30pm	
	5 hours	5 hours	5 hours	5 hours	5 hours	

**Attendance Report #2 from Mrs. Brown:**

<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>
	11am-6pm		11am-6pm		11am-6pm	11am-6pm
	7 hours		7 hours		7 hours	7 hours

**Work Area:**

## Reimbursement for Temporary Absences

**Introduction** Local districts have the option to pay for temporary absences from child care. Districts that choose to pay for temporary absences must indicate this option in their Child and Family Services Plan.

As part of the monitoring process, child care workers need to monitor temporary absences of children in order to determine whether payment to the provider is warranted.

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**Regulations** Regulations for reimbursement are found in 18 NYCRR 415.6, *State Reimbursement*, **Tab 6**, and are more fully outlined in 05-OCFS-ADM-03, *Child Care Subsidy Program*, **Tab 8**.

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**Routine Absences** Reimbursement for payments on behalf of children who are temporarily absent from child care is allowable, subject to the guidelines outlined in 18 NYCRR Part 415.6, and as outlined in the Child and Family Services Plan.

The provider rendering the child care services must be duly Licensed, Registered, or enrolled as a Legally-Exempt Group Child Care provider.

- The district may choose to make payments only to those providers with which it has a letter of intent or contract, or to all subsidized providers (except Legally-Exempt In-Home and Legally-Exempt Family Child Care providers)
- The district has to specify in the written contract, agreement, or written notice to the provider that payment is allowable in cases of temporary absence from child care

## Lesson 2: Issuing and Monitoring Payments

**Selecting a Base Period** The district that plans to claim federal or state reimbursement of payments for child care for children who are temporarily absent must select either the three-month or six-month period as the basis on which it will maintain records and seek reimbursement.

- No combination of the three or six month periods is permitted within one district
- Once a base period is selected, no change can be made until the end of the annual program year

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**Identifying a Base Period** The district must identify the beginning of the three-month or the six-month period used in determining maximum temporary absence numbers.

The base period is defined as:

- The date of a child's admission to child care and ending three or six months later depending on the period selected, or
- The fixed calendar date for all children entering child care and ending three or six months later depending on the period selected

If the latter is selected,

- A child entering child care during a quarterly (or semiannual, depending on the period selected) cycle may, during the initial period, receive a prorated number of days of absence, beginning on the date of entry and ending on the last day of the quarterly or semiannual cycle
- All temporary absences thereafter will be computed using the normal quarterly or semiannual cycle.



**Limits for  
Routine  
Absent  
Maximum  
Days**

In the case of routine absences, payment for maximum temporary absence from child care is allowed for up to:

- 12 days in any one calendar month, and
  - No more than 12 days in any three-month period if the district selects a three-month base period, or
  - 24 days in any six-month period if the district selects a six-month base period

Reimbursement is **not** available if:

- The provider ordinarily charges the parent/caretaker on a daily or part-time basis and the child for whom reimbursement is requested receives subsidized child care from a different provider on the same day
- The provider ordinarily charges the weekly market rate, when care is provided 30 or more hours for five or less days per week. In this case, the child's absences would not count towards routine absences

## **Reimbursement for Absences with Extenuating Circumstances**

**Introduction** Districts may also provide reimbursement for absences caused by extenuating circumstances if these circumstances are noted in the child's services plan and have been verified by the district.

## Lesson 2: Issuing and Monitoring Payments

### Extenuating Circumstances Definitions

Extenuating circumstances are defined as:

- The child or the child's caretaker needs to appear in court or keep other appointments related to the provision of preventive, foster care, adoption or child protective services, or other needs set forth in the child's service plan
- The child needs to receive medical care and/or routine medical treatment
- The child's family is homeless, and the homelessness necessitates the child's absence from child care
- The child's caretaker is participating in an education or training program as outlined in the district's county plan, and the child's absence coincides with the temporary suspension of the program for purposes of, but not limited to, holidays, school conference, and snow day closures

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### Limit for Maximum Absent Days

The maximum allowed absent days from child day care with extenuating circumstance(s) are:

- Up to 15 days in any one calendar month, and
  - No more than 20 days in any three-month period if the district selects a three-month base period, or
  - 40 days in any six-month period if the district selects a six-month base period.

**Note:** These limits are not additional but cumulative to routine limits. Example: Routine absences allow 12 days in a month, plus 3 additional days for absences with extenuating circumstances, totaling 15 days.

**Summary— Absences** The following chart summarizes the maximum limits for reimbursement for temporary absence from child day care:

Base Period	Routine Limits	Limits with Extenuating Circumstance(s)	Total
In one calendar month	Up to 12 days	3 days	Up to 15 days
In 3-month period	Up to 12 days	8 days	Up to 20 days
In 6-month period	Up to 24 days	16 days	Up to 40 days

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**Verification Required for Claiming Payment** When the payment of absence with extenuating circumstances is claimed, the parent/caretaker is responsible for providing documentation such as:

- Court order
- Physician’s letter
- Any other documents to show compliance with the definition of extenuating circumstance

## Lesson 2: Issuing and Monitoring Payments

<b>District Reimbursement Requirements</b>	<p>When an extenuating circumstance exists and the district opts to make payments and claim reimbursement for a number of absences <u>over the limits of extenuating circumstances</u>, the district must:</p> <ul style="list-style-type: none"><li>• Submit a written request to the Office of Children and Family Services (OCFS) for approval. Such requests must be client-specific and must indicate the numbers of additional absences as well as the reason(s) the additional absences were necessary</li><li>• Maintain as a part of the case record a copy of the written OCFS approval for reimbursement of child care payments in excess of the limits for cases with extenuating circumstances</li></ul>
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## Reimbursement When a Program is Closed

<b>Introduction</b>	<p>Districts may also reimburse Licensed, Registered, or enrolled Legally-Exempt Group Child Care providers when care is not provided because of program closure due to:</p> <ul style="list-style-type: none"><li>• A state, federal, or nationally recognized holiday</li><li>• Extenuating circumstances beyond the provider's control such as natural disaster, severe weather</li><li>• Other emergency closing not due to a substantiated regulatory violation</li></ul>
---------------------	--

**Policy  
Governing  
Payment for  
Program  
Closure**

The following guidelines govern payment for program closure:

- Reimbursement is available **only** for subsidized children who would otherwise be present at the child care program
- Reimbursement is **not** available for a day the program is closed if the provider ordinarily charges the clients on a day or part-time basis and the child for whom reimbursement is requested receives subsidized child care from a different provider on the same day
- The maximum number of days allowable is **5** per year

The district must maintain a record of the payment to each provider.

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**Payment for  
Program  
Closure to  
Provider**

If a district opts to make payments for program closures, it may choose to make such payments to:

- Providers with which the district has a contract or letter of intent only, or
- All providers of subsidized child care services except for care givers of Legally-Exempt In-Home or Family Child Care

The district must specify in the Child and Family Services Plan whether or not it opts to make such payments and, if applicable, for which providers such payment will be made.

## Practice C: Temporary Absence from Child Care

**Directions:** Review the following cases and determine if the payment for temporary absence is allowed.

**Case 1** Mrs. Green is a Legally-Exempt provider who looks after her nephew, Matthew, in her home and claimed payment for the month of January including five days when Matthew was absent due to illness.

1. Approve Deny

Why? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Case 2** Cara goes to Star Day Care for three hours in the morning on weekdays. Star Day Care submitted a bill, claiming three days of program closure during the month, on days Cara was scheduled to be there.

Cara's parents report, and provide verification, that she received child care from another provider on those three half-days.

1. Approve Deny

Why? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Case 3**

The district has selected a three-month base period in determining maximum temporary absences, beginning on the first day of January, April, July, and October.

Andy entered Star Day Care on January 1st and the provider has claimed eight absent days for February, eight days for March and three days for April.

1. **February**      Approve      Deny

Why? \_\_\_\_\_

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2. **March**      Approve      Deny

Why? \_\_\_\_\_

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3. **April**      Approve      Deny

Why? \_\_\_\_\_

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**Lesson 2: Issuing and Monitoring Payments**

**Case 4** You've received a bill from Star Day Care for Jonathan for the month of January. It reads:

<u>Sun</u>	<u>Mon</u>	<u>Tue</u>	<u>Weds</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>
	New Year's		Sick	Snow Day	Sick	
		Court	Court	Court	Sick	
	Sick	Sick	Sick	Sick	Sick	
	Sick	Sick	Sick	Sick	Sick	

1. Approve

Deny

Why? \_\_\_\_\_  
\_\_\_\_\_



## Issuing Payments to Providers

**Payments to Child Care Providers** In order for districts to issue child care subsidy payments, the district must verify provider eligibility in the Child Care Facility System (CCFS) to determine if providers are licensed, registered, or enrolled as Legally-Exempt providers by an Enrollment Agency (EA). The Local Department of Social Services (LDSS) can also run a “parent-provider report” in CCFS to see a list of providers associated with the county.

Providers receiving subsidies are required to be in compliance with the applicable laws and regulations pertaining to the Child Care Subsidy program, as well as any additional requirements imposed on providers by the district. In addition, all child care providers receiving subsidy payments must certify that all documentation and information provided to the district is accurate and true, and that they do not charge more for subsidized children than for non-subsidized children in care. These guidelines are outlined in 05-OCFS-ADM-03 and 18 NYCRR 415.12.

Districts must determine whether providers are eligible for subsidy payments based on their provider status. It is the district’s responsibility to ensure that those providers required to be Licensed, Registered, or enrolled have a valid license, registration, or enrollment status before they make Child Care Subsidy payments.

## Lesson 2: Issuing and Monitoring Payments

### **Non-compliance of a Licensed or Registered Provider**

Districts must pay Licensed or Registered providers who are in good standing. A Licensed or Registered child care provider has due process rights to a hearing and may only be considered non-compliant for the purpose of stopping the issuance of subsidy payments after one of the following events occurs:

- The provider's license or registration was suspended following a finding that the public health or a child's safety or welfare is in imminent danger
- The provider was issued a letter to revoke or deny the provider's child care license or registration, the child care provider's due process hearing rights have been adhered to, and all rights to appeal have been exhausted, resulting in a final decision to revoke or deny the provider's child care license or registration
- The provider was issued a written notification that the provider's license or registration is no longer valid
- The provider is closed

See 18 NYCRR 415.4(h) for more information.

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### **Legally-Exempt Payable Statuses**

Districts must issue payments for care provided by Legally-Exempt providers who have either been temporarily or fully enrolled by the EA. These payments may go back to the Child Care Subsidy Start Date established by the district when there are no known Periods of Ineligibility documented in CCFS. These providers do not have to be fully enrolled in order to begin receiving subsidy payments.

Providers with a status of Intake, Preliminary Review or Under Full Review have not been enrolled and are not eligible providers. Providers whose status is Denied or Withdrawn have been rejected and are not eligible for enrollment. Providers who are Closed or Closed: Terminated were once eligible but are no longer eligible to provide subsidized child care.

**Legally-Exempt Payable Statuses (Con't)**

The district may also pay Legally-Exempt providers who are in the process of renewing their enrollment. The LDSS must review both the provider enrollment status and the family decision in order to determine whether a provider is eligible to be paid for care. Detailed information is in the desk aid Issuing Payments for Subsidized Child Care Based on Provider Enrollment Status and Family Decision.

The provider status of Enrolled: Emergency Inactive indicates serious non-compliance and the district must not issue payment for care given to a provider in this status.

---

**Deferring Payments to Providers**

The district is required to act on a claim for reimbursement from a provider within 30 days of receiving such a claim.

Districts may choose to defer a claim in the following circumstances:

- Upon the recommendation of a federal, state, or local agency when the agency has informed the local district that continued payment of claims place the district at risk of making payments for services that were not provided in accordance with the applicable state regulations
- Inaccuracies in the claim warrant a more detailed review
- Upon notification of the existence of a pending criminal charge involving fraud

See 18 NYCRR 415.4(h) for more information.

## Lesson 2: Issuing and Monitoring Payments

### **Disallowing Payments to Providers**

The district may also disallow payments for claims for subsidy services provided for the time period in which:

- An enrolled provider is found to be operating or have operated a child care program required to be licensed or registered without obtaining a license or registration
- A Licensed or Registered provider is found to be operating or have operated over its licensed or registered capacity
- An enrolled Legally-Exempt provider is found to be caring or have cared for more children than the limits defined by regulation in 18 NYCRR 415.1(h)

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### **Denying Payments to Providers**

Districts may also deny payments to providers who are not eligible to care for specific families. This can include circumstances when:

- A provider is an adult member of the Child Care Services Unit (CCSU) who is not a sibling to the child in care
- Title XX funding is being used to pay for services
- A provider has been disapproved in a protective/preventive case because the district believes it would be contrary to the health, safety, or welfare of the child to receive services from the provider

**Suspending Legally-Exempt Providers** Districts may choose to suspend a Legally-Exempt provider to care for all subsidized children while a provider is under investigation for child abuse and maltreatment. The district may only suspend the provider during the time that the investigation is open.

If the district chooses to do so, the district must develop a written policy that includes:

- Modalities of Legally-Exempt care that will qualify for suspension
- The criteria that will be used to determine which providers will be suspended, or specify that suspension will be applied to all providers
- Specify how such providers will be identified and who will be responsible for informing the EA of the beginning and end of the suspension
- State written notification procedures when the suspension begins and ends

The procedure for suspending Legally-Exempt providers is outlined in 12-OCFS-LCM-01, *Changes to the Legally-Exempt Child Care Provider Enrollment Process*.

## Lesson 2: Issuing and Monitoring Payments

### District Requirements When Suspending a Legally-Exempt Provider

If the district elects to suspend a Legally-Exempt provider who is under investigation for child abuse or maltreatment, the district must:

- Notify the EA when the suspension begins and ends
- Notify the provider in writing of the suspension. The letter must include:
  - A contact person at the district who can explain the district's decision
  - A statement that explains the suspension will end when the CPS investigation ends
- Notify the parent via OCFS-LDSS-4781, *Intent to Change Child Care Benefits*, to inform the parent that payment to the provider is suspended and the parent should seek another provider

**Note:** The outcome of the investigation is not relevant to the provider's eligibility for payment, nor does an indicated report of child abuse or maltreatment make a provider ineligible for payment. In addition, per confidentiality laws, the LDSS cannot share the reason for the suspension with the parent or the EA.

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### Child Care Time and Attendance

Child Care Time and Attendance (CCTA) is a computer program used by OCFS to support the monitoring and payment of Child Care Subsidy funds. Support provided by the system includes, but is not limited to recording:

- Child care schedules
- Parent schedules
- Travel time
- Absences and closures

## Lesson 3: Handling Child Care Overpayments

**Lesson Importance** In the course of monitoring payments, you will occasionally discover an overpayment. According to 18 NYCRR 415, overpayments must be collected. Prior to collecting an overpayment, you need to determine what caused it. Once you determine whether the cause of the overpayment is one which permits you to collect it, the amount of the overpayment should be determined and all reasonable steps to collect it taken.

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**Lesson Overview** This lesson provides an overview of the steps workers need to take when an overpayment occurs.

This lesson contains the following topics:

- Definition and Occurrence of Overpayment
  - Recovery of Overpayments
  - The Mechanism of Recovery
  - Fraud
  - Fraud and Abuse Control Activities
- 

**Lesson Objectives** By the end of this lesson, participants will be able to:

- Determine whether an overpayment should be collected
- Identify the steps involved in recovering an overpayment
- Identify the types of situations in which benefits should be terminated or suspended
- Identify the two methods by which fraud is established
- Identify district responsibilities when fraud occurs
- Determine whether or not the disqualification penalty can be applied in cases where A/R fraud has been established
- Identify the appropriate time to start the disqualification penalty and the length of time for which it should be applied
- Identify the appropriate procedures for dealing with providers who commit fraud or submit false claims

## Definition of Overpayment

**Definition of Over-payment** An overpayment is the amount of Child Care Subsidy that has been paid to either a parent or provider in excess of the amount for which he or she was eligible. In other words, an overpayment is the difference between what the subsidy amount should have been and the amount above and beyond the subsidy amount that actually was paid. According to 18 NYCRR 415.4(i), overpayments must be collected.

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**Changes a Parent May Fail to Report**

Examples of changes a provider may fail to report include:

- A child's absence
- Changes to hours of care
- Rate changes
- Child withdrawn from care

## District Action

**District Action to Correct**

The district must take all reasonable steps to promptly correct any overpayments for child care services to a child's parent or provider.

For the purpose of correction of overpayments, "promptly" means within **60 days** of the date the client notified the district of a change in circumstance.

No recovery may be made when the overpayment was caused by the district's failure to act promptly on a change of information provided by the parent/caretaker.

See 415.4(i)(7) for more information.



**Generally Accepted Accounting Principles (GAAP)**

Local districts are required to use Generally Accepted Accounting Principles (GAAP) in all government programs. Systems which meet GAAP standards must be in place in order to:

- Keep track of funds going out and where they go
- Get funds back to the subsidy program once they are recovered by the district (for districts that use a general fund)

GAAP standards are usually in place by any system that disperses funds. The process is monitored by an auditing function.

## Recovery of Overpayments

**Overpayment Recovery** Overpayment recovery is defined as the process by which an overpayment is recovered.

The process for overpayment recovery can be found in 18 NYCRR 415.4(i), **Tab 6**, as well as in 05-OCFS-ADM-03, *Child Care Subsidy Program*, III.E.13, p. 39-42, **Tab 8**.

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**Federal and State Reimbursement**

When an overpayment occurs as a result of a district's failure to act promptly (within 60 days) on information provided by a parent/caretaker regarding circumstances affecting child care benefits, no recovery can be made.

When recovery cannot be made under this subdivision, Federal Financial Participation (FFP) and state reimbursement cannot be claimed for such overpayment.

### Lesson 3: Handling Child Care Overpayments

#### **Prompt Action to Correct**

Prompt action means that corrective action must be taken and the client must receive a client notice within 60 days of the following:

- The date the client notified the district of a change in circumstances, or
- The date on which a district calculation error or other error that caused the overpayment was made

When an overpayment occurs as a result of a district's failure to act within 60 days on information provided by a parent regarding the circumstances affecting child care benefits, no recovery may be made.

---

#### **Prompt Recovery is Better for the Family**

Although there is a 60 day grace period for corrective action on child care overpayments, a district:

- Is encouraged to take corrective action as soon as possible to lessen the economic impact on the family
- Should not wait until the next recertification or redetermination period to recoup overpayments

Delay may result in a family receiving additional benefits or applying an inappropriate amount towards the family share of child care costs.

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#### **Steps in the Process**

The following steps need to be taken by the district to determine the overpayment and whether to recover the amount of the overpayment:

- Determine how the overpayment occurred and who was responsible for it
- Determine the amount of the overpayment including the time period for which an overpayment occurred
- Estimate the costs of recovery
- Determine whether the overpayment rises to the level of fraud

**Responsibility for Overpayments**

The parties responsible for an overpayment may include:

- The district
- The parent
- The provider
- A combination of one or more of these parties

Responsibility for an overpayment is the same whether the overpayment is due to acts of omission or commission.

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**When to Recover Overpayments**

The district must attempt to recover overpayments when:

- The overpayment resulted from fraud (regardless of the amount of the overpayment or whether the parent is a current or former recipient)
  - The parent/caretaker is currently receiving child care benefits
  - The estimated cost of recovery from a *former* recipient is less than or equal to the amount of the overpayment
- 

**Reasonable Recovery**

Ideally, complete recovery of all child care overpayments should occur within 12 months; however:

- The district must see that the recipient retains a reasonable amount of funds for any given month
  - Recovery amounts and timeframes must be reasonable
- 

**Recovery Guidelines**

Guidelines for reasonable recovery are as follows:

- In no event can the monthly recovery exceed 10% of the gross income
- If the monthly recovery amount would exceed 10% of the gross income, the recovery period must be extended
- The parent caretaker can waive the above and repay in a lump sum
- Districts should consider parent/caretaker hardship requests

### Lesson 3: Handling Child Care Overpayments

**Requests for Reduced Recovery Amounts** Parent/caretaker requests that recovery amounts be reduced to less than 10% of the gross monthly income and/or that collection periods be extended beyond 12 months may be made in cases of undue hardship.

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**Recovery from TA Recipients** If Temporary Assistance (TA) is the only source of income, the district should delay recovery until the family has additional income. Monthly gross income is the sum of:

- The amount of the TA cash grant, and
- Any earned or unearned income

---

**Outstanding Over-payments** When an the applicant has failed to repay an overpayment that resulted from either:

- Failure to notify the district of a change in circumstance, or
- Fraud

He or she must agree to and comply with a plan to make full repayment of such child care overpayments as a condition of eligibility for new child care services.

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**Responsibility for Repayment** Overpayments should be recovered from the party who is responsible for the overpayment as follows:

- From the recipient on whose behalf payments were made, or
- From the provider who received payments for such services

---

**Refusals to Repay** If the child care provider or former recipient of child care services refuses to repay, the overpayment may be recovered in accordance with the legal remedies available under state law.

## Practice D: What Caused the Overpayment?

**Directions:** Please place a checkmark in the column with the most likely cause for the overpayment.

#	Case Scenario	Both Client & Provider Error	Client Error	Provider Error	Agency Error
1	Janice is receiving CCS benefits. Her work hours decrease, decreasing the need for child care. At redetermination an overpayment is identified.				
2	CCS worker Maria reviews a case at redetermination. She uses the new market rates but forgets to check the age of the child. Six months goes by. Upon redetermination, she discovers the mistake. An overpayment has been made.				
3	CCS worker Homer receives a message from the Medicaid worker eight weeks after the recipient reported her employer gave her a raise. The family share dollar amount should have been increased but was not. Therefore, there has been an overpayment. The overpayment began eight weeks ago.				
4	An attendance sheet is submitted for payment of child care services. Elle, the worker reviewing the sheet, notices this provider has too many children in care. She realizes an overpayment was made.				

## The Mechanism of Recovery

### Methods of Recovery

A district must determine the mechanism by which to collect a child care overpayment. Recovery may occur through:

- Repayment to the district
- Increase in family share
- Reduction in the district's payment to the child care provider and increase in the parent's family share except where a contract for services obligates the district to make full payment
- From the recipient's available income (by voluntary request only)

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### Offsetting Underpayments and Overpayments

Underpayments and overpayments may be offset against each other.

Districts must:

- Maintain overpayment collection information
- Make appropriate adjustments:
  - When claiming Federal Financial Participation (FFP)
  - When claiming state reimbursement
  - When satisfying the district's maintenance of effort requirement under the New York State Child Care Block Grant (NYSCCBG)

FFP and state reimbursement cannot be claimed where there has been an overpayment and no repayment has been made and no recovery occurs.

**Suspending or Terminating Benefits** With the exception of child care services authorized as a child protective or a preventive service, a recipient of child care services who fails to comply with an agreed upon plan, must have his or her family's child care benefits suspended or terminated until such time as the recipient comes into compliance with such a plan.

Districts have the option to either suspend benefits or to reduce benefits. When the child care recipient is a TA recipient, he or she cannot be sanctioned for non-participation in a work activity if they do not have affordable child care.

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**TA Sanction** Districts must take into account that TA recipients cannot be sanctioned for non-participation in a work activity, if they do not have affordable child care. This situation must be examined when determining any reduction in child care benefits for TA families.

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**Notification of Reduction of Benefits** OCFS-LDSS-4782, *Notice of Intent to Discontinue Child Care Benefits*, must be sent prior to any action being taken on the recipient's child care benefits. This notice must include information on:

- The timeframe, amount, and reason for the overpayment
- The mechanism for collection of the overpayment
- Right to an agency conference or fair hearing

The district must give the recipient the completed form and keep a signed copy in the case record.

## Lesson 3: Handling Child Care Overpayments

**Notification of Overpayment** When an overpayment not due to fraud occurs, districts must complete OCFS-LDSS-7009, *Notice of Child Care Assistance Overpayment and Repayment Requirements*. This notice includes information on:

- The timeframe, amount, and reason for the overpayment
- The mechanism for collection of the overpayment
- The right to an agency conference or fair hearing

The district must give the parent/caretaker the completed form and keep a copy of the signed form in the case record.

## Fraud

**Definition of Fraud** Fraud is overpayments caused by the misrepresentation, concealment or withholding of information (by word or behavior) for the purpose of establishing or maintaining eligibility or increasing the level of child care assistance.

Disqualification penalties can only be applied once fraud has been established.

---

**Establishing Fraud** Fraud can be established in two ways:

- Conviction
- Voluntary admission



**Voluntary Admission of Child Care Fraud**

Establishing child care fraud on the basis of voluntary admission requires that the district obtain a written agreement signed by the parent/caretaker or provider in which the parent/caretaker or provider does the following:

- States that he or she understands and agrees that he or she or a member of the Child Care Services Unit (CCSU) made a fraudulent statement or committed a fraudulent act
- Describes the activity in which he or she participated
- States he or she has been notified of the disqualification penalties
- States that he or she understands that he or she is responsible for repayment of any overpayment
- Agrees that he or she understands the consequences of signing a written statement

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**Responsible Parties**

The responsibility for repayment of overpayments resulting from fraud lies with:

- The recipient of child care services, and
- Members of the Child Care Services Unit (CCSU)

### Lesson 3: Handling Child Care Overpayments

#### **Disqualifi- cation Penalties**

A current or former recipient who has been convicted or voluntarily admitted to fraudulently receiving child care services is disqualified from receiving child care services for a period of time to be determined in accordance with the following time periods established for an Intentional Program Violation (IPV) in the TA program as set forth in 18 NYCRR 359.9(a):

<b>Number of Admissions or Convictions</b>	<b>Dollar Amount Fraudulently Received</b>	<b>Length of Disqualification from Child Care Subsidy</b>
1	-----	6 months
2	\$1,000. - \$3,900.	12 months
3	Over \$3,900.	18 months
4 or more	-----	5 years

Members of the CCSU are also subject to these disqualification penalties.

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#### **Application Status and the Disquali- fication Penalty**

The disqualification penalty is applied to applicants or recipients who are otherwise eligible for a Child Care Subsidy.

If an application for child care is denied or a case is closed because the applicant/recipient is not otherwise eligible, the disqualification penalty is pended until the individual reapplies and is found eligible for Child Care Subsidies.

**Required Activities and the Disqualification Penalty**

If a recipient of TA needs child care in order to participate in an activity required by the district, the disqualification will be suspended during the recipient's participation in the required activity.

The disqualification will begin once the recipient is no longer participating in a required activity.

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**Notice of Fraud Determination**

The district must notify applicants, recipients and former recipients when they are subject to a disqualification for child care fraud by using the OCFS-LDSS-7010, *Notice of Fraud Determination, Disqualification for Child Care Benefits and Repayment Plan*, Attachment E of 05-OCFS-ADM-03, *Child Care Subsidy Program*, **Tab 8**.

The completed form must be given to the parent/caretaker and a copy kept in the case record.

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**District Right to Inspect Provider Records and Premises**

Per 415.4(h)(3), districts have the right to make announced or unannounced inspections of the records and premises of any provider that provides care for subsidized children. This includes the right to make inspections prior to subsidized children receiving care in a home where the inspection is for the purpose of determining whether the child care provider is in compliance with applicable laws and regulations and any additional requirements imposed on such a provider by the district.

This option must be outlined in the Local Department of Social Services (LDSS) Child and Family Services Plan. The district must notify the Office of Children and Family Services (OCFS) immediately if regulatory violations are found and provide OCFS with an inspection report documenting the results of the inspection.

### Lesson 3: Handling Child Care Overpayments

#### **Disqualifi- cation of Providers**

Districts may disqualify a provider from receiving payment for child care services provided under the Child Care Subsidy program if a provider:

- Is criminally convicted of fraud
- Is found to be civilly liable for fraud
- Has voluntarily admitted to filing a false claim for reimbursement for child care services
- Has been disqualified from the Child and Adult Care Food Program (CACFP) for submission of false information on the application, submission of a false claim for reimbursement, or failure to keep required records
- Has failed to comply with the terms of a repayment plan with the social services district
- Has a conviction of any activity that occurred within the past seven years that indicated a lack of business integrity
- Has been found, after the district has conducted an administrative review, to have submitted a false claim to a LDSS for reimbursement. Procedures for conducting an administrative review are outlined in 415.4(h)(2)(ii)

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#### **Adminis- trative Review**

In order to conduct an administrative review, the district must take the following steps:

1. The LDSS conducts an administrative review of claims submitted to the district and any other information or documentation obtained to determine the accuracy of information in the claims
2. If the LDSS determined the provider submitted inaccurate information, a preliminary review report must be prepared by the district and sent to the provider for response.
3. The provider has 20 days from the date the district sent to report to respond.

4. The provider may respond in writing and present evidence to refute the findings of the report, or may request a formal review by the LDSS, which allows the provider to answer the findings of the report in person.
5. If no response is received from the provider within 20 days from the postmark on the preliminary review report, the report may be finalized by the LDSS. A finalized report may be the basis to disqualify a provider from providing subsidized care.
6. If a response is received from the provider within 20 days from the postmark on the preliminary review report, the LDSS must review the response and make appropriate changes before issuing a final report. The final report must be sent to the child care provider.
7. The provider, upon receipt of the final report, must be given 10 days from the date of the postmark to respond, and to request a formal review by the district.
8. If the provider does not request a formal review within 10 days, or does not provide a response that disproves the findings of the report, the provider may be disqualified.
9. The LDSS must conduct a formal review within 30 days of receipt of the request from the provider.
10. The LDSS must allow a provider, in person, to present evidence and arguments in support of the provider's position at a formal review.
11. After a formal review, the district must make a final determination of whether the provider submitted false claims.

More details about the administrative review can be found in 18 NYCRR 415.4(h)(2)(ii).

## Fraud and Abuse Control Activities

**Comprehensive Internal Control Plan** Per changes to 18 NYCRR 415.4, each local district is expected to establish comprehensive fraud and abuse control activities for the district's child care subsidy program. A copy of the changes to 18 NYCRR 415.4(m) can be found in **Tab 6**.

---

**Child and Family Services Plan Requirements** A social services district must provide details on its fraud and abuse control activities in the district's Child and Family Services Plan. The details must cover the following areas:

- Criteria to be used in Front End Detection System (FEDS), and
- Sampling methodologies to verify the following:
  - Continued need for child care, and
  - Attendance

---

**Front End Detection System** Front End Detection System (FEDS) criteria are the standards the district will use to determine which child care subsidy applications suggest a higher than acceptable risk for fraudulent or erroneous child care subsidy payments. The Child and Family Services Plan must identify the following:

- FEDS criteria that will be used, and
- Procedures for referring applications to the district's FEDS unit

Additionally, the district must submit a FEDS Plan which identifies the investigative process it will use in its FEDS program. Reference for the implementation of FEDS is found in 02-OCFS-INF-05, **Tab 9(RRM)**.

**Sampling Methodologies**

For our purposes, sampling methodologies are the procedures the district will use to identify the group of child care cases that are going to be scrutinized.

The sampling methodology that will be used for each of the following verification areas should be explained in the Child and Family Services Plan:

- Continued need for child care, and
- Attendance

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**Verification of Continued Need for Child Care**

The need for child care includes, as applicable, participation in one or more of the following:

- Employment
- Education
- Other required activities

The need for child care is defined in 18 NYCRR Part 415, **Tab 6**.

---

**Verification of Attendance**

Attendance will be verified by comparing the following:

- Caregivers' attendance forms for children receiving subsidized child care services, and
- Any Child and Adult Care Food Program (CACFP) inspection forms





## Unit 5

### Provider Types and District Responsibilities

**Unit Importance** This unit provides you with information about the different types of providers. This unit also covers the local district's responsibilities when dealing with the different types of child care providers.

This unit will help you:

- Explain the difference between various provider types that will help your clients select a suitable provider
- Explain parent/caretaker responsibilities related to selecting a provider
- Identify local district roles and responsibilities in dealing with child care providers

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**Unit Overview** This unit consists of the following lessons:

- Provider Information
- District Responsibilities Regarding Child Care Providers

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## Lesson 1: Provider Information

### Lesson Importance

The lesson provides you with information about the different types of providers and will help you:

- Explain the difference between the various types of providers
- Provide clients with criteria that will help them select an available provider
- Make referrals to local Child Care Councils (CCC) or Child Care Resource and Referral Agencies(CCR&Rs), when appropriate

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### Lesson Overview

Topics in the lesson include:

- Giving Information About Providers
- Licensed Providers
- Registered Providers
- Legally-Exempt Providers
- Parental Responsibilities with Legally-Exempt Providers

---

### Lesson Objectives

By the end of this lesson, you will be able to:

- Identify the sources of information available to educate clients about the different types of providers
- Explain the importance of the parent/caretaker making informed decisions about child care
- Describe the difference between Licensed, Registered, and Legally-Exempt providers

## Giving Information About Providers

**Introduction** The Child Care Subsidy worker can assist the parent/caretaker in the process of locating a provider by offering the following information:

- An explanation of the difference between Licensed, Registered, and Legally-Exempt providers
- Information about the resource and referral programs in their local area
- Any additional information the district offers based on local requirements

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### Video

The video, provided by the New York State Office of Children and Family Services (OCFS) and titled *Think About Child Care*, introduces the many facets of child care to local district clients. It comes in both English and Spanish Versions.

The video emphasizes what parent/caretakers should look for and expect from providers. This video can be watched online at the OCFS Website under *Publications* at <http://www.ocfs.state.ny.us/main/publications/>.

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### Brochures

The companion brochure to the video *As You Think About Child Care*, Publication #1115A:

- Explains the different types of regulated care situations
- Explains those types of care that are not regulated
- Provides resources and phone numbers if a parent/caretaker needs assistance while looking for care
- Provides a child care checklist reminding the parent/caretaker what to look for while assessing child care

**Note:** Both the video and brochure were made prior to the new health and safety requirements.

**Resource and Referral Programs**

Child Care Councils (CCC) or Child Care Resource and Referral (CCR&R) agencies provide services to parent/caretakers and day care providers in a network which serves all areas of New York State.

Services vary from district to district but may include:

- Making referrals to Licensed or Registered day care providers
- Monitoring of Registered providers
- Offering technical assistance and support services to providers
- Providing assistance to help clients make informed child care decisions
- Offering educational programs for parent/caretakers and providers
- Maintaining data on Licensed and Registered child care capacity
- Assisting providers in meeting OCFS requirements for medication administration
- Providing the services of a Health Care Consultant at reduced rates
- Serving as Enrollment Agencies (EA) for Legally-Exempt child care providers

Due to confidentiality requirements, no referrals can be made to Legally-Exempt child care providers. Local Departments of Social Services (LDSS), EAs, and CCR&Rs are prohibited from releasing any information pertaining to Legally-Exempt providers to the public or to parent/caretakers.

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**Definition of CCFS**

The Child Care Facility System (CCFS) was developed by OCFS Division of Child Care Services (DCCS) to process and track data for Licensed, Registered, and Legally-Exempt providers. Its users include staff from the New York State Regional Offices, LDSSs, CCR&Rs, and EAs.

**Use of CCFS** Districts are provided use of CCFS to:

- Obtain a report of Licensed or Registered providers to be used for referral purposes
- Obtain a report of Licensed and Registered providers removed from the referral list
- Search the database to verify whether a child care provider is currently Licensed or Registered, the type of care provided, and whether the provider is in a status “eligible” to provide subsidized child care
- Search the database to verify whether a Legally-Exempt child care provider is enrolled with a payable provider status and family decision combination (see the Desk Aid: *Issuing Payments for Subsidized Child Care*)
- Obtain a report of parent/caretakers and the Legally-Exempt providers they are using

## Licensed Providers

**Introduction** A Licensed child care provider meets standards set by a licensing agency, which may be the:

- NYS OCFS for Group Family Day Care and Day Care Centers outside of NYC
- NYC Department of Health and Mental Hygiene for Day Care Centers in NYC

---

**Examples of Licensed Providers** Examples of providers that must be licensed include:

- Day Care Centers (DCC) – care provided in a facility (not a home) for more than six children for more than three hours a day
- Group Family Day Care (GFDC) – care provided in a home, for up to 16 children of all ages for more than three hours a day when four are of school age. There must be one approved assistant present when child care is provided to seven or more children when none of the children in care are school age, or nine or more children when at least two children in care are school age. One caretaker per every two children under the age of two is required

**Standards  
for  
Licensure**

A license gives the provider the legal authority to provide child care and informs the parent/caretaker that the provider has met established standards for operation including but not limited to:

- Management and Administration
- Building and Equipment
- Child Abuse
- Staff criminal background check/fingerprinting
- Discipline
- Fire Protection
- Health
- Nutrition
- Program Requirements
- Safety
- Sanitation
- Staff Qualifications
- Training

The license of each provider will note whether the provider meets the OCFS requirements to administer medication. Standards are spelled out in detail in 18 NYCRR 416, *Group Family Day Care* and 18 NYCRR 418, *Day Care Centers*, and require extensive supportive paperwork and numerous inspections by outside agencies and/or contractors before a license may be issued.

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**Inspections**

Licensing standards must be met before the licensed operation opens.

Licensed operations are required to renew their license periodically. Regular inspections are conducted to see that standards continue to be met.

## Registered Providers

### Registered Providers

Registration may be required for some programs and is voluntary for others. Examples of programs that must be registered include:

- Family Day Care (FDC) - care provided in a residence for more than three hours per day for three to six children. Maximum capacity depends on the age of the children in care (under certain conditions, up to two additional school-age children may be cared for if approved by OCFS regulators). FDC providers may care for more than two children under the age of two only if there is at least one caregiver for every two children under the age of two
- School-Age Child Care (SACC) - a program for seven or more school-age children operating during non-school hours. School-age child care programs cannot be operated in a home
- Small Day Care Center (SDCC) – A program not in a residence and where care is provided for three to six children for more than three hours per day

An example of a program that may voluntarily register is a Legally-Exempt nursery school that provides care in a facility for less than three hours a day.

Standards are spelled out in detail in 18 NYCRR 417 for *Family Day Care*, 18 NYCRR 414 for *School Age Child Care*, and 18 NYCRR 418 for *Small Day Care Centers*.

---

### Registering Agency

The agency that registers SACC and FDC is the NYS OCFS. The agency may use its own staff or the following agencies to register these providers:

- Regional Office of DCCS
- LDSS
- CCR&R



**Registration  
Require-  
ments**

An example of some information registered providers supply is:

- Water quality and heating
- Character references
- Education and experience
- Home safety checklist
- Staff criminal background check/fingerprinting
- Floor plan
- State Central Register Database Check (LDSS-3370)
- Medical statement on condition of employees

CCFS will note whether the provider meets OCFS requirements to administer medication. The information provided is either attested to be true by virtue of the provider's signature or attested to by outside inspectors.

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**Quality Child  
Care and  
Protection  
Act**

As a result of the Quality Child Care and Protection Act of 2000, certain registered providers have to meet additional requirements:

- SACC programs and FDC homes must be inspected by OCFS prior to being registered for the first time
- 50% of registered programs are required to be re-inspected prior to renewal

Every valid complaint received by OCFS of a Licensed or Registered provider must be followed by an inspection.

## Legally-Exempt Providers

**Introduction** These providers are Legally-Exempt from day care licensing or registration regulations but must meet minimum state health and safety standards to care for subsidized children. Unlike Licensed and Registered providers, a Legally-Exempt provider cannot initiate the enrollment process without an applicant/recipient of child care assistance who has chosen the provider for child care services.

An enrolled Legally-Exempt child care provider becomes “inactive” when the child care provider is not currently caring for a subsidized child. Inactive Legally-Exempt providers close at the end of the 12 month enrollment period.

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**Types** There are two types of Legally-Exempt care. They are as follows:

- Informal Child Care
- Group Child Care

Each of these types can be divided into subgroups. Informal Child Care includes Family Child Care and In-Home Child Care. Group Child Care includes Groups Operating Under the Auspices of Another Government Agency (GUAs), as well as Groups Not Operating Under the Auspices of Another Government Agency (GNUAs).

---

**Family Child Care** Legally-Exempt Family Child Care is:

- Care for one or two children provided outside the child’s home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors (Article 4 of the State Labor Law)
- Care for more than two children, for three hours or less per day, provided outside the child’s home, in a residence, by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors (Article 4 of the State Labor Law)
- Care provided by a relative within the third degree of consanguinity of the parent

**Family Child Care (continued)**

**Note:** Care may be provided in a home other than the provider’s own residence. For example, a provider may use a neighbor’s home to operate a Legally-Exempt Family Child Care program as long as the neighbor is not already operating any type of child care program in the home. The health and safety requirements apply to the home where care is provided.

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**In-Home Child Care**

In-Home Child Care consists of child care furnished in the child’s own home by a provider. For Legally-Exempt In-Home Child Care:

- The provider is chosen and monitored by the child’s caretaker
- The caretaker is responsible for finding out their responsibilities as an employer, including but not limited to: Minimum wage, applicable state and federal employment taxes, and employee benefits

A minor providing in-home child care is a “**babysitter**”, as defined by NYS Labor Law. As such, babysitters must meet the requirements for the employment of minors as set forth in Article 4 of the NYS Labor Law. Babysitters are exempt from the NYS Labor Law restrictions on the number of work hours and the requirement to have working papers.

For more information, please refer to the desk aid *Clarification on Enrollment Requirements for Minors 14 Years or Older Who are Providing In-Home Child Care*, located in your participant manual.

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**Factors in Legally-Exempt Status**

The following factors are relevant in determining if the child care provider is providing Legally-Exempt In-Home or Family Child Care:

- Whether children are cared for in their own home
- Relationship of the children to the provider
- Number of hours care is provided
- Number of children in care at any one time
- Age of children in care

## Lesson 1: Provider Information

### Group Child Care

Legally-Exempt Group Child Care means care provided by those caregivers that are not required to be licensed by, or registered with, NYS OCFS but that meet all applicable state or local requirements for such child care programs. Group Child Care providers may be groups operating under the auspices of another government agency, or groups not operating under the auspices of another government agency. Legally-Exempt Group Child Care providers include, but are not limited to:

- Nursery school, pre-kindergarten, or day care programs for children three years of age or older or a program for school-age children conducted during non-school hours, **operated by public school districts or by a private school or academy** which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the NYS Education Law, provided that such pre-kindergarten, nursery school or school-age program is located on the same premises or campus where the elementary or secondary education is provided
- Nursery schools and programs for pre-school-age children **operated by non-profit agencies or organizations or private proprietary agencies** which provide services for three or less hours per day
- Summer day camps operated by **non-profit agencies or organizations or private proprietary agencies** in accordance with the State Sanitary Code
- Day care centers, family day care homes and other child care programs located on **Federal/tribal property** which are operated in compliance with the applicable Federal/tribal laws and regulations for such child care programs

## Parental Responsibilities with Legally-Exempt Providers

### Parent Responsibility for Monitoring

Monitoring the quality of care provided by Legally-Exempt providers is primarily the parent/caretaker's responsibility because:

- Family and In-Home Child Care providers are not required to be Licensed or Registered. However, Family Child Care providers may be subject to inspection by the EA
- Group Child Care providers are not required to be Licensed or Registered, but may be subject to applicable federal or state regulations or registration requirements

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### Additional Parental Responsibilities in Legally-Exempt In-Home Child Care

The child's parent/caretaker has to meet applicable federal and state employment requirements when employing an In-Home Child Care provider including:

- Complying with the Minimum Wage requirement
- Reporting and paying Social Security Taxes (FICA)
- Meeting Federal Unemployment Tax (FUTA) requirements
- Meeting the NYS Unemployment Insurance requirements
- Providing Worker's Compensation coverage
- Providing disability benefits

The *Legally-Exempt In-Home Provider Agreement* form and 03-OCFS-LCM-17, *Legally-Exempt In-Home Child Care Providers as Employers* are located in **Tab 10 (RRM)**.

---

### Complaints

Parents or caretakers who have a complaint about the care of their children should contact the EA if their child care is provided by an enrolled Legally-Exempt provider. All other child care complaints, including concerns about over capacity, should be directed to the toll-free Child Care Complaint Line at 1-800-732-5207.

## Lesson 2: District Responsibilities Regarding Child Care Providers

**Lesson Importance** In addition to the determination of a family’s eligibility for a Child Care Subsidy, the district has additional responsibilities related to child care providers. District responsibilities include communicating regularly with Enrollment Agencies, determining whether additional standards need to be met for providers, and conducting checks and verifications for certain child care providers.

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**Lesson Overview** Topics in the lesson include:

- Additional Local District Responsibilities

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**Lesson Objectives** By the end of this lesson, you will be able to:

- Explain the additional responsibilities the district has related to the Child Care Subsidy program
- Identify the checks the district must conduct related to Legally-Exempt provider enrollment

## Local District Responsibilities

**Introduction** In addition to providing benefits to Low-Income families, the local district has additional responsibilities related to the Child Care Subsidy program. These additional responsibilities are outlined in 18 NYCRR, 415.4 and 415.9, **Tab 6**.

---

**Summary of Local District Responsibilities** The Local Department of Social Services (LDSS) is responsible for the following tasks during the enrollment process:

- Distributing the enrollment packet for Legally-Exempt providers to parents/caretakers
- Coordinating required tasks with Enrollment Agencies (EAs)
- Reporting changes to the EA of parent/caretaker case information
- Outlining additional local standards, if applicable
- Conducting child welfare database checks
- Reviewing extenuating circumstances pertaining to child welfare issues
- Issuing payments to subsidized child care providers

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**Distribution of Enrollment Packet** Districts must provide the most recent version of the enrollment form(s) and attachments to a child's parent/caretaker that has applied for or is receiving child care subsidies under the New York State Child Care Block Grant (NYSCCBG), and who is interested in using a Legally-Exempt child care provider.

The Local Department of Social Services (LDSS) must inform the parent/caretaker that the enrollment packet must be submitted to the EA that serves the area where the child care will be provided. The EA will be responsible for providing the enrollment packet to providers at the time of their subsequent re-enrollment. Providers are responsible for working with parents to complete the enrollment packet at re-enrollment.

## Lesson 2: District Responsibilities Regarding Child Care Providers

### The Enrollment Packet

The enrollment packet, which the district must provide, includes the following forms:

- OCFS-LDSS-4699, *Enrollment Form for Provider of Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care*
- OCFS-LDSS-4700, *Enrollment Form for Provider of Legally-Exempt Group Child Care*
- OCFS-LDSS-4699.1, *Employment of Minors Form*
- OCFS-LDSS-4699.1A, *Employment of Minors, Information*
- OCFS-LDSS-4699.2, *Legally-Exempt In-Home Child Care Provider Agreement Form*
- OCFS-LDSS-4699.2A, *Parental Responsibilities When Employing a Legally-Exempt In-Home Child Care Provider*
- OCFS-LDSS-4699.3, *Legally-Exempt Provider Training Record Form*
- OCFS-4915, *History of Criminal Convictions and Parental Acknowledgement*
- OCFS-4916, *History of Day Care Enforcement and Parental Acknowledgement*
- OCFS-4971, *History of Termination of Parental Rights and or Court Ordered Article 10 Removal of a Child and Parental Acknowledgement*



**Coordination Between Local District and Enrollment Agencies** During the enrollment or re-enrollment of Legally-Exempt providers, the LDSS and EA must communicate during several points in the enrollment process. The EA must immediately notify the district of its enrollment decisions of Legally-Exempt providers. The district must notify the EA of any changes in the parent/caretaker's benefit status. The manner of notification may vary according to the needs of the district and the agreement between the district and the EA.

Districts should communicate with enrollment agencies to determine:

- The primary contact people from the district and the EA who will be involved in the enrollment process
- Which personnel to notify at the EA when a change in the parent/caretaker's benefits occur
- Procedures for communicating whether Legally-Exempt providers meet any additional local standards set forth in the district's Child and Family Services Plan
- The process for handling requests and delivering the results of the child welfare database checks
- The process for conducting and communicating the results of a review of extenuating circumstances with the EA

## Lesson 2: District Responsibilities Regarding Child Care Providers

### Enrollment Agency Notifications

EAs can notify the district of major tasks related to Legally-Exempt Enrollment through the Child Care Facility System (CCFS). Notices may include:

- LE Child Welfare Referral List—List of LE providers for whom the district must conduct a child welfare database check
- LE Child Welfare Database Results Due/Overdue—Results of the child welfare database check are overdue
- Additional Standards Referral List—List of LE providers for whom the district must conduct a check of the district’s additional standards
- LE Additional Standards Due/Overdue—Results of the additional standards check are overdue
- LE Child Welfare Extenuating Circumstances Review Referrals—List of providers for whom the district must conduct a Review of Extenuating Circumstances related to the provider’s history of either a TPR or Article 10 removal
- LE Family Child Care and In-Home Training Approvals by Approval Date—List of providers eligible for the LE enhanced rate (Districts should apply the enhanced rate for a period of 12 consecutive months. The 12 month period should start no later than the beginning of the first full month following the date of the E-notice.)
- LE Parent-Provider Eligibility Changes—Informs district that EA has made changes to either the family decision and/or to the enrollment status of a provider that may impact subsidy payments

Details regarding these notifications can be found in 12-OCFS-LCM-01, *Changes to the Legally-Exempt Child Care Provider Enrollment Process*.

**Notification of Child Care Subsidy Case Information Status** Parents/caretakers must receive written notification from the LDSS any time their eligibility changes or their case closes. Districts should notify child care providers if the benefit status of a parent/caretaker changes or a parent/caretaker's subsidy case is closed. For Legally-Exempt providers, districts **must** notify the EA with whom the provider is enrolled.

The district must inform the EA within 7 days of the subsidy case determination for the parent/caretaker, including when the following events occur:

- Child care or TA case eligibility approval or denial
- Child care or TA case closure

The district must also inform the EA within 7 days of changes in the subsidy case information which impact enrollment, which may include the following:

- The parent stops using the Legally-Exempt provider
- The parent places another child in the provider's care
- Changes in the location where care is provided
- Possible health and safety violations, as outlined in 18 NYCRR 415.4(f), **Tab 6**
- Other information which may impact enrollment

## Lesson 2: District Responsibilities Regarding Child Care Providers

### **District Notification Forms**

Districts may use the model form OCFS-2114, *District Notification to Legally-Exempt Caregiver Enrollment Agency* to inform the EA of updates. This form can be used to update the EA of:

- The results of the child welfare database check
- The results of the additional standards check
- The results of the Review of Extenuating Circumstances
- Provider's ineligibility to provide care for a specific family
- Decision to suspend a Legally-Exempt provider or a provider's suspension has ended
- District has disqualified a provider
- Complaints regarding Legally-Exempt providers, when the district believes the provider is violating health and safety regulations
- Updates to the status of the Child Care Subsidy case

Details on district notifications to the EA are available in 12-OCFS-LCM-01, *Changes to the Legally-Exempt Child Care Provider Enrollment Process*.

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### **Additional Local Standards**

Districts may choose to establish additional local standards for providers who receive Child Care Subsidy payments. Any additional local standards the district chooses must be outlined in its Child and Family Services Plan and approved by OCFS.

The district is responsible for verifying that providers meet its additional standards. The district should develop a mechanism for informing other agencies, such as the EA, as to whether the provider meets or fails to meet such standards. Providers who do not meet the additional standards cannot receive subsidy payments.

**Participation  
in the Child  
and Adult  
Food  
Program  
(CACFP)**

As part of establishing additional standards, the district may require participation in the Child and Adult Food Program (CACFP) for Legally-Exempt providers who provide 30 or more hours of child care per week to one or more subsidized children. If the district chooses this option, it must be outlined in its Child and Family Services Plan.

---

**Child  
Welfare  
Database  
Checks**

During the enrollment process for Legally-Exempt providers, the EA will request that the district conduct a child welfare database check to determine whether the provider has had his or her parental rights terminated or has had a child removed from his or her care by court order under Article 10 of the Family Court Act (FCA). The district must inform the EA, based on the results of the database check, whether:

- The provider does or does not have a history of court-ordered removal under FCA Article 10
- The district must determine whether the provider has or has not had a termination of parental rights

Once the EA makes the request to the district to conduct the child welfare database check, the district must inform the EA only whether the provider has had a child removed by court order under FCA Article 10 and whether the provider has had his or her parental rights terminated. The district must return these results to the EA within 15 days.

The results of the child welfare database check are confidential; the district should only inform the EA whether the information from the database check precludes the caregiver from being enrolled as a Legally-Exempt child care provider.

## Lesson 2: District Responsibilities Regarding Child Care Providers

### Review of Extenuating Circumstances

A provider may be eligible for a Review of Extenuating Circumstances, if the provider has been denied enrollment or terminated based on the results of the district's child welfare database check or the EA's review of the attestations on the enrollment form concerning:

- Termination of Parental Rights under the Family Court Act
- Court-ordered Removal of a Child under Article 10 of the Family Court Act
- Criminal history of the provider, employees, household members, or volunteers that involves a violent or other serious crime not committed against a child
- Licensing or registration enforcement history in CCFS

A request can be made for the denial or termination to be reviewed if the provider believes there are extenuating circumstances. If a provider's termination or denial is based upon a termination of parental rights or a court-ordered removal of a child under Article 10 of the Family Court Act, it is the district's responsibility to conduct the Review of Extenuating Circumstances and to inform the EA of the results.

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### Conducting a Review of Extenuating Circumstances

The EA receives the following items prior to informing the local district of the need for an extenuating circumstances review:

- Written request for the extenuating circumstances review with an explanation of the extenuating circumstances
- A summary written by the provider explaining the original incident and the underlying reasons for the incident; the statement is signed by both the parent and the provider
- One or more of the following applicable forms:
  - OCFS-4915, *History of Criminal Convictions and Parental Acknowledgement*
  - OCFS-4916, *History of Day Care Enforcement and Parental Acknowledgement*
  - OCFS-4917, *History of Termination of Parental Rights and or Court Ordered Article 10 Removal of a Child and Parental Acknowledgement*

## Unit 5: Provider Types and District Responsibilities

At the time of referral, the EA is required to provide the district with the enrollment form, written summary explaining the original incident, one or more of the *Parental Acknowledgement* forms, the provider's written request for the review and explanation of extenuating circumstances, and any other relevant material it has received. It is the district's responsibility to work with the provider and request any additional documentation needed to conduct the review.

The district is responsible for:

- Requesting the provider submit proof as appropriate
- Evaluating the provider's claim, as described in 05-OCFS-ADM-03, **Tab 8**
- Determining whether an exception should be made to the presumption against enrollment. The reviewing agency must not allow an exception to be made unless the provider has satisfactorily demonstrated that enrollment will not jeopardize the health, safety, or welfare of children in the provider's care
- Verifying the provider has given the parent full knowledge of the original incident and extenuating circumstances prior to granting an exception
- Notifying the EA of the results

The district must make a determination whether the provider can be considered for enrollment based upon guidelines issued in 05-OCFS-ADM-03, Attachment A, **Tab 8**. Once the EA receives the district's extenuating circumstances determination, the EA will make the final enrollment determination as to whether the provider may be enrolled and notify the provider.





OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 18. DEPARTMENT OF SOCIAL SERVICES  
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES  
SUBCHAPTER C. SOCIAL SERVICES  
ARTICLE 2. FAMILY AND CHILDREN'S SERVICES  
PART 415. CHILD CARE SERVICES

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## Section 415.0. Applicability

This Part governs the authorization and payment of publicly funded child care services for children under any provision of the Social Services Law or the Federal Social Security Act to the extent of appropriations made available therefor.

## Section 415.1. Definitions

For purposes of this Part and instruction of the department pertaining thereto, the following definitions of terms shall apply:

- (a) *Child care services* means care for an eligible child provided on a regular basis either in or away from the child's residence for less than 24 hours per day which is provided by an eligible provider as defined in subdivision (g) of this section. Child care services may exceed 24 consecutive hours when such services are provided on a short-term emergency basis or in other cases where the caretaker's approved activity necessitates care for 24 hours or more on a limited basis, if the district has indicated in its consolidated services plan or integrated county plan that it will provide for such care.
- (b) *Eligible child* means a child who resides with a caretaker which meets the program and financial eligibility requirements for the particular type of child care services and who:
- (1) is under 13 years of age. For child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services under other than under the New York State Child Care Block Grant Program, a child who turns 13 years of age during a school year may continue to receive child care services through the end of that school year; or
  - (2) is under 18 years of age; and
    - (i) is a child with special needs as defined in subdivision (c) of this section; or
    - (ii) is under court supervision; or
  - (3) is under 19 years of age, is a full-time student in a secondary school, or in an equivalent level of vocational or technical training, and:
    - (i) is a child with special needs as defined in subdivision (c) of this section; or
    - (ii) is under court supervision.
- (c) *Child with special needs* means a child who is incapable of caring for himself or herself and who has been diagnosed as having one or more of the following conditions to such a degree that it adversely affects the child's ability to function normally:
- (1) visual impairment;
  - (2) deafness or other hearing impairment;
  - (3) orthopedic impairment;
  - (4) emotional disturbance;
  - (5) mental retardation;

- (6) learning disability;
- (7) speech impairment;
- (8) health impairment;
- (9) autism; or
- (10) multiple handicaps.

Any such diagnosis must be made by a physician, licensed or certified psychologist or other professional with the appropriate credentials to make such a diagnosis.

- (d) *Caretaker* means the child's parent, legal guardian or caretaker relative, or any other person in loco parentis to the child.
- (e) *Caretaker relative* means any person who is a parent or other relative as set forth in section 369.1(b) of this Title who exercises responsibility for the day-to-day care of, and who lives with, a child.
- (f) *Person in loco parentis to a child* means the child's guardian or caretaker relative or any other person with whom a child lives who has assumed responsibility for the day-to-day care and custody of the child.
- (g) *Eligible provider* means one of the following:
  - (1) a validly licensed or properly registered day care center or a properly registered school- age child care program operated by a voluntary non-profit corporation or association or an authorized child caring agency; or
  - (2) a validly licensed or properly registered child day care center or a properly registered school-age child care program operated by a private proprietary corporation or organization or by an individual; provided, however, that for child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services that are funded other than under the New York State Child Care Block Grant Program, such a provider will be an eligible provider only with the prior approval of the commissioner of the Office of Children and Family Services upon the demonstration by the social services district that conveniently accessible non-profit facilities are unavailable or unable to provide the required care; or
  - (3) a public school district operating a child care program which meets State and Federal requirements; or
  - (4) a family day care home properly registered with the department to provide child care services to children; or
  - (5) a group family day care home issued a valid license by the department to provide child care services to children; or
  - (6) a caregiver of informal child care as defined in subdivision (h) of this section who is enrolled with the social services district in accordance with section 415.4(f) of this Part; provided, however, that such a caregiver is not an eligible provider for child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services that are funded other than under the New York State Child Care Block Grant Program; or
  - (7) a caregiver of legally-exempt group child care as defined in subdivision (i) of this section which is enrolled with the social services district in accordance with section 415.4(f) of this Part; provided, however, that such

a caregiver is not an eligible provider for child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services that are funded other than under the New York State Child Care Block Grant Program except as provided in paragraph (3) of this subdivision.

(h) Informal child care includes legally-exempt family child care and legally-exempt in-home child care. Members of the child's or the caretaker's public assistance unit, and other adult members of the child care service unit except the child's siblings, are not eligible to provide subsidized child care.

(1) *Legally-exempt family child care* means:

- (i) child care for one or two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in article 4 of the New York State Labor Law, and who is chosen and whose services are monitored by the child's caretaker; or
- (ii) child care for more than two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in article 4 of the New York State Labor Law, who provides such care for less than three hours per day and who is chosen and whose services are monitored by the child's caretaker; or
- (iii) child care provided by a relative within the third degree of consanguinity of the parent(s) or step-parent(s) of the child or children except where such relative is a person legally responsible for, or the caretaker relative of, such child or children. Relatives within the third degree of consanguinity of the parent(s) or step-parent(s) of the child include: the grandparents of the child; the great-grandparents of the child; the great-great-grandparents of the child; the aunts and uncles of the child, including the spouses of the aunts and uncles; the great-aunts and great-uncles of the child, including the spouses of the great-aunts and great-uncles; the siblings of the child; and the first cousins of the child, including the spouses of the first cousins.

(2) *Legally-exempt in-home child care* means:

- (i) child care furnished in the child's own home by a caregiver who is chosen and monitored by the child's caretaker and who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in article 4 of the New York State Labor Law; provided, however, that the child's caretaker must provide the caregiver with all employment benefits required by State and/or Federal law, and must pay the caregiver at least the minimum wage, if required.

(i) *Legally-exempt group child care* means care provided by those caregivers, other than caregivers of informal child care as defined in subdivision (h) of this section, which are not required to be licensed by or registered with the department or licensed by the City of New York but which meet all applicable State or local requirements for such child care programs. Caregivers of legally-exempt group child care include, but are not limited to:

- (1) pre-kindergarten and nursery school programs for children three years of age or older, and programs for school-age children conducted during non-school hours, operated by public school districts or by private schools or academies which provide elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such pre-kindergarten, nursery school or school-age programs are located on the premises or campus where the elementary or

secondary education is provided;

- (2) nursery schools and programs for pre-school-aged children operated by non-profit agencies or organizations or private proprietary agencies which provide services for three or less hours per day;
- (3) summer day camps operated by non-profit agencies or organizations or private proprietary agencies in accordance with Subpart 7-2 of the State Sanitary Code;
- (4) day care centers, family day care homes and other child care programs located on Federal property which are operated in compliance with the applicable Federal laws and regulations for such child care programs; and
- (5) day care centers, family day care homes and other child care programs located on tribal property which are operated in compliance with the applicable tribal laws and regulations for such child care programs.

- (j) *Family share* means the weekly amount paid by the child's caretaker toward the costs of the child care services determined in accordance with section 415.3(f) of this Part.
- (k) *State income standard* means the most recent Federal income official poverty line, as defined and annually revised by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), updated by the department for a family size of four and adjusted by the department for family size.
- (l) *Child care services unit* means those adults and/or children residing in the same household who will be considered for the purposes of determining a family's eligibility for child care services. For the purposes of this Part, an adult means any person 18 years of age or older unless the individual meets the definition of a child with special needs or the district has elected to include 18-, 19- or 20-year old individuals in the same child care services unit as their parent by indicating such option in its consolidated services plan or integrated county plan. Districts have the option to include all 18-, 19- or 20-year olds in the child care services unit or to include only those 18-, 19- or 20-year olds whose inclusion in the child care services unit would benefit the family. The district's approved consolidated services plan or integrated county plan must specify the criteria it will use to determine whether or not an 18-, 19- or 20-year old is included in the child care services unit.
- (1) For families where the child's caretaker is receiving public assistance, the child care services unit will be comprised of the caretaker, his or her children and any other member of the public assistance unit. For families where no adult family member is in receipt of public assistance, the child care service unit will be comprised as follows:
- (i) when adults, other than spouses, reside together and do not have a child in common, each adult along with his or her child(ren) will be considered a separate child care services unit;
  - (ii) when adults, other than spouses, reside together and have at least one child in common, the child care services unit will be comprised of the adults who have child(ren) in common, the child(ren) those adults have in common, and the other child(ren) of each such adult;
  - (iii) when a custodial parent who is under the age of 21 years is residing with his or her parent(s), or has established his or her own household, or resides with an individual other than his or her parent(s), the child care services unit will be comprised of the custodial parent who is under 21 years of age, his or her child(ren), and any other individual in the household with legal responsibility for the custodial parent's child(ren);

- (iv) when an eligible child(ren) resides only with individuals who are not the child(ren)'s parent, step-parent, adoptive parent or legal guardian with financial responsibility for the child(ren), the child care services unit will be comprised of the eligible child(ren) only; and
- (v) individuals who would otherwise be included in the child care services unit but who are temporarily absent from a household who meet the following criteria will be considered part of the child care services unit:
- (a) individuals whose needs are partially or fully being met by members of the household, such as children or minors attending school away from home; provided, however, that a child away from home due to a foster care placement will not be considered part of the child care services unit; and
  - (b) individuals who are required to contribute to the needs of the household.
- (m) *Actual cost of care* means the rate usually charged by the caregiver for non-subsidized child care services. When child care services are provided in accordance with the terms of a contract between a social services district and the caregiver, the negotiated contract rate is the actual cost of care for such services even if such rate is less than the rate usually charged by the caregiver for non-subsidized child care services.
- (n) *Child care certificate* means a certificate that is issued directly to a child's caretaker which verifies that the caretaker is eligible for subsidized child care services which the caretaker arranges.
- (o) *Engaged in work*.
- (1) For an individual who is not receiving public assistance, engaged in work means that the individual:
    - (i) is earning wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law for the type of employment; or
    - (ii) is self-employed and is able to demonstrate that such self-employment produces personal income equal to or greater than the minimum wage or has the potential for growth in earnings to produce such an income within a reasonable period of time.
  - (2) For an individual receiving public assistance, engaged in work means the individual is engaged in work as defined by the social services district in the district's employment plan submitted to and approved by the New York State Department of Labor.
- (p) *Seeking employment*. For an individual who is not receiving public assistance, seeking employment means making in-person job applications, going on job interviews, registering with a New York State Department of Labor's Division of Employment Services Office to obtain job listings, and participating in such other job seeking activities as are approved by the social services district.
- (q) *Child welfare service plan* means a clearly defined service plan as developed and approved by the appropriate children's service unit, including a description of the immediate home situation of the children, the reason for care, kind of service needed, planned hours of care, and the goal of the service, including an evaluation of the plan and goal at the six-month redetermination of eligibility for the day-care service provided.
- (r) *Office* means the New York State Office of Children and Family Services.

(s) *Legally-exempt caregiver enrollment agency* means the agency under contract with the office to enroll caregivers of legally-exempt child care to provide subsidized services under the New York State Child Care Block Grant. For each district in New York State except for the City of New York, the legally-exempt caregiver enrollment agency will be the applicable child care resource and referral agency under contract with the office to serve that district. For the City of New York, the legally-exempt caregiver enrollment agency will be an entity or entities identified by the office in consultation with the New York City Human Resources Administration and the New York City Administration for Children's Services.

## **Section 415.2. Eligibility, guarantees, and priorities for child care services**

**Eligibility.** The following families are eligible for child care services under the specified child care programs when such care is not otherwise available from a legally responsible relative or caretaker of the child in need of services and the care is a necessary part of a plan for self support. For two-parent or two-caretaker families, each parent or caretaker must meet one of the eligibility criteria set forth in this subdivision.

(a) New York State Child Care Block Grant Program. A family will be eligible for child care services under the New York State Child Care Block Grant Program, if the family meets one or more of the following criteria:

- (1) Families which are guaranteed child care services. A social services district must guarantee child care services to a family which meets the criteria set forth in any subparagraph of this paragraph regardless of whether the social services district has any State or Federal funds available under this program to pay for all or a portion of such costs. In accordance with subdivision (d) of this section, a district may set aside funds and/or establish priorities for families eligible for a child care guarantee.
  - (i) A social services district must guarantee child care services to a family who has applied for or is receiving public assistance when such services are needed for a child under 13 years of age in order to enable the child's parent(s) or caretaker relative(s) to participate in activities required by a social services official including orientation, assessment, or work activities as defined in 18 NYCRR Part 385. The guarantee applies to all of the eligible children of the parent(s) or caretaker relative(s) regardless of the child's status as part of the public assistance filing unit.
  - (ii) A local social services district must guarantee to applicants who would otherwise be eligible for, or are recipients of, public assistance benefits and who are employed, the option to choose to receive continuing child care subsidies in lieu of public assistance benefits, for such period of time as the recipient continues to be eligible for public assistance. For the purposes of this section, an eligible applicant for, or recipient of, public assistance benefits and who is employed, includes a person whose gross earnings equal, or are greater than, the required number of work houses times the State minimum wage. Recipients of child care subsidies under this section who are no longer eligible for public assistance benefits, shall be eligible for transitional child care described in subparagraph (iv) of this paragraph as if they had been recipients of public assistance.
  - (iii) A social services district must guarantee child care services to a family which is receiving public assistance when such services are needed for a child under 13 years of age in order to enable the child's parent(s) or caretaker relative(s) to engage in work as defined by the social services district.
  - (iv) A social services district must guarantee child care services for a period of up to 12 consecutive months after the month in which a family's public assistance case closed or, for those who chose child care in lieu of public assistance, the month after the family is no longer financially eligible for

public assistance, provided:

(a) the case closed or the family became financially ineligible for public assistance due to:

(1) increased income from either employment or child support; or

(2) the family voluntarily ending assistance and their income is no longer within public assistance standards; and

(b) the family received public assistance in at least three of the six months immediately preceding the case closing; or, for a family which chose child care in lieu of public assistance, was eligible for public assistance in at least three of the six months immediately preceding their ineligibility for public assistance; and

(c) the family includes an eligible child that is under the age of 13 who needs child care services in order to enable the child's parent(s) or caretaker relative(s) to be engaged in work as defined in section 415.1(o)(1) of this Part; and

(d) the family has income at or below 200 percent of the applicable State income standard. This child care guarantee is available to eligible families for 12 months from the month after the family's eligibility for public assistance has terminated or ended. Families may ask for and begin to receive child care in any month during the 12-month period of the child care guarantee. The start date for eligibility may precede the date services were requested and cover any period during the 12 months of the guarantee.

(2) Families that are eligible when funds are available. A social services district must provide child care services to a family eligible under any one of the subparagraphs of this paragraph, to the extent that the district continues to have funds available under either the district's allocation from the State Child Care Block Grant Program or any local funds appropriated for such program subject to any priorities and set asides established pursuant to subdivision (d) of this section.

(i) A family which has applied for or is receiving public assistance when such services are needed for an eligible child aged 13 or older, who has special needs or is under court supervision, in order to enable the child's parent(s) or caretaker relative(s) to participate in activities required by social services officials including orientation, assessment, or work activities defined in 18 NYCRR Part 385.

(ii) A family receiving public assistance when such services are needed for a child aged 13 or older, who has special needs or is under court supervision, in order to enable the child's parent(s) or caretaker relative(s) to engage in work as defined by the social services district.

(iii) A family receiving public assistance when child care services are necessary:

(a) to enable a teenage parent to attend high school or an equivalency program; or

(b) for the child to be protected because the child's parent(s) or caretaker relative(s) is physically or mentally incapacitated or has family duties away from home necessitating his or her absence.

(iv) A family with income up to 200 percent of the State income standard when the family is at risk of becoming dependent on public assistance and child care services are needed:



- (a) for the child's caretaker(s) to be engaged in work as defined in section 415.1(o)(1) of this Part; or
  - (b) to enable a teenage parent to attend high school or an equivalency program.
- (v) A family experiencing homelessness, in accordance with section 725 of Subtitle VII-B of the McKinney-Vento Act, with income up to 200 percent of the State income standard and child care services are needed for the child's caretaker(s) to seek housing and:
- (a) for the child's caretaker(s) to seek employment as defined in section 415.1(p); or
  - (b) for the child's caretaker(s) to be engaged in work as defined in section 415.1(o); or
  - (c) for the child's caretaker(s) to attend educational or vocational activities as defined in section 415.2(a)(3)(vii)(b) or section 415.2(a)(3)(iv). Notwithstanding the potential for some of these educational or vocational training programs to allow for the eventual attainment of a bachelor's degree or like certificate of completion for a four-year college program, this regulation does not permit the renewal of such educational or vocational training program enrollment for any additional period in excess of 30 consecutive calendar months except as for those programs defined in section 415.2(a)(3)(iv), nor does it permit enrollment in more than one such program; or
  - (d) for the child's caretaker(s) to access or participate in counseling services programs.
- (3) Families that are eligible if funds are available under this program and if the social services district has listed such families as eligible in the district's consolidated services plan or integrated county plan. A social services district must provide child care services for an eligible child as defined in section 415.1(b) of this Part to a family eligible under this paragraph, to the extent that the district continues to have funds available under either the district's allocation for the State Child Care Block Grant Program or any local funds appropriated for such program subject to any priorities and set asides established pursuant to subdivision (d) of this section, provided the social services district has listed such families as eligible families in the district's consolidated services plan or integrated county plan:
- (i) a family receiving public assistance when child care services are necessary for a parent or caretaker relative to participate in an approved activity in addition to their required work activity;
  - (ii) a family receiving public assistance when child care services are necessary for a sanctioned parent or caretaker relative to participate in unsubsidized employment whereby the parent or caretaker relative receives earned wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law;
  - (iii) a family receiving public assistance or with income up to 200 percent of the State income standard when child care services are needed for the child to be protected because the child's caretaker is:
    - (a) participating in an approved substance abuse treatment program, or in screening for or an assessment of the need for substance abuse treatment;
    - (b) homeless or receiving services for victims of domestic violence and needs child care in order to participate in an approved activity, or in screening for or an assessment of the need for

services for victims of domestic violence; or

- (c) in an emergency situation of short duration including, but not limited to, cases where the caretaker's absence from the home for a substantial part of the day is necessary because of extenuating circumstances such as a fire, being dispossessed from the home, seeking living quarters, or providing chore/housekeeper services for an elderly or disabled relative.
- (iv) a family is receiving public assistance or has income up to 200 percent of the State income standard and child care services are needed for the child's caretaker to attend a two- year program other than one with a specific vocational sequence leading to an associates degree or a certificate of completion, or a four year college or university program leading to a bachelor's degree provided:
  - (a) the program is reasonably expected to improve the earning capacity of the caretaker;
  - (b) the caretaker is and continues to participate in non-subsidized employment whereby the caretaker works at least 17 1/2 hours per week and earns wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law while pursuing the course of study; and
  - (c) the caretaker can demonstrate his or her ability to successfully complete the course of study;
- (v) a family with an open child protective services case when it is determined on a case-by-case that such child care is needed to protect the child;
- (vi) a family with income up to 200 percent of the State income standard when child care services are needed for the child to be protected because the child's caretaker is physically or mentally incapacitated or has family duties away from home necessitating his or her absence;
- (vii) a family with income up to 200 percent of the State income standard when child care services are needed for the child's caretaker to participate in one of the following activities provided such activity is an allowable activity set forth in the social services district's consolidated services plan or integrated county plan and the district determines that the activity is a necessary part of a plan for the family's self-support:
  - (a) actively seeking employment as defined in section 415.1(p) of this Part for a period of up to six months as established by the social services district in its consolidated services plan or integrated county plan, if the caretaker documents that he or she is currently registered with a New York State Department of Labor's Division of Employment Services Office, provided that child care services will be available only for the portion of the day the family is able to document is directly related to the parent or caretaker engaging in such activities;
  - (b) educational or vocational activities including attendance in one of the following secondary or post-secondary programs:
    - (1) a public or private educational facility providing a standard high school curriculum offered by or approved by the local school district;
    - (2) an education program that prepares an individual to obtain a New York State high school equivalency diploma;

- (3) a program providing basic remedial education in the areas of reading, writing, mathematics and oral communications for individuals functioning below the ninth month of the eighth grade level in those areas;
  - (4) a program providing literacy training designed to help individuals improve their ability to read and write;
  - (5) an English as a second language (ESL) instructional program designed to develop skills in listening, speaking, reading and writing the English language for individuals whose native or primary language is other than English;
  - (6) a two year full-time degree granting program at a community college, a two year college, or an undergraduate college with a specific vocational goal leading to an associate degree or certificate of completion within a determined time frame which must not exceed 30 consecutive calendar months;
  - (7) a training program which has a specific occupational goal and is conducted by an institution licensed or approved by the State Education Department other than a college or university;
  - (8) a prevocational skills training program such as a basic education and literacy training program; or
  - (9) a demonstration project designed for vocational training or other projects approved by the Department of Labor;
- (c) a program to train workers in an employment field that currently is or is likely to be in demand in the near future, if the caretaker documents that he or she is a dislocated worker and is currently registered in such a program, provided that child care services are only used for the portion of the day the caretaker is able to document is directly related to the caretaker engaging in such a program. For the purposes of this provision, a dislocated worker is any person who: has been terminated or laid off from employment; has received a notice of termination or layoff from employment that will occur within six months of such notice; or was self-employed but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters. Notwithstanding the potential for some of these educational or vocational training programs to allow for the eventual attainment of a bachelor's degree or like certificate of completion for a four-year college program, this regulation does not permit the renewal of such educational or vocational training program enrollment for any additional period in excess of 30 consecutive calendar months except as authorized under subparagraph (iv) of this paragraph, nor does it permit enrollment in more than one such program.

(b) Title XX program

- (1) To the extent that the social services district has made title XX funds available for child care services, a family is eligible for child care services funded under title XX of the Federal Social Security Act if the family meets one or more of the criteria set forth in subdivision (a) of this section or the child is in need of child care as a preventive service provided the social services district has listed such families as eligible families in the district's consolidated services plan or integrated county plan,

subject to any applicable priorities and set asides established pursuant to subdivision (d) of this section.

- (2) A social services district may establish in its consolidated services plan or integrated county plan upper income levels above 200 percent of the State income standard for families receiving child care services under the title XX provided that the income levels do not exceed 275 percent of the State income standard for a family of one or two, 255 percent of the State income standard for a family of three, or 225 percent of the State income standard for a family of four or more.

(c) Child care services during breaks in activities.

- (1) A social services district must provide New York State Child Care Block Grant services to families receiving public assistance, during breaks in activities, for a period of up to two weeks when the parent or caretaker relative is: engaged in work; participating in work activities or performing community service pursuant to title 9-B of article 5 of the Social Services Law; a teen parent attending high school or other equivalent training; physically or mentally incapacitated; or absent from the home due to family duties. Such child care services may be authorized for up to one month if child care arrangements would be lost if the services were not continued, and the program or employment is scheduled to begin within that one-month period.
- (2) For all other families that are eligible under subdivision (a) or (b) of this section, a social services district may provide child care services while the caretaker is waiting to enter an approved activity or employment or on a break between approved activities for a period not to exceed two weeks or for a period not to exceed one month where child care arrangements would otherwise be lost and the subsequent activity is expected to begin within that period.

(d) Priority populations and funding set asides.

(1) Priority populations.

- (i) For child care services funded under the New York State Child Care Block Grant Program, each social services district must give priority to the following federally-mandated populations:
  - (a) families with very low income. Each social services district must establish in its consolidated services plan or integrated county plan an income level at or below 200 percent of the State income standard which will constitute the upper income level for families with very low income; and
  - (b) families with children who have special needs; and
  - (c) families experiencing homelessness.
- (ii) For child care services funded under the New York State Child Care Block Grant Program and/or under title XX of the Federal Social Security Act, each social services district may establish local priorities for child care services provided that the priorities provide eligible families with equitable access to child care assistance funds to the extent that these funds are available. Any local priorities must be set forth in the district's consolidated services plan or integrated county plan.
  - (a) Local priorities may refine but can not replace the federally mandated priorities.

- (b) Local priorities may be based on one or a combination of factors, including, but not limited to, household composition, reason for child care, and income level.
- (c) Local priorities may not have the effect of limiting a caretaker's choice of any eligible child care provider or be based on a caretaker's choice of a child care certificate.

(2) Funding set-asides.

- (i) Each social services district may set aside a portion of the district's New York State Child Care Block Grant allocation and/or its title XX allocation to serve one or more of the Federal and/or the district's local priority populations including families eligible for a child care guarantee; provided that the method of disbursement of funds to priority groups provides that eligible families within a priority group will receive equitable access to child care assistance funds to the extent that such funds are available.
- (ii) Each funding set aside must be based on a 12-month period and must be described in the district's consolidated services plan or integrated county plan along with the rationale for the set aside amount based on the projected need for that population.
- (iii) Within each 12-month period, the amount of the set aside for each particular priority population may be adjusted up or down by 10 percent without the prior written approval of the office. Each such adjustment to a set aside amount must be reported to the office within 30 days of the adjustment.
- (iv) The prior approval of the office is needed for any adjustment in the amount of a set aside for a particular priority population which would exceed 10 percent of the amount for that set aside originally specified in the district's consolidated services plan or integrated county plan.

(3) Waiting lists and denial of services.

- (i) If a social services district has set aside funds to serve one or more priority populations and all of the available funds that are not set aside are projected to be needed for open child care cases, the district may deny services to a family which is not eligible for a child care guarantee and which does not fall within the priority populations for the set asides or place the family on a waiting list for subsidies.
- (ii) A social services district that has not established set asides must open a new case for an eligible family if the district has sufficient funding available to provide child care services to that family at the time the family is determined to be eligible. If the district does not have sufficient funding available because all of the available funds are projected to be needed for open child care cases, the district may deny services to a family which is not eligible for a child care guarantee or place the family on a waiting list for subsidies.

(4) Case closings. Once a social services district has committed all of the funds available to it, either through set asides approved in the district's consolidated services plan or integrated county plan and/or because all of the available funds are projected to be needed for open child care cases, the social services district may discontinue funding to those families which are not eligible for a child care guarantee that have lower priorities in order to serve families with higher priorities. If no priorities are established beyond the federally-mandated priorities and all funds are committed, case closings for families which are not eligible under a

child care guarantee and are not a federally-mandated priority must be based on the length of time in receipt of services. The length of time used to close cases may be based either on the shortest or longest time receiving child care services but must be consistent for all families. The social services district must specify in its consolidated services plan or integrated county plan whether case closings will be based on the shortest or longest length of time receiving child care services.

- (5) Each social services district must collect and submit to the office information, in the form and manner and at the times specified by the office, concerning the disbursement of child care subsidy funds showing the geographic distribution of children receiving child care services from the district.

### Section 415.3. Caretaker's responsibilities

- (a) An applicant for child care and development block grant services must apply, in writing, on forms and in a manner prescribed by the social services district in accordance with Part 404 of this Title. The social services district must permit the applicant to submit an application by mail. The caretaker with whom an eligible child or children reside(s) is the applicant for such services.
- (b) The applicant is responsible for providing accurate, complete and current information regarding family income and composition, child care arrangements and any other circumstances related to the family's eligibility for child care services, and for notifying the social services district immediately of any changes in such information.
- (c) The child(ren)'s caretaker is responsible for locating a child care provider(s) that meets the needs of his or her child(ren). A caretaker that is unable to locate a child care provider(s) may ask the social services district for assistance.
- (d) A family which chooses to have a caregiver of informal child care provide child care services in the child(ren)'s own home must provide such caregiver with all employment benefits required by State and/or Federal law and pay the caregiver at least minimum wage, if required by State and/or Federal law.
- (e) Family share
- (1) Each family receiving child care services, except for a family where the parent(s) or caretaker relative(s) is receiving public assistance or a family experiencing homelessness, must contribute toward the costs of such services by paying a family share based upon the family's income. A family share also may be required of any family to recoup an overpayment for a child care services regardless of whether any member of the family is receiving public assistance.
- (2) The income-based portion of the family share for child care services must be determined by the social services district in accordance with a sliding fee scale developed pursuant to paragraph (3) of this subdivision. The overpayment portion of the family share, if any, must be reflected separately from any income-based portion of the family share and must be determined in accordance with section 415.4(i) of this Part.
- (3) The sliding fee scale developed by the social services district must be calculated by subtracting the State income standard, as defined in section 415.1(k) of this Part, for the specific family size of the eligible family from the annual gross income of the eligible family, multiplying the remaining income by a factor of 10 to 35 percent, as selected by the social services district and included in the district's consolidated services plan or integrated county plan, and dividing the product by 52 to determine a weekly family share. The same percentage factor must be used for all families receiving child care services which are required to pay an income-based portion of a family share.

- (4) A minimum weekly family share of \$1 must be charged to each family receiving child care services which is required to pay an income-based portion of a family share.
  - (5) Each family receiving child care services is responsible for paying only one family share regardless of the number of children in the family who are receiving child care services.
  - (6) The family is responsible for paying the family share in the manner determined by the social services district. The social services district may require the family to pay the family share to the social services district or to one or more child care providers used by the family.
  - (7) The family share will be recalculated by the social services district whenever there is a change in income, household circumstances or child care provider that would affect the amount of the family share, or when an overpayment for child care services has occurred and the recovery of such overpayment will be made through the family share, but no less frequently than each recertification.
  - (8) The failure of a family receiving child care services to pay the family share for such services established by the social services district or to cooperate with such district to develop an arrangement satisfactory to the district to make full payment of all delinquent family shares constitutes an appropriate basis for suspending or terminating such child care services in accordance with the procedures set forth in section 404.6 of this Title.
- (f) A caretaker seeking child care services to enable the caretaker to participate in an approved training program must provide documentation that includes, but is not limited to, the following:
- (1) the name of the institution offering or conducting the training program;
  - (2) the course of study to be pursued or in which the person is participating;
  - (3) the specific vocational or rehabilitative goal;
  - (4) the duration of the training (hours per day) including no more than a total of three hours per day to commute (from home) to and from training location; and
  - (5) progress reports (marks, transcripts, letters, and like documents) which indicate that the caretaker is progressing satisfactorily towards attaining the established vocational or rehabilitative goal.

#### **Section 415.4. Local district responsibility**

Each local social services district shall be responsible for compliance with the following requirements:

(a) Initial eligibility.

- (1) At the time of application for child care services, the social services district must inform the applicant of:
  - (i) the various child care services programs available and the requirements of the child care services programs for which the applicant may be eligible including information about the child care guarantee for applicants and recipients of public assistance and for families transitioning from public assistance set forth in section 410-w(3) of the Social Services Law. Such information must describe the actions that the family needs to take in order to be eligible for the child care guarantee;

- (ii) the applicant's responsibility for reporting all relevant facts to the social services district in order that a proper determination of the applicant's eligibility for child care services can be made and for providing the documents or other information which the applicant must submit to verify such facts;
  - (iii) the fact that any investigation needed in order to determine the applicant's eligibility will be undertaken;
  - (iv) a recipient's responsibility for notifying the social services district immediately of any change in financial circumstances, living arrangements, employment, household composition, child care provider or other circumstances that affect the family's need or eligibility for child care services;
  - (v) a recipient's responsibility to contribute toward the costs of the child care services by paying a family share, if required as determined in accordance with section 415.3(e) of this Part;
  - (vi) the child care providers with which the social services district has arrangements for the provision of child care services to recipients;
  - (vii) a recipient's option to choose between the eligible providers set forth in section 415.1(g) of this Part;
  - (viii) a recipient's responsibility to locate child care. In addition, a public assistance recipient who needs child care in order to comply with his or her work requirements must be notified of the provisions in section 415.8 of this Part regarding the recipient's responsibility to locate child care and to inform the district of the recipient's efforts to locate child care including following up on referrals from the district, the applicable local child care resource and referral agency and/or any other child care agency to which the recipient is referred by the district;
  - (ix) information to assist a recipient to make an informed choice regarding the provider from which the recipient wishes to receive child care services; and
  - (x) a recipient's right to have child care services provided without discrimination on the basis of race, religion, national origin, sex, handicapping condition or political belief.
- (2) All applications for child care services must be processed promptly. A determination of programmatic and financial eligibility must be completed within the time-frame set forth in section 404.1(d) of this Title except where the applicant requests additional time, where difficulties in verifying eligibility lead to a delay or where other reasons beyond the social services district's control lead to a delay. The reason for a delay in making such determination must be recorded in the case record and communicated to the applicant.
- (3) Initial eligibility for child day care, informal child care and legally-exempt group child care services must be determined pursuant to the requirements of this Part, Part 404 of this Title and, where applicable, 18 NYCRR Part 385. In addition, required documentation and a completed service plan are necessary prerequisites to the determination of eligibility and must be retained in the case folder.
- (4) If an application for child care services is approved, the social services district must:
- (i) send written notice to the applicant of the determination of eligibility for child care services; the family share to be paid by the applicant, if required, the date(s) such family share is due and the family share payment procedures which must be followed; and the applicant's right to a fair hearing



in accordance with Part 358 and section 404.1(f) of this Title; and

(ii) provide an authorization for child care services to the applicant in accordance with section 404.7 of this Title.

(5) If an application for child care services is denied, the social services district must send written notice to the applicant of the determination of ineligibility and of the applicant's right to a fair hearing in accordance with Part 358 and section 404.1(f) of this Title.

(b) Continuing eligibility.

(1) Continuing eligibility for child care services must be redetermined as often as case factors indicate, but no less frequently than every 12 months; provided, however, that a social services district may not require the submission of a new application merely because the applicant is no longer eligible for public assistance or no longer eligible for a child care guarantee. The district must establish procedures to enable families to keep their child care services without interruption as long as the families remain eligible for such services including procedures to transfer families from one unit of the district to another when necessary.

(2) All factors concerning need and eligibility for child care services must be reconsidered, reevaluated and verified during redeterminations. The periodic redeterminations conducted by the social services district do not eliminate the responsibility of a recipient of child care services to report to such district any change in financial circumstances, living arrangements, child care arrangements, employment, household composition or other circumstances that affect the family's need or eligibility for child care services.

(3) If a recipient is redetermined to be eligible for child care services, the social services district must send written notice to the recipient of the determination of eligibility for child care services; the family share payment procedures which must be followed; and the recipient's right to a fair hearing in accordance with Parts 358 and 404 of this Title.

(4) If a recipient is determined to no longer be eligible for child care services, the social services district must send written notice to the recipient of the determination of ineligibility and of the recipient's right to a fair hearing in accordance with Part 358 and section 404.1(f) of this Title.

(c) Child care services requirements.

(1) A recipient must have the option to choose between the eligible providers set forth in section 415.1(g) of this Part; provided, however, that:

(i) a recipient may choose a provider of informal child care or a provider of legally-exempt group child care only for child care services provided under the New York State Child Care Block Grant Program;

(ii) a social services district may disapprove a provider chosen by a recipient in a preventive or child protective case if the district has reason to believe that it would be contrary to the health, safety or welfare of the child to receive child care services from that provider;

(iii) a child care provider chosen by a recipient must be validly licensed, properly registered or enrolled, as appropriate; and

(iv) a child care provider chosen by a recipient must permit a child's caretaker to have: unlimited and on demand access to such child; the right to inspect, on demand and at any time during the hours of

operation of the home or facility, all parts of such home or facility used for child care or which could present a hazard to the health or safety of a child; unlimited and on demand access to the provider(s) caring for such child whenever such child is in care and during the normal hours of operation; and, unlimited and on demand access to written records concerning such child except where access to such records is otherwise restricted by law.

- (2) A recipient who chooses a caregiver of legally-exempt in-home child care who will be providing such care in a child's own home must be advised of the recipient's responsibility to provide such provider with all employment benefits required by State and/or Federal law and the recipient's responsibility to pay the provider at least the minimum wage if required by State and/or Federal law.
- (3) The child care services provided must be reasonably related to the hours of employment, education or training of a child's caretaker, as applicable, and permit time for delivery and pick-up of the child. Up to eight hours of child care services may be provided, if needed, to enable an employed caretaker who works a second or third shift to sleep if the social services district indicates in its consolidated services plan or integrated county plan that it will provide such services.
- (4) When arranging child care services, the needs of the child must be taken into account including: continuity of child care; reasonable proximity of the care either to the child's home and school or to the child's caretaker's place of employment, education or training, as applicable; and, the appropriateness of the child care to the child's age and special needs.
- (5) No child may be moved by a social services district from an existing placement with an eligible provider unless the recipient of child care services consents to such move; provided, however, that a social services district may require that a child receiving child care services as part of a preventive case or a child protective case be moved from an existing placement with an eligible provider if the district has reason to believe that it would be contrary to the child's health, safety or welfare to continue receiving child care services from that provider.
- (6) A current list of the licensed or registered child day care providers located in the social services district must be maintained and made available to applicants for and recipients of child care services.
- (7) Social services districts must inform public assistance recipients that:
  - (i) the exemption from work requirements for lack of child care, if applicable, will not extend the time limitations on the receipt of family assistance; and
  - (ii) the recipient will not be sanctioned for failure to comply with work requirements as long as the recipient can demonstrate an inability to find child care in accordance with section 415.8 of this Part. The information provided to the recipient must include the definitions and procedures set forth in such section.
- (8) A social services district must notify applicants for and recipients of public assistance of the guarantee for child care services and for transitional child care services available to applicants or recipients that choose child care services in lieu of public assistance. Recipients of public assistance also must be informed of their potential eligibility for the guarantee for transitional child care services when their public assistance benefits are terminated. Such notification must describe the actions an applicant or recipient must take to obtain the guaranteed transitional child care services. A social services district may not require that an applicant or recipient reapply to receive the guaranteed transitional child care services as long as the family remains eligible for child care services.

(9)

(i) The social services district shall allow, disallow, or defer a claim for reimbursement, submitted by an eligible provider to the social services district, for the purpose of providing child care services pursuant to this Part within 30 days of receiving such claim.

(ii) The social services district may defer a claim for reimbursement only in the following circumstances:

(a) upon the recommendation of a federal, state, or local agency, when the agency has informed the social services district that continued payments of such claims place the social service district at risk of making payments for services that were not provided in accordance with the applicable state regulations; or

(b) after an initial review of the claim by the social services district revealed inaccuracies in the claim that warrant a more detailed review; or

(c) upon notification of the existence of a pending criminal charge involving fraud.

(iii) The social services district may disallow payment for claims for services provided to any and all children receiving a child care subsidy for the time period in which:

(a) an enrolled provider is found by the office to be operating or have operated a child care program, required to be licensed or registered with the office, without obtaining such license or registration; or

(b) a licensed or registered provider is found by the office to be operating or have operated over its licensed or registered capacity; or

(c) an enrolled informal provider is found by the office to be caring or have cared for more children than the limits defined in section 415.1(h) of this Part.

(d) Jurisdiction.

(1) When a family which is guaranteed child care services moves from one social services district to another social services district within the State, the new social services district of residence is responsible for paying for the family's child care services beginning with the second full month that the family lives in that district, provided the family continues to be eligible for guaranteed child care services. The former social services district is obligated to continue to pay for the guaranteed child care services during the month the family moves to the other district and the first full month following the month the family moved.

(2) Notwithstanding paragraph (1) of this subdivision, if a social services district continues to have responsibility for providing public assistance benefits for a family which has moved to another district, such as when the parent(s) or caretaker relative(s) is required to attend a substance abuse program located in another district, the district which is responsible for the public assistance benefits remains responsible for all child care services needed for any child(ren) of that parent(s) or caretaker relative(s) who moves to live with, or be near, the parent(s) or caretaker relative(s).

(3) When a child(ren) is placed in foster care in a social services district outside of the district where the child(ren) resided at the time of placement, and the foster family needs child care services for the foster child(ren) and the foster family is eligible to receive such services pursuant to section 415.2(a) of this Part, the district that has financial responsibility for the foster child(ren) will be responsible for providing child care

services for the foster child(ren).

- (4) For all other families not described in paragraph (1), (2) or (3) of this subdivision, the social services district where a family resides will be responsible for providing child care services.

(e) Administration.

- (1) In the case of providers from whom or from which the social services district purchases child care services, contracts, when required by section 405.3 of this Title, will be negotiated in accordance with the purchase of service requirements set forth in such section; provider budgets may be reviewed and attendance and payment records will be monitored.
  - (2) Required reports and claims for reimbursement must be prepared and submitted in the form and manner and at the times as required by the office.
  - (3) Records required to be maintained by the State and Federal law and by instructions of the office must be retained as appropriate. Under this subdivision, local districts must keep and retain adequate claiming records, retain appropriate documentation in the recipient's case file, and make appropriate records available for audit by appropriate State and Federal agencies.
  - (4) Social services districts may alter their participation in activities related to arranging for, subsidizing, delivering, and monitoring the provision of subsidized child day care, provided that the total participation of an individual district in all activities related to the provision of subsidized child day care must be no less than the participation level engaged in by such individual district on the effective date of this section, to be determined based on a review of expenditures for the calendar year January 1, 1990 through December 31, 1990.
  - (5) The social services district is responsible for reporting to the office, in the form and manner and at the times required by the office, specific information regarding child care services, including, but not limited to, the number of children receiving each specific child care services, the costs of such services separated by the type of child care providers used, and any additional information required for the State to meet Federal reporting requirements.
  - (6) Each social services district must submit a child care services plan to the office for approval as part of the district's multi-year consolidated services plan or integrated county plan and any annual implementation reports, in the form and manner and at the times required by the office. A social services district must implement its child care services programs in accordance with the child care services plan approved by the office.
- (f) Enrollment of caregivers of informal and legally-exempt group child care. A social services district may only make payments for child care provided by caregivers of informal or legally-exempt group child care if the caregiver has been enrolled by a legally-exempt caregiver enrollment agency on either a temporary or final basis in accordance with this subdivision. Each social services district must provide a child's caretaker that has applied for or is receiving child care subsidies under the New York State Child Care Block Grant and who is interested in using a caregiver of legally-exempt child care with an enrollment package and notify the caretaker that the completed package must be submitted to the applicable legal-exempt caregiver enrollment agency.
- (1) Each legally-exempt caregiver enrollment agency must establish procedures for enrolling, for payment purposes, a caregiver of informal child care or a caregiver of legally-exempt group child care, as defined in section 415.1 of this Part, who or which chooses to provide child care services under the New York State

Child Care Block Grant Program. Such enrollment procedures must:

- (i) collect only such information about the caregiver as determined by the Office of Children and Family Services to be necessary to make payments and to furnish information to the caregiver or to a recipient;
  - (ii) facilitate appropriate and prompt payments; and
  - (iii) permit the caregiver to enroll with the legally-exempt caregiver enrollment agency after selection by a recipient.
- (2) Each legally-exempt caregiver enrollment agency must distribute health and safety information as specified by the office to all newly enrolled caregivers of informal child care and caregivers of legally- exempt group child care.
- (3)
- (i) Prior to enrolling or re-enrolling a caregiver of informal child care or a caregiver of legally-exempt group child care, the legally-exempt caregiver enrollment agency must review the enrollment package obtained from the caregiver and determine, within 10 days of receiving the enrollment package, whether the enrollment package is complete and the caregiver is exempt from the State's child day care licensing and registration requirements.
  - (ii) If the caregiver is exempt from the State's child day care licensing and registration requirements, and the completed checklist and attestations in the enrollment package do not raise any immediate concerns, the legally-exempt caregiver enrollment agency must enroll the caregiver on a temporary basis until the legally-exempt caregiver enrollment agency completes a full review of the package. The legally-exempt caregiver enrollment agency must notify the applicable social services district of the enrollment of the legally-exempt caregiver on a temporary basis.
  - (iii) The legally-exempt caregiver enrollment agency must complete a full review of the enrollment package within 40 days of receiving the completed enrollment package to determine whether the caregiver meets the enrollment requirements including the basic health and safety requirements set forth in paragraph (7) of this subdivision and the additional requirements for informal child care caregivers set forth in paragraph (8) of this subdivision, if applicable. The legally-exempt caregiver enrollment agency must notify the applicable social services district of its final determination regarding the enrollment of the legally-exempt caregiver.
  - (iv) Caregivers enrolled with a social services district on or before the effective date of these regulations, must document compliance with the requirements set forth in paragraph (7) of this subdivision and the additional requirements for informal child care caregivers in paragraph (8) of this subdivision, if applicable, before or as part of the next redetermination of eligibility for child care services for a child in the caregiver's care.
  - (v) Enrollment information must be updated and reviewed at least annually and at any other time when a change in circumstances warrants such a review including but not limited to when the caregiver seeks to serve another child. The legally-exempt caregiver enrollment agency only must verify any changes that have occurred to the caregiver's enrollment information since the last enrollment package was submitted.

- (4) If the caregiver is exempt from the licensing and registration requirements and the caregiver otherwise meets the qualifications set forth in section 415.1(h) or (i) of this Part, and meets the basic health and safety requirements set forth in paragraph (7) of this subdivision and the additional requirements for informal child care set forth in paragraph (8) of this subdivision, if applicable, or integrated county plan, then the legally-exempt caregiver enrollment agency must enroll the caregiver for the purpose of providing child care services to eligible families under the New York State Child Care Block Grant Program unless the applicable social services district informs the legally-exempt caregiver enrollment agency that the caregiver does not meet a locally-defined additional requirement set forth in the social services district's consolidated services plan or integrated county plan in accordance with subdivision (h) of this section.
- (5) A caregiver of informal child care or a caregiver of legally-exempt group child care must be enrolled with the legally-exempt caregiver enrollment agency before payment is made to such caregiver by a district for providing child care services under the New York State Child Care Block Grant Program.
- (6) Each legally-exempt caregiver enrollment agency must maintain an automated roster, in the New York State Child Care Facilities System, of the caregivers of informal child care and caregivers of legally-exempt group child care enrolled with such legally-exempt caregiver enrollment agency including the name and address of each such caregiver and information about the caregiver's compliance with the enrollment requirements at such time and in manner and form required by the office.
- (7) Basic health and safety requirements for caregivers of informal or legally-exempt group child care.
- (i) At the time of applying for enrollment and for re-enrollment, the caregiver must furnish a sworn statement indicating whether, to the best of his or her knowledge, such caregiver, any employee of the caregiver, and any volunteer who has the potential for regular and substantial contact with children in care, and, for caregivers of legally-exempt family child care, each household member age 18 or older, has ever been convicted of a misdemeanor or a felony in New York State or any other jurisdiction. Prior to furnishing the caretaker and the legally-exempt caregiver enrollment agency with such information, the caregiver shall inquire of each such employee, volunteer and household member regarding whether that person has ever been convicted of a misdemeanor or any felony in New York State or any other jurisdiction.
- (a) When a caregiver, indicates that he or she or such an employee, volunteer or household member has been convicted of a crime, the caregiver must give the caretaker and the legally-exempt caregiver enrollment agency true and accurate information about the crime which will enable the caretaker and the legally-exempt caregiver enrollment agency to evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child(ren). Such information must include, but is not limited to, the nature of the crime, the penalties imposed as a result of the conviction, and the length of time which has elapsed since the conviction.
- (b) No person convicted of a felony or misdemeanor against children or, for caregivers of legally-exempt family child care, whose household includes an individual convicted of such a crime may be enrolled by a legally-exempt caregiver enrollment agency as a child care caregiver.
- (c) No legally-exempt informal child care program or legally-exempt group child care program which employs an individual or uses a volunteer convicted of a felony or misdemeanor against children may be enrolled by a legally-exempt caregiver enrollment agency as a child care caregiver.

- (d) A legally-exempt caregiver enrollment agency may enroll a caregiver who has been convicted or whose employee, volunteer or household member has been convicted of other felony or misdemeanor offenses, consistent with guidelines issued by the office for evaluating applicants with criminal conviction records.
- (ii) The caregiver must furnish the child's caretaker with true and accurate information, in writing, indicating whether, to the best of the caregiver's knowledge, such caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children and, for caregivers of legally-exempt family child care, any household member age 18 or older, has ever been the subject of an indicated report of child abuse or maltreatment in New York State or any other jurisdiction. Prior to furnishing the caretaker with such information, the caregiver shall inquire of each such employee, volunteer and household member regarding whether that person has ever been the subject of an indicated report of child abuse or maltreatment. The caregiver must furnish the child's caretaker with information regarding any such indicated report including a description of the incident, the date of the indication and any other relevant information.
- (iii) To be enrolled by a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of informal child care or a caregiver of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State or local government agency must attest and certify in writing:
- (a) whether, to the best of his or her knowledge, the caregiver has ever been denied a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home, or had such a license or registration suspended or revoked. If a caregiver indicates that he or she has been denied such a license or registration or had such a license or registration suspended or revoked, the caregiver must provide true and accurate information to the child's caretaker and the legally-exempt caregiver enrollment agency about the reasons for the denial, suspension or revocation. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked, based on guidelines issued by the office; and
- (b) whether the caregiver has ever had his or her parental rights terminated, or had a child(ren) removed from his or her care by court order under article 10 of the Family Court Act. If a caregiver indicates that he or she has had his or her parental rights terminated or has had a child(ren) removed from his or her care by court order under article 10 of the Family Court Act, the caregiver must provide true and accurate information regarding the reasons underlying the loss of parental or custodial rights. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had his or her parental rights terminated or has lost custody of a child(ren) by court order under article 10 of the Family Court Act, based on guidelines issued by the office.
- (iv) To be enrolled with a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of legally-exempt group child care must attest and certify in writing either that:
- (a) the caregiver is legally operating under the auspices of another Federal, State or local government agency; or
- (b) if the caregiver of legally-exempt group child care is not required to operate under the

auspices of another Federal, State or local governmental agency, then the caregiver must meet the additional health and safety requirements set forth in section 415.4(f)(7).

- (v) To be enrolled by a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of informal child care or a caregiver of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State or local governmental agency also must attest and certify in writing, and the child's caretaker must attest and certify in writing, that the caregiver meets and has agreed to continue to meet the following basic health and safety requirements:
- (a) The caregiver and all children have two separate and remote ways to escape in an emergency.
  - (b) Rooms for children are well-lighted and well-ventilated. Heat, ventilating and lighting equipment are adequate for the protection of the health of the children.
  - (c) The caregiver will use barriers to restrict children from unsafe areas. Such areas include, but are not limited to, swimming pools, open drainage ditches, wells, holes, wood and coal burning stoves, fireplaces and permanently installed gas space heaters.
  - (d) Where child care is provided on floors above the first floor, windows on floors above the first floor are protected by barriers or locking devices to prevent children from falling out of the windows.
  - (e) Adequate and safe water supply and sewage facilities are provided and comply with State and local laws. Hot and cold running water is available and accessible at all times.
  - (f) The caregiver certifies that the caregiver and each employee and each volunteer with the potential for regular and substantial contact with children in care is physically fit to provide child care and are free of any communicable disease and, for caregivers of legally-exempt family child care, that all persons residing in the home are free of any communicable disease unless the caregiver's or household member's health care provider has indicated that the presence of a communicable disease does not pose a risk to the health and safety of the children in care. If the legally-exempt caregiver enrollment agency has reasonable cause to suspect that the information provided by the caregiver is incorrect, the legally-exempt caregiver enrollment agency may require that the caregiver submit a statement from a physician, physician's assistant or nurse practitioner verifying the information.
  - (g) Suitable precautions will be taken to eliminate any conditions in areas accessible to children that pose a safety hazard.
  - (h) All matches, lighters, medicines, drugs, cleaning materials, detergents, aerosol cans and other poisonous or toxic materials are stored in their original containers and used in such a way that they will not contaminate play surfaces, food or food preparation areas or constitute a hazard to children. Such materials will be kept in a place inaccessible to children.
  - (i) The caregiver will ensure that each child receives meals and snacks in accordance with the plan developed jointly by the caregiver and the child's caretaker.
  - (j) Perishable food, milk and formula will be kept refrigerated.



- (k) When the caregiver cares for infants, formula, breast milk and other food items for infants will not be heated in a microwave oven.
- (l) The caretaker of a child will have unlimited access to the child, and to the premises when the child is in care and to written records regarding the child.
- (m) Evacuation drills will be conducted at least monthly with the children during the hours that children are in care.
- (n) The caregiver will never use corporal punishment or allow others to use corporal punishment while children are in care.
- (o) The caregiver will never use or be under the influence of alcohol or drugs while children are in care and will make sure that children are not exposed to individuals using drugs or alcohol while in care.
- (p) The caregiver will not smoke or allow smoking in indoor areas while children are in care or in vehicles while children are being transported.
- (q) The caregiver will never leave children unsupervised or in the care of individuals who are not authorized to supervise the children.
- (r) The caregiver has either a working telephone or immediate access to one. Emergency telephone numbers for the fire department, local or State Police or sheriff's department, poison control center and ambulance service are posted conspicuously on or adjacent to the telephone.
- (s) Protective caps, covers or permanently installed obstructive devices are used on all electrical outlets that are accessible to young children.
- (t) Paint and plaster are in good repair so that there is no danger of children putting paint or plaster chips in their mouths or of it getting into their food.
- (u) There is one operating smoke detector on each floor of the home or facility. Such detectors will be checked regularly to insure proper operation.
- (v) The home or facility is equipped with a portable first aid kit that is accessible for emergency treatment. The first aid kit is stocked to treat a broad range of injuries and situations and will be restocked as necessary. The first aid kit and any other first aid supplies are kept in a clean container or cabinet not accessible to children.
- (w) The caregiver shall not provide child care to any child unless the caregiver has been furnished with a statement signed by a physician or other authorized individual who specifies that the child has received age appropriate immunizations in accordance with New York State Public Health Law or a statement signed by a physician or other authorized individual who indicates that one or more of the immunizations would be detrimental to the child's health, or the child's caretaker provides a statement indicating that the child has not been immunized due to the caretaker's religious beliefs.
- (x) Stairs, railings, porches and balconies are in good repair.

- (y) The caretaker and the caregiver certified in writing that to the best of their knowledge, all statements made on the enrollment or re-enrollment form and any attachments thereto are accurate and true. Any false information, certified and attested to by the caregiver or the caretaker on either the enrollment or re-enrollment form or any attachment thereto, may result in the caregiver being denied enrollment or the termination of the caregiver's enrollment by the legally-exempt caregiver enrollment agency and/or the social services district terminating child care subsidy payments and/or taking legal action against the caregiver or caretaker.
- (z) The caregiver may not administer medication to any child in his or her care except to the extent that the caregiver is authorized under the Education Law to administer medications or has met the requirements for the administration of medications as defined in section 418-1.11 of this Title.
- (vi) To be enrolled by or to maintain enrollment with a legally-exempt caregiver enrollment agency to provide child care services to families receiving child care subsidies under the New York State Child Care Block Grant Program, every legally exempt caregiver, employee with a caregiving role, and volunteer with the potential for regular and substantial contact with children in care, except for a grandparent, great grandparent, sibling (if living in a separate residence), aunt, or uncle providing care pursuant to 415.1(h), must complete Office-approved training that complies with the federal minimum health and safety pre-service training requirements.
- (a) For informal child care programs enrolled at the time this regulation becomes effective, the required individuals must complete the Office-approved training by September 30, 2017.
- (b) For applicants seeking to be enrolled as an informal child caregiver after this regulation becomes effective, the required individuals must complete the Office-approved training pre-service or by September 30, 2017, whichever is later.
- (c) For legally-exempt group child care programs enrolled at the time this regulation becomes effective, the required individuals must complete the Office-approved training by September 30, 2017. Any individual who does not complete the training by September 30, 2017 must not be left unsupervised with children in care until such time as the training has been completed. The person supervising the individual must have completed the Office-approved training that complies with the federal minimum health and safety pre-service training requirements.
- (d) For applicants seeking to be enrolled as a legally-exempt group child care program after this regulation becomes effective, the required individuals must complete the Office-approved training pre-service or by September 30, 2017, whichever is later. Any required individual who has not completed the training by September 30, 2017 must not be left unsupervised with children in care until such time as the training has been completed. The person supervising the individual must have completed the Office-approved training that complies with the federal minimum health and safety pre-service training requirements.
- (8) Additional health and safety requirements for caregivers of informal child care.
- (i) A legally-exempt caregiver enrollment agency must refer a caregiver of informal child care to the child and adult care food program (42 USC 1758, 1759[a], 1762[a], 1765, and 1766) at initial enrollment of any caregiver not currently enrolled, or at the annual re-enrollment of any currently enrolled

caregiver. If the caregiver is or becomes a participant in the child and adult care food program, the caregiver must provide the legally-exempt caregiver enrollment agency with a copy of documentation of participation in the program. A legally-exempt caregiver enrollment agency must verify the caregiver's documentation to determine whether the caregiver is a participant in the child and adult care food program.

(ii) Upon applying for enrollment, and as part of the annual re-enrollment process, a legally-exempt caregiver enrollment agency must verify the information in the attestation of each caregiver of informal child care to determine if the caregiver's parental rights have been terminated, or if a child(ren) was removed from his or her care by court order under article 10 of the Family Court Act.

(a) The legally-exempt caregiver enrollment agency will request that the applicable social services district conduct a child welfare database check of the caregiver and provide the applicable social services district with such available information about the caregiver as is necessary to complete the database check to determine whether the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under article 10 of the Family Court Act. The district must provide the legally-exempt caregiver enrollment agency with the results of the child welfare database check within 15 days of receiving the request.

(1) When the check of the district's child welfare data base reveals that the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under article 10 of the Family Court Act, the district shall provide the specific office mandated information on the foster care and/or court records concerning the caregiver's termination of parental rights and the removal of the child from the caregiver's home to the legally-exempt caregiver enrollment agency for the purposes of determining whether to enroll the caregiver.

(2) When the check of the district's child welfare data base reveals that the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under article 10 of the Family Court Act, the caregiver must provide the caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding the reasons underlying the loss of parental or custodial rights, if such information has not already been provided to the caretaker and the legally-exempt caregiver enrollment agency. A legally-exempt caregiver enrollment agency must determine, based on guidelines issued by the office, whether to enroll a caregiver who has had such a loss of parental or custodial rights.

(iii) Upon applying for enrollment, and as part of the annual re-enrollment process, a legally exempt caregiver enrollment agency will:

(a) Check each caregiver against the office's child care facility system to determine whether the caregiver has ever been denied a child day care license or registration or had a child day care license or registration suspended or revoked. When the check of the office's child care facility system reveals that the caregiver has been denied a child day care license or registration or had a child day care license or registration revoked or suspended, the caregiver must provide the caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding any such denial, revocation or suspension, including a description of the reason for denial, revocation or suspension, the date of the denial, revocation or suspension, and any other relevant information, if such information has not already been

provided to the caretaker and the legally-exempt caregiver enrollment agency. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked based on guidelines issued by the office.

(b) Check each caregiver of informal child care, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and for caregivers of legally-exempt family child care, each household member age 18 or older against the New York State Sex Offender Registry maintained by the New York State Division of Criminal Justice Services, via the Registry's toll free telephone number to determine if such caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and for caregivers of legally-exempt family child care, each household member age 18 or older is listed on the New York State Sex Offender Registry. When the New York State Sex Offender Registry reveals that a caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, or for caregivers of legally-exempt family child care, a household member is listed on the Sex Offender Registry for committing a sex offense, the legally-exempt caregiver enrollment agency may not enroll such a caregiver.

(iv) On an annual basis, the applicable legally-exempt caregiver enrollment agency must conduct on-site inspections including reviewing the immunization records of at least 20 percent of the currently enrolled legally-exempt family child care caregivers, as defined in this Part, in the applicable district who do not participate in the child and adult care food program to determine whether such caregivers are in compliance with the health and safety standards set forth in this section.

(a) The office will provide by January 31st of each year to the legally-exempt caregiver enrollment agency instructions for compiling a list of the caregivers that must be inspected and a minimum unduplicated number of providers that must be inspected. The legally-exempt caregiver enrollment agency must complete the inspections and report the results of the inspections in a manner and format as specified by the office by December 31st of each year.

(b) If the legally-exempt caregiver enrollment agency finds that a caregiver is non-compliant with any requirements of this section, the legally-exempt caregiver enrollment agency will assist the caregiver in working towards compliance, in the manner and according to the timeframes established by the office. If the caregiver does not come into compliance with the requirements within the required timeframes, the legally-exempt caregiver enrollment agency will terminate the enrollment of the caregiver and notify the appropriate district of that the caregiver's enrollment has been terminated.

(g)

(1) Where a social services district is subsidizing child care services pursuant to any of the provisions of this Part, the district may submit to the office justification for a need to impose additional requirements on child care providers providing subsidized child care services and a plan to monitor compliance with such additional requirements. A social services district may make participation in the child and adult care food program a condition of enrollment for each caregiver of informal child care who will be providing an average in excess of 30 hours of care per week to one or more subsidized children provided the district sets forth this requirement in the district's consolidated services plan or integrated county plan. No such additional requirements or monitoring may be imposed without the written approval of the office.

(2) To the extent that a social services district has established any additional standards for caregivers of legally-exempt child care, the district's monitoring process must include procedures for notifying the applicable legally-exempt caregiver enrollment agency if the district determines that such a caregiver is not in compliance with an additional standard. Any such procedures established by the social services district may not extend the timeframes set forth in subdivision (f) of this section for legally-exempt caregiver enrollment agency to review an enrollment package.

(h)

(1) A social services district may refuse to allow a child care provider that is not in compliance with this section and regulations promulgated by the office, or any approved additional requirements of the social services district, to provide subsidized child care services to a child.

(2)

(i) A social services district may disqualify a provider from receiving payment for child care services provided under the child care subsidy program if a provider:

(a) is criminally convicted of fraud;

(b) is found to be civilly liable for fraud;

(c) has voluntarily admitted to filing a false claim for reimbursement for child care services;

(d) has been disqualified from the Child and Adult Care Food Program, by the New York State Department of Health and/or its sponsoring agency, for submission of false information on the application, submission of a false claim for reimbursement or failure to keep required records;

(e) has failed to comply with the terms of a repayment plan with the social services district; or

(f) has a conviction of any activity that occurred in the past seven (7) years that indicated a lack of business integrity; or

(g) has been found by a social services district, after the social services district has conducted an administrative review in accordance with subparagraph (ii) of this paragraph, to have submitted a false claim(s) to a social services district for reimbursement.

(ii) An administrative review by a social services district must include the following:

(a) A review of the claims submitted to the social services district and any other information or documentation obtained by the social services district to determine the accuracy of the information contained in the claims; and if a social services district determines after such a review that a provider submitted inaccurate information in the claims, then a preliminary review report must be prepared by a social services district and sent to the child care provider that is the subject of the review for a response.

- (b) A child care provider must be given 20 days, from the date the district sent the preliminary review report to respond to the report. A child care provider may respond in writing presenting evidence and arguments that the provider believes refute the findings of the preliminary review report, or may request a formal review by a social services district, which allows a provider, in person, to present evidence and arguments in support of his/her position.
- (c) If no response from a provider is received by a social services district within 20 days from the date of the postmark of the preliminary review report, the report may be finalized by a social services district. A final report, issued under this subclause, may be the basis for a social services district to disqualify a provider from providing subsidized child care.
- (d) If a response from a provider is received by a social services district within 20 days from the date of the postmark of the preliminary report, the social services district must review and evaluate the response and may make appropriate changes based on the response from the provider, before issuing a final review report. Upon completion of the review, the social services district shall issue a final review report, such report must be sent to the child care provider that is the subject of the review.
- (e) A child care provider, upon receipt of a final review report, must be given 10 days from the date of the postmark of the final review report to respond, and to request a formal review by the social services district. A final review report issued under this subclause, where a provider does not request a formal review within the 10-day specified timeframe, or does not provide a response that disproves the findings of said report, may be the basis for a social services district to disqualify a provider from providing subsidized child care.
- (f) A social services district, upon receipt of a request for a formal review by a provider found in a final review report to have submitted inaccurate claims, must conduct such a review within 30 days of receipt of the request.
- (g) A social services district at a formal review must allow a provider, in person, to present evidence and arguments in support of the provider's position.
- (h) A social services district, after a formal review and after reviewing the evidence and arguments supplied by a provider at a formal review must make a final determination of whether a provider submitted false claims. A final determination that a provider submitted false claims may be the basis for a social services district to disqualify a provider from providing subsidized child care.
- (iii) A provider who has been disqualified from receiving payment for child care services provided under the child care subsidy program by a social services district under subparagraph (i) of this paragraph is ineligible to receive such payments through any social services district for five years from the date of the disqualification, if such a provider made full restitution of any and all falsely obtained funds to the social services district. If such a provider did not make full restitution to a social services district, then the provider will remain ineligible to provide subsidized child care.
- (iv) A social services district that disqualifies a provider from receiving a payment for child care services provided under the child care subsidy program must provide appropriate information concerning the disqualification to the appropriate regional office of the Office's Division of Child Care Services if the provider is a licensed or registered day care provider, or to the appropriate legally-exempt caregiver

enrollment agency if the provider is a legally-exempt child care provider.

- (3) In accordance with a plan approved by the office, a social services district will have the right to make announced or unannounced inspections of the records and premises of any provider that provides care for subsidized children, including the right to make inspections prior to subsidized children receiving care in a home where the inspection is for the purpose of determining whether the child care provider is in compliance with applicable laws and regulations and any additional requirements imposed on such a provider by the social services district. A social services district must notify the office immediately of any violations of regulations and must provide the office with an inspection report documenting the results of such inspection.
- (4) Nothing contained in this Part will diminish the authority of the local social services district from referring a matter to the appropriate district attorney or law enforcement agency.

(i) Overpayments.

- (1) The social services district must take all reasonable steps to correct promptly any overpayments for child care services to a child's caretaker or a child care provider.
- (2) Overpayments must be recovered through:
  - (i) repayment by the child's caretaker or child care provider; or
  - (ii) by recovery through a reduction in the amount of the payment to the child's caretaker or child care provider; provided, however, that no recovery of overpayments may be made from a child care provider where a contract for such child care services obligates the social services district to make full payment. When no recovery may be made from a child care provider because a contract requires full payment, and repayment is not made from the child's parent or caretaker, Federal financial participation (FFP) and State reimbursement cannot be claimed for such overpayment.
- (3) In recovering overpayments for child care services from child care recipients, social services districts must ensure that the child care recipients retain, for any month, a reasonable amount of funds.
- (4) Recoupment of such overpayment can be made only from child care benefits unless the child care recipient voluntarily requests that such recovery be made from his or her available income.
- (5) Overpayments must be recovered from the caretaker(s) on whose behalf the payments were made or the provider(s) who received payment for such services, so long as caretaker(s) or provider(s) are deemed responsible for such overpayments whether by acts of omission or commission.
- (6) Overpayments to child care providers or former recipients of child care services who refuse to repay may be recovered in accordance with the legal remedies available under State law.
- (7) When an overpayment occurs as a result of a district's failure to act promptly on information provided by a parent or caretaker regarding circumstances affecting child care benefits, no recovery shall be made from the party who provided such information. When a recovery cannot be made under this subdivision, Federal financial participation (FFP) and State reimbursement cannot be claimed for such overpayment.
- (8) Underpayments and overpayments may be offset against each other.

- (9) In all cases involving current child care services recipients, in all cases of fraud, and in all cases where the overpayment would equal or exceed the cost of recovery of the overpayment, the recovery of an overpayment must be attempted.
- (10) Each social services district must collect and maintain information on the collection of overpayments and make appropriate adjustments when claiming FFP and State reimbursement, and when satisfying the district's maintenance of effort requirement under the New York State Child Care Block Grant Program as set forth in section 415.7 of this Part.
- (11) An applicant for child care services who has not repaid past overpayments for previous child care services that resulted from:
- (i) the failure of the applicant, or member(s) of the applicant's family unit, to promptly notify the social services district of a change in circumstances; or
  - (ii) from child care services fraud by the applicant or member(s) of the applicant's family unit must agree to, and comply with, a plan to make full payment of such overpayments as a condition of being eligible for the new child care services.
- (12) With the exception of child care services authorized as a child protective or preventive service, a recipient of child care services who fails to agree to a reasonable plan for repayment or recovery of an overpayment, or who fails to comply with an agreed upon plan, must have their child care benefits suspended or terminated until such time as the recipient comes into compliance with such a plan.
- (13) With the exception of child care services authorized as a child protective or preventive service, a recipient or former recipient of child care services who has been convicted of, or has voluntarily admitted to, fraudulently receiving child care services must have their child care services, if any, suspended or terminated and will not be eligible for subsequent child care services for a period of time determined in accordance with the time periods established for intentional program violations set forth in section 359.9(a) of this Title. If such recipient or former recipient is a recipient of temporary assistance and needs child care in order to participate in an activity required by the social services district, the disqualification of eligibility for child care services based on the former fraud conviction or voluntary admission will be suspended during the recipient's or former recipient's participation in the required activity. However, the disqualification period will begin or resume once the recipient or former recipient is no longer participating in a required activity.
- (14) Overpayments for child care services made as a result of payment for aid continuing for a caretaker who loses a fair hearing must be recovered as prescribed in this subdivision.
- (j) Due process requirements.
- (1) Written notice of the determination of eligibility, the family share to be paid by the applicant, or ineligibility for child care services, as well as any modifications thereto, must be sent to the applicant or recipient in accordance with section 404.1(f) of this Title. Recipients of child care services must receive timely and adequate notice of any change in child care services, except that changes in the manner of payment for child care services by a social services district may be made with only adequate notice pursuant to section 358-3.3 of this Title, unless those changes result in a discontinuation, suspension, reduction or termination of such benefits, or force a change in child care arrangements.
- (2) An applicant for or recipient of child care services must be notified of the right to a fair hearing in accordance



with Part 358 of this Title whenever there is a determination affecting his or her family's eligibility for child care services.

- (k) Nothing contained in this Part will diminish the authority of the office to conduct inspections of licensed or registered child care providers or to provide for such inspections through purchase of services in accordance with section 390 of the Social Services Law. Nothing contained in this subdivision will obligate the office to take any action to enforce any additional requirements imposed by a social services district on child care providers providing care to children receiving child care subsidies.
- (l) Social services districts must describe how they will examine and verify the accuracy of information contained in the enrollment forms completed by legally-exempt providers. This information must be described in the district's consolidated services plan or integrated county plan.
- (m) Each social services district must establish comprehensive fraud and abuse control activities for the district's child care subsidy program. A social services district must provide details on its comprehensive fraud and abuse control activities in the district's consolidated services plan or integrated county plan, which must include, but not be limited to:
- (1) identification of the criteria the social services district will use to determine which child care subsidy applications suggest a higher than acceptable risk for fraudulent or erroneous child care subsidy payments and procedures for referring such applications to the district's front end detection system;
  - (2) a sampling methodology to determine which cases the social services district will seek verification of an applicant or recipient's continued need for child care including, as applicable, verification of participation in employment, education or other required activities; and
  - (3) a sampling methodology to determine which caregivers of subsidized child care services the social services district will review for the purpose of comparing the caregiver's attendance forms for children receiving subsidized child care services and any child and adult care food program inspection forms to verify that child care was actually provided on the days listed on the attendance forms.

### **Section 415.5. Methods of making payment for child care services**

- (a) Each social services district may provide child care services directly or may pay for such services in accordance with the provisions of this section applicable to the particular child care services program.
- (1) For child care services provided under the New York State Child Care Block Grant Program, payment may be made by one or more of the following methods:
- (i) by advance cash payments, cash reimbursements or vouchers to the child's caretaker for care provided by an eligible provider and supported by a bill signed by both the child's caretaker and the provider; provided, however, that a caregiver of informal child care or of legally-exempt group child care must be enrolled with the social services district pursuant to section 415.4 of this Part before payment may be made for such services; or
  - (ii) by a purchase of services contract or letter of intent in accordance with section 405.3 of this Title, or by advance cash payments, cash reimbursements or vouchers to an eligible provider; provided, however, that a caregiver of informal child care or of legally-exempt group child care must be enrolled with the social services district pursuant to section 415.4 of this Part before payment may be made for such services.

- (2) The provisions in section 159 of the Social Services Law precluding the payment of cash assistance for certain families in receipt of safety net assistance do not apply to the payment of child care services for such families.
- (3) A social services district must establish at least one method of payment by which payment for child care services arranged by the child's caretaker can be made.

(b) [Reserved]

- (c) For child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services funded other than under the New York State Child Care Block Grant Program, payment must be made by a purchase of services contract or letter of intent in accordance with section 405.3 of this Title.
- (d) Attendance and payment records must be monitored for all providers receiving payment for child care services regardless of the method of payment.

### **Section 415.6. State reimbursement**

- (a) A change in the rate of payment based on a change in the age of a child is effective in the first full month following the date in which the child becomes 1 1/2 years of age or the date of the child's birthday, whichever is applicable.
- (b) Reimbursement for payment on behalf of children who are temporarily absent from child care is allowable subject to the following conditions:
  - (1) The provider rendering the child care services must be duly licensed, registered or enrolled to provide child care services and the social services district has opted to make such payments. If a social services district opts to make such payments, it may choose to make such payments either to those child care providers with which the social services district has a contract or letter of intent only, or to all providers of subsidized child care services except for caregivers of informal child care. The social services district must specify in its consolidated services plan or integrated county plan whether it opts to make such payments and, if applicable, for which providers such payments will be made.
  - (2) The social services district has specified in its contract or written agreement with the provider or through written notice to the provider that payment is allowable in cases of temporary absences from child care.
  - (3) Except in cases of extenuating circumstances defined below, temporary absences from child care are allowed up to 12 days in any one calendar month; provided, further, that such absences may total no more than 12 days in any three-month period if the social services district selects a three-month period for determining maximum temporary absences, or 24 days in any six-month period if the social services district selects a six-month period for determining maximum temporary absences.
  - (4) Extenuating circumstance means a situation or occurrence verified by the social services district, and noted in the child's services plan, in which a child is temporarily absent from child care for one or more of the following reasons:
    - (i) the social services district determines that the child is unable to attend child care because it is necessary for the child or the child's caretaker to appear in court or to keep other appointments related to the provision of preventive, foster care, adoption, or child protective services, or other

needs as set forth in the child's services plan;

(ii) the child is ill, has a handicapping or other condition which requires medical care and/or treatment, or the child requires routine medical care and/or treatment;

(iii) the child's family is homeless, and the homelessness necessitates the child's absence from child care;  
or

(iv) the child's caretaker is participating in an approved education or training program and the child's absences coincide with a temporary suspension of such program for purposes including, but not limited to, holidays, school conferences and snow days.

(5) Where it is determined that an extenuating circumstance or circumstances exists, reimbursement for temporary absences due to such circumstance or circumstances will be permitted for an additional three days in any one calendar month; provided, further, that all absences may total no more than 20 days in any three-month period if the social services district selects a three-month period for determining maximum temporary absences, or 40 days in any six-month period if the social services district selects a six-month period for determining maximum temporary absences.

(6) Under no circumstances will reimbursement for temporary absences be permitted in excess of the limits set forth in paragraph (5) of this subdivision unless the office and social services district expressly consent to such reimbursement.

(7) A social services district must select one of the alternative periods in paragraph (3) of this subdivision as the basis on which it will maintain records and seek reimbursement. No combination of methodologies is permitted within a district. Once a methodology is selected, no change may be made until the end of the annual program year as defined in the Comprehensive Annual Social Services Program Plan.

(8) For purposes of this section, a social services district may establish the three-month or the six-month periods used in determining maximum temporary absences on either of the following bases:

(i) beginning on the date of a child's admission to child care and ending three or six months later depending on the period selected; or

(ii) beginning on a fixed calendar date for all children entering child care and ending three or six months later depending on the period selected. If this basis is chosen, a child entering child care during a quarterly or semiannual cycle may, during that initial cycle, receive a prorated number of days of absence beginning on the date of entry and ending on the last day of the quarterly or semiannual cycle. All temporary absences thereafter will be computed using the normal quarterly or semiannual cycle.

(9) Reimbursement is not available for a day a child is absent from care if the provider ordinarily charges the caretaker on a daily or part-time basis and the child for whom reimbursement is requested is otherwise in need of and receives subsidized child care from a different provider on the same day.

(c) Reimbursement for payments to licensed or registered or legally-exempt group programs during program closures also is allowable subject to the following conditions:

(1) The social services district has opted to make such payments. If a social services district opts to make such payments, it may choose to make such payments either to those child care providers with which the social

services district has a contract or letter of intent or to all providers of subsidized child care services except for caregivers of informal child care. The social services district must specify in its consolidated services plan or integrated county plan whether or not it opts to make such payments and, if applicable, for which providers such payments will be made.

- (2) The program closure is due to a State, Federal or nationally recognized holiday or due to extenuating circumstances beyond the provider's control including but not limited to:
    - (i) natural disaster;
    - (ii) severe weather; or
    - (iii) other emergency closings that are due to circumstances other than a substantiated regulatory violation.
  - (3) Reimbursement is available only for children in receipt of a child care subsidy who would otherwise be present at the child care program.
  - (4) Reimbursement is not available for a day the program is closed if the provider ordinarily charges the caretaker on a daily or part-time basis and the child for whom reimbursement is requested is otherwise in need of and receives subsidized child care services from a different provider on the same day.
  - (5) The maximum number of days allowable under this section is five per annum.
  - (6) The district must maintain a record of the payments made under this provision for each provider in order to receive reimbursement.
- (d) Special reimbursement requirements specific to the title XX Social Services Block Grant Program.
- (1) State reimbursement for child care services provided under title XX of the Federal Social Security Act will be available for 100 percent of allowable costs up to the amount of the social services district's annual title XX Social Services Block Grant allocation, or as otherwise provided by State law.
  - (2) When a client is determined to be eligible for child care services under the title XX Social Services Block Grant, payment must be claimed for reimbursement in accordance with the State instructions relating to such title.
- (e) Payments by a social services district for child day care, informal child care and legally- exempt group child care are subject to reimbursement only when the following requirements are met:
- (1) Payments do not exceed the actual cost of care. For purposes of this Part, the actual cost of care is:
    - (i) for care provided pursuant to a contract between the social services district and the provider, the payment rate set forth in the contract;
    - (ii) for care provided other than pursuant to a contract between the social services district and the provider, the amount charged to the general public for equal care in the providing facility or home; provided, however, if the facility or home cares only for subsidized children, then the actual cost of care is the amount the provider currently is receiving from the social services district for such children unless the provider can demonstrate to the social services district that the actual cost of providing care to such children is higher than that amount.

- (2) Payments for child day-care or child care services for eligible families/children do not exceed the amount charged to the general public for equal care in the providing facility or home.
- (3) Payments per child for child day care in a day care center (DCC), a family day care home (FDC), a group family day care home (GFDC), a school-age child care program (SACC) and for informal child care and legally-exempt group child care do not exceed the applicable rates for the type of child care provider used and the age of the child set forth in section 415.9 of this Part.
- (4) Payments cannot be made when such care is provided by a child's parent, stepparent, legal guardian, caretaker relative, person in loco parentis to the child, or another member of the child care services unit other than the child's sibling.
- (5) Payments cannot be made when such care is provided by a member of the public assistance unit including essential persons as referred to in section 369.3(c) of this Title.

### **Section 415.7. Additional requirements for the New York State Child Care Block Grant Program**

- (a) For child care services provided under the New York State Child Care Block Grant Program. State reimbursement to a social services district will be available, up to the social services district's annual block grant allocation for 75 percent of allowable costs for child care services provided to families in receipt of public assistance and for 100 percent of allowable costs for child care services provided to all other eligible families. Allowable program costs include the following costs of providing child care services:
  - (1) eligibility determinations and re-determinations;
  - (2) participation in adjudicatory and judicial hearings;
  - (3) child care placements including transportation to such placements;
  - (4) inspection, review and supervision of child care placements including monitoring compliance with any additional local child care requirements imposed pursuant to section 415.4(f) of this Part;
  - (5) training of social services district staff; and
  - (6) the establishment of computerized child care information systems.
- (b) A social services district must expend its allocation from the New York State Child Care Block Grant in a manner that provides for equitable access to child care services funds to eligible families.
- (c) A social services district may spend no more than five percent of its annual block grant allocation for administrative activities. The term administrative activities does not include the costs of providing child care services set forth in subdivision (a) of this section. Administrative activities include, but are not limited to the following:
  - (1) providing local officials and the public with information about the program;
  - (2) conducting public hearings;
  - (3) monitoring program activities for compliance with program requirements;

- (4) maintaining substantiated complaint files;
  - (5) coordinating the resolution of audit and monitoring findings;
  - (6) evaluating program results;
  - (7) managing or supervising persons with responsibilities set forth in paragraphs (1) through (6) of this subdivision;
  - (8) travel costs incurred for official business in carrying out the program; and
  - (9) other costs for goods and services required for the administration of the program including rental or purchase of equipment, utilities, and office supplies.
- (d) Any claims for child care services made by a social services district for expenditures during a particular Federal fiscal year, other than claims made under title XX of the Federal Social Security Act, will be counted against the social services district's New York State Child Care Block Grant for that Federal fiscal year. A social services district's New York State Child Care Block Grant allocation for a particular Federal fiscal year is available only for child care services expenditures made during that Federal fiscal year that are claimed in the form and manner and at such times required by the office. Any portion of a social services district's New York State Child Care Block Grant allocation for a particular Federal fiscal year that is not claimed by the time required by the office will be available to the district for New York State Child Care Block Grant expenditures for the next Federal fiscal year.
- (e) Each social services district must maintain the amount of local funds spent for child care assistance under the New York State Child Care Block Grant Program at a level equal to or greater than the amount the district spent for child care assistance during Federal fiscal year 1995 under title IV-A of the Federal Social Security Act, the Federal Child Care and Development Block Grant Program and the State Low Income Child Care Program. Each social services district's claims submitted under the New York State Child Care Block Grant will be processed in a manner that maximizes the availability of Federal funds and ensures that the district meets its maintenance of effort requirement in each applicable Federal fiscal year.
- (f) When offering child care services under the New York State Child Care Block Grant Program to a family eligible to receive such services, a participating social services district must offer the child's caretaker the choice either:
- (1) to enroll the child with an eligible child day care provider which has a contract with the social services district for the provision of such services; or
  - (2) to receive a child care certificate, as defined in section 415.1(n) of this Part, which permits the child's caretaker to arrange child care services with any eligible provider.
- (g) When a child's caretaker elects to use a child day care provider which has a contract with the social services district for the provision of child care services, the child must be enrolled with the provider selected by such caretaker to the maximum extent practical.
- (h) When a child's caretaker elects to use a child care certificate to arrange child care services, the social services district must issue such certificate directly to the caretaker.

**Section 415.8. Special provisions relating to public assistance recipients**

- (a) A social services district must guarantee child care services to a family who has applied for or is in receipt of public assistance when such services are needed for a child under 13 years of age in order to enable the child's custodial parent or caretaker relative to participate in activities required by a social services official pursuant to title 9-B of article 5 of the Social Services Law.
- (b) A social services district may not reduce or terminate public assistance to an individual or an individual and the family of such individual based on a refusal of the individual to comply with applicable work requirements if the individual is a custodial parent or caretaker relative of a child under 13 years of age and the individual has a demonstrated inability, as determined by the social services district, to obtain child care needed to comply with such work requirements due to the following reasons:
- (1) unavailability of appropriate and accessible child care within a reasonable distance from the individual's home or work site;
  - (2) unavailability or unsuitability of informal child care by a relative or under other arrangements; and
  - (3) unavailability of appropriate and affordable formal child care arrangements.
- (c) The social services district must inform the family:
- (1) about the exception to the penalties associated with the work requirement if the family is unable to locate child care needed to comply with applicable work requirements including the procedures used to demonstrate an inability to obtain child care and the definitions of the terms "appropriate," "accessible," "reasonable distance," "unsuitability of informal child care" and "affordable"; and
  - (2) that any family assistance received during the time the parent or caretaker relative receives an exception from the work requirements under this section will count toward the family's 60-month limit on receiving such benefits.
- (d) It is the responsibility of the parent or caretaker relative to locate child care for the applicable child(ren) needed to comply with such work requirements.
- (e) If such parent or caretaker relative cannot locate the needed child care on his or her own, the parent or caretaker relative must inform the social services district of his or her efforts to locate such care and request additional assistance in locating care.
- (f) When a parent caretaker relative requests assistance from the social services district in locating child care due to an inability to locate the needed child care on his or her own, the social services district must:
- (1) assist the family by referring the parent or caretaker relative to the child care resource and referral agency funded under title five-B of article six of the Social Services Law that is responsible for the areas in which the parent or caretaker relative lives and/or would be expected to work or to another appropriate child care referral agency; and/or
  - (2) provide the parent or caretaker relative with a list of names, addresses and telephone numbers of eligible providers.
- (g) The parent or caretaker relative must follow-up on all referrals from the social services district, child care resource

and referral agency and/or other child care referral agency, as applicable, and must report his or her success or failure to the social services district. In order to be excused from complying with the applicable work requirements, the parent or caretaker relative must have a demonstrated inability, as determined by the social services district, to locate the needed child care for the applicable child(ren) despite the referrals from the social services district, the child care resource and referral agency and/or any other child care referral agency, as applicable.

(h)

- (1) If the parent or caretaker relative has a demonstrated inability, as determined by the social services district, to locate the child care needed for the applicable child(ren) despite such referrals, the social services district must offer the parent or caretaker relative two choices of eligible child care providers at least one of which must be a licensed or registered provider.
- (2) If the parent or caretaker relative is unwilling to accept child care services from either of these providers; is unable to demonstrate, as determined by the social services district, that such child care is not appropriate, accessible, suitable, affordable or a reasonable distance from the individual's home or work site; and the individual fails to comply with the applicable work requirements, then the social services district may reduce or terminate public assistance to such parent or caretaker relative and/or that individual's family in accordance with applicable statutory or regulatory provisions.

(i) A social services district must determine that a parent or caretaker relative has a demonstrated inability to locate needed child care if all of the following conditions are met:

- (1) the parent or caretaker relative has provided an attestation that he or she has contacted those accessible and suitable friends, neighbors and relatives who are within a reasonable distance of the individual's home or work site and who have the potential to act as informal child care providers for the applicable child(ren) but those individuals are not appropriate or affordable. The attestation must include a list of the friends, neighbors and relatives the parent or caretaker relative contacted; and
- (2) the parent or caretaker relative has provided an attestation that he or she has contacted all of the child care providers to which the parent or caretaker relative was referred by the social services district, a child care resource and referral agency and/or any other child care agency, as applicable. The attestation must specify each potential provider contacted and the reasons why that provider is not appropriate, accessible, suitable, affordable or a reasonable distance from the individual's home or work site.

(j) The social services district must review and verify the attestations provided by the parent or caretaker relative. If the attestations validly document the unavailability of appropriate, accessible, suitable, affordable child care within a reasonable distance from the individual's home or work site, the district must excuse the parent or caretaker relative from the applicable work requirements.

(k)

- (1) A parent or caretaker relative who has been excused from the applicable work requirements due to a demonstrated inability to locate needed child care for his or her applicable child(ren) will be excused from the work requirements only for so long as that demonstrated inability continues to exist.
- (2) The parent or caretaker relative must document to the social services district, through the submission of new attestations in accordance with section 415.8(i) on a periodic basis as set forth by the social services district, that the parent or caretaker relative is continuing to attempt to locate the needed child care including following up on all new referrals from the social services district, child care resource and referral agency, and/or any other child care agency, as applicable, and by responding to all offers of child care from the social



services district. New attestations must be submitted in accordance with a schedule developed by the district based on the parent's or the caretaker relative's employment plan.

(l) For the purposes of this section, the following definitions apply:

- (1) Applicable child(ren) means the child(ren) under 13 years of age who are residing with a custodial parent or caretaker relative and who need child care in order for the parent or caretaker relative to comply with the applicable work requirements.
- (2) Appropriate means the child care provider(s) is open for the hours and days the parent or caretaker relative would need child care in order to comply with the applicable work requirements and the provider(s) is able and willing to provide child care services to the applicable child(ren) including addressing any special needs of the applicable child(ren).
- (3) Accessible means the parent or caretaker relative is able, by available public or private transportation, to get the applicable child(ren) to and from the child care provider(s) taking into consideration the age and any special needs of the child(ren).
- (4) Reasonable distance means the child care provider(s) is located within a reasonable distance from the parent or caretaker relative's home and work activity, based on locally accepted community standards, as defined by the social services district in the district's consolidated services plan.
- (5) Unsuitability of informal child care means the physical condition of the home in which care would be provided, or the physical or mental condition of the informal provider, would be detrimental to the health, welfare and/or safety of the applicable child(ren).
- (6) Affordable means the parent or caretaker relative would have sufficient income to pay the family share for the child care services determined in accordance with section 415.3(e) of this Part, if required, and/or to pay the cost of care above market rate, if applicable. If the potential provider is a provider of informal child care who would be providing care in the child(ren)'s home, affordable also means that the parent or caretaker relative would have sufficient income to pay the provider at least minimum wage, if required by State and/or Federal law, and to provide such provider with all employment benefits required by State and Federal law.

### **Section 415.9. Rates**

A social services district has the option to apply the weekly or daily rate, except as provided below, when care is provided for 30 or more hours per week on five or less days. When care is provided for less than 30 hours per week, the daily, part-day or hourly rates must be applied, as applicable.

- (a) Weekly rates must be applied when care is provided for 30 or more hours for five or less days per week. Weekly rates also must be applied when child care services are provided for 30 or more hours per week by a child care provider who routinely charges nonsubsidized parents on a weekly basis and who has not signed a purchase of service contract or other written agreement for payment on a different basis.
- (b) Daily rates must be applied if care is provided for at least six but less than twelve hours per day, and care is provided for less than 30 hours per week. When child care services are provided for 30 or more hours per week by a child care provider who routinely charges nonsubsidized parents on a daily basis and who has not signed a purchase of service contract or other written agreement for payment on a different basis, the weekly rates divided by five must be applied.

- (c) Part-day rates must be applied when the child care services are provided for at least three but less than six hours per day. Part-day rates also must be applied for children who are attending pre-kindergarten, kindergarten or higher grade and who are provided care before and/or after school for less than three hours per day by day care centers or school-age child care programs that do not charge on an hourly basis.
- (d) With the exception noted in subdivision (c) of this section, the hourly rates in this section must be applied when child care services are provided for less than three hours per day.
- (e) Where child care services provided by a single provider exceed one weekly or daily period as set forth in this section, payment for the additional child care services will be based on the actual cost of care up to the applicable rate for the type of child care provider used, the age of the child and the amount of time the child care services are provided.
- (f) Where child care services are provided by multiple providers, reimbursement will be made for the actual cost of such services up to the applicable rate for each child care provider used. However, if the combined reimbursement to the multiple providers would exceed one weekly market rate, in order to receive such reimbursement the parent or caretaker must demonstrate that the schedule of employment of the parent or caretaker or the special needs of the child necessitates that child care services be arranged with multiple providers. If the social services district determines that the parent or caretaker has not demonstrated that there is a necessity to use multiple providers, reimbursement is limited to one weekly market rate that is applicable for the type of provider who provides care for the highest number of hours. The social services district will determine how to distribute the reimbursement for the multiple providers.
- (g) The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.
- (h)
- (1) A social services district may establish a differential payment rate for child care services provided by licensed or registered child care providers that have been accredited by a nationally recognized child care organization. Legally-exempt child care providers are not eligible for a differential payment rate under this paragraph. If the social services district chooses to provide a differential rate, the differential rate must be at least five percent higher than the actual cost of care or the applicable market rate, whichever is less. The differential rate may not exceed 15 percent of the actual cost of care or the applicable market rate, whichever rate is less.
  - (2) A social services district must establish differential payment rates for any eligible child care provider as defined in section 415.1(g) of this Part for child care services provided during nontraditional hours (evening, night or weekend hours). The differential rate must be at least five percent higher than the actual cost of care or the applicable market rate, whichever is less. The differential rate may not exceed 15 percent of the actual cost of care or the applicable market rate, whichever is less.
  - (3) A social services district must establish differential payment rates for licensed and registered child care providers for child care services provided to a child experiencing homelessness. A social services district may establish differential payment rates for legally-exempt child care providers for a child experiencing homelessness. The differential rate for licensed and registered child care providers must be at least five percent higher than the actual cost of care or the applicable market rate, whichever is less. There is no minimum differential rate for legally-exempt child care providers. The

differential rate may not exceed 15 percent of the actual cost of care or the applicable market rate, whichever is less.

- (4) The differential payment rates the district sets may be different for each category established in this subdivision. The social services district must indicate in the district's consolidated services plan or integrated county plan the percentage that it will provide for each category. The social services district must indicate the rate that it will provide for child care providers that qualify for multiple differential payment rates, pursuant to this section. The total percentage must not exceed 25 percent of the applicable market rate or the actual cost of care. A social services district may request a waiver from the Office to establish a payment rate that is in excess of 25 percent above the applicable market rate upon a showing that the 25 percent maximum is insufficient to provide access within the district to such child care providers or services, as applicable.
- (i) The rate of payment for caregivers of legally exempt group child care is the actual cost of care up to 75 percent of the applicable market rate for day care center providers as set forth in this section.
- (j)
- (1) Effective June 1, 2016, the following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.
- (2) Upon the effective date of these regulations, there will be two market rates for the legally-exempt family child care and in-home child care categories, a standard market rate and an enhanced market rate. The standard market rate for legally-exempt family child care and in-home child care categories will be 65 percent of the applicable registered family day care market rate. The enhanced market rate for legally-exempt family child care and in-home child care categories will be 70 percent of the applicable registered family day care market rate. The enhanced market rate will apply to those caregivers of legally-exempt family child care and in-home child care who have provided notice to, and have been verified by, the applicable legally-exempt caregiver enrollment agency or by the district for those portions of the district that are not covered by a legally-exempt caregiver enrollment agency, as having completed 10 or more hours of training annually in the areas set forth in section 390-a(3)(b) of the Social Services Law. A social services district has the option, if it so chooses in the child care portion of its child and family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate:
- (i) for all such providers;
- (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or
- (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the 10 hour annual training requirement. The standard market rate will apply to all other caregivers of legally-exempt family child care and in-home child care.
- (3) The market rates are established for each of five groupings of social services districts. The rates established for a group apply to all districts in the designated group. The district groupings are as follows\*:

**\*See current market rates LCM for this information**

(k) When a social services district pays for child care services provided by an eligible provider located in another district, the applicable market rate is the rate for the district in which the child care provider is located.

**Section 415.10 Waivers**

A social services district may request a waiver of any non-statutory provision of this Part. The waiver must be described in the social services district's consolidated services plan or integrated county plan and must be approved by the office prior to implementation.

**Section 415.11 Effective date—Repealed**

**Section 415.12 Eligible provider responsibilities**

- (a) An eligible provider that provides child care services to families receiving child care subsidies must comply with the following requirements:
- (1) An eligible provider must operate their child care program in compliance with the applicable office regulations. Failure to operate in compliance with the office regulations may result in the office taking enforcement action pursuant to section 413.3 of this Title.
  - (2) An eligible provider, on a daily basis, must maintain current and accurate attendance records for each child showing the date of attendance with the time of arrival and departure. Full day absences must also be noted.
  - (3) An eligible provider must certify that all documentation and information provided to a social services district is accurate and true. Any false or fraudulent claims for payments by a provider may result in the deferral or disallowance of payment for such claims with a social services district, a referral to the office for the revocation of a provider's registration or license, and/or referral for criminal prosecution.
  - (4) An eligible provider must not charge more for subsidized child care than the provider charges for non-subsidized care.

**NEW YORK CODES, RULES AND REGULATIONS**

\*\*\* THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH SEPTEMBER 10, 2004 \*\*\*

TITLE 18. DEPARTMENT OF SOCIAL SERVICES

CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES

SUBCHAPTER C. SOCIAL SERVICES

ARTICLE 1. PROVISION OF SOCIAL SERVICES--GENERAL

**PART 404. DETERMINATION AND REDETERMINATION OF ELIGIBILITY FOR SOCIAL SERVICES**

Part 404 Notes

Statutory authority: Social Services Law, §§ 20, 34, 358, 390, 410, 473, 473-a

Added Part 404 on 4/01/76.

**§ 404.1 Process Of Eligibility Determination**

- (a) Method of determining eligibility. The social services district must adopt methods of determining eligibility which are consistent with the objectives of the program and must respect the rights of individuals under the United States Constitution, and the Social Security Act, title IV of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State law. The social services district must adopt safeguards in determining eligibility which prevent discrimination or adverse action against individuals with AIDS or an HIV infection or an HIV-related illness and individuals who have had an HIV-related test. The terms AIDS, HIV infection, HIV-related illness or HIV-related test are defined in section 360-8.1 of this Title.
- (b) Provision of information to applicants. The social services district shall:
- (1) provide applicants, recipients and others who may inquire with clear and detailed information concerning social services programs, eligibility requirements, documentation requirements, and the right to a fair hearing;
  - (2) inform each applicant and recipient at the time of application or redetermination of his initial and continuing responsibility:
    - (i) to provide accurate, complete and current information on income and family composition;
    - (ii) to provide accurate information relating to service needs, as requested, and to notify the district of any changes in such information;
    - (iii) to cooperate in the verification and documentation of eligibility whenever required;
  - (3) inform each applicant or recipient that he has the right to accept or reject services without consequence except as specified in this Title.

(c) Application for social services.

- (1) Each individual wishing to apply for social services shall be assured the opportunity to do so without delay.
- (2) The application process must insure that all information, as prescribed by the department, which is necessary to establish eligibility is obtained. The required information may be obtained verbally, in writing on department approved forms, or electronically from the WMS or other department system. Information obtained verbally must be recorded by the interviewer. All information must be verified by the applicant. When an applicant for social services is currently receiving income maintenance or medical assistance benefits, any relevant existing information, including, but not limited to service goals and living arrangements, which is available through the WMS or other department system, must be used to avoid a duplication of efforts in the collection of information.
- (3) The application process described in this Part must be used when a person applies for services described in Articles 1, 2 or 3 of Subchapter C of Chapter II of this Title.
- (4) The application process may be initiated by the applicant himself or herself, his or her authorized representative, or someone acting responsibly for him or her.
- (5) Except where required by Federal law or regulation, no person who applies for a social service shall be required to disclose the social security number of any person for whom the service is requested as a condition of eligibility for the service. However, nothing herein shall restrict the ability of a social services official to request that the applicant disclose the social security number of the person who will receive the service. If such a request is made, the applicant must be informed whether the disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited and the uses which will be made of the social security number. A request for disclosure of the applicant's social security number may be made either orally or in writing.
- (6) No person may be required to have an HIV-related test or required to disclose the results of such test as a condition of applying for services.
- (7) An applicant who requests services, in whole or in part, on the basis of AIDS or an HIV-related illness may have such condition subject to verification by the local social services district acting in accordance with article 27-F of the Public Health Law.
- (8) An application shall be required as a condition of authorization for any social service identified and defined in the district component of the comprehensive annual social services program plan except:
  - (i) No application is required for the provision of information and referral services, nonresidential services for victims of domestic violence and for social group services for senior citizens.
  - (ii) Completion of an application for protective services for children is required only after investigation of a report of alleged or suspected child abuse or neglect has determined that there is some credible evidence of abuse or neglect. An application may not be completed prior to such determination.

(iii) Completion of an application for protective services for adults is required only after the investigation and assessment of a protective service for adults referral have determined that an individual meets the client characteristics for adult protective services, unless an adult who is the subject of a request for protective services for adults, the adult's authorized representative, or someone acting responsibly for such adult disagrees with the decision of the district not to accept the request as a referral for protective services for adults, as defined in section 457.1(c)(2) of this Title. In such case, the adult, the adult's authorized representative, or someone acting responsibly for such adult may apply for protective services for adults in accordance with paragraph (1) of this subdivision. If an application for protective services for adults is submitted by an adult, an adult's authorized representative, or by someone acting responsibly for such adult, the application must be accepted and a determination of eligibility or ineligibility made in accordance with subdivision (f) of this section and section 457.13 of this Title.

(9) An application must be completed at the following times:

- (i) when the applicant is making an initial application for services or care;
- (ii) when reapplication is made 30 days after a services case is closed or an application for services is denied; and
- (iii) no less often than every 12 months, when redetermining the eligibility of income-eligible recipients, except those individuals specified in clause (d)(2)(ii) (b) of this section.

(10) When an income maintenance or medical assistance case is closed but social services are to be continued, information contained in the WMS concerning the recipient must be made available to enable a determination of eligibility to be made. When additional information is necessary to determine continued eligibility for social services, the social services district may require that the social services recipient submit the additional information.

(11) When a recipient of services moves to another social services district and the recipient wants to continue to receive services, information contained in WMS concerning the recipient must be made available to the district to which the recipient moved in order for the district to determine whether the recipient remains eligible for the continuation of services. When additional information is necessary to determine continued eligibility, the social services district may require that the social services recipient submit the additional information.

(d) Time period for determination of eligibility.

(1) Initial determination of programmatic and/or financial eligibility.

- (i) A determination of programmatic and/or financial eligibility must be completed for all applications or reapplications for services within 30 days of the date of application, except for protective services for adults as set forth in Part 457 of this Title. Eligibility for protective services for adults must be determined at the time the protective services for adults assessment services plan is completed in accordance with section 457.2 (b) (4) of this Title.

- (ii) Except for the provision of child care services to certain families transitioning from family assistance as set forth in section 415.2(a)(1)(iii) of this Title, and protective services for adults as set forth in Part 457 of this Title, no reimbursement will be available for the provision of services prior to the date of actual determination of programmatic and/or financial eligibility unless such determination is made within 30 days of the date of application and the individual is determined to have been programmatic and/or financially eligible when services were initiated. In no event may the date of eligibility precede the date of application except for the provision of child care to transitioning families as set forth in section 415.2(a)(1)(iii) and protective services for adults.

(2) Redetermination of programmatic and/or financial eligibility.

- (i) Programmatic eligibility must be redetermined periodically but not less frequently than every 12 months, including State charge recipients of post-institutional service planning (PISP) who are receiving only follow-up visits as specified in paragraphs (a)(1)-(4) of section 313.2 of this Title. However, programmatic eligibility must be redetermined not less frequently than every six months for recipients of foster care services for children. The requirements regarding the periodic redetermination of programmatic eligibility as set forth in this section do not supersede or otherwise affect the requirements concerning the development, periodic review, and update and implementation of services plans or the client eligibility and monitoring activities for child care services as set forth in Part 415 of this Title or for protective services for adults as set forth in Part 457 of this Title.
- (ii) Redeterminations of financial eligibility shall be made periodically, but not less frequently than:
  - (a) every 12 months for an income-eligible individual in receipt of services;
  - (b) every six months for a child or minor in receipt of foster care maintenance payments;
  - (c) every 12 months for an individual in receipt of services whose family gross income is derived exclusively from pensions or social security benefits or SSI or a combination thereof;
  - (d) every 12 months for a State charge PISP recipient residing in those facilities specified in paragraphs (a)(1)-(3) of section 313.2 of this Title who is receiving only mandated follow-up visits and/or contacts.

This subparagraph does not apply to a child or minor in receipt of adoption assistance or to a recipient of social group services to senior citizens. This subparagraph also does not apply to recipients of public assistance, including Emergency Assistance to Families (EAF), or medical assistance; provided, however, that the continuing eligibility of such recipients for services must be verified every 12 months by use of an on-line inquiry or appropriate system production reports in those social services districts where the public assistance, medical assistance and services components of the welfare management system have been installed. In all other social services districts, verification of continuing eligibility for such recipients must occur every 12 months, and must be documented in the case record and signed by the caseworker and case supervisor.



- (iii) Redetermination of eligibility for social services which are made pursuant to the provisions of subparagraph (ii) of this paragraph shall not occur earlier than 30 days prior to the expiration of the periods specified in such subparagraph.
- (iv) Redetermination of both financial and/or programmatic eligibility shall be made within 30 days of an indication of a change in an individual's circumstances which may render the individual ineligible or may change the degree of need for services.
- (v) At the time of redetermination, current documentation shall be obtained to verify family size, categorical relationship, income, and continuing need for services, as appropriate.

(e) Documentation.

(1) General. No determination of eligibility shall be made solely on the basis of the application. Documentation of the criteria and conditions essential for eligibility shall be part of the eligibility determination process. Documentation means the collection, verification and recording of information necessary to determine eligibility.

- (i) Applications for services based on income maintenance status shall be supported by documentation of the actual receipt of, or eligibility for, the income maintenance benefit or payment.
- (ii) Applications for services based on income eligible status shall be supported by documentation of current family size and monthly gross income as specified in section 404.5 (b) of this Part.
- (iii) Applications for services based on need without regard to income shall be supported by documentation of the existence of the requisite programmatic factors except that no such documentation shall be required for the provision of information and referral.
- (iv) All applications for service shall be supported by the documentation of the need for service as evidenced by an individual plan for service.
- (v) If the application is filed by an applicant's authorized representative or someone acting responsibly for him, the relationship of the authorized representative or the responsible person to the applicant and the reasons for such representative filing shall be recorded.

(2) Documentation of eligibility based on income status.

- (i) When an eligibility determination is based on a family's income status, the family size and the amount and source of each component of gross income as defined in section 404.5 (b) of this Part shall be identified and documented prior to a determination of eligibility for social services.
- (ii) Family size need not be documented beyond the information on the signed application unless there is reason to suspect that the information is not correct.
- (iii) Applicants shall be required to provide documentation for all income received.

- (iv) Adequate documentation of gross income can include pay stubs, business records, and/or correspondence from employers, the Social Security Administration, Veterans Administration, State employment agencies, State welfare agencies and/or providers of pensions.
- (3) Recording and maintenance of records. The social services district shall maintain for each applicant or recipient a record which contains, in accordance with the requirements of Part 406 of this Title, information necessary to support an eligibility determination.
- (f) Notice of eligibility determinations. Written notice of determination of eligibility or ineligibility for service shall be sent to the applicant or recipient as follows:
- (1) A notice of eligibility or ineligibility shall be sent to applicants or recipients within 15 calendar days after the determination has been made.
  - (2) A notice of eligibility must include information concerning the type of service to be provided, any required fee for services in accordance with section 404.6 (b) of this Part, the duration of service planned, the name of the worker or unit responsible for case management and his or her telephone number, a statement regarding the continuing responsibility of the applicant or recipient to report any change in his or her status and the right of the recipient to accept or reject the service(s).
  - (3) A notice of ineligibility shall include information concerning specific reasons for denial or termination and department policy on which the decision is based.
  - (4) All notices of determination of eligibility or ineligibility must include information concerning the right of an applicant or recipient to request a fair hearing and all other information required by section 358-2.2 of this Title.
  - (5) Written notice of determination of eligibility or ineligibility may not be required in the following situations:
    - (i) where, through a face-to-face interview, a determination is made to continue eligibility; or
    - (ii) where, in a foster care case, the child has been surrendered by the natural parent(s) or guardian and placed under the custody of the local commissioner of social services.
- (g) Provision of services. When the service is authorized to be delivered, the social services district and the provider agency shall make provision for the delivery of the service(s) authorized within 15 calendar days after notification of eligibility.

Section statutory authority: Public Health Law, § A27-F

Statutory authority: Social Services Law, §§ 20, 34, 358, 390, 410, 473, 473-a

Added 404.1 on 4/01/76; amended 404.1 on 3/17/78; amended 404.1 on 1/29/79; amended 404.1 on 9/18/79; amended 404.1 on 5/29/84; amended 404.1 on 10/20/85; amended 404.1 on 12/23/88; amended 404.1 on 8/21/89; amended 404.1 on 3/27/91; amended 404.1(c) on 6/02/93; amended 404.1(c)(7)(iii) on 8/25/93; amended 404.1(c)(8)(v) on 3/23/94; amended 404.1(c) on 12/04/96; amended 404.1(d)(1)(ii) on 3/03/04; amended 404.1(d)(2)(1) on 3/23/94; amended 404.1(d)(2)(ii) closing paragraph on 3/23/94.

**§ 404.2 Responsibility For Eligibility Determinations**

- (a) The social services district shall be solely responsible for the determination of eligibility for services.
- (b) If the acceptance of applications is delegated to a provider under a contract executed in accordance with the purchase of services requirements specified in section 405.2 of this Title, responsibility for eligibility determinations shall remain with the social services district; any requirements that a provider obtain and transmit to the social services district data necessary to make a determination of eligibility shall be specified in the purchase of services contract.

Statutory authority: Social Services Law, §§ 20, 34, 358, 390, 410, 473, 473-a

Added 404.2 on 4/01/76.

**§ 404.3 Verification Of Eligibility Determination**

- (a) The social services district shall establish procedures to verify the accuracy of eligibility determinations.
- (b) The department will, through audits and case review on a sampling basis, conduct additional verification of social services district implementation and application of eligibility criteria.

Statutory authority: Social Services Law, §§ 20, 34, 358, 390, 410, 473, 473-a

Added 404.3 on 4/01/76.

**§ 404.4 Programmatic Eligibility**

A social service defined in the comprehensive annual social services program plan and included for provision in the district component shall be provided only when the following programmatic conditions are met:

- (a) Need for the service has been established by the social services district.
- (b) The applicant for such service is included in a category of individuals specified in the comprehensive annual social services program plan to be eligible.

Statutory authority: Social Services Law, §§ 20, 34, 358, 390, 410, 473, 473-a

Added 404.4 on 4/01/76.

**§ 404.5 Financial eligibility.****(a) Income maintenance status.**

- (1) For purposes of financial eligibility for services, the following persons have income maintenance status:
  - (i) Recipients of ADC--an ADC recipient is any individual who is certified eligible for cash assistance under the ADC program and receives such payments during the period upon which eligibility for social services is based.
  - (ii) Individuals whose needs are taken into account in computing the grant for eligible persons under the ADC program--these include children and other relatives in the home not eligible for ADC in their own right but whose presence is significant to ADC recipients as "essential persons."
  - (iii) Recipients of SSI benefits including recipients of State supplementary payments--an SSI recipient is any individual who is certified eligible for cash assistance under the SSI program and receives such payments including State supplementary payments during the period upon which eligibility for social services is based.
  - (iv) Recipients of foster care or adoption assistance (FCAA)--an FCAA recipient is any child or minor certified eligible for foster care maintenance or adoption assistance who received such benefits during the period upon which eligibility for social services was based.
  - (v) Recipients of HR--an HR recipient is any individual who is certified eligible for cash assistance under the HR program and who received such payments during the period upon which eligibility for services is based.
  - (vi) Recipients of MA--an MA recipient is any individual who is certified eligible to receive a medical payment during the period upon which eligibility for services is based.
- (2) Persons with income maintenance status shall be financially eligible for services in accordance with the provisions of the then effective comprehensive annual social services program plan.
- (3) When financial eligibility for services is based on the income maintenance status of the applicant, such status shall be verified as of the date of application.

**(b) Income eligible status.**

- (1) Individuals, other than those described in subdivision (a) of this section, must be financially eligible for services on the basis of income eligibility status if the monthly gross income of the family is equal to or less than:
  - (i) the appropriate income eligibility level contained in the then effective consolidated services plan or integrated county plan;
  - (ii) for New York State Child Care Block Grant child care services, the financial eligibility requirements for such services established by the Office of Children and Family Services in accordance with section 415.2(a) of this Title.

- (2) The determination of family monthly gross income shall be based on the average monthly income for a period of not less than one month nor in excess of three months prior to application, adjusted for any changes in income known or expected to occur during the period of authorization.
- (3) If income fluctuates significantly, the average monthly amount shall be computed based on income received during a period of not less than three nor more than six months.
- (4) Computation of monthly gross income shall be based on a factor of  $4\frac{1}{3}$  of the weekly income.
- (5) Monthly gross income means the monthly sum of income received from the following sources:
  - (i) Monthly wages or salary, i.e., total money earnings received for work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece-rate payments, and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues and similar purposes.
  - (ii) Net income for non-farm self-employment, i.e., gross receipts minus expenses from one's own business, professional enterprise, or partnership. Gross receipts include the value of all goods sold and services rendered. Expenses include costs of goods purchased, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes) and similar costs. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income.
  - (iii) Net income from farm self-employment, i.e., gross receipts minus operating expenses from the operation of a firm by a person on his own account, as owner, renter or sharecropper. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, the incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm hands, depreciation charges, cash rent, interest on farm building repairs, farm taxes (not State and Federal income taxes) and similar expenses. The value of fuel, food or other farm products used for family living is not included as part of net income. Social security benefits include social security pensions and survivor benefits, and permanent disability insurance payments made by the Social Security Administration prior to deductions for medical insurance and railroad retirement checks from the U.S. government.
  - (iv) Dividends, interest (on savings or bonds) income from estates or trusts, net rental income or royalties, including dividends from stockholding or membership in associations, interest on savings or bonds, periodic receipts from estates or trust funds, net income from rental of a house, store or other property to others, receipts from boarders or lodgers and net royalties.
  - (v) Public assistance or welfare payments include public assistance payments such as ADC, SSI (including State supplemental payments), and home relief.

- (vi) Pensions and annuities include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company, and periodic receipts from annuities or insurance.
  - (vii) Unemployment compensation means compensation received from government unemployment insurance agencies or private companies during periods of unemployment and any strike benefits received from union funds.
  - (viii) Workers' compensation means compensation received periodically from private or public insurance companies for injuries incurred at work. The cost of this insurance must have been paid by the employer and not by the individual.
  - (ix) Alimony.
  - (x) Child support.
  - (xi) Veterans' pensions means money paid periodically by the Veterans' Administration to disabled members of the Armed Forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training, as well as so-called "refunds" paid to ex-servicemen as GI insurance premiums.
- (6) Exclusions from monthly gross income. Excluded from computation of monthly gross income are the following:
- (i) per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;
  - (ii) money received from sale of property, such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property in which case the net proceeds would be counted as income from self-employment);
  - (iii) withdrawals of bank deposits;
  - (iv) money borrowed;
  - (v) tax refunds;
  - (vi) gifts;
  - (vii) lump sum inheritances or insurance payments;
  - (viii) capital gains;

- (ix) the value of coupon allotments under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons;
- (x) the value of USDA donated foods;
- (xi) the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act;
- (xii) any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (xiii) earnings of a child under 14 years of age (no inquiry shall be made);
- (xiv) loans and grants such as scholarships obtained and used under conditions that preclude their use for current living costs;
- (xv) any grant or loan to any undergraduate student for educational purposes made or insured under the Higher Education Act;
- (xvi) home produce utilized for household consumption;
- (xvii) payments made for child care services, or the value of child care services provided to a recipient of child care services provided under the New York State Child Care Block Grant Program and under title XX of the Social Security Act who is applying for or receiving any other services funded under any Federal or federally assisted program that bases eligibility for such services upon need or the amount of benefits upon need;
- (xviii) veterans' assistance payments made to or on behalf of certain Vietnam veterans' natural adult or minor children for any disability resulting from spina bifida suffered by such children;
- (xix) veterans' assistance payments made for covered birth defects to or on behalf of the adult or minor children of women Vietnam veterans in service in the Republic of Vietnam during the period beginning on February 28, 1961 and ending on May 7, 1975. Covered birth defects means any birth defect identified by the Veterans' Administration as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period on February 28, 1961 and ending on May 7, 1975, and that has resulted or may result in permanent physical or mental disability; and
- (xx) one-time \$250 payments made under the American Recovery and Reinvestment Act of 2009 to social security, supplemental security income (SSI), railroad retirement benefits and veterans disability compensation or pension benefits recipients for 10 months from the date the payment was received, including the month payment was received.

- (c) Eligibility without regard to financial circumstances. Notwithstanding subdivisions (a) and (b) of this section, individuals and families who are programmatically eligible for the following services will be determined to be eligible for such services without regard to financial eligibility criteria: information and referral services;
- (1) protective services for adults;
  - (2) protective services for children;
  - (3) preventive services for children; and
  - (4) residential services for victims of domestic violence.
- (d) Resources. Financial eligibility for services contained in the district component of the comprehensive annual social services program plan shall be based only on the monthly gross income of the family as defined in this section.
- (1) No exploration of resources shall be made in the determination of eligibility for services.
  - (2) No lien or incumbrance of any kind shall be required from or be imposed against the property of any individual in connection with services rendered or to be rendered.
  - (3) No adjustment or recovery of the cost of services rendered shall be made.

#### **§ 404.6 Fees For Services**

- (a) The social services district must impose and provide for the collection of such fees for service as are required in the then effective consolidated services plan or integrated county plan or, in the case of child care services, the family share for such services required by section 415.3(f) of this Title. Failure of the service recipient to pay a fee or family share as required in this section must lead to suspension or termination of the service for which the fee or family share was imposed and not paid unless, in the case of child care services, satisfactory arrangements have been made, prior to the suspension or termination of such services, for the service recipient to make full payment of all delinquent family shares. No subsequent application nor any reapplication by the service recipient for any service suspended or terminated by reason of the failure to pay a required fee or family share will be considered until such time as all delinquent fees are paid or, in the case of child care services, unless and until arrangements satisfactory to the social services district are made for the service recipient to make full payment of all delinquent family shares. Notwithstanding the foregoing, failure of the service recipient to pay a fee or family share must not be a basis for denial or discontinuance of services as part of a plan of protective services for an adult or a child or for preventing placement of a child in foster care.



(b) Methods of collection.

- (1) The social services district must advise the recipient in writing, at the time of the initial eligibility determination and each redetermination, of the required fee amount, the date(s) such fee is due and the payment procedures to be followed. The notice of the fee requirements must be included in the written notice of eligibility. A provider must also be notified when a recipient is required to pay a fee, if the provider is required to collect fees for the service. Such notification to the provider must contain the amount of the fee and the date(s) such fee is due.
- (2) If a fee is not paid by the specified date, the social services district, or the provider, when appropriate, must immediately give a written notice of the fee past due in person or by mail to the service recipient. Such notice must include a warning of impending termination of the service for continued nonpayment and specify the time period within which such payment must be made or, in the case of child care services, the time period within which satisfactory arrangements for such payment must be made. Such time period may be no less than seven days and no more than 30 days. If payment is not received or, in the case of child care services if arrangements, satisfactory to the social services district, for full payment of delinquent fees by the service recipient, have not been made within the time period specified in the written notice that the fee is past due, then the social services district must give written notice of termination of service in person or by mail to the service recipient. The notice of termination of service must state that the service will be terminated 10 days subsequent to the date of the notice unless payment of all delinquent fees is received prior to the date of termination or, in the case of child care services, unless and until arrangements, satisfactory to the social services district, are made for the service recipient to make full payment of all delinquent fees. Copies of the warning and termination notices must be maintained in the recipient's basic data file.

(c) Claiming. Fees imposed upon service recipients in accordance with this section shall be deducted from the amount of expenditures for such services for which Federal and State reimbursement is claimed.

Statutory authority: Social Services Law, §§ 20, 34, 358, 390, 410, 473, 473-a  
Added 404.6 on 9/08/77; amended 404.6 on 3/27/91; amended 404.6(a) on 1/13/93; amended 404.6(a) on 3/03/04;  
amended 404.6(b) on 1/13/93.

### § 404.7 Authorization For Services

- (a) An authorization for services to be provided either by the social services district directly or by purchase shall be required prior to the provision of any service. An authorization for services is not required for information and referral services, and other services where the eligibility determination is on the basis of group eligibility only.
- (b) The social services district shall use form DSS-2562, Services Authorization/Reporting Record, as the basic authorization for all services. In addition, form DSS-638, or a local equivalent approved by the department, shall be completed for the purpose of authorization for services provided by purchase.
- (c) Social services districts which are in the department's welfare management system shall use, for all services, form DSS-2970, Authorization for Services.
- (d) An Authorization for Services shall require the following data as a minimum:
  - (1) name of recipient;
  - (2) identification of the basis for eligibility, i.e., income maintenance, income, or without regard to income status;
  - (3) identification of the service or services to be provided;
  - (4) identification of goal(s);
  - (5) period of authorization for the services to be provided which may be up to 12 months except as otherwise specified in sections 372.6, 415.6, and 457.1 of this Title;
  - (6) name and title of authorizing person; and
  - (7) for purchased services, the name of the provider shall be added.
- (e) The social services district and/or the provider agency shall provide a service within 15 calendar days after making notification of eligibility to the applicant in the instances when a written application is taken, and within 30 calendar days after acceptance of a request for service in all other instances. Providing a service means actual provision of service or arrangement for its provision at an appropriate later date.

Statutory authority: Social Services Law, §§ 20, 34, 358, 390, 410, 473, 473-a

Added 404.7 on 4/01/76; amended 404.7 on 1/29/79; amended 404.7 on 4/17/80; amended 404.7 (d)(5) on 3/23/94.

**\* § 404.8 Definitions**

The following definition of family shall be used for all determinations and redeterminations of eligibility for services under this Part:

- (a) Family means one or more adults and children, if any, related by blood or law, and residing in the same household. Where adults, other than spouses, reside together, each shall be considered a separate family. Emancipated minors and children living under the care of individuals not legally responsible for that care shall be considered one-person families.
- (b) In the above definition, adult shall mean any person 18 years of age or older.

\* NB Effective until May 15, 2004

\* § 404.8 Definitions.

- (c) The following definition of family must be used for all determinations and redeterminations of eligibility for services, other than child care services, under this Part:

- (1) Family means one or more adults and children, if any, related by blood or law, and residing in the same household. Where adults, other than spouses, reside together, each shall be considered a separate family. Emancipated minors and children living under the care of individuals not legally responsible for that care shall be considered one-person families.

- (2) In the above definition, adult shall mean any person 18 years of age or older.

- (d) The definition of child care services unit set forth in section 415.1(f) of this Title must be used for all determinations and redeterminations of eligibility for child care services.

\* NB Effective May 15, 2004

Statutory authority: Social Services Law, §§ 20, 34, 358, 390, 410, 473, 473-a

Added 404.8 on 12/01/82; amended 404.8(effective 05, 15, 04) on 3/03/04.





George E. Pataki  
Governor

NEW YORK STATE  
OFFICE OF CHILDREN & FAMILY SERVICES  
52 WASHINGTON STREET  
RENSSELAER, NY 12144

John A. Johnson  
Commissioner

### Administrative Directive

<b>Transmittal:</b>	05-OCFS-ADM-03
<b>To:</b>	District Commissioners
<b>Issuing Division/Office:</b>	Division of Development and Prevention Services
<b>Date:</b>	May 20, 2005
<b>Subject:</b>	Child Care Subsidy Program
<b>Suggested Distribution:</b>	Directors of Services, Child Support and Temporary Assistance; Supervisors of Services, Child Support and Temporary Assistance; Child Care Assistance Staff; Accounting; WMS Coordinators; Domestic Violence Liaisons
<b>Contact Person(s):</b>	Questions pertaining to this ADM should be directed to the Office of Children and Family Services, Bureau of Early Childhood Services: Anne Ball, (518) 474-3775 or E-mail: <a href="mailto:Anne.Ball@ocfs.state.ny.us">Anne.Ball@ocfs.state.ny.us</a>  Questions pertaining to claiming should be directed to the Office of Temporary and Disability Assistance, Bureau of Financial Services: Regions I-IV: Virginia Scala, (518) 474-7549 or Email: <a href="mailto:virginia.scala@otda.state.ny.us">virginia.scala@otda.state.ny.us</a> Region V: Michael Borenstein, (631) 854-9704 or Email: <a href="mailto:michael.borenstein@otda.state.ny.us">michael.borenstein@otda.state.ny.us</a> Region VI: Marian Borenstein, (212) 961-8250 or Email: <a href="mailto:marian.borenstein@otda.state.ny.us">marian.borenstein@otda.state.ny.us</a>
<b>Attachments:</b>	A: Guidelines For Review of Enrollment Forms for Provider of Legally-Exempt Care: History of Article 10 Removal; Termination of Parental Rights; and Denial, Revocation and/or Suspension of a Child Day Care License or Registration B: OCFS-LDSS-4699, Enrollment Form for Provider of Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care C: OCFS-LDSS-4700, Enrollment Form for Provider of Legally-Exempt Group Child Care D: OCFS-LDSS-7009, Notice of Child Care Assistance Overpayment and Repayment Requirements E: OCFS-LDSS-7010, Notice of Fraud Determination, Disqualification for Child Care Benefits and Repayment Plan F: OCFS-LDSS-7013, Child Support Requirements Notification Letter G: OCFS-LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause

Claim  
 H: OCFS-LDSS-7012, Notice of Good Cause Determination

Attachments Available On-Line:



Filing References

Previous ADMs/INFs		Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
05 OCFS ADM-01, 05 OCFS INF-02, 04 OCFS ADM-01, 04 OCFS LCM-09, 04 OCFS LCM-07, 03 OCFS LCM-19, 03 OCFS LCM-17, 03 OCFS INF-07	02 OCFS INF-05, 02 OCFS INF-01; 01 OCFS LCM-11, 01 OCFS LCM-08, 01 OCFS INF-8, 99 LCM-19, 92 LCM-138, 91 ADM-34	92 ADM-08	403, 404, 405, 415, 358-2, 358- 3, 628.3	SSL§ 332-a, 334, 335, 410		

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## **I. Purpose**

The purpose of this Administrative Directive (ADM) is to inform social services districts (districts) of the changes in the requirements for child care subsidies funded through the New York State Child Care Block Grant (NYSCCBG) and Title XX of the federal Social Security Act. Additionally, this ADM includes requirements of the child care subsidy program not issued previously in an ADM or Local Commissioners Memorandum (LCM).

The OCFS forms provided as Attachments D, E, F, G and H of this ADM will be available shortly on the OCFS Intranet website under the Forms Section. The format of these forms, but not the content, may change when they are finalized and posted to the website. The five forms, that are Attachments D – H, can be printed directly from this ADM and used on an interim basis to support the requirements under the child care subsidy program. OCFS will issue a notice once the five respective forms are finalized, and available for downloading from the OCFS Intranet.

## **II. Background**

Changes to the regulations regarding the child care subsidy program, Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) Parts 358 and 415 and Sections 403.1, 404.1, 404.5, 404.6, 404.8, 405.1, 405.2, 405.3, and 628.3, were adopted effective May 15, 2004. These regulations fully implement the provision of child care services under the Title XX Social Services Block Grant and the NYSCCBG program; and the federal statutory and regulatory requirements that govern the federal funds included in the NYSCCBG. NYSCCBG funds child care subsidies to families receiving Temporary Assistance<sup>1</sup> (TA) and to other low income families.

This ADM details those changes to regulatory requirements as well as other requirements of the child care subsidy program that have not been addressed in previous releases by the Office of Children and Family Services (the Office).

This ADM is not an all-inclusive guide to the requirements of the child care subsidy program. Districts should refer to the following list for additional guidance.

- 05 OCFS ADM-01 Administration of Medication by Legally-Exempt Child Care Providers: Revised Health and Safety Requirements for Legally-Exempt Family, In-Home and Group Child Care
- 05 OCFS INF-02 Consolidated Services Plan-2005 Income Eligibility Standards
- 04 OCFS ADM-01 Guaranteed Child Care in Lieu of Temporary Assistance; Payment During Breaks in Activities; Eligibility for Families in Post Secondary Education; No Application for Transitional Child Care
- 04 OCFS LCM-07 Child Care Market Rates
- 03 OCFS LCM-19 Guidelines and Instructions for Preparing County Service Plans
- 03 OCFS LCM-17 Legally-Exempt In-Home Child Care Providers as Employees

<sup>1</sup> The term “public assistance” has been replaced by the term “temporary assistance.” Temporary Assistance encompasses Family Assistance, Safety Net Assistance and Veteran’s Assistance.

- 03 OCFS INF-07      Application for Child Care Assistance
- 02 OCFS INF-05      Child Care Case Referrals to FEDS and EVR
- 02 OCFS INF-01      Former Child Assistance Families Eligible for Transitional Child Care Guarantee
- 01 OCFS LCM-11      Child Care: Revised Health and Safety Requirements for Legally-Exempt Child Care Providers
- 01 OCFS LCM-08      Revised Client Notification Forms for Child Care Subsidy
- 01 OCFS INF-08      Former Child Assistance Program (CAP) Families Eligible for Transitional Child Care Guarantee or/and Transitional Medicaid/CAP MA Guarantee
- 99 LCM-19              Notice LDSS-4647: Important Information About Child Care
- 92 LCM-138            Child Care Certificate Program
- 91 ADM-34             Child Care: Reimbursement for Children with Special Needs

### **III. Program Implications**

Districts must operate child care subsidy programs in compliance with State statutes, regulations and policies. The following are highlights of significant changes to the child care subsidy program based on regulatory amendments:

- To be eligible for a child care subsidy, the child's parents/caretakers must demonstrate they have a child support order in place, be actively pursuing a child support order or have good cause not to pursue a child support order.
- New State health and safety requirements apply to informal and legally-exempt group child care providers.
- Amendments to 18 NYCRR 358-2 and 358-3 expand fair hearing rights to include all families that apply for or receive child care services.
- “Aid continuing” for child care services is available to all families in receipt of child care subsidies.
- Districts are no longer required to have a contract with a provider to pay for absences and now have the option to pay for days on which the program is closed.
- The Child Care Services Unit replaces the Services Family Unit in determining which family and household members’ needs and income are taken into account when determining child care eligibility and the amount of the family share.
- New definitions of “engaged in work” and “seeking employment” clarify circumstances under which certain families are eligible for child care services.
- Families in which a member has voluntarily admitted to or was convicted of child care fraud are subject to disqualification penalties similar to those applied in the Temporary Assistance program.

## **A. DEFINITIONS**

### **1. THE OFFICE**

“The Office” means the New York State (NYS) Office of Children and Family Services.

### **2. CHILD CARE SERVICES**

Child care services mean care for an eligible child provided on a regular basis either in or away from the child’s residence for less than 24 hours per day, which is provided by an eligible provider. Child care services may exceed 24 consecutive hours when such services are provided on a short-term emergency basis or in other cases where the caretaker’s approved activity necessitates care for 24 hours or more on a limited basis, if the district has indicated in its Consolidated Services Plan (CSP) or Integrated County Plan (ICP) that it will provide for such care.

### **3. ELIGIBLE CHILD**

Eligible child means a child who resides with a parent/caretaker that meets the program and financial eligibility requirements for the particular type of child care services and who:

- is under 13 years of age. For child care services provided under Title XX of the federal Social Security Act or provided as a child protective service or a preventive service funded other than under the NYSCCBG program, a child who turns 13 years of age during a school year may continue to receive child care services through the end of that school year; or
- is under 18 years of age and is either a child with special needs or is under court supervision; or,
- is under 19 years of age, is a full-time student in a secondary school, or in an equivalent level of vocational or technical training, and is either a child with special needs, or is under court supervision.

### **4. CARETAKER**

Caretaker means the child’s parent, legal guardian or caretaker relative, or any other person in loco parentis who lives with a child.

### **5. CARETAKER RELATIVE**

Caretaker relative means any person who is a custodial parent or other adult relative as set forth in 18 NYCRR section 369.1(b), who exercises responsibility for the day-to-day care of and who lives with a child.

The term custodial parent or other adult caretaker relative shall include the following, as applicable:

- (a) the child's father, mother, brother, sister, grandfather, great-grandfather, great-great-grandfather, grandmother, great-grandmother, great-great-grandmother, uncle, great-uncle,

- great-great-uncle, aunt, great-aunt, great-great-aunt, of whole or half blood;
- (b) the child's first cousin, nephew and niece, of whole or half blood;
- (c) the child's step father, step mother, step brother, step sister, but no other step relative;
- (d) in the case of a child who has been surrendered to an authorized agency or who has been adopted:
  - (i) any of the blood or step relatives included in the preceding paragraphs of this subdivision; and
  - (ii) the child's adoptive parents and:
    - (a) the other children of the adoptive parents and the children of such children;
    - (b) the parents, grandparents and great-grandparents of the adoptive parents;
    - (c) the brothers and sisters of the adoptive parents and the children of such brothers and sisters; and
    - (d) the aunts, uncles, great-aunts and great-uncles of adoptive parents;
- (e) the spouse of any person described in the preceding paragraphs of this subdivision, even though the marriage may have been terminated by death, divorce or annulment; and
- (f) in the case of a child born out of wedlock, any relative in the maternal line included in the preceding paragraphs of this subdivision and, if paternity has been adjudicated or acknowledged in writing, any relative in the maternal and paternal lines included in the preceding paragraphs of this subdivision.

## 6. INFORMAL CHILD CARE

Informal child care includes legally-exempt family child care and legally-exempt in-home child care. Members of the child's or the caretaker's temporary assistance unit and other adult members of the child care service unit, except the child's siblings, are not eligible to provide subsidized child care.

Legally-exempt family child care means:

1. Child care for one or two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets requirements for the employment of minors as set forth in Article 4 of the NYS Labor Law, and who is chosen and whose services are monitored by the child's parent/caretaker; or
2. Child care for more than two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in Article 4 of the NYS Labor Law, who provides such care for less than three hours per day and who is chosen and whose services are monitored by the child's parent/caretaker; or
3. Child care provided by a relative within the third degree of consanguinity of the parent or step-parent of the child except where such relative is a person legally responsible for, or the caretaker relative of, such child. Relatives within the third degree of consanguinity of the parents or step-parents of the child include:

- siblings of the child;
- grandparents of the child;
- great-grandparents of the child;
- great-great grandparents of the child;
- aunts and uncles of the child, including their spouses;
- great-aunts and great-uncles of the child, including their spouses; and
- first cousins of the child, including their spouses.

Legally-exempt in-home care means:

Child care furnished in the child’s home by a caregiver who is chosen and monitored by the child’s parent/caretaker and who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in Article 4 of the NYS Labor Law. In addition, the child’s parent/caretaker must pay the caregiver at least the minimum wage as set forth in Article 19 of the NYS Labor Law and provide the caregiver with all employment benefits required by State and/or federal law, including but not limited to Social Security and Workers' Compensation coverage.

## **7. LEGALLY-EXEMPT GROUP CHILD CARE**

Legally-exempt group child care refers to care provided by those caregivers, other than caregivers of informal child care, which are not required to be licensed by or registered with the NYS Office of Children and Family Services (the Office) or licensed by the City of New York but which meet all applicable State or local requirements for such child care programs.

Caregivers of legally-exempt group child care include, but are not limited to:

- (1) pre-kindergarten and nursery school programs for children three years of age or older, and programs for school-age children conducted during non-school hours, operated by public school districts or by private schools or academies which provide elementary or secondary education or both in accordance with the compulsory education requirements of the NYS Education Law, provided that such pre-kindergarten, nursery school or school-age programs are located on the premises or campus where the elementary or secondary education is provided;
- (2) nursery schools and programs for pre-school age children operated by non-profit agencies or organizations or private proprietary agencies which provide services for three or less hours per day;
- (3) summer day camps operated by non-profit agencies or organizations or private proprietary agencies in accordance with Subpart 7-2 of the State Sanitary Code;
- (4) day care centers, family day care homes and other child care programs located on federal property which are operated in compliance with the applicable federal laws and regulations for such child care programs;
- (5) day care centers, family day care homes and other child care programs located on tribal property which are operated in compliance with the applicable tribal laws and regulations for

- such child care programs; and,
- (6) school-age programs caring for not more than six children.

## 8. ELIGIBLE CHILD CARE PROVIDER

To be an eligible child care provider, the provider must be included in the following list:

- (1) For eligibility under the NYSCCBG:
- a) a validly licensed or properly registered child day care center or properly registered school-age child care program operated by a voluntary non-profit corporation or association or an authorized child care agency; or
  - b) a validly licensed or properly registered child day care center or properly registered school-age child care program operated by either a private, proprietary corporation or organization or by an individual; or
  - c) a public school district operating a child care program which meets State and federal requirements; or
  - d) a family day care home properly registered with the Office to provide child care services to children; or
  - e) a group family day care home issued a valid license by the Office to provide child care services to children; or
  - f) a caregiver of informal child care who is enrolled with the district; or
  - g) a caregiver of legally-exempt group child care that is enrolled with the district.
- (2) For eligibility under Title XX of the Social Security Act:
- a) a validly licensed or properly registered child day care center or properly registered school-age child care program operated by a voluntary non-profit corporation or association or an authorized child care agency; or
  - b) a validly licensed or properly registered child day care center or properly registered school-age child care program operated by a private proprietary corporation or organization or by an individual; provided, however, that such a provider will be an eligible provider only with the prior approval of the commissioner of the Office upon the demonstration by the district that conveniently accessible non-profit facilities are unavailable or unable to provide the required care; or
  - c) a public school district operating a child care program which meets State and federal requirements; or
  - d) a family day care home properly registered with the Office to provide child care services to children; or
  - e) a group family day care home issued a valid license by the Office to provide child care services to children.

## 9. CHILD CARE SERVICES UNIT

The Child Care Services Unit (CCSU) replaces the Services Family Unit (SFU) in determining eligibility for child care. CCSU refers to the adults and/or children residing in the same household who will be considered for the purposes of determining a family's eligibility and the family share for child care services. Adult means any person 18 years of age or older unless the individual meets the definition of a child with special needs. The district may elect to include 18, 19, or 20 year old individuals in the same CCSU as their parent by indicating such option in its CSP/ICP. Districts have the option to include all 18, 19, or 20 year olds in the CCSU or to include only those 18, 19 or 20 year olds whose inclusion in the CCSU would benefit the family. The district's approved CSP/ICP must specify the criteria it will use to determine whether or not an 18, 19, or 20 year old is included in the CCSU.

- (1) For families where the child's parent or caretaker relative is receiving TA, the CCSU will be comprised of the parent or caretaker relative, his or her children and any other member of the TA unit.
- (2) For families that are receiving "child care in lieu of TA," the CCSU will be comprised of those household members that would be included in the TA filing unit, if the family were in receipt of TA, and those legally responsible non-filing unit members in the household whose income or resources would be considered in determining eligibility for TA.
- (3) For families where no adult family member is in receipt of TA, the CCSU will be comprised as follows:
  - (a) When adults, other than spouses, reside together and do not have a child in common, each adult along with his or her child will be considered a separate CCSU.
  - (b) When adults, other than spouses, reside together and have at least one child in common, the CCSU will be comprised of the adults who have child(ren) in common, the child(ren) those adults have in common and the other child(ren) of each such adult.

When a custodial parent who is under the age of 21 years is residing with his or her parent(s), or has established his or her own household, or resides with an individual other than his or her parent(s), the CCSU is comprised of the custodial parent who is under 21 years of age, his or her child(ren) and any other individual in the household with legal responsibility for the custodial parent's child(ren).

When eligible children reside only with individuals who are not the children's parent, step-parent, adoptive parent or legal guardian with financial responsibility for the children, the CCSU will be comprised of the eligible child only. For example, a child placed in foster care and residing with a foster family is considered a family of one. As another example, a child residing with a relative who does not have legal guardianship, but may or may not have legal custody, is considered a family of one. The awarding of legal custody to a non-parental caretaker *does not* remove financial responsibility for the child from the parent and assign it to the custodial party. For example, when a child is removed from his or her parent and placed in the custody of the district commissioner, the parent still remains financially responsible for the child.

Individuals who would otherwise be included in the CCSU, but who are temporarily absent from a household, who meet the following criteria will be considered part of the CCSU:

- (1) Individuals whose needs are partially or fully being met by members of the household, such as children or minors attending school away from home; provided, however, that a child away from home due to a foster care placement will not be considered part of the CCSU; and
- (2) Individuals who are contributing or are required to contribute to the needs of the household, such as individuals who are serving in the military.

**10. FAMILY SHARE**

Family share means the weekly amount paid by the child’s parent/caretaker toward the costs of the child care services.

**11. ENGAGED IN WORK**

For an individual who is not receiving TA, “engaged in work” means:

- (1) Is earning wages at a level equal to or greater than the minimum amount required under federal and NYS Labor Law for the type of employment; or
- (2) Is self-employed and is able to demonstrate that such self-employment produces personal income equal to or greater than the minimum wage or has the potential for growth in earnings to produce such an income within a reasonable period of time.

For an individual receiving TA, “engaged in work” means the individual is engaged in work as defined by the district in the district’s approved employment plan.

**12. SEEKING EMPLOYMENT**

For an individual who is not receiving TA, “seeking employment” means making in-person job applications, going on job interviews, registering with a NYS Department of Labor Division of Employment Services Office to obtain job listings, and participating in such other job seeking activities as are approved by the district.

**13. CHILD WITH SPECIAL NEEDS**

Child with special needs means a child who is incapable of caring for himself or herself and who has been diagnosed as having one or more of the following conditions derived from the NYS Education Law, Title 8 NYCRR 200.1(zz), to such a degree that it adversely affects the child’s ability to function normally:

- |                         |                       |                                       |
|-------------------------|-----------------------|---------------------------------------|
| Autism                  | Health impairment     | Orthopedic impairment                 |
| Deafness                | Learning disability   | Speech or language impairment         |
| Deaf-blindness          | Mental retardation    | Traumatic brain injury                |
| Emotional disturbance   | Multiple disabilities | Visual impairment including blindness |
| Other health impairment |                       |                                       |



#### 14. PERSON IN LOCO PARENTIS TO A CHILD

Person in loco parentis to a child means the child's guardian, caretaker relative or any other person with whom a child lives who has assumed responsibility for the day-to-day care of the child.

#### 15. CHILD CARE CERTIFICATE

Child care certificate means a certificate issued to a child's parent/caretaker that verifies the parent/caretaker is eligible for subsidized child care services. The parent/caretaker uses the certificate to assist in arranging for care from a child care provider.

#### 16. STATE INCOME STANDARD (SIS)

State Income Standard (SIS) means the most recent official federal income poverty level (as defined by the federal Office of Management and Budget) as updated by the Office.

### **B. ELIGIBILITY DETERMINATION AND REDETERMINATION**

#### 1. APPLICATION FOR CHILD CARE

Applicants for child care services must apply in writing on the Common Application LDSS-2921, or local equivalent approved by the Office. The district must permit applicants to submit their applications by mail. The parent/caretaker with whom an eligible child resides is the applicant for child care services. The applicant is responsible for providing accurate, complete and current information regarding the family's circumstances including the family's income, composition and child care arrangements. The applicant must notify the district immediately of any change in this information.

Recipients of TA and "child care in lieu of TA" *must not be required* to complete a new application for transitional child care assistance, although districts may contact the family to update the case information. The district must determine whether a family is eligible for transitional child care *prior* to closing a TA case or a "child care in lieu of TA" case. Districts may use the family's existing TA application with updated information to determine eligibility and benefits for transitional child care. A separate Administrative Directive, 04 OCFS ADM-01, has been issued to detail requirements for "child care in lieu of TA."

Except where required by federal law or regulation, no person who applies for a social service must be required to disclose the Social Security Number of any person for whom the service is requested as a condition of eligibility for the service. For child care assistance, the provision of a Social Security Number is voluntary and child care benefits must not be denied or withheld for the failure to furnish a Social Security Number. No federal statute requires families who are receiving child care assistance through Title XX or NYSCCBG to disclose Social Security Numbers for the receipt of child care assistance.

However, this does not restrict the ability of a district to request that the applicant disclose the Social Security Number of the person who will receive the service. If such a request is made, the applicant must be informed that the disclosure is voluntary, by what statutory or other authority such number is

solicited and the uses which will be made of the Social Security Number.

Additionally, when a district obtains a Social Security Number voluntarily disclosed by an applicant for child care benefits, the district must provide the collected Social Security Number as requested by the Office to meet federal reporting requirements.

For additional information on application requirements, refer to *section III.E.1, Application* of this ADM.

## **2. DETERMINATION OF ELIGIBILITY**

The district is solely responsible for the determination of eligibility for child care benefits. An initial determination of programmatic and/or financial eligibility must be completed for all applications or reapplications for child care services within 30 days of the date of application. Initial eligibility for child day care, informal child care and legally-exempt group child care services must be determined pursuant to the requirements of Title 18 NYCRR Parts 404 and 415; the district's options designated in an approved CSP/ICP; and, where applicable, 12 NYCRR Part 1300. Additionally, the required documentation is a necessary prerequisite to the determination of eligibility and must be retained in the case folder.

In determining whether a family is eligible for child care, the following conditions must be established:

### **(1) Programmatic Eligibility**

There is a programmatic need for child care and child care services are a necessary part of a plan of self-support, self-sufficiency, or protection for the child developed by the district.

The child care is not otherwise available from a legally responsible relative. If there is a legally responsible relative outside of the household, the availability of that person to provide child care must be assessed, taking into account any court ordered or court sanctioned custody agreements. In two-parent households, both parents must meet the eligibility criteria.

In the case where a non-custodial parent exists, districts must make an assessment of the availability of the non-custodial parent when determining whether child care is needed. If the non-custodial parent resides in close proximity to the custodial parent and the non-custodial parent's work or activity schedule indicates availability, and there are no other circumstances that would make care by the non-custodial parent inappropriate, the non-custodial parent is considered to be available to provide child supervision during periods when the custodial parent is engaged in an approved activity. Availability of the non-custodial parent may be limited by any number of factors including but not limited to custody orders, visitation agreements, incarceration, disability or domestic violence situations.

The district can require the non-custodial parent to provide child supervision provided that it does not violate the provisions of any child custody order or other court order or infringe on the non-custodial parent's ability to work or participate in an activity that would be approved by the district. The district cannot request that the non-custodial parent offer child supervision on the custodial parent's days of custody, as specified by a court order. For example, Mary and Bill are divorced and share custody of their child. Bill has custody on Saturday, Sunday and Monday and Mary has custody the rest of the week. Bill lives across the street from their child's school and does not work the same hours as Mary. He is willing to supervise the child after school but Mary insisted that their

child not be with Bill on her days of custody, even though she was working during the hours that their child could be with Bill. The district cannot insist that Bill provide care and deny child care assistance on the days that he does not have custody but is available to provide care. As another example, John is a divorced father who lives two blocks from his ex-wife, Sara. John has joint custody of his daughter and is not prohibited by any provision in the custody order from providing child care. He works the night-shift at a local factory and Sara is a school teacher. The district cannot require John to provide child care during the day when Sara is teaching because John must have adequate time to sleep before his shift begins at the factory.

A district cannot require a non-custodial parent to provide child supervision if he/she has no visitation privileges, or if other circumstances exist indicating it would not be in the best interests of the child or the custodial parent.

In child protective cases, there must be a determination that child care is needed to address a child protective need.

## (2) Family Eligibility

The family must be included in one or more of the categories of eligible families for the funding source.

- For NYSCCBG, eligible families include: families that are guaranteed child care, families that are eligible when funds are available, and families that are eligible if funds are available and if the district has listed such families as eligible in the district's CSP/ICP.
- For Title XX, eligible families include: families that are receiving child care services as part of a preventive or protective services case or identified as an eligible family in the district's approved CSP/ICP. For more information, refer to *section III.C.2.a, Categories of Eligible Families Under Title XX* of this ADM.

## (3) Child Eligibility

The child meets the definition of an eligible child.

## (4) Financial Eligibility

The family (Child Care Services Unit) is financially eligible to receive child care subsidy.

For NYSCCBG funds, the family income must be at or below 200% of the State Income Standard.

For Title XX funds, the family income must be at or below the upper income levels established by the district within its CSP/ICP.

For child protective cases, eligibility for child care is established without regard to financial circumstances only when it is determined that such child care is needed to protect the child.

## (5) Child Support

In all households in which a parent is continuously absent, the custodial parent/caretaker seeking a child care subsidy must demonstrate that: he or she is actively pursuing child support, or he or she has good cause not to pursue child support. Refer to *section III.G, Child Support Requirements* of this ADM for more information.

### 3. DOCUMENTATION OF DECISION

No determination of eligibility may be made based solely on the application. Documentation, meaning collection, verification and recording of the criteria and conditions necessary for eligibility, is part of the determination process. The district must maintain a record that contains information that supports all aspects of the eligibility determination for each applicant or recipient, including, but not limited to programmatic, financial, family composition, and family and child eligibility. Family size need not be documented beyond the information provided on the application unless there is reason to believe the information provided is incorrect.

Additional factors that determine eligibility must be cited in the case record with supporting documentation. These include but are not limited to:

- (1) The hours the child care is needed, including the work or education/training schedule of the parent/caretaker, if applicable;
- (2) The reason child care is needed;
- (3) The goal to be achieved by provision of child care assistance;
- (4) Evaluation at subsequent redetermination periods of whether the goal is being achieved;
- (5) The non-custodial parent's or other legally responsible relative's availability to provide care;
- (6) Ages of children needing care and documentation of any special needs to support the determination that a child has special needs;
- (7) Active pursuit of child support or good cause exception;
- (8) For a licensed or registered provider, the provider's name;
- (9) For an informal or legally-exempt group provider, enrollment forms which have been approved by the district and are completed annually or as required;
- (10) Where applicable, for families who are eligible when funds are available, how the availability of funding has impacted the eligibility decision; and,
- (11) If the application is filed by the applicant's authorized representative or someone acting responsibly for him or her, the relationship of the authorized representative or responsible person to the applicant and the reasons for such representative filing must be recorded.

### 4. INCOME

Individuals, other than those receiving TA, must be financially eligible for services on the basis of income eligibility status. Individuals are eligible for NYSCCBG if the monthly gross income of the family is equal to or less than to 200 percent of the State Income Standard or, for services funded under Title XX, the appropriate income eligibility level contained in the district's effective CSP/ICP.

The determination of family monthly gross income must be based on the average monthly income for a period of not less than one month nor in excess of three months prior to application, adjusted for any changes in income known or expected to occur during the period of authorization.

If income fluctuates significantly, the average monthly amount must be computed based on income received during a period of not less than three nor more than six months. Refer to other information on the treatment of lump sum payments and or other payments received for child support arrears in *section III.G.6.j, Fluctuating Child Support Income and Lump Sum Child Support Payments* of this ADM.

Computation of monthly gross income must be based on a factor of 4 1/3 of the weekly income.

**a) MONTHLY GROSS INCOME**

Monthly gross income means the monthly sum of income received from the following sources:

- Monthly wages or salary, i.e., total money earnings received for work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece-rate payments, and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues and similar purposes;
- Net income for non-farm self-employment, i.e., gross receipts minus expenses from one's own business, professional enterprise, or partnership. Gross receipts include the value of all goods sold and services rendered. Expenses include costs of goods purchased, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes) and similar costs. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income;
- Net income from farm self-employment, i.e., gross receipts minus operating expenses from the operation of a farm by a person on his or her own account, as owner, renter or sharecropper. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, the incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm hands, depreciation charges, cash rent, interest on farm building repairs, farm taxes (not State and federal income taxes) and similar expenses. The value of fuel, food or other farm products used for family living is not included as part of net income;
- Social Security benefits including Social Security pensions and survivor benefits, and permanent disability insurance payments made by the Social Security Administration prior to deductions for medical insurance, and railroad retirement checks from the U.S. government;
- Dividends; interest income from estates or trusts; net rental income or royalties, including dividends from stockholdings or membership in associations, interest on savings or bonds, periodic receipts from estates or trust funds, net income from rental of a house, store or other property to others, receipts from boarders or lodgers, and net royalties;
- Temporary assistance or welfare payments include Safety Net, Veterans Assistance, and Family Assistance payments;
- Pensions and annuities include pensions or retirement benefits paid to a retired person or his or her survivors by a former employer or by a union, either directly or through an insurance company, and periodic receipts from annuities or insurance;
- Unemployment compensation means compensation received from government unemployment insurance agencies or private companies during periods of unemployment and any strike benefits

received from union funds;

- Workers' compensation means compensation received periodically from private or public insurance companies for injuries incurred at work. The cost of this insurance must have been paid by the employer and not by the individual;
- Alimony;
- Child support; and
- Veterans' pensions means money paid periodically by the Veterans' Administration to disabled members of the Armed Forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training, as well as so-called "refunds" paid to ex-servicemen as GI insurance premiums.

***b) EXCLUSIONS FROM MONTHLY GROSS INCOME***

Excluded from computation of monthly gross income are the following:

- per capita payments to, or funds held in trust for, any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;
- money received from sale of property, such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property in which case the net proceeds would be counted as income from self-employment);
- withdrawals of bank deposits;
- money borrowed;
- tax refunds;
- gifts;
- lump sum inheritances or insurance payments;
- capital gains;
- the value of coupon allotments under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons;
- the value of USDA donated foods;
- the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act;
- any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- earnings of a child under 14 years of age (no inquiry must be made);
- loans and grants such as scholarships obtained and used under conditions that preclude their use for current living costs;
- any grant or loan to any undergraduate student for educational purposes made or insured under the Higher Education Act;

- home produce utilized for household consumption;
- payments made for child care services or the value of child care services provided to a recipient of TA or the NYSCCBG subsidy program who is applying for or receiving any other services funded under any federal or federally assisted program that bases eligibility for such services upon need or the amount of benefits upon need; and,
- Veterans Administration (VA) payments provided under Public Law 104-204 to Vietnam veterans' natural adult or minor children for any disability resulting from spina bifida suffered by such children and VA payments to covered birth defects to or on behalf of the adult or minor biological children of female Vietnam veterans.

## **5. DATE OF ELIGIBILITY**

Eligibility for all child care services, except for transitional child care, begins on the date that an application is submitted. Potential eligibility for the transitional child care guarantee begins on the date that the TA case or the "child care in lieu of TA" case closes and continues for a period of 12 consecutive months following the month of closing. A parent or caretaker relative may apply for transitional child care benefits at any point during the 12-month eligibility period.

## **6. REDETERMINATION OF ELIGIBILITY**

Continuing eligibility must be redetermined as often as factors indicate, but no less than every 12 months, provided, however, that a district may not require the submission of a new application merely because the applicant is no longer eligible for TA. Refer to 04 OCFS ADM-01 for information on the requirements for families transitioning from TA.

Periodic redeterminations must not occur earlier than 30 days prior to the end of the previous eligibility period. When a new person is added to the case or there is another indicator of a change in a recipient's circumstances, which may render him/her ineligible or which may change the degree of need for services, redeterminations of both financial and/or programmatic eligibility must be made within 30 days of the change.

The district must establish procedures to enable families to keep their child care services without interruption as long as the families remain eligible for such services including procedures to transfer families from one unit of the district to another. This requirement does not apply to a family that has moved out of the district that was issuing the TA or the guaranteed child care assistance.

All factors concerning need and eligibility for child care services must be reconsidered, re-evaluated and verified during redeterminations. Current documentation of family size, categorical relationship, income, and continuing need for services must be obtained as appropriate. The periodic redeterminations conducted by the district do not eliminate the responsibility of the recipient of child care services to report to the district any change in financial circumstances, living arrangements, child care arrangements, employment, household composition, or other circumstances that affect the family's need or eligibility for child care services.

If a family is using a legally-exempt child care provider, the provider enrollment form must be updated or replaced with a newly completed enrollment form at least every 12 months.

## C. ELIGIBLE FAMILIES

For two-parent or two-caretaker families, *each* parent/caretaker must meet the eligibility criteria.

For parents living separately and sharing joint custody of a child, both parents may be eligible for child care services. Each parent must engage separately in the normal eligibility determination process to establish his/her subsidy level. The district must include the child's custody schedule within the case record for verification purposes.

### 1. CATEGORIES OF ELIGIBLE FAMILIES UNDER THE NEW YORK STATE CHILD CARE BLOCK GRANT

The NYSCCBG provides funding for child care subsidies to recipients of TA, low-income families transitioning off TA, families that are eligible for TA who have opted to receive “child care in lieu of TA” after applying for TA, and non-TA low income families.

Some families are *guaranteed* child care assistance, regardless of whether the district has any State or federal funds available under the NYSCCBG to pay for any or all of such costs, if they meet specific eligibility requirements described in this section. A second group of families may be considered to be eligible *only* when there are funds available within the district and they meet programmatic and financial criteria. A third group of families is considered to be eligible when the district has funds available to serve them, *and* the district has included them as eligible families in its CSP/ICP *and* they meet the programmatic and financial criteria.

The three categories of families listed below are eligible for child care services under the NYSCCBG provided that child care is not otherwise available from a legally responsible relative or caretaker of the child in need of services, and the care is a necessary part of a plan of self support or protection for the child developed by the district.

#### **a) FAMILIES THAT ARE GUARANTEED CHILD CARE**

A district must guarantee child care services (regardless of whether the district has any State or federal funds available under the NYSCCBG to pay for such costs) to the following families. The guarantee applies to all of the eligible children under 13 years of age of the parent or caretaker relative regardless of the child’s status as part of the TA filing unit.

- (1) Families that have applied for or are in receipt of TA when child care is needed for a child under 13 years of age in order to enable the child’s parent or caretaker relative to participate in activities required by the district including orientation, assessment or work activities as defined in 12 NYCRR Part 1300.
- (2) Families that are receiving TA when child care is needed for a child under 13 years of age in order to enable the child’s parent or caretaker relative to engage in work as defined by the district;
- (3) Families which have applied for and would otherwise be eligible for TA benefits and choose to receive “child care in lieu of TA”, or were receiving TA and voluntarily closed their TA case while still eligible for TA **and** when child care is needed for a child under 13 years of age in order to enable the child’s parent or caretaker relative to work for at least the following number of hours.



(a) For a single parent:

- with a child under the age of six years: 20 hours per week; or
- with children who are all six years or older: 30 hours per week.

(b) For two-parent families:

- the parents must be working a combined total of 55 hours per week with at least one parent working 30 or more hours per week.

This guarantee continues as long as the family meets these requirements.

- (4) Families transitioning from TA whose TA cases have been closed or who voluntarily close their TA cases; and who are no longer financially eligible for TA due to an increase in income or child support. The family must have received TA in three of the six months prior to case closing, or, for a family that chose “child care in lieu of TA”, was eligible for assistance in at least three of the six months immediately preceding their ineligibility for TA. The family must include an eligible child under the age of 13 who needs child care in order for the parent(s) to be engaged in work, and the family's gross income must be at or below 200% of the State Income Standard. For transitional child care, the eligibility period begins with the first month in which a family becomes ineligible for TA or “child care in lieu of TA”, and is limited to 12 months in duration.

***b) FAMILIES THAT ARE ELIGIBLE WHEN FUNDS ARE AVAILABLE***

Families in this category may receive subsidized child care to the extent that the district continues to have funds available under either its allocation from the NYSCCBG or any local funds appropriated for this program, subject to any service priorities and set-asides established by the district. Districts may establish priorities, in addition to the federal priorities of very low income families and special needs children, by identification of such categories in the CSP/ICP, subject to approval from the Office. Funds may be set aside for such priority families when described in the CSP/ICP and approved by the Office.

A district must provide child care assistance to the following families when funds are available:

- (1) Families that have applied for or are receiving TA, when child care is needed for an eligible child 13 years of age or older who has special needs or is under court supervision, to enable the child's parent or caretaker relative to engage in work or participate in activities required by the district including orientation, assessment or work activities defined in 12 NYCRR Part 1300.
- (2) Families that are receiving TA, when child care is needed for an eligible child 13 years of age or older who has special needs or is under court supervision, to enable the child's parent or caretaker relative to engage in work as defined by the district.
- (3) Families that are receiving TA when child care is needed to enable a teenage parent to attend high school or an equivalency program; or for the child to be protected because the child's parent or caretaker relative is unable to care for their children due to a physical or mental incapacity or has family duties away from home necessitating his or her absence.
- (4) Families with income at or below 200% of the State Income Standard when the family is at risk of becoming dependent on TA and child care services are needed to permit the child's parent/caretaker to be engaged in work; or to enable a teenage parent to attend high school or

an equivalency program.

**c) FAMILIES THAT ARE ELIGIBLE WHEN FUNDS ARE AVAILABLE AND THE CATEGORY OF FAMILY IS IDENTIFIED IN THE DISTRICT'S CSP/ICP**

Families in this category may receive subsidized child care to the extent that the district continues to have funds available under either its allocation from the NYSCCBG or any local funds appropriated for this program, **and** the category of family is designated as an eligible family by the district in its CSP/ICP. Availability of funds is subject to the service priorities and set-asides established by each district in its CSP/ICP and approved by the Office.

The district may select categories from the following list or the district may opt to refine any of the optional categories, by specifying any limitations to the programmatic eligibility criteria, so that a more specific population is selected. The identified families must be listed as eligible in the district's CSP/ICP and approved by the Office.

- (1) Families receiving TA when child care services are necessary for the parent or caretaker relative to participate in an approved activity in addition to being engaged in work as required by the district or in a required work activity (e.g.: A parent or caretaker relative with a minimum wage position requesting additional child care during the hours he or she is not at work to enable him or her to seek a better job).
- (2) Families receiving TA when child care services are necessary for a sanctioned parent or caretaker relative to participate in unsubsidized employment when the parent or caretaker relative receives earned wages greater than or equal to the minimum amount required under federal and State labor law.
- (3) Families receiving TA or families with incomes up to 200% of the State Income Standard when child care services are needed for the child to be protected because the parent/caretaker is:
  - (a) participating in an approved substance abuse treatment program, screening or assessment (If the applicant is classified as exempt from work activities because of his or her substance abuse, child care can be offered under this category. However, if the district *requires* that the applicant receive substance abuse treatment and he or she is working or participating in a required work activity, child care is *guaranteed*.);
  - (b) homeless, or receiving services for victims of domestic violence, and is in need of child care to participate in an approved activity, screening or assessment for domestic violence; or,
  - (c) in an emergency situation of short duration including, but not limited to, cases where the parent/caretaker must be away from the home for a substantial period of the day due to extenuating circumstances such as a fire, being dispossessed from the home, seeking living quarters or providing chore/housekeeping services for an elderly or disabled relative.
- (4) Families receiving TA or with incomes up to 200% of the State Income Standard when child care services are needed for the child's parent/caretaker to attend a two year program other than one with a specific vocational sequence leading to an associates degree or a certificate of completion, or at a four year college or university program leading to a bachelor's degree

provided:

- (a) that it is reasonably expected to improve the earning capacity of the parent/caretaker;
  - (b) the parent/caretaker is participating in and continues to participate in non-subsidized employment whereby the parent/caretaker works at least 17 1/2 hours per week and earns wages at a level equal or greater than the minimum amount required under federal and State labor law while pursuing the course of study; and
  - (c) the parent/caretaker is and remains engaged in work while pursuing the course of study and can demonstrate his or her ability to successfully complete the course of study.
- (5) Families with an open child protective case, irrespective of income, only when it is determined that such child care is needed to protect the child.
- (6) Families with income up to 200% of the State Income Standard when child care services are needed for the child to be protected because the parent/caretaker is physically or mentally incapacitated or has family duties away from the home.
- (7) Families with incomes up to 200% of the State Income Standard when child care services are needed for the child's parent/caretaker to participate in one of the following approved activities provided the activity is identified in the district's CSP/ICP as an allowable activity, the district determines it is a necessary part of a plan for the family's self support, and provided that the parent/caretaker can demonstrate that he or she is participating in the approved activity:
- (a) Actively seeking employment for a period no greater than six months, and if the parent/caretaker is registered with the NYS Department of Labor, Division of Employment; or
  - (b) Educational or vocational activities, including attendance in one of the following secondary or post-secondary programs:
    - (i) A public or private educational facility providing standard high school curriculum offered by, or approved by, the local school district;
    - (ii) An education program that prepares the parent/caretaker to obtain a NYS high school equivalency diploma;
    - (iii) A program providing basic remedial education in the areas of reading, writing, mathematics and oral communications for individuals functioning below the ninth month of the eighth grade level in those areas;
    - (iv) A program providing literacy training designed to help individuals improve their ability to read and write;
    - (v) An English as second language instructional program designed to develop skills in listening, speaking, reading and writing the English language for individuals whose native or primary language is other than English;
    - (vi) A two year full-time degree granting program at a community college, a two year college, or an undergraduate college with a specific vocational goal leading to an associate degree or certificate of completion within a determined time frame which must not exceed 30 consecutive months;

- (vii) A training program which has a specific occupational goal and is conducted by an institution licensed or approved by the State Education Department other than a college or university;
- (viii) A pre-vocational skills training program such as a basic education and literacy training program; or
- (ix) A demonstration project designed for vocational training or other project approved by the Department of Labor.

Notwithstanding the potential for some of these educational or vocational training programs to allow for the eventual attainment of a bachelor’s degree or like certificate of completion for a four–year college program, Office regulations do not permit the renewal of such educational or vocational training program enrollment for any additional period in excess of 30 consecutive calendar months, except for families as authorized under paragraph (4) in this section (*to attend a two year program other than one with a specific vocational sequence leading to an associates degree or a certificate of completion, or at a four year college or university program leading to a bachelor’s degree*), nor does it permit enrollment in more than one such program.

**2. TITLE XX OF THE FEDERAL SOCIAL SECURITY ACT**

**a) CATEGORIES OF ELIGIBLE FAMILIES UNDER TITLE XX**

To the degree that the district has chosen to make Title XX funds available for low income child care services, a family is eligible for child care services funded under Title XX if the family meets any of the programmatic eligibility criteria for the NYSCCBG, or if the child is in need of child care as a preventive service, subject to any applicable priorities and set asides established in the district’s most recently approved CSP/ICP. To exercise this option, the district must identify the programmatically eligible families it chooses to include as eligible families in the district’s CSP/ICP and receive approval from the Office. The district may opt to refine any of the optional categories so that a more specific population is selected by specifying any limitations to the programmatic eligibility criteria in its CSP/ICP.

**b) UPPER INCOME LEVELS FOR TITLE XX**

For Title XX funds, a district is permitted to establish within its CSP/ICP upper income levels that exceed 200% of the State Income Standard (SIS) for families receiving child care services, up to the maximum income levels shown below.

FAMILY SIZE	MAXIMUM INCOME LEVEL ALLOWED
1 to 2	275% SIS
3	255% SIS
4 or more	225% SIS

### 3. CHILD CARE SERVICES DURING BREAKS IN PARENT/CARETAKER RELATIVE'S ACTIVITIES

#### **a) FAMILIES RECEIVING TA**

Districts must provide NYSCCBG services to families receiving TA during breaks in activities, for a period up to two weeks. Such child care services may be authorized for up to one month when child care arrangements would otherwise be lost and the program or employment is expected to begin within that one month period, and when the parent or caretaker relative is:

- engaged in work;
- participating in work activities;
- performing community service per SSL Article 5, Title 9-B;
- a teen parent attending high school or equivalent training; or,
- physically or mentally incapacitated, or absent from home due to family duties.

For example, the employer of parent or caretaker relative who is on TA and receiving child care in order to attend work, closed his business for a one week period. The provider requires payment whether or not the child attends the program during that week. The district must provide a child care subsidy.

#### **b) LOW INCOME FAMILIES**

For all other families who are eligible under the NYSCCBG or Title XX, including families who are receiving transitional child care or “child care in lieu of TA”, a district may provide child care services while the parent/caretaker is waiting to enter an approved activity/employment, or on a break between activities for a period up to two weeks or for a period up to one month, where child care arrangements would otherwise be lost and the subsequent activity is expected to begin within that period. If the district elects to provide this service to low income families, it must be indicated in its CSP/ICP and approved by the Office. For example, a teenage parent is attending high school and has one week off for school vacation. The parent will lose the child care arrangements if subsidy is not provided. If the district has chosen to provide this service to this low income category of family in its CSP/ICP that has been approved by the Office and there are funds available, subsidy for child care during the school vacation must be paid.

### 4. PRIORITY POPULATIONS, FUNDING SET ASIDES, WAITING LISTS, AND CASE CLOSINGS

#### **a) PRIORITY POPULATIONS**

Federal regulations require that two specific populations of families be prioritized for child care services funded under the NYSCCBG program: *families with very low income* and *families with children who have special needs*. Districts define “families with very low income” by establishing the upper income level for these families in their CSP/ICP. This income level must be set at or below 200% of the State Income Standard (SIS).

In addition to the federally mandated priority populations, each district has the option of establishing *local priorities* for child care services funded under the NYSCCBG and/or under Title XX of the federal Social Security Act. The district may identify categories of families as local priority populations, in order to “set-aside” funds for that population’s estimated 12-month needs. The district must provide eligible families within a priority group equitable access to child care assistance funds, to the extent that these funds are available. Local priorities must be identified in the district’s CSP/ICP and approved by the Office prior to being implemented. Local priorities may refine but cannot replace the federally mandated priorities. Local priorities may be based on one or a combination of factors, including, but not limited to, household composition, reason for child care, and income level. Local priorities may not have the effect of limiting a parent/caretaker’s choice of any eligible child care provider or be based on a parent/caretaker’s choice of a child care certificate. Families with a child care guarantee must be provided child care services even if a district has insufficient funds. However, there may be times of the year when a district has insufficient funds to cover other families that do not have a child care guarantee.

Identification of a category of family as a “priority” and the definition of “very low income” *does not* change the income eligibility standards for the NYSCCBG, which are set in the Social Services Law at 200% of the State Income Standard (SIS). However, priorities and the district’s definition of “very low income” assist in determining how intake may be limited or cases closed when a district has insufficient funds to provide child care to all families who meet the State income and programmatic eligibility criteria but do not fall under a guarantee of child care.

A district may decide, for example, that it only has sufficient funds to cover families with incomes below 160% of the SIS. In this case, a family with income of 175% is financially eligible for child care but is ineligible to receive a subsidy *at the current time* due to insufficient funds. If a district is limiting intake to a particular income level when there are insufficient funds, the district must be prepared to support its decision by documenting spending levels.

When circumstances require that a district must limit the number of cases that will be opened, the provision of assistance to families identified as priorities will dictate which cases are opened first and which cases may be denied due to insufficient funds and/or put on a waiting list. When circumstances dictate that some cases be closed due to insufficient funding, families who do not meet the definition of a priority population will be closed first.

#### ***b) FUNDING SET ASIDES***

Each district may set aside a portion of the district’s NYSCCBG allocation and/or its Title XX allocation to serve one or more of the federal and/or local priority populations. Families eligible for child care guarantees may have set asides. The method of disbursement of funds to priority groups must be such that eligible families within a priority group will receive equitable access to child care assistance funds to the extent that such funds are available.

Each funding set aside amount must be based on the projected need for the population for a 12-month period. The amount of the set aside, and the rationale, must be described in the district’s CSP/ICP. The amount of the set aside, for each particular priority population for a given 12-month period, may be adjusted up or down by 10 percent without the prior written approval of the Office. Such adjustment to a set aside amount must be reported to the Office within 30 days of the adjustment. Any adjustment of the set aside amount for a priority population that exceeds 10% of the amount originally set in the CSP/ICP requires the prior approval of the Office.

### **c) WAITING LISTS AND DENIAL OF SERVICES**

If a district has set aside funds to service one or more priority populations and all of the available funds that *are not set aside* are projected to be needed for open cases, the district may deny services to a family that is not eligible for a child care guarantee and that does not fall within the priority population for the set asides, or the district may place the family on a waiting list for subsidies.

A district that has not established set asides must open a new case for an eligible family if the district has sufficient funding available to provide child care services to that family at the time the family is determined to be eligible. If the district does not have sufficient funding available because all of the available funds are projected to be needed for open child care cases, the district may deny services to a family that is not eligible for a child care guarantee, or place the family on a waiting list for subsidies.

### **d) CASE CLOSINGS**

Once a district has committed all available funds, either through set asides, as approved in its CSP/ICP, and/or projections based on open child care cases, the district may discontinue funding to families that have lower priorities and who are not eligible for a child care guarantee in order to serve those families with higher priorities. A district must rank in its CSP/ICP its identified priority families for the purposes of case closing and case openings for use in the event that funds are insufficient to serve all eligible families. If no priorities are established beyond the federally-mandated priorities and all funds are committed, case closing for families that are not eligible under a child care guarantee and are not a federally-mandated priority must be based on the length of time in receipt of services. The district must choose to close cases based either on the shortest or longest time receiving child care services, but the decision must be specified in its CSP/ICP and be applied consistently for all families.

## **D. RESPONSIBILITIES OF PARENT/CARETAKER**

### **1. APPLICATION FOR CHILD CARE**

Applicants for child care services must apply, in writing, on forms and in a manner prescribed by the district. The parent/caretaker with whom an eligible child resides is the applicant for such services. The applicant is responsible for providing accurate, complete and current information regarding family income and composition, child care arrangements, and any other circumstances related to the family's eligibility for child care services. Any change in this information must be reported immediately to the district. The parent/caretaker is informed of this requirement in the LDSS-2921 Application and the LDSS-4148A: "What You Should Know About Your Rights and Responsibilities."

### **2. ACTIVE PURSUIT OF CHILD SUPPORT**

The child's parent/caretaker must demonstrate that he or she is actively pursuing child support from the non-custodial parent through the district's Child Support Enforcement Unit (CSEU) or by private legal means or must show good cause for why the family should be excused from this requirement. For more information on determining good cause, refer to *section III.G.5, Good Cause* of this ADM.

### 3. CHOOSING A CHILD CARE PROVIDER

The child's parent/caretaker is responsible for locating a child care provider that meets the need of his or her child. A parent/caretaker that is unable to locate a child care provider may ask the district for assistance. The district must provide a copy of a list of licensed or registered providers to applicants when the list is requested. The district may also refer the parent/caretaker to the child care resource and referral agency for assistance in arranging child care. Refer to *section III.F, Special Provisions Relating to Temporary Assistance Recipients* of this ADM for a district's responsibility when a TA parent cannot find care.

Parents/caretakers are responsible for paying those providers that do not have a contract with the district any differential between the maximum allowable child care market rate and the actual cost of child care. Parents/caretakers who are unwilling or unable to increase their out-of-pocket expenses should be instructed to search for another provider whose costs are closer to the market rate.

A family that chooses to have a provider providing child care services in the child's own home must provide such provider with all employment benefits required by State and/or federal law, and must pay the provider at least the minimum wage, if required. Families may be referred to the NYS Department of Labor for information on specific requirements.

### 4. FAMILY SHARE

Each low income family receiving child care services must contribute toward the costs of the child care by paying a family share based on the income of the CCSU. The family is responsible for paying the family share in the manner determined by the district. The district may require the family to pay the family share to the district or to one or more child care providers used by the family. A family share may also be required of any family to recover an *overpayment* for child care services regardless of whether any member of the family is receiving TA.

The parent/caretaker has the right to request a fair hearing if he or she disagrees with an action taken or decision made by the district. If a fair hearing is requested, the parent/caretaker is not required to repay any overpayments until after the district prevails at the fair hearing.

The failure of a family receiving child care services to pay the family share established by the district, or to cooperate with the district to develop an arrangement satisfactory to the district to make full payment of all delinquent family shares constitutes an appropriate basis for suspending or terminating such child care services. However, the failure of a recipient to pay his or her family share is not to be used as a basis for the denial or discontinuance of services as part of a plan of protective services for an adult or a child or for preventing the placement of a child in foster care.

For more information on the family share, please refer to the *section III.E.5, Family Share* of this ADM.

### 5. CHILD CARE NEEDED FOR PARTICIPATION IN APPROVED TRAINING

A parent/caretaker seeking child care services in order to participate in an approved training program must provide documentation that includes, but is not limited to, the following:

- the name of the institution offering or conducting the training program;



- the course of study to be pursued or in which the person is participating;
- the specific vocational or rehabilitative goal;
- the duration of the training (hours per day) including no more than a total of three hour per day to commute (from home) to and from the training location; and
- progress reports (marks, transcripts, letters, and like documents) that indicate that the parent/caretaker is progressing satisfactorily towards attaining the established vocational or rehabilitative goal.

## 6. IMMEDIATE NOTIFICATION WHEN A CHANGE OCCURS

A recipient is responsible for notifying the district immediately of any change in financial circumstances, living arrangements, employment, household composition, child care provider or other circumstances that affect the family's need or eligibility for child care services. Such changes may have an immediate impact on issuance of subsidy payment, and may result in a child care overpayment if the recipient does not immediately notify the district.

## E. RESPONSIBILITIES OF THE SOCIAL SERVICES DISTRICT

### 1. APPLICATION

Each individual wishing to apply for social services must be allowed the opportunity to do so without delay. The district must allow the applicant to submit an application by mail.

Districts are required to inform applicants of their rights and responsibilities. This is accomplished through the following documents:

- LDSS-4148A: "What You Should Know About Your Rights and Responsibilities"
- LDSS-4148B: "What You Should Know About Social Services Programs"
- LDSS-4148C: "What You Should Know If You Have an Emergency"

### 2. INITIAL ELIGIBILITY

Initial eligibility for child day care, informal child care and legally-exempt group child care services must be determined pursuant to the requirements of 18 NYCRR Parts 404 and 415, the district's options designated in its approved CSP/ICP, and, where applicable, 12 NYCRR Part 1300. Additionally, the required documentation is a necessary prerequisite to the determination of eligibility and must be retained in the case folder.

All applications must be processed promptly. A determination of programmatic and/or financial eligibility must be completed for all applications within 30 days of the date of the application.

Except for the provision of child care services to families transitioning from TA eligible for the child care guarantee, reimbursement for services provided prior to the date of actual determination of programmatic and/or financial eligibility will be allowed only if:

- the eligibility determination was made within 30 days of the date of application, and
- the applicant was determined to have been programmatically and/or financially eligible when services were initiated.

The date of eligibility for services may not precede the date of application except in the case of transitional child care benefits.

Upon the approval of a child care services application, the district must provide an authorization for child care services and send written notice, OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, within 15 calendar days after the determination has been made to the applicant regarding:

- the eligibility determination,
- the amount of the family share, if required,
- the dates the family share is due to be paid by the applicant,
- the family share payment procedures, and
- the applicant's right to a fair hearing.

If the child care services application is denied, the district must send written notice, OCFS/LDSS-4780, Denial of Your Application for Child Care Benefits, within 15 calendar days after the determination has been made to inform the applicant of the reason for the determination of ineligibility and of the applicant's right to a fair hearing.

Notification must be made using the forms specified above unless the district has requested and been granted approval from the Office for use of local equivalents to replace any of these forms.

### 3. CONTINUING ELIGIBILITY

Continuing eligibility for child care services must be redetermined no less frequently than every 12 months. In redetermining eligibility, all eligibility factors must be reevaluated.

If a recipient is found to be eligible at redetermination, the district must send to the recipient the required notice, OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, within 15 calendar days after the determination has been made.

Districts must send the required notice, OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits, at least ten days before the proposed action when a change involves an increase or decrease in the amount of benefits or there is a change in the manner of payment that forces the recipient to change child care arrangements.

For those changes that result in a suspension or termination of such benefits, a district must provide notice, using OCFS/LDSS-4782, Notice of Intent to Discontinue Benefits, at least ten days before the suspension or termination of benefits.

#### **4. CHILD CARE SERVICE REQUIREMENTS**

##### ***a) PARENTAL CHOICE***

A recipient must have the option to choose among eligible child care providers. A district may disapprove a child care provider chosen by the recipient in a child preventive case funded under Title XX or a child protective case if the district has reason to believe that it would be contrary to the health, safety or welfare of the child to receive child care services from that provider.

When offering NYSCCBG to a family eligible to receive such services, the district must offer the child's parent/caretaker the choice to either:

- enroll the child with an eligible child care provider which has a contract with the district for the provision of such services; or
- receive a child care certificate that permits the child's parent/caretaker to arrange child care services with any eligible provider.

A child care provider must be validly licensed, properly registered or enrolled, as appropriate. When the license or registration of a provider is suspended, the provider is not validly licensed or registered and cannot operate for the term of the suspension.

##### ***b) CHILD CARE SERVICES MUST FIT THE HOURS OF THE APPROVED ACTIVITY***

The child care services must be reasonably related to the hours of employment, education or training of a child's parent/caretaker, as applicable, and permit time for pick up and delivery for the child. Additionally, up to eight hours of child care services may be provided, if needed, to enable an employed parent/caretaker who works a second or third shift to sleep if the district indicates in its CSP/ICP that it will provide such services.

##### ***c) MOVING OF A CHILD FROM AN ELIGIBLE PROVIDER***

No child may be moved by a district from an eligible provider unless the recipient consents to such move; provided, however, that a district may require that a child receiving child care services as part of a preventive case funded under Title XX, or as a child protective services case, be moved from an existing placement with an eligible provider if the district has reason to believe that it may be contrary to the child's health, safety or welfare to continue receiving services from that provider.

##### ***d) ASSIST IN ARRANGING CHILD CARE***

A parent/caretaker that is unable to locate a child care provider may ask the district for assistance. The district must provide a list of licensed or registered child care providers located in the district or refer the parent/caretaker to the child care resource and referral agency for assistance in arranging child care. Refer to *section III.F, Special Provisions Relating to Temporary Assistance Recipients* of this ADM for a district's responsibility when a TA parent cannot find care.

Districts may use the Child Care Facilities System (CCFS) to obtain a list of providers and update such list against providers on the hold list provided to the district by the Bureau of Early Childhood Services Regional Office.

## 5. FAMILY SHARE

### a) *INCOME-BASED PORTION OF THE FAMILY SHARE*

Each family receiving child care services, other than those receiving child care services under TA, must contribute toward the costs of the child care by paying a family share based on the income of the CCSU. This *income-based* portion of the family share for child care services must be determined by the district in accordance with a sliding fee scale. Each district must select a percentage, from 10% to 35%, that it will use to calculate the family share for all families receiving child care services that are required to pay an income-based portion of a family share. The district must use the same percentage for all families. Once the percentage is recorded in the district's CSP/ICP and approved by the Office, it becomes the basis for the district's sliding fee scale.

The family share is calculated as follows:

- Determine the annual gross income for the eligible family.
- Subtract the State Income Standard (SIS) for the specific family size of the CCSU from the annual gross income of the CCSU to obtain the difference.
- Multiply the difference by the district's selected percentage, designated in the CSP/ICP, to get the annual family share.
- Divide the annual family share by 52 to get the weekly family share.

A minimum weekly family share of one dollar must be charged to each family receiving child care services that is required to pay an income-based portion of a family share. Each family receiving child care services is responsible for paying only one income-based family share regardless of the number of children in the family who are receiving child care services.

### b) *OVERPAYMENT PORTION OF FAMILY SHARE*

A family share may also be required of any family to recover an *overpayment* for child care services regardless of whether any member of the family is receiving TA. The child care overpayment portion of the family share, if any, must be reflected separately from any income-based portion of the family share. Refer to *section III.E.13, Child Care Overpayments* of this ADM for detailed information on the calculation and collection of overpayments.

### c) *METHOD OF PAYMENT OF THE FAMILY SHARE*

The family is responsible for paying the family share in the manner determined by the district. The district may require the family to pay the family share to the district or to one or more child care providers used by the family.

### d) *RECALCULATION OF FAMILY SHARE*

The family share will be recalculated by the district whenever there is a change in income, household circumstances or child care provider that would affect the amount of the family share, or when an overpayment for child care services has occurred and the recovery of such overpayment will be made through the family share, but no less frequently than each recertification.

***e) FAILURE TO PAY FAMILY SHARE AND TERMINATION OF SERVICES***

The failure of a family receiving child care services to pay the family share established by the district, or to cooperate with the district to develop an arrangement satisfactory to the district to make full payment of all delinquent family shares, constitutes an appropriate basis for suspending or terminating such child care services. However, the failure of a recipient to pay his or her family share is not to be used as a basis for the denial or discontinuance of child care services as part of a plan of protective services for a child or adult or for preventing the placement of a child in foster care.

***f) WHEN FAMILY SHARE EXCEEDS COST OF CARE***

If the family share exceeds the cost of care, the family is ineligible for child care payments. However, there may be situations when the family share exceeds the cost of care during certain times of the year and the cost of care exceeds the family share at other times of the year. This happens with school age children who need only part-time child care while school is in session and full-time child care during school vacations and summer break. In this circumstance, when the family share exceeds the cost of care, the family pays the full cost of care. When the cost of care exceeds the family share, the family pays the family share and the district covers the balance.

***g) INFORMING THE APPLICANT***

At the time of initial eligibility determination, redetermination, and each recalculation of the family share, the district must inform the parent/caretaker, using the OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, or the OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits, of the amount of the required family share and when the family share is due to be paid. A provider that is being paid directly by the district must be notified if the provider is required to collect a family share from the recipient. The notification to the provider must include the amount of the family share to be collected and when it is due.

**6. ENROLLMENT OF LEGALLY-EXEMPT PROVIDERS**

New health and safety standards require that a legally-exempt child care provider attest to his or her history, if any, in regards to the removal of a child from his or her care through an Article 10 court order; termination of his or her parental rights; and/or denial, revocation and/or suspension of a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home. Districts should refer to 01 OCFS LCM-11, Revised Health and Safety Requirements for Legally-Exempt Providers, and 03 OCFS LCM-17, Legally-Exempt In-Home Child Care Providers as Employees, and 05 OCFS ADM-01, Administration of Medication by Legally-Exempt Child Care Providers, for all other health and safety requirements and enrollment procedures for legally-exempt providers.

***a) NEW LEGALLY-EXEMPT PROVIDER CERTIFICATIONS***

To be enrolled by a district to provide child care services under the NYSCCBG, a provider of legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care which is not required to be operated under the auspices of another federal, State or local government agency must attest and certify in writing:

- Whether the provider has ever had a child(ren) removed from his or her care by court order under Article 10 of the Family Court Act;
- Whether the provider has ever had his or her parental rights terminated; and
- Whether, to the best of his or her knowledge, the provider has ever been denied a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home, or had such a license or registration suspended or revoked.

The provider must provide true and accurate information to the district and the parent/caretaker about the reasons for the denial, suspension or revocation and the reasons underlying the loss of parental or custodial rights. Based on guidelines issued by the Office, a district must determine whether to enroll a provider who indicates that he or she has been subject to any of the conditions listed above. The guidelines for implementing this requirement are provided as Attachment A of this ADM.

#### ***b) REVISED ENROLLMENT FORMS***

The naming of the enrollment forms, LDSS-4699, Enrollment Form for Provider of Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care and the LDSS-4700, the Enrollment Form for Provider of Legally-Exempt Group Child Care has been changed to include an OCFS prefix. The content of these forms has been revised to include the new legally-exempt provider certifications. These forms, OCFS/LDSS-4699 and OCFS/LDSS-4700, are included as Attachments B and C, respectively. Districts must begin using these immediately for all new enrollments.

Districts must notify current recipients of child care assistance of the requirement for providers to complete the new certifications, and provide the certification sections of the revised enrollment forms, OCFS/LDSS-4699 and OCFS/LDSS-4700, to the child care recipients with instructions to have them completed by their provider and returned as a condition of eligibility, at the next case action, recertification or the end of the enrollment period, whichever comes first. At its option, the district may take the additional action of directly informing the enrolled child care providers of these regulatory changes that may affect their status as enrolled providers. Districts must promptly review the certification sections of the revised enrollment form and make an enrollment decision in accordance with the guidelines.

#### ***Other additions and changes to the enrollment forms***

##### ***Administration of medication***

On January 31, 2005, new regulations regarding administration of medication went into effect. A new section has been added to the enrollment forms to address the administration of medication in legally-exempt care. The Office issued 05 OCFS ADM-01 dated January 12, 2005 that details guidelines concerning the administration of medication.

##### ***Access to where child care services are being provided***

In the final Provider Certification section on both enrollment forms, OCFS/LDSS-4699 and OCFS/LDSS-4700, a new certification was added to allow districts access to the child care site when subsidized care is being provided. Districts may use this clause to verify the appropriate delivery of services.

### ***Other changes to the enrollment forms***

For both forms, language was added to the case identifying information section to clarify that a parent/caretaker may, but is **not required** to, provide his/her Social Security Number. The parent/caretaker may not be required to disclose the Social Security Number as a condition of eligibility. It explains that the Social Security Number will be used to assist in identifying the child care parent's/caretaker's file. It may also be used by federal, State and local agencies to prevent duplication of services and fraud, and for federal reporting.

In Section I of the OCFS/LDSS-4699, instruction was added to advise the parent and provider that they must submit the Agreement for Legally-Exempt In-Home Child Care when in-home care is provided. Also the response to 2B under Provider Status, was reworded, from *"I care for only 2 children..."* to say, *"I care for no more than 2 children..."*

### ***c) MONITORING DETERMINATIONS PRIOR TO AUTHORIZING PAYMENT***

Prior to authorizing payment for child care services provided by a provider of legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care, the district must review information obtained from the provider and determine whether the provider is exempt from the State's child day care licensing and registration requirements and whether the provider meets the basic health and safety requirements. Enrollment information must be updated and reviewed at least annually and at any other time when a change in circumstances warrants such a review.

A district must describe in its CSP/ICP how it will examine and verify the accuracy of information contained in the enrollment forms completed by legally-exempt providers. The district's monitoring activities may involve other components in addition to the review and verification of enrollment paperwork, attendance sheets, work schedules, bills signed by both the child's caretaker and the provider, and other payment records. For example, a district may:

- Conduct random site visits during the hours care is being provided to verify information on the enrollment forms regarding health and safety and whether child care is actually being provided as billed. These random visits can only be conducted as part of an audit function or when the district has received approval to conduct such as part of its CSP/ICP.
- Conduct file reviews to determine whether providers are submitting enrollment documents at least annually and to determine if child care services are reasonably related to the hours of employment, training or education of the child's parent/caretaker.
- Conduct file reviews to determine whether those child care providers who are also receiving TA are accurately reporting their income for the purpose of computing their TA benefits.
- Define additional standards for legally-exempt providers in the district's CSP/ICP. Such standards may include a routine home visit to assess health and safety prior to enrollment; or a local criminal or local child welfare database check of the caregivers and/or persons residing in the home where the child care is provided.
- Make fraud referrals when the district has reason to believe that a provider or a parent/caretaker has made a fraudulent statement.

## 7. MONITORING OF ATTENDANCE AND PAYMENT RECORDS

Attendance and payment records must be monitored for all providers receiving payment for child care services regardless of the method of payment.

## 8. ADDITIONAL DISTRICT STANDARDS FOR PROVIDERS OF SUBSIDIZED CHILD CARE SERVICES

Districts may submit to the Office justification for a need to impose additional requirements on child care providers providing subsidized child care services that exceed the current State and federal regulations. The justification for additional standards must include a plan to monitor compliance with such additional requirements. Additional standards are established by including them in the district's CSP/ICP and obtaining approval by the Office. The Office is not obligated to take any action to enforce any additional requirements imposed by a district on child care providers providing care to children receiving a subsidy. The district must not impose such requirements or monitoring without the written approval of the Office.

If the local standard is included in its CSP/ICP and approved the Office, a district may choose to conduct announced or unannounced inspections of the records and the premises of providers of child care to subsidized children. An example of an additional standard a district may select includes conducting inspections *prior* to the actual provision of child care to subsidized children for the purpose of determining whether a child care provider is in compliance with applicable local laws and regulations and any additional requirements imposed on the provider by the district. However, a district may always conduct announced or unannounced inspections of the records and the premises of any provider of care to subsidized children as part of its audit function without the prior approval of the Office.

If the district finds any suspected violations of child care provider licensing or registration regulations promulgated by the Office, and the district must immediately notify the Office and provide the Office with an inspection report documenting the results of such inspection.

## 9. PAYMENT TO NON-COMPLIANT PROVIDER

A district may refuse to allow a child care provider that is not in compliance with regulations and requirements promulgated by the Office, or any additional district standards as approved by the Office, to provide subsidized child care services to a child. A district may refuse to provide subsidy payments to child care providers who are considered "non-compliant" as set forth herein.

- (1) A legally-exempt, enrolled child care provider must be considered "non-compliant" for the purpose of stopping the issuance of subsidy payments if the district determines:
  - (a) the provider does not meet the health and safety requirements or other requirements set forth by the Office;
  - (b) the provider does not meet the definition of a legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care; or
  - (c) the provider does not meet locally defined additional requirements set forth in the district's CSP/ICP and approved by the Office.



- (2) A licensed or registered child care provider has due process rights and may only be considered “non-compliant” for the purpose of stopping the issuance of subsidy payments, after one of the following events occurs:
- (a) the provider’s license or registration was suspended following a finding that the public health or a child’s safety or welfare is in imminent danger;
  - (b) the provider was issued a letter to revoke or deny the provider’s child care license or registration and the child care provider’s due process hearing rights have been adhered to and all rights to appeal have been exhausted, resulting in a final decision to revoke or deny the provider’s child care license or registration;
  - (c) the provider was issued a written notification that the provider’s license or registration is no longer valid; or
  - (d) the provider is closed.

The district is responsible for documenting the eligibility status of a provider prior to approving payments for child care. The eligibility status of licensed and registered providers, except for day care centers licensed in New York City, can be verified by using the search capability of the CCFS. CCFS contains up-to-date information on suspension and/or closure actions taken by the Bureau of Early Childhood Services (BECS) licensors. Providers can be viewed according to their facility statuses.

Prior to approving the issuance of a child care subsidy payment, the district should review the statuses of licensed or registered child care providers in their area in CCFS to determine which, if any, have a status of “suspended” or “closed.” When providers have been suspended or closed, the district should check the “status effective” date in CCFS to determine if the provider was “suspended” or “closed” during times when subsidized child care was provided. Payment cannot be made for child care provided during the times the provider was “suspended” or “closed.” However, subsidy must be paid for child care provided for the time period that a program is legally allowed to continue to operate.

Any parent choosing to use a suspended provider should be made aware that such providers are ineligible for subsidy and the district may not issue subsidy payment for care provided by such provider.

## **10. DUE PROCESS REQUIREMENTS**

Written notice of the determination of eligibility and the family share to be paid by the applicant, or ineligibility for child care services, as well as any modification thereto, must be sent to the applicant or recipient. Recipients of child care services must receive timely and adequate notice of any change in child care services, except for changes in the manner of payment. A district must provide timely and adequate notice for those changes that result in a discontinuation, suspension, reduction or termination of such benefits, or force a change in child care arrangement.

An applicant or recipient of child care services must be notified of the right to a fair hearing whenever there is a determination affecting his or her family’s eligibility for child care services.

## **11. JURISDICTIONAL REQUIREMENTS**

When a family which is guaranteed child care services moves from one district to another district within the State, the new social service district is responsible for paying the family’s child care services

beginning with the second full month that the family lives in that district, provided the family remains eligible for guaranteed child care services. The former district is obligated to continue to pay for the guaranteed child care services during the month the family moves to the other district and the first full month following the month the family moved.

However, in a situation where the district *requires* a recipient to attend a program, such as substance abuse residential facility, in another district as part of his or her employment plan, the original district retains responsibility for providing TA benefits for that recipient. The original district is also responsible for all child care services needed for any child who moves to live with, or be near, the recipient, until the recipient's TA expires.

When a child is placed in foster care in a social service district outside of the district where the child resided at the time of placement, and the foster family needs child care services for the foster child and the foster family is eligible to receive such services, the district that has financial responsibility for the foster child will be responsible for providing child care services for the foster child.

For all other families not described above, the social service district where a family resides will be responsible for providing child care services.

## **12. OTHER ADMINISTRATIVE REQUIREMENTS**

A district has the following responsibilities for the administration of child care services:

- (1) In the case of providers from whom the district purchases child care services, contracts, when required by 18 NYCRR section 405.3, must be negotiated in accordance with the purchase of service requirements set forth in such section. The district may review provider budgets, and must monitor attendance and payment records for providers.
- (2) Required reports and claims for reimbursement must be prepared and submitted in the form and manner and at the times required by the Office of Temporary and Disability Assistance and the Office of Children and Family Services.
- (3) Each district must collect and submit information to the Office, in the form and manner and at the times specified by the Office, concerning the disbursement of child care subsidy funds showing the geographic distribution of children receiving child care services from the district.
- (4) The records required to be maintained by State and federal law and regulation, and by requirements of the Office of Temporary and Disability Assistance and the Office of Children and Family Services, must be retained as stated. A district must keep and retain adequate claiming records, retain appropriate documentation in the recipient's case file and make appropriate records available for audit by appropriate State and federal agencies.
- (5) The district is responsible for reporting to the Office, in the form and manner and at the times required by the Office, specific information regarding child care services, including but not limited to, the number of children receiving each specific child care service, the costs of such services separated by the type of child care providers used, and any additional information required for the State to meet federal reporting requirements.
- (6) The district must submit a child care services plan to the Office for approval as part of the district's multi-year CSP/ICP and any annual implementation reports. The plan must be

submitted in the form and manner prescribed by the Office and at the times required by the Office. A district's child care subsidy program must be implemented in accordance with the CSP/ICP approved by the Office.

### **13. CHILD CARE OVERPAYMENTS**

#### ***a) OCCURRENCE OF OVERPAYMENTS***

Overpayments for child care services may occur as a result of payment for aid continuing for a parent/caretaker who lost a fair hearing. Additionally, overpayments may occur when an applicant or recipient fails to inform the district of changes affecting his or her family's eligibility or child care benefit level. These changes include but are not limited to the following:

- household income
- household composition
- work or approved activity schedule
- hours of care needed
- child care provider
- rate changes.

Overpayments may occur due to the failure of the provider to report changes. These changes include but are not limited to the following:

- child's absence, that is not covered by the district's absence policy
- child withdrawn from care
- hours of care provided
- rate changes.

Overpayments may also occur when a district fails to take timely action to make a change in the family's child care benefit level or when the district makes an error in calculation of the family's child care benefit level.

#### ***b) DISTRICT ACTION TO CORRECT OVERPAYMENT***

The district must take all reasonable steps to correct promptly any overpayments for child care services to a child's parent/caretaker or a child care provider. For the purposes of this section, "promptly", on the part of the district, means that corrective action must be taken and the client must receive a client notice within 60 days of the date the client notified the district of a change in circumstances. However, when an overpayment occurs as a result of a district's failure to act within 60 days on information provided by a parent/caretaker regarding the circumstances affecting child care benefits, no recovery may be made from the party who provided such information. In the case of a district calculation error or other error causing a child care overpayment, the corrective action must be taken and the client must receive a client notice within 60 days of the date of occurrence of the district error.

Although there is a 60 day grace period for corrective action on child care overpayments, a district is encouraged to take corrective action as soon as possible to lessen the economic impact on the family. A district *should not* wait until the next recertification period to recoup child care overpayments. Such a delay by the district may result in a family receiving additional child care benefits for which it is no longer eligible or applying an inappropriate amount towards the family share of child care costs.

#### **c) RECOVERY OF OVERPAYMENT**

The following actions are to be taken by the district to determine the overpayment and whether to recover the amount of overpayment:

- determine how the child care overpayment occurred and who was responsible for the overpayment. Responsible parties may include the district, parent, provider or a combination of one or more of these parties;
- determine the amount of the overpayment including the time period for which an overpayment occurred;
- estimate the costs of recovery; and
- determine whether the overpayment rises to the level of fraud.

The district must attempt to recover overpayments when:

- the overpayment resulted from fraud (regardless of the amount of overpayment or whether the parent/caretaker is a current or former recipient);
- the parent/caretaker is *currently* receiving child care benefits (regardless of the amount of overpayment); or
- the estimated cost of recovery of the overpayment from a *former* recipient is less than or equal to the amount of overpayment.

However, when an overpayment occurs as a result of a district's failure to act within 60 days on information provided by a parent/caretaker regarding the circumstances affecting child care benefits, no recovery may be made from the party who provided such information. State reimbursement and FFP cannot be claimed for child care overpayments if the district did not act promptly to correct the overpayment.

#### **d) MECHANISM OF RECOVERY**

A district must determine the mechanism by which to collect a child care overpayment. Recovery of an overpayment may occur through:

- Repayment to the district by the child's parent/caretaker or provider, whomever is the responsible party.
- Increase in family share. When a child care overpayment occurs with a TA recipient the overpayment can be recouped by imposing a family share on the TA recipient.
- Reduction in the district's payment to the child care provider and increase in the parent/caretaker's family share except where a contract for such services obligates the district to make full payment.

- Recovery of overpayments can be made only from child care benefits unless the recipient voluntarily requests that it be made from his/her available income. If the family is *currently* in receipt of benefits, the district may reduce the amount of the child care benefit and increase the amount of the family share owed by the parent. Alternatively, the district may continue to pay the same benefit level to the provider but instruct the parent/caretaker to pay the family share directly to the district.

When it has been determined that a child care overpayment to a recipient or former recipient has occurred, which does not involve fraud, districts must complete Attachment D, OCFS/LDSS-7009, Notice of Child Care Assistance Overpayment and Repayment Requirements. This notice includes information on the time frame, amount and reason for the overpayment; the mechanism for collection of the overpayment; and the right to an agency conference and fair hearing if the recipient disagrees with the district's determination of the overpayment. The district must give the parent/caretaker the completed form and keep a copy of the signed form in the case record.

In recovering overpayments for child care services from child care recipients, the district must see that child care recipients retain a reasonable amount of funds for any given month. Recovery attempts and amounts must be reasonable. Ideally, complete recovery of all child care overpayments should occur within 12 months. However, in no event can the monthly recovery amount exceed 10% of the monthly gross income of the family. If the recovery amount would exceed 10% of the gross income, the recovery period must be extended beyond 12 months. A parent/caretaker may elect to waive the above limitations and pay back a child care overpayment in a lump sum, over a period of less than 12 months or in amounts that exceed 10% of his or her gross income. Alternatively, districts should consider those circumstances when a parent/caretaker requests that recovery amounts be reduced to less than 10% of the monthly gross income and collection periods be extended beyond 12 months because of undue hardship. In cases in which a TA recipient has no income beyond the TA grant, the district should delay recovery of the overpayment until the family has income in addition to the TA grant. Monthly gross income for a TA recipient includes the amount of the TA cash grant and any earned or unearned income.

When a parent/caretaker or provider is deemed responsible for the child care overpayment, due to acts of commission or omission, the overpayment must be recovered from the parent/caretaker on whose behalf the payments were made or the provider who received payment for such services, whoever is responsible for the overpayment. Overpayments to child care providers or former recipients of child care services who refuse to repay may be recovered in accordance with the legal remedies available under State law.

Underpayments and overpayments may be offset against each other. Districts must collect and maintain information on the collection of overpayments and make appropriate adjustments when claiming Federal Financial Participation (FFP) and State reimbursement, and when satisfying the district's maintenance of effort requirement under the NYSCCBG program. FFP and State reimbursement cannot be claimed for overpayments where no repayment is made and no recovery occurs.

#### **e) APPLICANTS WITH OUTSTANDING OVERPAYMENTS**

An applicant for child care services who has not re-paid past overpayments for previous child care services that resulted from the failure to notify the district of a change in circumstances or from fraud, must agree to and comply with a plan to make full repayment of such child care overpayments as a condition of being eligible for the new child care services.

***f) SUSPENDING OR TERMINATING BENEFITS***

With the exception of child care services authorized as a child protective or a preventive service, a recipient of child care services who fails to comply with an agreed upon plan, must have his or her family's child care benefits suspended or terminated until such time as the recipient comes into compliance with such a plan.

In this situation, districts have the option to either suspend child care benefits or to reduce child care benefits. The OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits, must be sent prior to any action being taken on the recipient's child care benefits. However, districts must take into account that TA recipients cannot be sanctioned for non-participation in a work activity, if they do not have affordable child care. This situation must be examined when determining any reduction in child care benefits for TA families.

***14. FRAUD***

With the exception of child care services authorized as a child protective or child preventive service, a recipient or former recipient of child care services who has been convicted of or has voluntarily admitted to, on or after May 15, 2004, fraudulently receiving child care services is subject to a disqualification from the child care subsidy program.

***a) VOLUNTARY ADMISSION OF CHILD CARE FRAUD***

For the purpose of a voluntary admission by a recipient or former recipient, fraudulently receiving child care assistance means that an applicant or recipient applies for or receives child care assistance and intentionally misrepresents, conceals or withholds facts for the purpose of establishing or maintaining eligibility for or increasing the level of child care assistance. The district must obtain a written agreement signed by the individual in which the individual:

- understands and agrees that he or she or a member of the CCSU made a false or misleading statement or committed an act intended to mislead, misrepresent, conceal or withhold facts concerning eligibility for child care assistance;
- describes the fraudulent activity in which he or she participated;
- is notified of the disqualification penalties;
- is held responsible, along with members of the CCSU, for the repayment of any overpayment that resulted from the fraud; and,
- agrees that he or she understands the consequences of signing the agreement.

***b) DISQUALIFICATION PENALTIES***

A recipient or former recipient who has been convicted of or has voluntarily admitted to fraudulently receiving child care services, and the CCSU for which he or she is a member, are disqualified from receiving child care services for a period of time to be determined in accordance with the following time periods established for an Intentional Program Violation in the TA program as set forth in 18 NYCRR 359.9(a):

- (1) for six months, for the first admission or conviction of child care fraud;

- (2) for 12 months, for the second admission or conviction of child care fraud, or when the offense results in the wrongful receipt of benefits in an amount between \$1,000 and \$3,900;
- (3) for 18 months, for the third admission or conviction of child care fraud or when the offense results in the wrongful receipt of benefits in an amount in excess of \$3,900; or
- (4) for five years, for the fourth or any subsequent admission or conviction of child care fraud.

The disqualification penalty will be applied as follows:

- (1) For a family applying for child care services on or after May 15, 2004 who admitted or was convicted of child care fraud at any time in the past, the district will apply the appropriate disqualification penalty to the applicant and CCSU.
- (2) For a family who applied for child care services prior to May 15, 2004 who admitted or was convicted of child care fraud at any time in the past and the district makes the determination of eligibility on or after May 15, 2004, the district will apply the appropriate disqualification to the applicant and CCSU.
- (3) For a current recipient who was authorized for child care services prior to May 15, 2004 and who admitted or was convicted of child care fraud on or after May 15, 2004, the district will apply the appropriate disqualification penalty to the recipient and CCSU.
- (4) For a current recipient who was authorized for child care services prior to May 15, 2004 and who admitted or was convicted of child care fraud prior to May 15, 2004, the district may not apply a disqualification penalty to the recipient and CCSU.

The disqualification penalty is applied to applicants or recipients that are otherwise eligible for a child care subsidy. If an application for child care is denied or a case is closed because the applicant/recipient is not otherwise eligible, then the disqualification is pended until the individual reapplies and is found eligible for child care subsidies.

If a recipient of TA needs child care in order to participate in an activity required by the district, the disqualification of eligibility for child care services based on a child care fraud conviction or voluntary admission will be suspended during the recipient's participation in the required activity. However, the disqualification period will commence once the recipient is no longer participating in a required activity.

The district must notify applicants, recipients and former recipients when they are subject to a disqualification for child care fraud by using the Attachment E, OCFS/LDSS-7010, Notice of Fraud Determination, Disqualification for Child Care Benefits and Repayment Plan. The district must give the parent/caretaker the completed form and keep a copy of the signed form in the case record.

## **F. SPECIAL PROVISIONS RELATING TO TEMPORARY ASSISTANCE RECIPIENTS**

The following provisions apply to TA recipients:

- (1) Child care services are guaranteed to a family who has applied for or is in receipt of temporary assistance when such services are needed for a child under thirteen years of age in order to enable the child's custodial parent or caretaker relative to participate in activities required by a social services official pursuant to title 9-B of article 5 of the Social Services Law.

- (2) A district may not reduce or terminate TA to an individual or an individual and the family of such individual based on a refusal of the individual to comply with applicable work requirements if the individual is a custodial parent or caretaker relative of a child under 13 years of age and the individual has a demonstrated inability, as determined by the district, to obtain child care needed to comply with such work requirements due to the following reasons:
- (a) Unavailability of appropriate and accessible child care within a reasonable distance from the individual's home or work site;
  - (b) Unavailability or unsuitability of informal child care by a relative or under other arrangements; and
  - (c) Unavailability of appropriate and affordable formal child care arrangements.
- (3) For the purposes of this section, the following definitions apply:
- (a) **Applicable** child means a child under thirteen years of age who is residing with a custodial parent or caretaker relative and who needs child care in order for the parent or caretaker relative to comply with the applicable work requirements.
  - (b) **Appropriate** means the child care provider(s) is open for the hours and days the parent or caretaker relative would need child care in order to comply with the applicable work requirements and the provider(s) is able and willing to provide child care services to the applicable child including addressing any special needs of the applicable child.
  - (c) **Accessible** means the parent or caretaker relative is able, by available public or private transportation, to get the applicable child to and from the child care provider(s) taking into consideration the age and any special needs of the child.
  - (d) **Reasonable distance** means the child care provider(s) is located within a reasonable distance from the parent or caretaker relative's home and work activity, based on locally accepted community standards, as defined in the district's CSP/ICP.
  - (e) **Unsuitability** of informal child care means the physical condition of the home in which care would be provided, or the physical or mental condition of the informal provider, would be detrimental to the health, welfare and/or safety of the applicable child.
  - (f) **Affordable** means the parent or caretaker relative would have sufficient income to pay the family share for the child care services, if required, and/or to pay the cost of care above market rate, if applicable. If the potential provider is a provider of informal child care who would be providing care in the child's home, affordable also means that the parent or caretaker relative would have sufficient income to pay the provider at least minimum wage, if required by State and/or federal law, and to provide such provider with all employment benefits required by State and federal law.
- (4) The district must inform the family:
- (a) About the exception to the penalties associated with the work requirement if the family is unable to locate child care needed to comply with applicable work requirements. The district must explain the procedures used to demonstrate an inability to obtain child care and the definitions of the terms "appropriate" "accessible", "reasonable distance", "unsuitability of informal child care" and "affordable"; and



- (b) That any family assistance received during the time the parent or caretaker relative receives an exception from the work requirements under this section will count toward the family's 60 month limit on receiving such benefits.
- (5) It is the responsibility of the parent or caretaker relative to locate child care needed to comply with such work requirements.
- (6) If the parent or caretaker relative cannot locate the needed child care on his or her own, the parent or caretaker relative must inform the district of his or her efforts to locate such care and request additional assistance in locating care.
- (7) When a parent or caretaker relative requests assistance from the district in locating child care due to an inability to locate the needed child care on his or her own, the district must:
  - (a) Assist the family by referring the parent or caretaker relative to the child care resource and referral agency that is responsible for the areas in which the parent or caretaker relative lives and/or would be expected to work or to another appropriate child care referral agency; and/or
  - (b) Provide the parent or caretaker relative with a list of names, addresses and telephone numbers of eligible providers.
- (8) The parent or caretaker relative must follow-up on all referrals from the district, child care resource and referral agency and/or other child care referral agency, as applicable, and must report his or her success or failure to the district. In order to be excused from complying with the applicable work requirements, the parent or caretaker relative must have a demonstrated inability, as determined by the district, to locate the needed child care for the applicable child(ren) despite the referrals from the district, the child care resource and referral agency and/or any other child care referral agency, as applicable.
- (9) If the parent or caretaker relative has a demonstrated inability, as determined by the district, to locate the child care needed for the applicable child(ren) despite such referrals, the district must offer the parent or caretaker relative two choices of eligible child care providers at least one of which must be a licensed or registered provider.

If the parent or caretaker relative is unwilling to accept child care services from either of these providers; is unable to demonstrate, as determined by the district, that such child care is not appropriate, accessible, suitable, affordable or a reasonable distance from the individual's home or work site; and the individual fails to comply with the applicable work requirements, then the district may reduce or terminate temporary assistance to such parent or caretaker relative and/or that individual's family in accordance with applicable statutory or regulatory provisions.

- (10) A district must determine that a parent or caretaker relative has a demonstrated inability to locate needed child care if all of the following conditions are met:
  - (a) The parent or caretaker relative has provided an attestation that he or she has contacted those accessible and suitable friends, neighbors and relatives who are within a reasonable distance of the individual's home or work site and who have the potential to act as informal child care providers for the applicable child(ren) but those individuals are not appropriate or affordable. The attestation must include a list of the names of the friends, neighbors and relatives the parent or caretaker relative contacted; and

- (b) The parent or caretaker relative has provided an attestation that he or she has contacted all of the child care providers to which the parent or caretaker relative was referred by the district, a child care resource and referral agency and/or any other child care agency, as applicable. The attestation must specify the names of each potential provider contacted and the reasons why that provider is not appropriate, accessible, suitable, affordable or a reasonable distance from the individual's home or work site.
- (11) The district must review and verify the attestations provided by the parent or caretaker relative. If the attestations validly document the unavailability of appropriate, accessible, suitable, affordable child care within a reasonable distance from the individual's home or work site, the district must excuse the parent or caretaker relative from the applicable work requirements.
- (12) A parent or caretaker relative who has been excused from the applicable work requirements due to a demonstrated inability to locate needed child care for his or her applicable child(ren) will be excused from the work requirements only for so long as that demonstrated inability continues to exist.

The parent or caretaker relative must document to the district, through the submission of new attestations on a periodic basis as set forth by the district, that the parent or caretaker relative is continuing to attempt to locate the needed child care including following-up on all new referrals from the district, child care resource and referral agency, and/or any other child care agency, as applicable, and by responding to all offers of child care from the district. New attestations must be submitted in accordance with a schedule developed by the district based on the parent's or the caretaker relative's employment plan.

## **G. CHILD SUPPORT REQUIREMENTS**

This section replaces the child care sections of 99 ADM-5 and 00 INF-2.

### **1. RESPONSIBILITIES OF PARENT/CARETAKER**

For all households in which a parent is continually absent, the custodial parent/caretaker seeking a child care subsidy must demonstrate that: he or she has court-ordered child support in place, he or she is actively pursuing a court order for child support, or he or she has good cause not to actively pursue child support (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause). Voluntary payment of child support on the part of the non-custodial parent or alleged non-custodial parent, without a written separation agreement signed by both parties or a court order specifying child support, does not meet the child care requirement to actively pursue child support. The requirement to actively pursue child support pertains to all children in the CCSU even if the custodial parent/caretaker is not requesting a child care subsidy for each and every child under 13 years of age. However, no amendment to a child support order should be sought to add child care expenses for any child age 13 years or older.

A custodial parent/caretaker can demonstrate to the child care unit that he or she is actively pursuing child support either by:

- a. providing documentation that he or she has applied for services from the Child Support Enforcement Unit (CSEU); or
- b. providing documentation that he or she is actively pursuing child support privately.

In some circumstances, the custodial parent/caretaker may be asked to actively pursue a modification of an order that does not specifically address child care expenses (see *section III.G.6.d, Establishing and Modifying Child Support Orders* of this ADM).

Once court-ordered child support is in place, the custodial parent/caretaker must continue to actively pursue support by modifying and enforcing the order, if appropriate. If the custodial parent/caretaker has applied for child support services from the CSEU, the CSEU will provide services to establish, modify or enforce the child support order.

A custodial parent/caretaker, who has chosen not to actively pursue support by applying for child support services through the CSEU, must demonstrate the actions he or she, or his or her legal representative, is taking to establish, modify, or enforce child support.

The custodial parent/caretaker must demonstrate to the child care worker that he or she is continuing to actively pursue child support. Copies of subpoenas, petitions, and scheduled court dates must be provided by the custodial parent/caretaker to the child care worker to demonstrate the custodial parent/caretaker is continuing to actively pursue support.

**a) INTACT HOUSEHOLDS - PARENTS OF CHILDREN BORN OUT OF WEDLOCK**

The court will not order child support when both parents are living with the child because there is no non-custodial parent to be held chargeable under a court order for child support. While the district may encourage these parents to legally establish paternity, there is no child care eligibility requirement to establish paternity or to seek child support so long as the parents and child(ren) reside together. If one of the parents moves out of the household, the custodial parent must actively pursue child support from the non-custodial parent in order to be eligible for child care subsidy, unless a good cause exception exists.

**b) CUSTODIAL PARENTS IN RECEIPT OF TEMPORARY ASSISTANCE**

If the custodial parent or caretaker relative is already pursuing court-ordered support through the CSEU under the requirements of the TA program, his or her continued compliance under the TA program will meet the child care requirement to actively pursue child support. If the custodial parent or caretaker relative has a good cause exception and/or a child support waiver due to domestic violence, the custodial parent or caretaker relative does not need to cooperate with child support requirements in order to receive child care while the good cause exception and/or waiver are in effect.

In addition, a custodial parent or caretaker relative, who receives TA and needs child care in order to participate in an activity required by the district, is guaranteed child care services even if the children are not in receipt of TA (such as those in receipt of SSI), and even if the custodial parent or caretaker relative fails to cooperate with TA child support requirements. The guarantee of child care for the TA custodial parent or caretaker relative supersedes the child care requirement to pursue child support.

However, a custodial parent or caretaker relative who is receiving TA, but is not required by TA to pursue child support, and who needs child care for a purpose not covered by the child care guarantee, must actively pursue child support in order to be eligible for child care services. This circumstance may

occur when the child is in receipt of SSI and the custodial parent or caretaker relative needs child care in order to participate in an activity that is not required by the district (e.g., to attend college in addition to meeting their TA work requirements). The child care guarantee would apply to the time the custodial parent or caretaker is working. However, since attending college is an optional activity that is in addition to his or her required TA activity, the child care guarantee would not apply for care needed to attend college. In order to receive child care for college attendance in addition to child care for his or her TA work requirement, the district must have included this activity in its CSP/ICP, have child care funds available and the custodial parent or caretaker relative must actively pursue child support.

**c) CUSTODIAL PARENTS IN RECEIPT OF MEDICAL ASSISTANCE**

If the custodial parent/caretaker is in receipt of Medical Assistance (MA) for the child and is already actively pursuing child support, his or her continued compliance will meet the child care requirement to actively pursue child support. This assumes that the parent/caretaker is pursuing cash support as well as medical support. If the parent/caretaker is not pursuing cash support for the child, he or she will be required to do so for purposes of the child care subsidy eligibility. If the custodial parent/caretaker has a good cause exception, the custodial parent/caretaker does not need to actively pursue child support requirements in order to receive child care benefits while the good cause exception is in effect. See additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause.

**d) TRANSITIONING CLIENTS AND CLIENTS ELIGIBLE FOR “CHILD CARE IN LIEU OF TA”**

Transitioning clients who meet the eligibility criteria for the transitional guarantee and clients who are eligible for the “child care in lieu of TA” guarantee must actively pursue child support. The child care guarantee in these cases does not supersede the requirement to actively pursue child support.

The custodial parent or caretaker relative may still claim the good cause exception. Additionally, if the client can demonstrate that there was a child support waiver due to domestic violence (DV) at the time of the TA case closing, the child care worker must evaluate with the custodial parent or caretaker relative whether good cause still exists. A DV waiver that is dated within the last 12 months is sufficient evidence to demonstrate good cause. See additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause.

**e) CUSTODIAL PARENTS NOT IN RECEIPT OF TA**

A custodial parent/caretaker who is applying for or receiving child care but is not receiving TA must demonstrate that he or she is actively pursuing child support unless he or she has a good cause exception (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause). In order to meet this requirement, the custodial parent/caretaker may apply for child support services through the CSEU, or may pursue child support by hiring a legal representative or pursue court-ordered child support on his or her own behalf. If he or she chooses to apply for child support services through the CSEU, he or she must complete the DSS-2521, Application for Child Support Services, and must voluntarily continue to actively pursue child support as described in *section III.G.2, Actively Pursuing Child Support Through the CSEU* of this ADM. In the absence of voluntary compliance with child support activities, the CSEU will close the child support case. In these cases, in order to maintain eligibility for child care services, the custodial parent/caretaker must demonstrate to the child care worker that he or she is actively pursuing child support through other legal means (i.e.

privately) or demonstrate good cause not to actively pursue child support.

***f) NON-CUSTODIAL PARENTS WHO HAVE SIGNED A CONSENT FOR ADOPTION AND/OR HAVE VOLUNTARILY SURRENDERED THEIR PARENTAL RIGHTS***

If a non-custodial parent has signed a consent for adoption and/or surrendered his or her parental rights, the custodial parent/caretaker will not be required to pursue child support for this child in order to be eligible for child care benefits.

***g) CARETAKERS WHO ARE NOT THE CHILD'S PARENTS***

A caretaker, legal guardian and other individual acting in loco parentis of a child and applying for child care services, is required to demonstrate that he or she is actively pursuing child support from the child's parents unless there is a good cause exception not to do so (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause). Child care workers should carefully consider the circumstances under which the child was placed in the household of the caretaker. In many of these cases, the caretaker may have good cause not to actively pursue child support.

***h) FOSTER PARENTS***

Foster parents, caring for a child who is in the care and custody of the local social services district, that apply for a child care subsidy for such a foster child are exempt from child support requirements for that foster child. This exemption only applies to the foster child. If the foster parents need child care services for their own children, they must actively pursue child support for their own children parents unless there is a good cause exception not to do so (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause).

**2. ACTIVELY PURSUING CHILD SUPPORT THROUGH THE CSEU**

Obtaining an appointment with the CSEU may be the first step in actively pursuing child support and should be considered acceptable proof of intent to comply with the requirement to actively pursue child support until it is shown or evidence appears to the contrary. Actively pursuing child support through the CSEU means that the custodial parent/caretaker: applies for child support services by completing the DSS-2521, Application for Child Support Services; takes any necessary steps to establish the paternity of a child born out of wedlock; establishes and enforces orders of child support; and modifies orders of child support, where appropriate, to be consistent with the Child Support Standards Act, which includes a provision for the payment of reasonable child care expenses. The custodial parent/caretaker may need to seek the assistance of the CSEU when an order needs to be modified; may have to appear in court; and, in some districts, will be responsible for filing the petition.

It is the responsibility of the custodial parent/caretaker to demonstrate he or she is actively pursuing support through the CSEU by providing documentation that he or she has applied for CSEU services. The custodial parent/caretaker must write and submit a status report and provide copies of supporting documentation to the child care worker. The status reports must, where applicable and appropriate: indicate when petitions will be filed and court dates have been scheduled, provide proof of attendance at required court dates, provide reasons for any delays granted by the court and provide any other information that would demonstrate the custodial parent/caretaker's active pursuit of child support based

on the stage of the child support enforcement process. If a custodial parent/caretaker is unable to provide verification to the child care worker, the district should determine whether the custodial parent/caretaker should seek assistance from the CSEU or the Family Court in obtaining copies of documents to demonstrate active pursuit of child support.

With the exception of legal services, child support services through the CSEU are provided free of charge. Custodial parents/caretakers who choose to receive legal services in addition to child support services, must sign the Right to Recovery section of the DSS-2521. The costs of any legal services will be recovered only when child support is collected. A custodial parent/caretaker is not required to obtain legal services as part of his or her active pursuit of child support. He or she may choose to represent himself or herself, request legal services from the CSEU or hire his or her own attorney.

Actively pursuing support through the CSEU is one of two ways to demonstrate to the child care unit that the custodial parent/caretaker is actively pursuing child support. In the event that the custodial parent/caretaker elects not to continue to actively pursue support through the CSEU, the CSEU will close the child support services case based on established child support case closure procedures. The custodial parent/caretaker must then demonstrate to the child care worker that he or she is actively pursuing support privately in order to maintain child care eligibility or demonstrate that he or she has good cause not to pursue child support (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause).

### **3. ACTIVELY PURSUING CHILD SUPPORT PRIVATELY**

Actively pursuing child support privately means the custodial parent (either on his or her own or through the assistance of an attorney) is actively participating in the activities that will lead to the establishment, modification or enforcement of court-ordered child support within a reasonable period of time.

Initially, the custodial parent/caretaker must submit in writing to the district a plan of activities and timeframes for the accomplishment of the establishment, modification or enforcement of a child support order. Such a plan must demonstrate the activities and timeframes for completion are reasonable.

The custodial parent/caretaker must also provide a written update to the plan of activities, no less frequently than at recertification, to demonstrate that he or she is actively engaged in and completing the activities in the plan. The update must include documentation, where applicable and appropriate, that:

- petitions to establish, modify or enforce child support have been or are being filed (including copies of petitions);
- court dates have been arranged and the custodial parent/caretaker or the legal representative has appeared in court on those dates; or
- the acknowledgment of paternity or order of filiation has been completed; and
- the custodial parent/caretaker has obtained a court order for child support.

### **4. LACK OF INFORMATION**

The district must establish procedures for interviewing the custodial parent/caretaker who indicates an

inability to provide sufficient information. These procedures must address providing the custodial parent/caretaker with an opportunity to sign the LDSS-4281, Attestation to Lack of Information form<sup>2</sup>. This activity may be conducted by the child care worker or district designee and may be charged to program costs under the NYSCCBG.

If the custodial parent/caretaker claims lack of information *after* applying for CSEU services, the district must either:

- refer the custodial parent/caretaker to the child care unit to sign the LDSS-4281, Attestation to Lack of Information and close the child support services case, if one had been opened; or
- the CSEU may complete and return the LDSS-4281, Attestation to Lack of Information form to the child care worker and close the child support services case. However, completing the LDSS-4281 is not a required activity under the IV-D program (i.e. for non-TA families). Therefore, this activity must be time studied and cannot be claimed as a child support activity.

If the custodial parent/caretaker has completed, signed and submitted the LDSS-4281 to the child care worker, the custodial parent/caretaker will be excused from actively pursuing child support.

## 5. GOOD CAUSE

### a) *OPPORTUNITY TO CLAIM GOOD CAUSE*

An applicant for, or recipient of, child care services has the right to claim good cause for not actively pursuing child support. This is explained in the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F. The applicant/recipient can make a good cause claim by completing and returning to the district, the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G. The district must provide the OCFS/LDSS-7013, Child Support Requirements Notification Letter to the client along with the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim form. A signed copy of the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim form must be filed in the case record.

If a custodial parent/caretaker is claiming a good cause exception, the case must not be referred to the CSEU pending the determination of whether good cause exists by the child care worker or designee. If the claim of good cause is not raised by the custodial parent/caretaker until after he or she has submitted an application for child support services and raises the good cause issue with the CSEU, the child support worker must assess whether the custodial parent/caretaker wishes to have the CSEU continue with child support services and if not, close the child support case. In addition, the child support worker should refer the case to the child care unit for a determination of good cause.

For child care purposes, good cause exists if pursuing child support would adversely affect the health, safety or welfare of the child or of other persons in the child's household.

If a district so chooses, it may contract with not-for-profit or other agencies or organizations to review and make determinations of good cause. Districts may use NYSCCBG subsidy program funds to pay for contractual services relative to the determination of good cause.

***b) APPLICANT OR RECIPIENT REQUIREMENT TO ESTABLISH EXISTENCE OF GOOD CAUSE***

An applicant or recipient who refuses to actively pursue child support and who claims to have good cause for not actively pursuing child support must establish that good cause exists and will be required to:

- (1) Specify the circumstances that the applicant or recipient believes provide sufficient good cause for not actively pursuing child support;
- (2) Corroborate the good cause circumstances; and
- (3) If requested, provide sufficient information to permit an investigation of the good cause claim.

***c) CIRCUMSTANCES UNDER WHICH ACTIVE PURSUIT OF CHILD SUPPORT IS AGAINST THE BEST INTEREST OF THE CHILD OR OTHER MEMBERS OF THE HOUSEHOLD***

The following are considered to be circumstances under which the active pursuit of child support would be against the best interest of the child because it would adversely affect the health, safety or welfare of the child on whose behalf such child support payments are to be made or would adversely affect the health, safety or welfare of another person in the child's household:

- (1) Active pursuit of child support is expected to result in physical harm to the child for whom support is sought;
- (2) Active pursuit of child support is expected to result in emotional harm to the child for whom support is sought;
- (3) Active pursuit of child support is expected to result in physical or emotional harm to the custodial parent/caretaker sufficient to impair the custodial parent/caretaker's ability to care for the child adequately;
- (4) Active pursuit of child support is expected to result in physical or emotional harm to any other member of the child's household;
- (5) The child for whom child support is sought was conceived as a result of incest or forcible rape;
- (6) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction;
- (7) The custodial parent/caretaker is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption, and discussions have gone on for less than three months; or
- (8) The non-custodial parent's rights have been terminated or voluntarily surrendered.

Physical harm and emotional harm must be of a serious nature in order to justify a finding of good cause. A finding of good cause for emotional harm may only be based on a demonstration of an emotional impairment that substantially affects the individual's functioning.

***Special Considerations Related to Emotional Harm***

For each good cause claim that is based in whole or in part upon the anticipation of emotional harm, the child care worker or designee must consider the following:



- (1) The present emotional state of the individual subject to emotional harm;
- (2) The emotional history of the individual subject to harm;
- (3) The intensity and probable duration of the emotional upset;
- (4) The degree of active pursuit required; and
- (5) The extent of the involvement of the child or individual subject to emotional harm in paternity establishment or support enforcement activity to be undertaken.

The child care worker or appropriate designee must document the findings with respect to the above factors in the case record.

***d) SPECIAL CONSIDERATIONS WHEN GOOD CAUSE INVOLVES DOMESTIC VIOLENCE***

The child care worker should review the documentation provided by the custodial parent/caretaker. If the documentation is sufficient to verify the good cause claim, the child care worker should make the determination at that time.

If there is no documentation or insufficient documentation, the custodial parent/caretaker may be referred to the domestic violence liaison (DVL) for a more complete assessment. The DVL will make a recommendation regarding the credibility of the claim that the DV situation represents a danger to the custodial parent/caretaker, the child or another member of the household and notify the child care worker of the recommendation. Based on the findings and recommendation of the DVL, the child care worker and supervisor will make the final determination on the good cause claim.

A referral may also be made to the DVL or a local community based domestic violence services organization for information and referral for domestic violence services. The referral for information and services should only be made if the custodial parent/caretaker agrees to such a referral. It is the decision of the custodial parent/caretaker whether or not to seek domestic violence services.

***e) PROOF OF GOOD CAUSE CLAIM***

The applicant or recipient who claims good cause must provide corroborative evidence within 20 days from the day the claim was made on the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim. If the child care worker or appropriate designee determines that the applicant or recipient requires additional time because of the difficulty of obtaining the corroborative evidence, upon supervisory approval, the child care worker or appropriate designee must allow a reasonable additional period of time.

Good cause may be corroborated with the following types of evidence:

- (1) Court, medical, criminal, child protective services, social services, psychological or law enforcement records indicating that the alleged non-custodial parent might inflict physical or emotional harm on the child or custodial parent/caretaker or other member of the household;
- (2) Medical records indicating that the child, custodial parent/caretaker or other household member has an emotional health history and a present emotional health status which indicates that pursuing child support would be detrimental to the mental and/or emotional health of the applicable individual;

- (3) A domestic violence waiver issued to a former TA recipient and dated within the last 12 months will be considered a demonstration of good cause. Once the date of the waiver exceeds 12 months, good cause will need to be redetermined by the child care worker or appropriate designee;
- (4) A birth certificate, medical record or law enforcement record indicating that the child was conceived as the result of incest or forcible rape;
- (5) Court or other documents indicating that legal proceedings for adoption are pending before a court of competent jurisdiction;
- (6) A written statement from a public or licensed private social agency that it is assisting the custodial parent/caretaker to decide whether to keep the child or release the child for adoption; or
- (7) Sworn statements from individuals (other than the applicant or recipient ) with knowledge of the good cause circumstances, which provide the basis for the good cause claim. A “sworn” statement is signed before, and witnessed and signed by, a person who is empowered to administer an oath to the testifier. Persons authorized to administer such oaths include public notaries, commissioners of deeds, judges, town justices, and justices of the peace. The sworn statement must attest to circumstances that would indicate that pursuing child support would adversely affect the health, safety or welfare of a household member.

***f) THE NEED FOR ADDITIONAL CORROBORATIVE EVIDENCE***

If after examining the corroborative evidence submitted by the applicant or recipient, the child care worker or appropriate designee determines that additional corroborative evidence is needed to make a good cause determination, the child care worker or appropriate designee will:

- (1) Promptly notify the applicant or recipient that additional corroborative evidence is needed; and
- (2) Specify the type of document needed.

If requested by the applicant or recipient, the child care worker or appropriate designee must advise the applicant or recipient how to obtain the necessary documents. Additionally, if requested by the applicant, the child care worker or appropriate designee must make a reasonable effort to obtain any specific documents that the applicant or recipient is not reasonably able to obtain without assistance.

***g) INVESTIGATION OF GOOD CAUSE CLAIM WHEN INSUFFICIENT CORROBORATIVE EVIDENCE PRESENTED***

The child care worker or appropriate designee may further verify the good cause claim by conducting an investigation if the applicant’s or recipient’s statement of the claim, together with the corroborative evidence, does not provide sufficient information. In domestic violence situations, the parent/caretaker may be referred to the DVL for a more complete assessment.

***h) LACK OF CORROBORATIVE EVIDENCE FOR CLAIM BASED ON THE APPLICANT’S/RECIPIENT’S ANTICIPATION OF PHYSICAL HARM***

Where a good cause claim is based on the applicant’s or recipient’s anticipation of physical harm and

corroborative evidence is not submitted in support of the claim:

- (1) the child care worker or an appropriate designee will investigate the good cause claim when the child care worker or appropriate designee believes the claim is credible without corroborative evidence, and corroborative evidence is not available;
- (2) good cause will be found if the claimant's sworn statement and the investigation which is conducted satisfy the child care worker, or appropriate designee, that the applicant or recipient has good cause for refusing to actively pursue child support;
- (3) supervisory personnel must approve the determination of good cause and note that approval in the case record; and
- (4) anticipated physical harm must be of a serious nature in order to justify a finding of good cause. In domestic violence situations, the parent/caretaker may be referred to the DVL for a more complete assessment.

*i) CHILD CARE ASSISTANCE PENDING A GOOD CAUSE DETERMINATION*

The child care worker or appropriate designee must not deny, delay or discontinue child care assistance pending a determination of good cause for not actively pursuing child support if the applicant or recipient has complied with the requirement to furnish corroborative evidence and information or has been referred to the domestic violence liaison for a more complete assessment.

An application or recertification for child care services must be authorized for a maximum period of three months pending a good cause determination. If good cause exists, the authorization for purchase of services must be extended to the normal six-month or twelve-month redetermination period.

*j) FINAL DETERMINATION AND NOTIFICATION OF GOOD CAUSE*

The child care worker or appropriate designee's determination of whether good cause exists and the basis for the determination must be approved by a supervisor. The final determination of good cause must be in writing; contain the findings and basis for the determination; and be entered in the case record.

The final determination must be made within 30 days from the day the good cause claim is made. The child care worker or appropriate designee may exceed 30 days when the case record documents that additional time is needed because information required to verify the claim cannot be obtained within the 30 days or the custodial parent/caretaker did not provide corroborative evidence within 20 days.

Notification of the good cause determination must be given to the custodial parent/caretaker in writing (see Attachment H, OCFS/LDSS-7012, Notice of Good Cause Determination). A notification that good cause was found to exist excuses the custodial parent/caretaker from actively pursuing child support. The good cause exception from actively pursuing child support may be temporary or permanent depending on the circumstances of the good cause claim. See *section III.G.5.k, Periodic Review of Good Cause* of this ADM for additional information.

If the determination is that good cause does not exist:

- (1) the child care worker or appropriate designee must notify the applicant or recipient (see Attachment H, OCFS/LDSS-7012, Notice of Good Cause Determination) and afford the applicant or recipient the opportunity to demonstrate he or she will actively pursue child

support, withdraw his or her application for child care, or have his or her child care case closed. The custodial parent/caretaker must be informed of his or her right to an agency conference or fair hearing to contest the determination that good cause does not exist. No action to deny or discontinue child care benefits can be made on the basis of the OCFS/LDSS-7012;

- (2) if the applicant or recipient continues to refuse to actively pursue child support absent a fair hearing decision issued in his or her favor, the child care worker or appropriate designee must send the applicant a denial of his or her application for child care benefits, OCFS/LDSS-4780, Denial of Your Application for Child Care Benefits. If the custodial parent/caretaker is a recipient, the child care worker or appropriate designee must send the custodial parent/caretaker the OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits. The child care applicant or recipient then has the option to allow the case action of denial or case closing to take place, or contest the decision to deny or discontinue child care benefits by requesting a fair hearing, or demonstrate he or she is actively pursuing child support.

All of the above-referenced notices must be both adequate and timely.

#### ***k) PERIODIC REVIEW OF GOOD CAUSE***

The child care worker or appropriate designee must periodically review, no less frequently than at each recertification, those cases in which the child care worker or appropriate designee determined that good cause exists based on a circumstance that is subject to change. In those cases, it is the parent/caretaker's responsibility to provide documentation to support a determination that good cause continues to exist. If the child care worker determines that circumstances have changed to the extent that good cause no longer exists, the district must provide the custodial parent/caretaker with the notice specified above in *section III.G.5.j, Final Determination and Notification of Good Cause* of this ADM.

#### ***l) CONFIDENTIALITY***

If the good cause exception stems from a claim of domestic violence, child protective or adult protective issues, the district must take precautions to see that this information is secured in the case file and maintained in a confidential manner. 18 NYCRR 357.3(i) and NYS policy stated in 98 ADM-3 Section IV-I on confidentiality related to victims of domestic violence; 18 NYCRR 457.16 on confidentiality related to adult protective services; and, 18 NYCRR 432.7 on confidentiality related to child protective services state that local district social service employees may not reveal information obtained in the course of administering assistance or services to unauthorized sources. Client information that must be safeguarded includes: applications, eligibility status, benefit issuance, investigations and contents of the case record or file. The confidentiality policy applies to all client information maintained and secured by the district whether it is contained in a written record or exchanged verbally.

## 6. CHILD CARE WORKER RESPONSIBILITIES

### *a) NOTIFYING CUSTODIAL PARENTS/CARETAKERS*

In cases where there is a non-custodial parent, child care workers must inform the custodial parent/caretaker, in writing, of the custodial parent/caretaker's responsibility to actively pursue child support through the CSEU or privately.

The child care worker must first ascertain whether or not the custodial parent/caretaker has previously applied for child support services and, if so, must determine the current status of the child support case. If the custodial parent/caretaker has an active child support case with the CSEU, the custodial parent/caretaker must provide the child care worker with a status report demonstrating that he or she continues to actively pursue support through the CSEU. If the CSEU has sent the custodial parent/caretaker the Contact Notice or the Notice of Intent to Close, and the custodial parent/caretaker has not responded to the CSEU, the custodial parent/caretaker is not considered to be actively pursuing child support.

If the custodial parent/caretaker had previously applied for child support services but the child support case is closed, the child care worker must determine the reason for the child support case closing. Districts may determine whether to obtain information on case closings from the custodial parent/caretaker or from the CSEU. If the case was closed by the CSEU for any of the following reasons, the custodial parent/caretaker is excused from the requirement to actively pursue child support:

- the non-custodial parent is deceased and no further action, including a levy against the estate, can be taken;
- paternity cannot be established;
- the non-custodial parent's location is unknown and regular attempts have been made unsuccessfully to locate the non-custodial parent over a three year period;
- the non-custodial parent cannot pay support for the duration of the child's minority because the non-custodial parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; or
- the non-custodial parent is a citizen of, and lives in, a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, has no reachable domestic income or assets, and reciprocity has not been established with such foreign country.

If the child support services case was closed at the custodial parent/caretaker's request or was closed due to the custodial parent/caretaker's failure to cooperate with the CSEU, the custodial parent/caretaker is not considered to be actively pursuing child support. The custodial parent/caretaker must then demonstrate that he or she is actively pursuing child support privately or has re-applied for child support services from the CSEU in order to meet the child care eligibility requirement of actively pursuing child support or demonstrate good cause not to actively pursue child support.

The child care worker or appropriate designee must notify the applicant or recipient in writing of the right to claim good cause as an exception to the requirement to actively pursue child support and of all the requirements applicable to a good cause determination.

Districts must use the model letter, the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F, or a local equivalent to notify custodial parents/caretakers of their responsibilities regarding child support.

Such notice must inform:

- the custodial parent/caretaker of his or her responsibility to actively pursue child support which may include establishment of paternity;
- the custodial parent/caretaker of the things he or she may have to do to demonstrate he or she is actively pursuing child support;
- the custodial parent/caretaker how to document that he or she is actively pursuing child support;
- the custodial parent/caretaker of what he or she needs to do if he or she does not have a court order for child support;
- the custodial parent/caretaker that he or she may need to modify the court order if the order does not include child care expenses;
- the custodial parent/caretaker, if he or she has a court order but is not receiving child support payments, that he or she must initiate and follow through with steps to enforce the order, if appropriate;
- the custodial parent/caretaker of his or her right to make a good cause claim at any time by informing his or her worker;
- the custodial parent/caretaker of the procedures for claiming good cause not to actively pursue child support; and
- the mother of the father's rights if paternity is established.

The notification letter must be accompanied by the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G. A copy of the written notification must be maintained in the custodial parent/caretaker's case record.

***b) SUBMITTAL OF THE DSS-2521: APPLICATION FOR CHILD SUPPORT SERVICES***

Child care *applicants* choosing to go to the CSEU for assistance in actively pursuing child support, must complete and sign the DSS-2521. If the applicant, including one who will be placed on a waiting list for a child care subsidy, submits the DSS-2521 to the child care worker, the child care unit must forward the completed DSS-2521 to the CSEU. When child care workers submit the DSS-2521, workers can include their name as the name of referring official (in the agency use only box at the top of the DSS-2521).

No action will be taken to approve the child care application until the child care applicant documents that he or she has requested an appointment from the CSEU or has submitted the DSS-2521 to the child care worker or the CSEU; or documents that he or she is actively pursuing child support order privately. Once the documentation is received demonstrating that the applicant is actively pursuing child support, the child care application can be processed. If the child care applicant cannot demonstrate he or she is actively pursuing child support within 30 days of submitting the child care application, the application must be denied for failure to comply with the requirement to actively pursue child support unless there is good cause not to actively pursue child support.

There is an exception for child care applicants who are claiming good cause. If the child care applicant has submitted the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G, indicating he or she has good cause not to pursue child support, and he or she is otherwise eligible for child care, the child care must be authorized pending the good cause determination. An application by a custodial parent/caretaker who is claiming good cause must be acted upon within 30 days. If the custodial parent/caretaker is otherwise eligible but additional time is needed to demonstrate good cause, child care may be authorized for up to three months while the good cause determination is pending. Districts cannot delay approval of a child care application while a good cause determination is pending so long as the applicant has complied with the requirement to furnish corroborative evidence and information.

If an applicant has a child support order in place that does not include child care expenses, the applicant may be required to pursue modification of the order. Refer to *section III.G.6.d, Establishing and Modifying Child Support Orders* of this ADM for additional information on modifications.

**c) GRACE PERIOD DURING INITIAL YEAR OF IMPLEMENTATION (MAY 15, 2004 - MAY 14, 2005)**

In a case where there is a non-custodial parent, the district must notify each non-TA child care *recipient* (with an open child care case on May 14, 2004) of the requirement to actively pursue child support. A due date must be included in the notification letter. The due date is based on the timeframe for implementation of the child support requirements for non-TA recipients that is selected by district in its CSP/ICP. The OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F of this ADM, includes important information for the custodial parent/caretaker including the opportunity to claim good cause.

For a recipient (with an open child care case on May 14, 2004) who, in response to the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F, applies for child support services through the CSEU or demonstrates that he or she is actively pursuing child support privately, the district will authorize the child care subsidy case for the normal six-month or twelve-month recertification period.

For a recipient who, in response to the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F, indicates on the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G, that he or she is making a good cause claim will be recertified for three months. The recipient must send corroborative evidence to support the good cause claim within 20 days from the day the good cause claim was made unless given an extension. The district must notify the recipient of the good cause determination using the OCFS/LDSS-7012, Notice of Good Cause Determination, Attachment H. If the determination is that good cause does not exist or cannot be established, the custodial parent/caretaker must be notified of the option to demonstrate he or she is actively pursuing support by providing necessary documentation to the district within ten days of the notice of good cause determination. If no such documentation is provided, the child care recipient must be sent an OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits.

A recipient who, in response to the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F, does not apply for child support services through the CSEU, cannot demonstrate that he or she is actively pursuing support privately and has not claimed good cause, will, if otherwise eligible, be recertified for three months provided that he or she indicates on the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G, that he or she will actively pursue child support. The recipient must demonstrate by the end of the three-month period that he or she is

actively pursuing child support. If the recipient fails to demonstrate that he or she is actively pursuing child support, the child care recipient must be sent an OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits.

***d) ESTABLISHING AND MODIFYING CHILD SUPPORT ORDERS***

Child care workers should be aware of the following when guiding custodial parents/caretakers in actively pursuing child support orders with a provision for child care expenses.

***Child Care and Child Support Orders***

Child support orders are determined under the State's child support guidelines known as the Child Support Standards Act or "CSSA". The CSSA is codified in Section 413 of the Family Court Act (FCA), which governs actions in Family Court, and in Section 240 of the Domestic Relations Law (DRL), which governs actions in the Supreme Court. Seeking child care in the order of support is applicable to both establishing orders of support and modifying orders of support. Under the CSSA, there are circumstances where the court must order an amount to be paid for child care expenses and there are circumstances where the court has discretion to order an amount to be paid for child care expenses. The reasonable child care expenses will generally be prorated between the parties in accordance with the parties' relative incomes. This section provides a general discussion of the rules governing application of the child support guidelines.

***Child care provisions should be sought and ordered by the court:***

When the custodial parent/caretaker is working; receiving elementary, secondary or higher education; or participating in vocational training that the court determines will lead to employment, and incurs child care expenses as a result of the above, the court must order reasonable child care expenses. The reasonable child care expenses will generally be prorated between the parties in accordance with the relative incomes of the parties.

***Child care provisions should also be sought and may be ordered:***

When the custodial parent/caretaker is seeking work and incurs child care expenses as a result thereof, the court may determine reasonable child care expenses and apportion the expenses between the parties.

**There are exceptions to when a child care worker should require the custodial parent/caretaker to seek a modification to obtain a child care provision in the parent/caretaker's existing order of child support. If any of the following applies, the child care worker should NOT direct the custodial parent/caretaker to seek a modification.**

***Modification of a child support order should NOT be sought if:***

1. The custodial parent/caretaker is receiving TA; or
2. The child care worker is aware that the non-custodial parent's income is at or below the self support reserve, which is 135% of the federal poverty level. For 2005, this amount is \$12,920. It is updated annually and is available from the OTDA website. Thus, in cases where it is clear that the non-custodial parent's income is at or below the self-support reserve and he or she does not have the ability to earn more income, the custodial parent/caretaker should not pursue a modification of an order of child support for the purposes of adding a provision for child care expenses; or



3. When the order of child support was entered or last modified, child care expenses existed and the court did not provide for child care expenses and there has been no substantial change in the parties' circumstances since the order of support was entered or last modified which would justify a modification (e.g. the obligor's income has not increased or the child's need for child care has not changed since the entry of the last order); or
4. The circumstances of the non-custodial parent indicate that the court is unlikely to modify the order due to the limited resources of the non-custodial parent. Such situations should be assessed on a case-by-case basis and may include but are not limited to: incarceration of the non-custodial parent or the non-custodial parent is disabled or unemployed; or
5. The custodial parent/caretaker needs child care for an activity other than employment, educational or vocational training or seeking employment; or
6. The order addresses only the family share and not the total child care expenses.

Note: When the custodial parent is *seeking employment* and incurs child care expenses as a result thereof, the court *may* order reasonable child care expenses. While child care expenses are not mandated in this case, the district can request the non-TA custodial parent to pursue a modification of an order that does not address child care expenses. However, the court may not grant the request for a modification in these cases, depending on the circumstances, because child care expenses are not mandated under these circumstances.

*Orders Stated in Terms of a Percentage of Child Care Expenses*

A custodial parent/caretaker will not be asked to pursue modification of an order that does not contain a sum certain (i.e. exact dollar) amount for the child care expenses. Where child care costs fluctuate, the custodial parent/caretaker must report any adjustments needed to their child support to the non-custodial parent. In cases where the custodial parent/caretaker has applied for child support services, the CSEU may be consulted if the custodial parent/caretaker is unable to collect the adjustments from the non-custodial parent. If the non-custodial parent is not compliant, it may become necessary to enforce the amounts not paid by petitioning the court.

***e) CUSTODIAL PARENT/CARETAKER WHO SEEKS A REDUCTION IN CHILD SUPPORT***

A custodial parent/caretaker who obtains a reduction in the amount of a child support order for the purpose of qualifying for, or increasing the amount of, a child care subsidy will not be considered to be actively pursuing child support and will, therefore, be ineligible for a child care subsidy.

***f) EXCHANGE OF INFORMATION BETWEEN CHILD CARE AND CHILD SUPPORT UNITS***

The district is responsible for determining the mechanism for exchange of information between the child care unit and CSEU. The district must establish procedures to obtain information from the custodial parent/caretaker to document that the custodial parent/caretaker is actively pursuing child support. The first step in establishing that the custodial parent/caretaker is actively pursuing support is documentation provided by the custodial parent/caretaker verifying that the custodial parent/caretaker has submitted a signed application for CSEU services or has an appointment with the CSEU. If the custodial parent/caretaker is unable to provide the documentation, the child care worker may request verification

from the CSEU that an application for child support services has been submitted and/or an appointment has been scheduled.

In applying for child care services, a custodial parent/caretaker signs either the LDSS-2921-Application or a State approved local equivalent. These forms contain the following consent language regarding information needed to determine eligibility:

*“I understand that by signing this application form, I agree to any investigation made by the Department of Social Services to verify or confirm the information I have given or any other investigation made by them in connection with my request for assistance.”*

No additional consent for release of information from the CSEU or the client’s attorney (if pursuing child support privately) is needed.

**g) CONTINUED VERIFICATION OF ACTIVE PURSUIT OF CHILD SUPPORT**

The child care worker must verify that the custodial parent/caretaker is continuing to actively participate in child support activities to obtain child support either through the CSEU or privately; already has a child support order and is actively participating (as required by the CSEU or privately) to enforce the order; or has a good cause exception. The custodial parent/caretaker must provide documentation to verify that he or she continues to actively pursue child support. The custodial parent/caretaker must verify where applicable and appropriate that:

- if applying for child support services through the CSEU, the custodial parent/caretaker has submitted the DSS-2521 as required by the district;
- the custodial parent/caretaker has submitted himself or herself and the child(ren) for genetic testing when required to establish paternity;
- the custodial parent/caretaker has filed a petition with family court to obtain an order of child support;
- the custodial parent/caretaker has obtained a court date;
- the custodial parent/caretaker has attended the court appearance as required or that the hearing was postponed for a legitimate reason;
- a child support order has been issued or modified by the court;
- child support payments are being made; and
- an enforcement petition has been filed, if required.

**h) CALCULATING NEED AND CHILD CARE BENEFIT AMOUNTS FOR LOW INCOME FAMILIES**

With the exception of any child care expenses ordered to be paid by the non-custodial parent to a low income custodial parent/caretaker, child support is treated as income when determining child care eligibility for the low income (i.e. non-TA) custodial parent/caretaker. In a *low income child only* case, the child support is considered income to the child.

The amount the non-custodial parent is required to pay for child care expenses as part of the child support order reduces the low income custodial parent/caretaker’s need for child care. The child care benefit for the low income custodial parent/caretaker is determined by taking the full amount charged by

the child care provider, up to the market rate, and subtracting the non-custodial parent's court-ordered amount of the child care expenses. The child care benefit is further reduced by any family share required of the low income custodial parent/caretaker.

***j) SUPPORT ORDERS THAT ADDRESS ONLY FAMILY SHARE RATHER THAN CHILD CARE COSTS***

The amount of child care expenses in the child support order *should be* the full cost of child care. However, districts must follow the terms specified in the court order. In some cases, the court order fails to address the full child care expenses and instead looks only at the custodial parent's family share of the subsidy rather than the full child care cost. In these cases, the child support order either specifies an exact dollar amount or refers to the custodial parent's family share of "out of pocket expenses" rather than the full child care expenses. The district must follow the court order as written even if it fails to address the full child care costs.

***j) FLUCTUATING CHILD SUPPORT INCOME AND LUMP SUM CHILD SUPPORT PAYMENTS***

18 NYCRR 404.5(b)(3) requires that if income fluctuates significantly, the average monthly amount used for determining financial eligibility for child care subsidy must be computed based on income received during a period of not less than three nor more than six months. Child support income received on an irregular basis in an amount that varies significantly, during the three to six month period the district chooses, from the amount in the child support order will be treated as fluctuating income. However, the amount of lump sum or other payments received for child support arrears is not counted as income for the purpose of determining eligibility of the custodial parent/caretaker for child care benefits.

***k) INCREASING CHILD CARE BENEFITS WHEN CHILD SUPPORT PAYMENTS ARE DELINQUENT***

If child support payments are delinquent, the applicant or recipient must take appropriate action to enforce the child support order. So long as appropriate attempts are being made to enforce the child support order, the district must recalculate the low income custodial parent/caretaker's income excluding the amount of the delinquent child support.

Districts must determine when to make an adjustment to the child care benefit amount when child support payments are past due. In most cases, no adjustment to the child care benefit should occur until the support is at least 30 days past due. However, in situations where the child care arrangement is jeopardized due to the delay in payment, the district may make adjustments to the child care benefit amount *before* the payment is delinquent by 30 days. The adjustment to the child care benefit amount must retroactively cover the period of time support was not received.

The custodial parent/caretaker must be informed that he or she may be required to return some or all of payments for child support arrears to replace adjustments in child care benefits that the district made to cover the non-custodial parent's delinquent payments. In such cases, the district must add the following language to the OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, or OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits:

*"Your child care benefit is increased by \$ \_\_\_\_\_ based on your report of non-receipt of child support. You will be required to pay back the increases in child care benefits when you receive some or all of the back due child support. You must continue to actively pursue child support including enforcement of your child support order to remain eligible for child care benefits. Any change in your income, including receiving back due child support, must be reported to the \_\_\_\_\_"*

*Department of Social Services immediately.”*

***l) RETURN OF CHILD CARE BENEFITS ADJUSTED DUE TO DELINQUENT CHILD SUPPORT PAYMENTS***

If child care benefits had been increased to cover delinquent child support payments due from the non-custodial parent, and the non-custodial parent begins paying the delinquent payments, the district must request the custodial parent/caretaker to return some or all of payments for child support arrears to the child care worker to replace the amount of increase in child care benefits that the custodial parent/caretaker received. The district must attempt to recover the increase in child care benefits in all cases in which the amount of increase equals or exceeds the cost of recovery.

When requesting a return of some or all of the lump sum or arrears payment, the district must notify the parent/caretaker in writing of the amount of overpayment that must be returned. Districts must issue the OCFS/LDSS-7009, Notice of Child Care Assistance Overpayment and Repayment Requirements, Attachment D, indicating the reason for the overpayment. The following information must be inserted in the space provided for the reason the overpayment occurred in *Section I* of the OCFS/LDSS-7009, Notice of Child Care Assistance Overpayment and Repayment Requirements:

*“Your child care benefits were increased based on delinquent child support from your child’s non-custodial parent. You now have received the delinquent child support. The increase to your child care benefits resulted in an overpayment as described below.”*

Such notice must include the calculations used to determine the overpayment and repayment amount, the date that it must be repaid and the rights to an agency conference and fair hearing. Refer to *section III.E.13.d, Child Care Overpayments-Mechanisms of Recovery* of this ADM for more information on repayment plans. A copy of the original OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, or OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits, issued to the custodial parent/caretaker when child care benefits were increased (which included the notification language described in *section III.G.6.k, Increasing Child Care Benefits When Child Support Payments Are Delinquent* of this ADM) must be included with the request for repayment.

The amount of lump sum or other payment received for child support arrears is not counted as income for the purpose of determining eligibility of the custodial parent/caretaker for child care benefits. Once child support payments are received on a regular basis, the district must include child support as income and determine eligibility for child care benefits, the amount of the child care benefit and the family share prospectively. The OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits must be provided to the custodial parent/caretaker.

***m) DENIAL OR DISCONTINUATION OF CHILD CARE BENEFITS***

If a status report from the custodial parent/caretaker or CSEU indicates a failure to actively pursue child support, the child care recipient must be sent an OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits, for failure to actively pursue child support without good cause.

In the case of a custodial parent/caretaker who is not actively pursuing child support and cannot demonstrate that a good cause exception exists, the district must deny or discontinue child care benefits. Districts must use the OCFS/LDSS-4780, Denial of Your Application for Child Care Benefits or the OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits, as appropriate. These notices include information regarding the parent/caretaker’s rights to appeal the district’s decision. The denial or discontinuation notice must include the following statement: *“You did not actively pursue child*

*support for (name of child) and did not show that you have good cause for not actively pursuing child support as required by Title 18 of the New York State Codes, Rules and Regulations, Section 415.3.”*

## **7. CHILD SUPPORT WORKER RESPONSIBILITIES**

The child support worker has responsibilities only for the custodial parent/caretaker who applies for child support services through the CSEU. Upon receipt of the DSS-2521, the CSEU should provide any appropriate services to establish paternity or to establish, modify or enforce a child support order.

### **a) ATTESTATION TO LACK OF INFORMATION**

If, after the CSEU investigative interview, a custodial parent/caretaker disavows knowledge of information necessary to identify and locate the alleged non-custodial parent, the CSEU worker would close the child support case. The CSEU must either complete the LDSS-4281, Attestation to Lack of Information form, or refer the custodial parent/caretaker back to the child care worker or designee for completion of the LDSS-4281. A copy of the completed form must be given to the custodial parent/caretaker and will be kept in the child care record as documentation that the custodial parent/caretaker is excused from actively pursuing child support.

### **b) PROVIDE INFORMATION TO THE CHILD CARE UNIT**

The custodial parent/caretaker will be required to document to the child care worker that he or she is actively pursuing child support. However, in some circumstances, the custodial parent/caretaker may lack the documentation needed to verify that he or she is actively pursuing child support. In these cases, the custodial parent/caretaker or the child care worker may ask the CSEU worker to provide information via the Child Support Information Transmittal form (LDSS-2859) or a local equivalent.

### **c) DISTRIBUTION OF CHILD SUPPORT COLLECTIONS**

For all *non-TA* child care cases, child support collected by the CSEU will be sent to the custodial parent/caretaker. In the event the non-TA custodial parent/caretaker is a *former TA recipient*, there may be assigned arrears that will be retained for reimbursement of assistance by the district in accordance with the child support distribution rules. Similarly, in *TA cases*, child support collections will be retained for reimbursement of assistance by the district in accordance with the child support distribution rules. The instruction provided in the Division of Child Support Enforcement (DCSE's) Dear Colleague Letter (DCL) dated January 19, 2000 for creating a non-public assistance child care support ledger in TA cases is cancelled. Child care ledgers in TA cases should be coded as 21CB or 22CB ledgers as appropriate.

For non-TA cases only, any *child care* expenses paid to the family as child support reduces the family's need for a child care subsidy. Because of the potential impact on the child care benefit amount, the child support worker may receive and must respond to a request for information from the child care worker regarding any child care expenses that have been court ordered and are being passed on from the CSEU to the family.

#### ***d) NOTIFICATION OF CHILD SUPPORT CASE CLOSINGS***

There may be circumstances where a custodial parent had previously applied for child support services and his or her child support case was subsequently closed. The reason for the case closure may impact the custodial parent's requirement to actively pursue child support and the custodial parent's eligibility for child care services.

If the custodial parent/caretaker had *requested* his or her child support case be closed, the custodial parent/caretaker will be required to demonstrate that he or she is actively pursuing child support privately or the custodial parent/caretaker may reapply for child support services through the CSEU. If circumstances have changed, the custodial parent/caretaker may claim good cause.

There are other circumstances where a child support case may have been closed and the custodial parent/caretaker should be excused from actively pursuing child support for child care eligibility purposes. If a previous child support services case was closed due to any of the following reasons, the custodial parent/caretaker is excused from actively pursuing child support:

- the non-custodial parent is deceased and no further action, including a levy against the estate, can be taken;
- paternity cannot be established;
- the non-custodial parent's location is unknown and regular attempts have been made unsuccessfully to locate the non-custodial parent over a three year period;
- the non-custodial parent cannot pay support for the duration of the child's minority because the non-custodial parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; or
- the non-custodial parent is a citizen of, and lives in, a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, has no reachable domestic income or assets and the State has been unable to establish reciprocity with such foreign country.

The child care worker will ask the custodial parent/caretaker to provide a copy of the child support case closure notice. However, there may be circumstances where the custodial parent/caretaker is unable to provide a copy of the notice. In these cases, the child care worker may contact the CSEU to confirm that the case was closed.

#### **8. IMPLEMENTATION TIME FRAMES**

The new child support requirement for child care *applicants* was effective May 14, 2004. Districts were allowed to choose to implement the new child support requirement for *recipients* (with an open child care case on May 14, 2004) either effective May 15, 2004 or at next case action or recertification, whichever comes first. The district must have indicated which option it selected in its CSP/ICP. Districts were allowed to request a waiver to extend the implementation timeframe for no more than six months. However, the waiver will pertain only to implementation of this requirement for families in receipt of child care services as of May 14, 2004.

## **H. METHOD OF MAKING PAYMENTS FOR CHILD CARE SERVICES**

### **1. NEW YORK STATE CHILD CARE BLOCK GRANT**

For child care services provided under the NYSCCBG program, payment may be paid by the following methods:

- (1) by advance cash payments, cash reimbursements or vouchers to the child's custodial parent/caretaker for care provided by an eligible provider and supported by a bill signed by both the child's custodial parent/caretaker and the provider. However, a caregiver of informal child care or of legally-exempt group child care must be enrolled with the district before payment may be made for such services.
- (2) by a purchase of services contract or letter of intent in accordance with 18 NYCRR 405.3 or by advance cash payments, cash reimbursements or vouchers to an eligible provider. However, a caregiver of informal child care or legally-exempt group child care must be enrolled with the district before payment may be made for such services. A district cannot require a provider to enter into a purchase of services contract or letter of intent as a condition of receiving payment under NYSCCBG.

A district must establish at least one method of payment by which payment for child care services arranged by the child's custodial parent/caretaker can be made. A district has the option to vary such method on a case-by-case basis to reflect individual case circumstances. However, the district may not vary payment methods if this will result in a limitation on the custodial parent/caretaker's choice of provider. For example, a district that has a policy of paying the custodial parent/caretaker whenever he or she uses a legally-exempt family child care provider or a legally-exempt group child care provider can choose to pay some of these providers directly, if the custodial parent/caretaker has a history of not paying the provider or frequently switching providers. As another example, a district that has a policy of having the custodial parent/caretaker pay the family share to the provider may require the custodial parent/caretaker to pay the family share to the district, if the custodial parent/caretaker has a history of not paying providers. However, the district must treat equally situated families the same.

### **2. TITLE XX**

For child care services provided under Title XX of the federal Social Security Act, or provided as child protective services or child preventive services funded other than under the NYSCCBG program, payment must be made by a purchase of service contract or letter of intent with a licensed or registered provider, or with a public school district operating a child care program which meets State and federal requirements.

## **I. REIMBURSEMENT FOR CHILD CARE EXPENDITURES**

### **1. PAYMENT FOR CHILDREN'S ABSENCES**

This section of the ADM on payment for children's absences replaces 92 ADM-8, Child Care: Reimbursement for Payments for Children's Absences.

A district has the option to choose whether it wants to issue payments on behalf of children who are temporarily absent from child care. Reimbursement is available for any absence, regardless of the reason for the absence, unless limitations are specified in the approved CSP/ICP, or the number of absences exceeds the maximum allowed for routine circumstances.

Reimbursement for such payments is allowable subject to the following conditions.

**a) SELECTION OF PROVIDERS**

The district must specify in its approved CSP/ICP to which providers such payments will be made, in accordance with one of the options below:

- To only those child care providers with which the district has a contract or letter of intent; *or*
- To all eligible providers of subsidized child care services, except for legally-exempt family day care and legally-exempt in-home providers.

The provider rendering the child care services must be duly licensed or registered to provide child care services, or an enrolled provider of legally-exempt group care. Such providers include: licensed day care centers; registered small day care centers; registered family day care providers; licensed group family day care providers; registered school-age child care programs; public schools providing care to pre-school aged children in accordance with a contract entered into between a public school district and the social services district; and enrolled legally-exempt group providers.

In order to be paid for absences, the provider must require payment for absences from families who are not receiving a child care subsidy, as well as those who are receiving a subsidy. Additionally, the provider must be open and available to provide care on the day the child is absent.

The district must state as part of a contract or agreement or through written notice to the provider that payment is allowable in cases of temporary absences from child care.

**b) SELECTION OF BASE PERIOD FOR DETERMINING NUMBER OF ABSENCES**

A district must select either a three-month or six-month period as the basis on which it will maintain records and calculate the number of allowable absences. The base period must be identified in the district's CSP/ICP and approved by the Office.

A district must establish a three-month or six-month base period for use in determining maximum temporary absences based on either of the following:

- beginning on the date of a child's admission to child care and ending three or six months later depending on the period selected; *or*
- beginning on a fixed calendar date for all children entering child care and ending three or six months later depending on the period selected. If this basis is chosen, a child entering child care during a quarterly or semiannual cycle may, during that initial cycle, receive a prorated number of days of absence beginning on the date of entry and ending on the last day of the quarterly or semiannual cycle. All temporary absences thereafter will be computed using the normal quarterly or semiannual cycle.



***c) MAXIMUM NUMBER OF ABSENCES-ROUTINE CIRCUMSTANCES***

The district must specify in its approved CSP/ICP the number of absences for which providers will be reimbursed. Except in cases of extenuating circumstances defined below, payment for temporary absences from child care are allowed for up to 12 days in any one calendar month; provided, further, that such absences may total no more than 12 days in any three-month period, if the district selects a three-month base period for determining maximum temporary absences; or 24 days in any six-month period, if the district selects a six-month base period for determining maximum temporary absences.

Claims for reimbursement for absences cannot be made for days of absence that occur after the date the child was withdrawn from the child care program. The district should prescribe guidelines for the reporting of a child's absence in its agreement with child day care providers.

***d) EXTENUATING CIRCUMSTANCES***

A district may also choose to pay for absences that are in addition to routine absences when extenuating circumstances exist. If a district chooses to pay for absences in extenuating circumstances, it must specify such in its approved CSP/ICP and include any limitations that apply. Extenuating circumstances means a situation or occurrence verified by the district and noted in the case record in which a child is temporarily absent from child care for one or more of the following reasons:

- the district determines that the child is unable to attend child care because it is necessary for the child or the child's custodial parent/caretaker to appear in court or to keep other appointments related to the provision of preventive, foster care, adoption, child protective services, or other needs as set forth in the child's services plan;
- the child is ill, has a handicapping or other condition which requires medical care and/or treatment, or the child requires other medical care and/or treatment;
- the child's family is homeless, and the homelessness necessitates the child's absence from child care; or
- the child's custodial parent/caretaker is participating in an approved education or training program and the child's absences coincide with a temporary suspension of such program for purposes including, but not limited to, holidays, school conferences and snow days.

***e) MAXIMUM NUMBER OF ABSENCES - EXTENUATING CIRCUMSTANCES***

Where it is determined that extenuating circumstances for absences exist, reimbursement is allowed for an additional three days above the maximum for routine absences, for a maximum of 15 days of absence in any one calendar month; provided that all absences may total no more than 20 days in any three-month period, if the district selects a three-month base period for determining maximum temporary absences; or 40 days in any six-month period, if the district selects a six-month base period for determining maximum temporary absences.

**f) CHART SUMMARIZING MAXIMUM NUMBER OF ABSENCES ALLOWED BY REGULATION**

The chart below summarizes the maximum number of reimbursable days of absence allowed for each period, according to regulation.

		Type of Absence		Total (Maximum number of days)
		Routine (Maximum number of days)	Additional Absences Due to Extenuating Circumstances (Maximum number of days)	
Period	1 Month	12	3	15
	Base Period of 3 Months	12	8	20
	Base Period of 6 Months	24	16	40

**g) ABSENCES IN EXCESS OF LIMITS FOR EXTENUATING CIRCUMSTANCES**

A district that wishes to claim reimbursement for temporary absences in excess of the limits for extenuating circumstances must submit a written request to the Office for approval. Such requests must be client-specific and must indicate the number of additional absences, the reason for the additional absences and justification for reimbursement. A copy of the written Office approval for reimbursement of child absence in excess of the limits for cases with extenuating circumstances must be maintained as part of the case record.

**h) CHILD ABSENT FROM CARE, BUT RECEIVING CARE FROM ANOTHER PROVIDER**

Reimbursement is not available for a day a child is absent from care if the provider ordinarily charges the custodial parent/caretaker on a daily or part-time basis and the child for whom reimbursement is requested is otherwise in need of and receives subsidized child care from a different provider on the same day.

**2. PROGRAM CLOSURES-LICENSED, REGISTERED OR LEGALLY-EXEMPT GROUP PROGRAMS**

A district has the option to choose whether it wants to issue payments on behalf of children when a child care program is closed due to specified circumstances. Reimbursement for payments to licensed, registered or legally-exempt group programs during program closures is allowable subject to the following conditions:

**a) SELECTION OF PROVIDERS**

The district must identify, in its approved CSP/ICP, the type of providers that are eligible for payment for program closures. The district may choose to make such payments either to those child care providers with which the district has a contract or letter of intent or to all eligible providers of subsidized

child care services with the exception of legally-exempt family day care and legally-exempt in-home providers.

***b) REASONS FOR PROGRAM CLOSURE***

The district must identify in its approved CSP/ICP the specific holidays and/or circumstances for which it will make payments for program closures. A program closure is allowable for reimbursement if it is due to a State, federal or nationally recognized holiday or due to extenuating circumstances beyond the provider's control including but not limited to:

- natural disaster;
- severe weather; or
- other emergency closings that are due to circumstances other than a substantiated regulatory violation.

Reimbursement is available only for children in receipt of a child care subsidy who would otherwise be present at the child care program. Reimbursement is not available for a day the program is closed if the provider ordinarily charges the custodial parent/caretaker on a daily or part-time basis and the child for whom reimbursement is requested is otherwise in need of and receives subsidized child care services from a different provider on the same day.

The maximum number of days for which reimbursement is allowable due to program closure is five per year.

The district must maintain a record of the payments made under this provision for each provider in order to receive reimbursement.

**3. REGISTRATION FEES AND DEPOSITS**

Federal and State reimbursement is available for payment of a registration fee and for deposits so long as the provider requires payment of such expenses of private-paying families. The provider rendering the child care services must be duly licensed or registered to provide child care services, or an enrolled provider of legally-exempt group child care. These costs may be claimed as program costs.

**4. MARKET RATES**

Market rates are updated biennially. The most recent went into effect on October 1, 2003. They may be viewed at the Office's Internet site: <http://www.ocfs.state.ny.us/main>. For a comprehensive discussion of maximum reimbursement for child care subsidy expenditures under the NYSCCBG and Title XX Social Services Block Grant and how to apply the market rates, please refer to 04 OCFS LCM-07.

**5. SPECIAL NEEDS PAYMENTS TO LEGALLY-EXEMPT PROVIDERS**

In order to assist children with special needs, districts are no longer required, as per 91 ADM-34, to request approval from the Office to apply the special needs market rate to legally-exempt providers funded under the NYSCCBG subsidy program. All the other requirements of 91 ADM-34 still apply,

with the exception of the amount of the special needs market rate, which is set forth in 04 OCFS LCM-07.

## **6. PAYMENTS FOR TRANSPORTATION EXPENSES**

Child care providers that also furnish transportation services have the option to include this expense in their rates or to create a separate charge for these services. If these services are included in the rate, it is reimbursable as long as their rate is within the market rate. If the rate exceeds market rate, the amount in excess of market rate is non-reimbursable. A district may choose to cover these excess costs at local cost or may require the custodial parent/caretaker to pay this excess amount.

If a provider charges transportation expenses as a separate charge to all families including private payers, a district is permitted to make payments for this extra fee as a program cost provided it is indicated in its approved CSP/ICP.

The time spent by the custodial parent/caretaker transporting a child to the child care program is not to be counted as time in which the child is in care.

## **J. REIMBURSEMENT FOR CLAIMS**

### **1. MAINTENANCE OF EFFORT - NYSCCBG**

In order to access funding under the NYSCCBG, each district must maintain the amount of local funds spent for child care assistance under the NYSCCBG at a level equal to or greater than the amount the district spent for child care assistance during federal fiscal year 1995 under Title IV-A of the federal Social Security Act, the federal Child Care and Development Block Grant program, and the State Low Income Child Care program. Each district's claims submitted under the NYSCCBG will be processed in a manner that maximizes the availability of federal funds and ensures that the district meets its Maintenance of Effort (MOE) requirement in each applicable federal fiscal year.

Each district must meet its MOE in cash on a federal fiscal year basis, October through September. If the district is not meeting its MOE, reimbursement of claims for expenditures under the NYSCCBG will be adjusted so that the MOE is being met.

The MOE level for districts are issued along with the district allocation of NYSCCBG funds, in a separate Local Commissioners Memorandum (LCM) after the passage of the State Budget each year.

### **2. REIMBURSEMENT LEVELS**

#### **a) NYSCCBG**

Claims for expenditures for child care services provided under NYSCCBG are eligible for the following levels of State and federal reimbursement up to the district's NYSCCBG allocation:

- (1) Reimbursement is provided for 75% of allowable costs for families on TA.
- (2) Reimbursement for all other eligible families is available for 100% of allowable costs,

provided that the district's maintenance of effort is being met.

- (3) Allowable program costs include the following costs of providing child care services:
  - (a) eligibility determinations and re-determinations;
  - (b) participation in adjudicatory and judicial hearings;
  - (c) child care placements including transportation to such placements;
  - (d) inspection, review and supervision of child care placements including monitoring compliance with any additional local child care requirements imposed pursuant to 18 NYCRR section 415.4(f);
  - (e) training of district staff; and
  - (f) the establishment of computerized child care information systems.
- (4) A district must expend its allocation from the NYSCCBG in a manner that provides for equitable access to child care services funds to eligible families.
- (5) A district may spend no more than five percent of its annual NYSCCBG allocation for administrative activities. The term “administrative activities” does not include the costs of providing child care services set forth under “program costs” above. Administrative activities include, but are not limited to the following:
  - (a) providing local officials and the public with information about the program;
  - (b) conducting public hearings;
  - (c) monitoring program activities for compliance with program requirements;
  - (d) maintaining substantiated complaint files;
  - (e) coordinating the resolution of audit and monitoring findings;
  - (f) evaluating program results;
  - (g) managing or supervising persons with responsibilities set forth in paragraphs (a) through (f) of this paragraph;
  - (h) travel costs incurred for official business in carrying out the program; and
  - (i) other costs for goods and services required for the administration of the program including rental or purchase of equipment, utilities, and office supplies.

#### ***b) TITLE XX SOCIAL SERVICES BLOCK GRANT***

Federal reimbursement for child care services provided under Title XX will be available for 100% of allowable costs up to the district’s annual Title XX Social Services Block Grant allocation.

### **IV. Systems Instructions**

Procedures for the authorization of payment for child care services in the Welfare Management System (WMS) are as follows:

For child care payments for eligible families applying for or receiving temporary assistance, a district can continue to use the DSS-3209, IM/WMS Authorization. A district may, at its option, utilize the

DSS-2970 WMS/Services Authorization to authorize payment for child care for temporary assistance families. Service Type Suffix Code (Data Element #23021) value "S" designates child care services funded under NYSCCBG for temporary assistance applicants/recipients and reimbursed at 75% federal and State share up to the district's allocation ceiling.

A district has the option to authorize payments for child care for NYSCCBG eligible families not in receipt of temporary assistance on the DSS-3209 for Food Stamps and Medical Assistance only cases. These payments are reimbursed at 100% federal and State share up to the district's allocation ceiling.

For all other eligible families, a district must authorize payment in WMS/Services by using Service Type Suffix Code value "R" on the DSS-2970 WMS/Services Authorization that designates child care services funded under NYSCCBG for non-temporary assistance families and reimbursed at 100% federal and State share up to the district's allocation ceiling.

In circumstances of an adult only temporary assistance case in which the children are not included in the temporary assistance filing unit, child care payment is authorized as a temporary assistance family and reimbursed at 75% federal and State share up to the district's allocation ceiling. For cases in which children are in receipt of temporary assistance but the caretaker is not included in the temporary assistance filing unit, child care is authorized in WMS Services and reimbursed at 100% federal and State share up to the district's allocation ceiling.

WMS/Services continues to support monitoring the issuance and return of child care certificates. Instructions for the child care certificate are included in 92 LCM-138 and in the Benefits Issuance Control System (BICS) Operations Manual, page A-82, BICS Production Request 32, in the addition dated April 1, 1993. Information is also provided in the BICS Services Payment Processing Manual, II. Authorizations, E., Self Selected Day Care Certificates, pages II 25-27.

## **V. Claiming Instructions**

NYSCCBG expenditures for child care subsidies for families receiving temporary assistance are claimed on Schedule H Non-Title XX Services for Recipients (LDSS-4283), line 2 (Day Care Services for Children), column 13 (Day Care Block Grant 75%). NYSCCBG program expenditures for child care subsidies for all other eligible families and for allowable program costs are claimed on the Schedule H, line 2, column 12 (Day Care Block Grant 100%). Refer to the Fiscal Reference Manual, Volume 2, and Chapter 3 for detailed instructions for completing the Schedule H.

NYSCCBG child counts and expenditures also must be reported on the Schedule G-2 Summary of Payments for Day Care (LDSS-2109EL). Expenditures made under the services types allowed must be reported on the Schedule G-2, via the Automated Claiming System. The BICS Schedule G-2 report provides the information needed to file the report. Refer to the Fiscal Reference Manual, Volume 2, and Chapter 3 for Schedule G-2 instructions.

Administrative expenditures for the NYSCCBG are claimed in accordance with the services Random Moment Survey (RMS) as Child Care Block Grant costs on line 6, section 1 (associated A-87 costs are claimed on line 4, section 2) of the Schedule D-2, Allocation for Claiming of General Services Administration Expenditures (LDSS-2347B). Instructions for completing the Schedule D-2 are contained in Chapter 9 of Volume 3 of the Fiscal Reference Manual County Cost Allocation Plan for districts outside of New York City. For New York City, the instructions are contained in Chapter 9 of Volume 4 of the Fiscal Reference Manual.

Claiming instructions for district administrative expenditures related to the training of employees which are claimed on the Schedule D-6 "Reimbursement For Training" (LDSS-2347-C) for the NYSCCBG program are covered in Chapter 13 of Volume 3 of the Fiscal Reference Manual for districts outside of New York City. New York City would refer to Volume 4 of the Fiscal Reference Manual.

## **VI. Other**

### **A. WAIVERS**

With the exception of the local child care market rates, a district may request a waiver of any non-statutory child care regulation. The waiver must be described in the district's CSP/ICP and must be approved by the Office prior to its implementation.

### **B. EFFECTIVE DATE**

The regulations were effective on May 15, 2004. Implementation was effective immediately, except for those districts which have requested in their CSP/ICP and received Office approval to implement the new child support provisions (with regard to existing child care cases only) and/or changes in the child care services unit (CCSU) at next case action or recertification, whichever comes first. The new legally-exempt provider certifications must be implemented immediately for providers enrolling on or after May 15, 2004. Districts must notify legally-exempt providers that were enrolled as of May 14, 2004 of the need to sign and return the new attestations no later than the next case action or recertification.

If a district has requested and received approval from the Office for a waiver to delay implementation of any other non-statutory provision, the effective date will be based on the approved waiver.

Larry G. Brown s/s

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Larry G. Brown  
Deputy Commissioner  
Division of Development & Prevention Services

**ATTACHMENT A**

GUIDELINES FOR REVIEW OF ENROLLMENT FORMS FOR PROVIDER OF LEGALLY-EXEMPT CARE: History of Article 10 Removal; Termination of Parental Rights; and Denial, Revocation and/or Suspension of a Child Day Care License or Registration

**I. ENROLLMENT REQUIREMENTS**

The previous enrollment requirements specified in 01 OCFS LCM 11 remain in effect and new health and safety assessment requirements have been added to the regulations (18 NYCRR, part 415.4 (f) (7) (iii) and (iv)). In order to be enrolled by a district to provide child care services under the NYS Child Care Block Grant Program, a provider of informal child care or a provider of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State or local government agency must attest and certify in writing regarding the following health and safety categories:

- Whether the provider has ever had a child(ren) removed from his or her care by court order under Article 10 of the Family Court Act (FCA); and/or
- Whether the provider has ever had his or her parental rights terminated, and/or
- Whether the provider has ever been denied a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home, or had such a license or registration suspended or revoked.

For any provider who has a history of the above health and safety concerns, the district must assess, in accordance with these guidelines issued by OCFS, whether the enrollment of such provider poses an unreasonable risk to the health, safety or welfare of the children in the provider’s care.

**A. REVISED ENROLLMENT FORMS**

Changes have been made to the enrollment forms to include the new certifications. The forms that have been modified are:

- OCFS/LDSS-4699, Enrollment Form for Provider of Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care, and
- OCFS/LDSS-4700, Enrollment Form for Provider of Legally-Exempt Group Child Care.

New sections have been added to each of the enrollment forms to address the provider’s history of Article 10 removals, termination of parental rights (TPR) and denial, revocation and/or suspension of a license or registration to operate a day care program. The provider must sign a certification for category.

**II. THE NEW HEALTH AND SAFETY CATEGORIES**

**A. COMPLETION OF OCFS/LDSS-4699, THE ENROLLMENT FORM FOR A PROVIDER OF LEGALLY-EXEMPT FAMILY CHILD CARE AND LEGALLY-EXEMPT IN-HOME CHILD CARE**

**1. History of Court-Ordered Article 10 Removal of a Child (Section V)**

*Background*

Article 10 refers to a section in the Family Court Act that addresses abuse and neglect (child protective) proceedings. The removal of a child under FCA Article 10 is a reversible action intended to protect a child from imminent danger (immediate danger of serious harm) or imminent risk to the child’s life or health. Before removing a child to foster care, a judge must consider whether the issuance of a temporary order of protection would eliminate the need for the removal.



A removal may occur without a fact-finding hearing and, in itself, a removal does not establish or prove wrongdoing by the parent/caretaker. A judicial finding, or adjudication, establishes the culpability of the parent/caretaker, in that the abuse or neglect was satisfactorily proven, admitted or consented to in family court. The definitions of abused child and neglected child are found in the Family Court Act, Section 1012.

The reasons for the length of placement may be linked to the resolution of the underlying cause of the removal. Shorter placements may occur when the parent/caretaker's underlying issues are more easily resolved or the extended family has become a placement resource for the child. Because child welfare staff must work towards a goal of reunification of children in foster care with their families as soon as the children can be safely returned home, a long foster care placement may be indicative of more severe factors underlying the removal. A placement lasting 15 months or more has additional significance because when a child has been in foster care for 15 of the preceding 22 months the district may be required to file a petition to terminate parental rights.

#### a) Provider History

Question 1: The provider must indicate whether he or she has ever had a child removed by court order in an Article 10 proceeding. If the provider has had a child removed by court order in an Article 10 proceeding, the provider must check the second response and must answer questions 2 through 5. These questions apply to *any* child removed from the person's care under Article 10. The provider may or may not be related to such child, but must have been considered "legally responsible" for the child's care at the time. For example, a woman may have been caring for her boyfriend's son and had the child protectively removed from her care. Another example is a child who was living with a friend of her mother's while the mother was away for 2 months and the child was removed from the care of the mother's friend and placed in foster care under court order in an Article 10 proceeding.

Question 2: If the provider has had a child removed, he/she must provide the date that the removal occurred. If the provider has had multiple removals, then all dates should be recorded.

Question 3: The provider must indicate whether, as a result of the Article 10 proceeding, there were judicial findings of abuse or neglect, and if so, what were the specific findings, such as: neglect, abuse or repeated abuse. If there was not a finding of abuse or neglect, the provider must indicate the reason why. An Article 10 removal *not accompanied by a judicial finding* of neglect or abuse may be an indicator that extenuating circumstances exist in the case.

Question 4: The provider must indicate the length of time that the child was in foster care and/or another out-of-home placement under Article 10. If the child was initially placed under Article 10, but then *remained out of the home under another type of family court proceeding*, the provider must give an explanation of why this occurred in his or her written statement (see question 5). Legal mechanisms for foster care placement, other than Article 10, include:

- Voluntary Placement under Social Services Law (SSL) 384-a. The care and custody of a child may be transferred to the district by a written instrument/agreement.
- FCA Article 7 allows for the placement of a Person in Need of Supervision (PINS).
- FCA Article 3 allows for the placement of a Juvenile Delinquent (JD).

Question 5: Any provider who indicates a history that includes an Article 10 removal must provide true and accurate information to the district and the child's parent/caretaker regarding the reasons underlying the child's removal. The provider must prepare and submit to the district and the child's

parent/caretaker a written summary that contains enough detail for the district to ascertain the sequence of events, the severity and the underlying reasons for the events. Underlying reasons are likely to include one or more of the following:

- Alcohol misuse/abuse, drug misuse/abuse, or
- Mental health issues, developmental or cognitive disabilities, or
- Sexual offender issues, or
- Anger management problems; batterer's issues; domestic violence issues, or
- Lack of parenting/ child care skills; lack of understanding of normal child development, or
- Insufficient coping strategies for managing stress; inadequate support system

The narrative should include a certification that all statements made are true and accurate.

b) Provider Certification

The provider must certify that the statements made are true and accurate.

## 2. History of Termination of Parental Rights (Section VI)

### *Background*

When it is clear that the natural parent of a child in foster care cannot or will not provide a safe family home for the child and when continued foster care is not an appropriate plan for the child, the child welfare agency may initiate a proceeding to terminate the parental rights under SSL 384-b and FCA Article 6. The purpose of such an action is to permanently terminate the parent's custodial rights and guardianship, free the child for adoption, and find a permanent alternative home for the child. Grounds for termination of parental rights include: abandonment, permanent neglect, mental illness/mental retardation of the parent, and severe or repeated abuse.

a) Provider History

Question 1: The provider who has had his/her parental rights terminated must check the second response, and then complete questions 2 and 3. Any provider who has not had his or her parental rights terminated should go on to part B.

Question 2: This question requests the legal basis for termination of the provider's parental rights. Information regarding the basis for the termination of parental rights may be found in the court petition and dispositional order or in child welfare service plans, a copy of which the provider should have received.

Question 3: Any provider who has a history of a termination of parental rights must provide true and accurate information to the district and the child's parent/caretaker regarding the reasons underlying the termination of parental rights. The provider must prepare and submit to the district and the child's parent/caretaker a written summary which contains enough detail for the district to ascertain the sequence of events leading to the termination of parental rights and which identifies the underlying causes.

The narrative should include a certification that all statements made are true and accurate.

b) Certification

The provider must sign and date this certification that all the statements on the form are true and accurate.

### 3. History of Denial, Revocation or Suspension of a License or Registration to Operate a Child Day Care Program (Section VII)

#### *Background*

Denial, revocation and/or suspension of a license to operate a child day care program are legal actions, known as enforcement actions, which are initiated by OCFS licensors when a child care provider is out of compliance with the regulations that are put in place to protect the health and safety of children in child day care. Enforcement action may force a provider to comply with OCFS regulations or may remove the provider's legal authority to operate as a licensed or registered day care provider. However, OCFS may not interrupt the provider's operation until all due process rights have been exhausted, except in the event of imminent danger immediate danger of serious harm to the children in care. When imminent danger is found, a suspension, an order to immediately cease provision of child care services, may be issued.

#### a) Provider History

Question 1: A provider who has had a denial of an application or renewal of a license or registration to operate a day care program must check the first or second response, as appropriate. If a provider indicates that he or she is appealing a decision, then the process may not yet be finalized, and the district must take this under consideration.

Question 2: A provider who has had a license or registration revoked or suspended must check the second option, and then complete questions 3 and 4.

Question 3: The information given by the provider will help the district retrieve the provider's record from the Child Care Facilities System (CCFS) and obtain information from the appropriate regional office that conducted the enforcement and supervised the provider's program.

Question 4: Any provider who indicates a history including a denial, revocation or suspension of a license or registration to operate a child day care program must provide true and accurate information to the district and to the child's parent/caretaker regarding the reasons for the denial, revocation and/or suspension. The provider must prepare and submit to the district and to the parent/caretaker, a written summary that contains enough detail for the district to ascertain the sequence and severity of the events and the underlying reasons. Underlying reasons may include some of those found in Article 10 and TPR cases or other factors more specifically pertaining to child care programs, such as:

- Lack of child care skills; lack of understanding of normal child development, or
- Unsafe day care site, or
- Inadequate staffing.

The narrative must include a certification that all statements are true and accurate

#### b) Certification

The provider must sign and date this certification that all the statements on the form are true and accurate.

#### 4. Parent and Provider Certifications, Section VIII

The new certifications for the provider and the parent are summarized below.

##### a) Provider Certifications

The provider agrees to allow representatives of the district and the State of New York access to the child care program and understands that refusal to do so may result in the provider becoming ineligible and losing enrollment status.

The provider is informed and acknowledges that he or she may not be eligible to provide care if he or she has a history of an Article 10 removal; termination of parental rights (TPR); or denial, revocation and/or suspension of a license or registration to operate a day care program. The provider is also informed that he or she may request the district review any extenuating circumstances to determine if an exception could be made to allow the provider to provide subsidized care.

##### b) Parent Certification

The parent is informed of and acknowledges that the district may not be able to pay a provider who has a history of an Article 10 removal, termination of parental rights (TPR) or denial, revocation and/or suspension of a license or registration to operate a day care program. The parent is also informed that he or she may request the district review any extenuating circumstances to determine if an exception could be made to allow the provider to provide subsidized care.

#### B. COMPLETION OF OCFS/LDSS-4700, THE ENROLLMENT FORM FOR PROVIDER OF LEGALLY-EXEMPT GROUP CHILD CARE

The changes in the OCFS/LDSS-4700 parallel those made in the OCFS/LDSS-4699, however, the section numbers vary. As with the Facilities Safety Checklist, completion of the three sections regarding the provider's history of Article 10 removal, TPR and denial, revocation or suspension of a day care license or registration *is not required* for the legally-exempt group providers who operate under the auspices of another Federal, State or local government agency:

- A nursery school, pre-kindergarten or day care program for children three years of age or older or a program for school-age children conducted during non-school hours, operated by a public school district that is providing elementary or secondary education or both in accordance with the compulsory education requirements of the NYS Education Law. The program is located on the same premises or campus where the elementary or secondary education is provided.
- A nursery school that is voluntarily registered with the NYS Education Department and operated in accordance with Part 125 of its regulations.
- A summer day camp operated in accordance with Subpart 7-2 of the State Sanitary Code.
- A day care center, family day care home or other child care program located on federal or tribal property and operated in compliance with applicable federal or tribal laws and regulations.

#### C. FALSIFICATION OF INFORMATION

If a district has reason to believe a provider is falsifying information on the enrollment forms, the district must make a referral to its fraud investigation unit.

### III. EVALUATING PROVIDER HISTORY AND RISK

The district must use the information required by the enrollment form to determine whether to enroll a provider who has:

- had a child removed from his or her care by court order under Article 10 of the Family Court Act (FCA), or
- had his or her parental rights terminated, or
- had his or her license or registration to operate a child day care program denied, revoked or suspended.

Such a history, in nearly all cases, means that the provider has failed to meet the standards for the minimum degree of care of a child while the provider was legally responsible for the child's care, acting either as a child care provider, a parent or a parental substitute. Districts may wish to utilize their own child welfare specialists to assist child care workers in understanding the significance of a particular Article 10 removal or termination of parental rights determination and its implications regarding child caring capability. Districts may utilize the OCFS regional offices for clarification of the circumstances of and reasons underlying the denial, revocation or suspension of a license or registration to operate a day care program.

The district must review the case and if the provider has any of the risk factors that are listed for the high risk group, the provider must be assigned to that group. Assignment to the high risk group, results in a presumptive denial of enrollment, which may be overcome ONLY if the provider demonstrates to the district's satisfaction that enrollment will not jeopardize the health and safety or welfare of children in the provider's care. If the provider does not have any of the characteristics of the high risk group, then he or she should belong to the low risk group, and may be considered for enrollment.

#### A. THE HIGH RISK GROUP

The high risk group includes any provider who has a history of:

- A removal of a child from his/her care by court order under an FCA Article 10 proceeding; or
- A termination of his /her parental rights; or
- A license or registration to operate a child day care program denied, revoked or suspended due to his/her own actions or inactions based on abuse or neglect, a child fatality due to negligence, chronic non-compliance with regulations, lack of supervision resulting in a serious injury to a child, or other serious violation; or
- A provider who has knowingly provided false information on enrollment forms.

#### 1. Enrollment Decision

The enrollment decision is a presumptive denial. The initial district response to any enrollment application submitted by a provider in the high risk group is to deny enrollment of the provider and to notify the parent/caretaker of the decision. The provider and/or the parent/caretaker may request the district to reconsider its decision.

A high risk provider may be *reconsidered* for enrollment only when the provider demonstrates extenuating circumstances exist. Extenuating circumstances are those extraordinary circumstances, which occurred at the time of the original incidents or since the original incidents, which may

justify enrollment. The following three conditions must be met prior to reconsidering enrolling a provider who has been presumptively denied for enrollment:

- The provider and/or the parent/caretaker must make a written request asking that an exception to the presumption against enrollment be made; and
- The provider must make true, accurate and full disclosure, in writing, of the extenuating circumstances to the parent/caretaker and the district; and
- The parent/caretaker must persist in wanting to use the provider, after receiving full disclosure.

## 2. Steps for evaluating extenuating circumstances:

- a) The district receives the written request for the exception to the denial of enrollment to be made.
- b) The district may wish to confirm that the parent/caretaker has received and reviewed the provider's statement, and still wishes to use this provider to care for his/her child. If the parent/caretaker wishes to use the provider, then advise the provider to submit the explanation of extenuating circumstances.
- c) The provider submits a written explanation and any proof of the extenuating circumstances, if these have not already been submitted. Extenuating circumstances may include unusual circumstances surrounding the original incident and/or factors which successfully resolve the underlying causes and tend to eliminate risk.

In Article 10 matters and TPR's, the provider's proof should include original paperwork from the family court and child welfare agency, including court petitions, court orders, court summaries/reports, correspondence, service plans, and progress reports. In licensing or registration matters, the proof may include correspondence with OCFS and hearing decisions.

- d) The district reviews the explanation of extenuating circumstances and the proof. Districts must determine on a case-by-case basis whether the documentation is appropriate and sufficient. Extenuating circumstances occurring at the time of the original incidents may include things such as:

- An Article 10 removal from a parent/caretaker who was believed to be neglectful or abusive at the time of removal, but later the allegations were found to be unconfirmed. In this type of situation, you would expect to find that there is no adjudication of abuse or neglect against the individual and that the out-of-home placement is short in duration.

For example, a provider states his child was removed from his care but he did not abuse or neglect the child. The provider states that the child was returned to his care within 2 weeks and there was no adjudication against him. The explanation given is that the judge ordered a removal of the child from the custodial father, based on the caseworker's testimony that the child disclosed she was sexually abused by "daddy". Upon further investigation, it became clear to the CPS caseworker that the abuse occurred while the child was living with her mother, that "daddy" was the child's stepfather, and that the custodial father had no involvement. The abuse petition filed against the father by child protective was withdrawn and the child was discharged from foster care to her father's care and custody.

The father in this example might be able to show the following items as proof of his account: notification letters from Child Protective Services advising of the determination of

GUIDELINES FOR REVIEW OF ENROLLMENT FORMS FOR PROVIDER OF LEGALLY-EXEMPT CARE: History of Article 10 Removal, Termination of Parental Rights, and/or Denial, Revocation and/or Suspension of a Child Day Care License or Registration

the hotline report; family court orders, petitions and court paperwork showing the petition was either withdrawn or dismissed; and/or child welfare service plans.

- In a TPR based on abandonment, it is possible that an estranged parent may not have known that an abandonment proceeding was being conducted, or even that his/her child was in foster care.

Extenuating circumstances occurring after the precipitating incidents include evidence of rehabilitation and successful resolution of underlying causes and other factors which minimize risk. These may include, but are not limited to:

- Successful participation in treatment or counseling (alcohol, drug, mental health, anger management and domestic violence, etc.), or
- Successful participation in parenting skills or child development classes, or
- Demonstration of strategies learned in treatment or class, or
- Development of an appropriate support system and use of effective strategies for coping with stress, or
- A significant period of time has elapsed since the incident and the provider has had significant maturational growth, or
- The provider has had personal achievements which demonstrate the development of relevant skills and knowledge, or
- The provider has not had additional incidents of Article 10 proceedings or termination of parental rights proceedings, or
- The provider has otherwise been rehabilitated.

e) The district must evaluate the severity of the original incident, the underlying causes, what has changed since the incident(s) to reduce risk to children in the provider's care and any extenuating circumstances. Truthfulness and completeness of disclosure from the provider must be considered.

Due to current regulatory constraints, the child care unit may not be able to receive corroboration (or contradiction) of the provider's account directly from a child welfare unit. However, the district should consult with its own child welfare specialists as to the adequacy of the statement and documentation submitted for a current or former child welfare case when the district is considering enrollment of a high risk provider.

For licensing or registration issues, the district may corroborate information given by the provider. District staff can access a facility report on CCFS that summarizes compliance violations within the past 24 months and notes any enforcement action taken in the past 5 years. Districts may contact the licensor named in CCFS for additional information. The licensor can confirm the underlying reasons for the enforcement actions.

f) The district addresses identified concerns with the parent/caretaker.

g) Decision: The district must determine whether an exception should be made to the presumption against enrollment, and notify the parent/caretaker and the provider of the decision. **The district must not enroll any provider unless the provider has satisfactorily demonstrated that enrollment will not jeopardize the health, safety or welfare of children in the provider's care.**

Failure of the provider to cooperate with the information sharing and evaluative process will result in a denial or termination of enrollment.

h) When the district enrolls any such provider, it must obtain a signed statement from the parent/caretaker stating that the parent/caretaker is aware of the provider's specific history of an Article 10 removal, TPR, and/or denial, revocation and/or suspension of a license or registration to operate a child day care program; has received the same written information submitted to the district; and knowingly chooses this provider to care for his or her children.

## B. LOW RISK GROUP

A provider is assigned to the low risk group only if the provider does not have any of the risk factors listed for the high risk group. Those providers belonging to the low risk group may include providers who have had a license or registration to operate a day care program denied, revoked or suspended and the lack of compliance was based on circumstances that the provider was attempting to resolve but was not able to adequately resolve in the time frame allowed and since the denial, revocation or suspension, the problem has been adequately resolved. For example, a family day care was closed down due to an unsafe water source. The provider's day care program had been using well water which became contaminated. To resolve the issue, the provider moved to a location that meets all regulatory requirements.

### 1. Enrollment Decision:

Providers in the low risk group may be considered for enrollment.

### 2. Action to be taken by the district:

The district must carefully evaluate the provider's history of the denial, revocation and/or suspension of a license or registration to operate a child day care program and should obtain corroboration of the provider's account prior to giving it credence.

When the district enrolls any such provider, it must obtain a signed statement from the parent/caretaker stating that the parent/caretaker is aware of the provider's specific history of an Article 10 removal, TPR, and/or denial, revocation and/or suspension of a license or registration to operate a child day care program; has received the same written information submitted to the district; and knowingly chooses this provider to care for his or her children.



NEW YORK STATE  
 OFFICE OF CHILDREN AND FAMILY SERVICES  
**ENROLLMENT FORM FOR PROVIDER OF LEGALLY-EXEMPT  
 FAMILY CHILD CARE AND LEGALLY-EXEMPT IN-HOME CHILD CARE**

Parent/Caretaker's Name:		Case Number:
Address:		
Telephone:	Social Security Number* (Not required, please see below):	
Provider's Name:		Date Of Birth**:
Address Where Care Is Given:	Provider's Address (If Different):	
Telephone:	Social Security Number:	
<p>* The parent/caretaker may, but does not have to list his/her social security number. You cannot be required to disclose your social security number as a condition of eligibility for child care services. If provided, your social security number will be used to assist in identifying your child care file. It may also be used by federal, State and local agencies to prevent duplication of services and fraud, and for federal reporting.</p> <p>** If the provider is less than 18 years old, the Employment of Minors Form must be completed.</p>		

**I. PROVIDER'S STATUS**

Provider: Check all statements and answers that apply:

1.  I provide care in the child's home (Provider and parent/caretaker must also complete and submit the Agreement For Legally-Exempt In-Home Child Care.)
2.  I provide care in my own home or another person's home. (Also check box A, B or C below, whichever applies.)
  - A.  I am either the grandparent, great-grandparent, great-great-grandparent, aunt/uncle, great aunt/great uncle, brother/ sister or first cousin of all the children in care; **OR**
  - B.  I care for no more than 2 children (not counting my own children or any children older than 13 years); **OR**
  - C.  I care for 3 or more children. However, I never have more than 2 children in care at the same time for more than three hours a day.
3.  I provide care other than choices #1 or #2 above. (Attach an explanation).
4.  I am on temporary assistance, medical assistance, or food stamps. My case # is: \_\_\_\_\_

**How much is the provider charging for each child?**

<u>Child's Name</u>	<u>Date of Birth</u>	<u>Amount Charged (per hour/day/week)</u>
A) _____	_____	_____
B) _____	_____	_____
C) _____	_____	_____

I agree that the amount I am charging the parent/caretaker signing this form is NOT MORE THAN the amount I am charging for other children of the same age and similar care.

**Who will supply meals and snacks?** Meals and snacks may be supplied either by the parent/caretaker or by the provider. Check the box that states what you have agreed to. If you want information about how your child care program can get money to help pay for meals and snacks, call the Child and Adult Care Food Program at 1(800) 942-3858.

- The provider will supply snacks and meals.
- The parent/caretaker will supply snacks and meals.
- Other – Explain: \_\_\_\_\_

**II. HOME SAFETY CHECKLIST**

*Provider and parent/caretaker complete this section together.*

**A. THE PROVIDER MEETS THESE REQUIREMENTS BEFORE CARING FOR CHILDREN:**

- | <u>YES</u>               | <u>NO</u>                |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | The provider and all children have two separate & remote ways to leave the building in an emergency.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Rooms for children are well-heated, well-lighted and well-ventilated.   |
| <input type="checkbox"/> | <input type="checkbox"/> | The home is free of unsafe areas (such as swimming pools, open drainage ditches, wells, holes, wood or coal burning stoves, fireplaces, and gas space heaters). If there are unsafe areas, sturdy barriers are in place around the unsafe areas that keep children from getting to them.  |
| <input type="checkbox"/> | <input type="checkbox"/> | If child care is provided above the first floor, there are barriers or locks on the windows so children can not fall out.   |
| <input type="checkbox"/> | <input type="checkbox"/> | The water supply is safe. There are working toilets. There is hot and cold running water all the time.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider, all volunteers who are likely to have regular contact with the children and all employees are physically able to provide child care and are free of any communicable disease. Additionally, all persons living in the home (other than the child's own home) are also free of any communicable diseases.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The home is free of any dangerous or unsafe conditions that could hurt a child. This includes: <ul style="list-style-type: none"> <li>▪ Knives and other sharp objects are out of the reach of children.</li> <li>▪ Small rugs, runners, and electrical cords are held in place so a child won't trip.</li> <li>▪ Electrical cords do not run under furniture or rugs and are out of the reach of small children.</li> <li>▪ Extension cords are not overloaded.</li> <li>▪ Any guns and other firearms are unloaded and stored in a locked drawer or cabinet and the key is kept in a safe place.</li> <li>▪ Cords to window blinds and shades are out of the reach of children.</li> <li>▪ Hot liquids are out of the reach of children.</li> <li>▪ Small items that a child could choke on are out of the children's reach.</li> </ul> |
| <input type="checkbox"/> | <input type="checkbox"/> | All matches, lighters, medicines/drugs, cleaning materials, detergents, aerosol spray cans and other poisonous or toxic materials are stored in their original containers. Care is taken so that they do not come in contact with children, where food is prepared, or otherwise be a danger to the children. All of these materials are stored safely away from the children.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Each child will receive meals and snacks according to what the parent/caretaker and the provider have agreed.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Milk, formula and any food that goes bad if left out will be kept refrigerated.   |
| <input type="checkbox"/> | <input type="checkbox"/> | If the provider cares for infants, formula, breast milk and other food items for infants will not be heated in a microwave oven.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider will always allow the custodial parent/caretaker or caretaker to have access to his/her child in care, to the home while the child is in care, and to any written records concerning the child.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider will hold evacuation drills at least once a month with the children so they will know what to do in an emergency.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider has a working telephone OR can get to one very quickly in an emergency. Emergency telephone numbers for the fire department, local police or sheriff's department, poison control center and ambulance service are posted near the phone and are easy to see.  |
| <input type="checkbox"/> | <input type="checkbox"/> | If a child in care is under 5 years old, protective caps, covers or permanently installed safety devices are used on all electrical outlets that the child could reach.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Paint and plaster are in good repair so that there is no danger of children putting paint or plaster chips in their mouths or of it getting into food.  |
| <input type="checkbox"/> | <input type="checkbox"/> | There is at least one operating smoke detector on each floor of the home. The provider will check regularly to make sure all detectors work.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The home has a portable first aid kit that is easy to get to in an emergency and is kept in a clean container away from children. It is stocked to treat common childhood injuries and problems. The provider will always replace things in the first aid kit as soon as possible after something has been used or is too old to be used.   |
| <input type="checkbox"/> | <input type="checkbox"/> | The parent/caretaker has given the provider signed proof from a doctor or other health care provider that: the child has received all of the immunizations appropriate for the child's age; OR that one or more of the immunizations would harm the child's health; OR the child's parent/caretaker provides a statement saying that the child has not been immunized due to the parent/caretaker's religious beliefs.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Stairs, railings, porches and balconies are in good repair.   |

**B. THE PROVIDER AGREES TO THE FOLLOWING CONDITIONS:**

The provider WILL NEVER use corporal punishment or let others use corporal punishment while children are in care. Corporal punishment means doing things directly to a child's body to punish them such as: spanking; biting; shaking; slapping; twisting or squeezing; making the child do physical exercises beyond what is normal; forcing the child to stay still for long periods of time; making the child stay in positions that hurt the child or are bizarre; bathing the child in unusually hot or cold water; and forcing the child to eat or have in the child's mouth soap, foods, hot spices or foreign substances.

The provider WILL NEVER use or be under the influence of alcohol or drugs while children are in care and will make sure that children being cared for do not have contact with people using drugs or alcohol.

The provider WILL NOT smoke or allow smoking in indoor areas or other enclosed areas, such as cars or other vehicles, when children are present.

The provider WILL NEVER leave children alone or in the care of other people.

**By signing the home safety checklist, the parent/caretaker and provider agree that they have inspected the home and that all statements on the form are true and accurate.**

PROVIDER NAME (Print):	PROVIDER SIGNATURE/DATE:
PARENT/CARETAKER NAME (Print)	PARENT/CARETAKER SIGNATURE/DATE:

**III. CRIMINAL HISTORY CERTIFICATIONS**

*To be completed by provider.*

I certify to the best of my knowledge and belief that    (Choose one):

- have** been convicted of a crime in New York State or any other place.
- have not** been convicted of a crime in New York State or any other place.

I certify to the best of my knowledge and belief that **any person helping me** to care for children (Choose one):

- has** been convicted of a crime in New York State or any other place.
- has not** been convicted of a crime in New York State or any other place.

If care is provided in a home other than the child's own home, I certify to the best of my knowledge and belief that **any person living in the home who is 18 years of age or older** (Choose one):

- has** been convicted of a crime in New York State or any other place.
- has not** been convicted of a crime in New York State or any other place.

I certify that I have asked each person living in the home (other than the child's own home) who is age 18 or over, each volunteer who is likely to have regular contact with children in care, and each employee if he or she has been convicted of a crime.

If I, or any other person listed below has been convicted of a crime, I or that other person will provide true and accurate information in writing to the parent/caretaker(s) of the children I will be caring for and to the Department of Social Services concerning the crime(s), the date(s) of such convictions and any other relevant information.

I understand that I am not eligible to provide child care if I, or any other person listed below, has been convicted of a felony or misdemeanor against children.

I understand that I am not eligible to provide child care if I, or any such other person listed below, has been convicted of a violent or other serious crime unless extenuating circumstances relating to the conviction(s) exist.

I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow me to provide child care. If I request an exception, I will provide all documents or references required by the Department of Social Services.

List all individuals that will be helping to care for the children and, if care is provided in a home other than the child's own home, list all household members 18 or older.

INDIVIDUALS CARING FOR CHILDREN: \_\_\_\_\_

HOUSEHOLD MEMBERS: \_\_\_\_\_

**By signing this form the provider agrees that all statements are true and accurate.**

PROVIDER NAME (PRINT):	PROVIDER SIGNATURE/DATE:
------------------------	--------------------------

#### IV. ADMINISTRATION OF MEDICATION

NYS Law restricts the right to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to specific medical professionals who are authorized by NYS to administer medication. Some individuals are exempt from this requirement based on their relationship to the child, family or household, and are permitted to administer medications, including:

- The child’s parent/caretaker, step-parent, legal custodian, legal guardian, or member of the child’s household,
- A child care provider employed by the parent/caretaker to provide child care in the child’s home,
- Family members who are related within the 3rd degree of consanguinity to the child’s parent or step-parent, and
- Effective January 31, 2005, child care providers who are trained and authorized by the Office of Children and Family Services (OCFS), under a Health Care Plan for Administration of Medication, approved by a qualified health care consultant, may administer medication when such providers are:
  - operating in compliance with the NYS regulations,
  - authorized by the child’s parent/caretaker, step-parent, legal guardian, or legal custodian to administer medication, and
  - administering medication to subsidized children in care.

To receive OCFS authorization to administer medication, a child care provider must be at least 18 years of age and literate in the language in which the parental permissions and health care provider’s instructions will be given.

**Any person who is not authorized by NYS Law, or not exempt from this legal requirement, may only administer over-the-counter topical ointments, sunscreen and topical insect repellent.** Examples of medication such providers may not administer include, but are not limited to: Tylenol®; Ritalin®; insulin; antibiotics; and ear, eye or nose drops.

#### A. QUALIFICATIONS FOR ADMINISTRATION OF MEDICATION

*Provider must complete.*

1. **Is the provider legally permitted to administer medication to subsidized children when authorized by a parent/caretaker, legal guardian, or legal custodian?**  
 **Yes.**  
 **No.** You are not authorized or permitted to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to the children in your care.
2. **Is an employee or volunteer of the program legally permitted to administer medication to subsidized children when authorized by a parent/caretaker, legal guardian, or legal custodian?**  
 **Yes.** Give employee’s or volunteer’s name: \_\_\_\_\_  
 **No.** Your employee/volunteer is not authorized or permitted to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to the children in your care.
3. **Give the reason that allows the provider and/or the employee/volunteer to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to subsidized children in the program. Answer this question only if you answered “Yes” to question 1 or 2.**

*Check the box(es) below that show the reason(s) that the provider or the employee/volunteer named above is allowed to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to subsidized children in the program. If there is a different answer or reason for different children, the provider must check all answers that apply.*

*The provider must attach the documentation required for each answer, as indicated.*

- A)** I am permitted to give medication because I am employed by the parent/caretaker to provide child care in the child’s home. I am *not* required to have a Health Care Plan for Administration of Medication.
- B)** I am permitted to give medication to the children for whom I am the grandparent, great-grandparent, great-great-grandparent, aunt/uncle (or spouse), great aunt/great uncle (or spouse), brother/sister or first cousin (or spouse). I am *not* required to have a Health Care Plan for Administration of Medication.
- C)** I have a valid professional health care license as a physician, physician assistant, registered nurse or nurse practitioner that authorizes me to administer medication. I am *not* required to have a Health Care Plan for Administration of Medication.

**I have attached a copy of my current medical license.**

- D)** My employee/volunteer has a valid professional health care license as a physician, physician assistant, registered nurse, or nurse practitioner that authorizes him/her to administer medication. I am required to have a Health Care Plan for Administration of Medication.

**I have attached a copy of the approval page of my Health Care Plan for Administration of Medication, and a copy of my employee/volunteer's current medical license.**

- E)** I have, or my employee/volunteer has, a valid professional license as a practical nurse or certification as an advanced emergency medical technician that allows me, or my employee/volunteer, to administer medication. I am required to have a Health Care Plan for Administration of Medication.

**I have attached a copy of my or my employee/volunteer's current medical license or certification, and a copy of the approval page of the Health Care Plan for Administration of Medication.**

- F)** I have, or my employee/volunteer has, met the training requirements of OCFS regulations, 18 NYCRR Part 415.4 (f)(7)(iv)(z). I am required to have a Health Care Plan for Administration of Medication.

**I have attached a copy of the approval page of the Health Care Plan for Administration of Medication.**

**B. INTENT TO SEEK AUTHORIZATION TO ADMINISTER MEDICATION TO SUBSIDIZED DAY CARE CHILDREN**

*Providers who are not permitted to administer medications and who do not have an employee/volunteer permitted to administer medication must answer this.*

**Will the provider be seeking authorization to administer medication to children in subsidized care? (Choose one)**

- Yes.** I want to learn how to start the process. *Ask the Department of Social Services representative or, in New York City, the Human Resources Administration (HRA) or Administration for Children's Services (ACS) representative, for the following form: Obtaining Authorization to Administer Medication to Children in Legally-Exempt Care.*
- No.** I will not be seeking authorization to administer medication at this time.

**C. PARENT/CARETAKER AND PROVIDER AGREEMENT FOR ADMINISTRATION OF MEDICATION**

*Parent/caretaker must complete.*

**Who will be responsible for administering medication to your child(ren) in the provider's care? (Check all that apply).**

- The child care provider or qualified employee/volunteer named previously will administer medication to the child.
- The legally-exempt child care provider or employee/volunteer will not administer medication. Instead, the parent/caretaker will administer medication or choose a person who is permitted under NYS Education Law to administer medication. This may include a member of the child's household or certain relatives. The relatives who may be authorized include: the child's grandparent, great-grandparent, great-great-grandparent, aunt/uncle (and spouse), great aunt/great uncle (and spouse), brother/sister or first cousin (and spouse). The parent/caretaker will inform the provider in writing when he or she has chosen a person to give medication to his or her child.

**D. PROVIDER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION**

*All providers must read and sign.*

I will administer medication in compliance with NYS law and only to the extent that I am permitted by NYS law to do so.

If I have employees, I will make sure that each of my employees administers medications in compliance with NYS law and only to the extent permitted by NYS law.

If I have volunteers, I will make sure that each of my volunteers administers medication in compliance with NYS law and only to the extent permitted by NYS law.

**By signing this, I agree that all the statements on this form are true and accurate.**

PROVIDER SIGNATURE:	DATE:
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**E. PARENT/CARETAKER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION**

*Parent/caretaker must review and sign the certification below.*

**I certify that all statements on this form are true and accurate.**

I understand that it is **my responsibility** to make sure my child(ren) receives any necessary medication. I understand that if I choose a child care provider who is not able to meet all of my child(ren)'s health care needs, I am responsible for making additional arrangements to meet the child(ren)'s needs. I will make all necessary arrangements prior to placing my child in the provider's care.

My provider has informed me whether he or she (or his/her employee/volunteer) is legally permitted to administer medication. I have read the Qualifications for Administration of Medication, Section IV A, of this enrollment form, and I understand whether or not my provider or his/her employee/volunteer is legally permitted to give medication to my child(ren).

My child care provider and I have discussed who will administer medication to my child(ren) while the child(ren) is in the provider's care. Our agreement regarding who will be responsible for administering medication to my child(ren) is indicated on this form in Section IV C.

I understand that I may administer medication to my child, or that I may authorize another person that is legally permitted to administer medication to my child. I may authorize a member of my child's household or certain relatives of the child to administer medication. The relatives who may be authorized include: the child's grandparent, great-grandparent, great-great-grandparent, aunt/uncle (and spouse), great aunt/uncle (and spouse), brother/sister or first cousin (and spouse).

PARENT/CARETAKER SIGNATURE:	DATE:
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**V. HISTORY OF COURT-ORDERED ARTICLE 10 REMOVAL OF A CHILD**

*Provider must complete.*

**A. PROVIDER HISTORY**

1. I certify that (*choose one*):

- I **have never** had a child removed from my care by court order in a proceeding under Article 10 (child protective) of the Family Court Act (FCA). (*Go to section B*).
- I **have** had a child removed from my care by court order in a proceeding under Article 10 (*child protective*) of the Family Court Act.

2. Date(s) removal(s) occurred: \_\_\_\_\_

3. As a result of the FCA Article 10 hearing, was there a judicial finding of abuse or neglect?

Yes, there was a judicial finding of abuse or neglect. (*Indicate type of finding below.*)

- Neglect       Abuse, severe or repeated       Abuse

No, there was no judicial finding of abuse or neglect. (*Indicate reason below.*)

- petition was withdrawn       Article 10 petition was not filed with the court
- case was dismissed       Other, explain: \_\_\_\_\_

4. Length of time that the child(ren) were removed from the home (*choose one*):

- 3 days or less       more than 3 days and as many as 60 days
- more than 60 days but less than 15 months       15 months or longer

5. *Provider must attach a written description of what led to the removal and the underlying reasons for the removal.*

**B. PROVIDER CERTIFICATION REGARDING HISTORY OF ARTICLE 10 REMOVAL**

*The provider must complete this certification.*

**By signing this form, I agree that I have provided true and accurate information regarding any history of an Article 10 removal of a child in my care.**

SIGNATURE OF PROVIDER:	DATE:
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**VI. HISTORY OF TERMINATION OF PARENTAL RIGHTS**

*Provider must complete.*

**A. PROVIDER HISTORY**

1. I certify and attest that *(Choose one)*:

- I **have never had** my parental rights terminated. *(Proceed to Part B.)*
- I **have** had my parental rights terminated.

2. My parental rights were terminated based on: *(Check reason below)*:

- Abandonment
- Mental illness
- Permanent neglect
- Mental retardation
- Severe or repeated abuse
- Other, \_\_\_\_\_

3. *Provider must attach a written description of what led to the termination of parental rights and the underlying reasons for the termination of parental rights.*

**B. PROVIDER CERTIFICATION REGARDING HISTORY OF TERMINATION OF PARENTAL RIGHTS**

*The provider must sign this certification.*

**By signing this form, I agree that I have provided true and accurate information regarding any history of a termination of my parental rights.**

SIGNATURE OF PROVIDER:	DATE:
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**VII. HISTORY OF SUSPENSION, REVOCATION OR DENIAL OF A LICENSE OR REGISTRATION TO OPERATE A CHILD DAY CARE PROGRAM**

*Provider must complete.*

*(CHILD DAY CARE includes: day care centers, family day care homes, group family day care homes, small day care centers and/or school age child care programs.)*

**A. PROVIDER HISTORY**

1. I certify and attest *(Choose all that apply)*:

- I **have** applied for an initial license or registration to operate a child day care program, and been denied.
- I **have** applied for a renewal of a license or registration to operate a child day care program and been denied.
- I have applied for an initial or renewed license or registration to operate a child day care program and I **have never** been denied an application for or a renewal of a license or registration to operate a child day care program.
- I have never applied for a license or registration to operate a child day care program. *(Go to Part B.)*

2. I certify and attest that *(Choose one)*:

- I **have never had** a license or registration to operate a child day care program revoked or suspended.
- I **have had** a license or registration to operate a child day care program revoked or suspended.

3. If you have ever had a license or registration revoked, suspended or denied, give the name and location of the child day care program(s) for which this action occurred.

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4. *Provider must attach a written description of what led to the denial, revocation or suspension of the license or registration to operate a child day care program, and the reasons this occurred.*

**B. PROVIDER CERTIFICATION REGARDING LICENSING/REGISTRATION HISTORY**

*The provider must sign this certification.*

**By signing this form, I agree that I have provided true and accurate information regarding my history of denial, revocation, or suspension of a license or registration to operate a child day care program.**

SIGNATURE OF PROVIDER:	DATE:
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## **VIII. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS**

### **A. PROVIDER CERTIFICATIONS**

I will notify the Department of Social Services immediately if the hours of care, number of children in my care, or any information provided on the enrollment form or attachments changes.

I agree to collect the family share (fee) if instructed to do so by the Department of Social Services. I will immediately notify the Department of Social Services if the parent/caretaker fails to pay the required family share. I agree to provide accurate attendance records as required by the Department of Social Services.

I understand that representatives of the Department of Social Services and the State of New York may visit my child care program to confirm that the information on my enrollment form and/or on attendance forms is true and accurate and that child care services are being provided as listed on those forms. I agree to allow representatives of the Department of Social Services and the State of New York access to all areas where child care is provided for a child receiving a child care subsidy. I understand that if I do not allow such access, then I will be considered an ineligible provider. Any child care that I provide to a child receiving a child care subsidy while I am deemed an ineligible provider by the Department of Social Services will not be reimbursed by the Department of Social Services.

I understand that I may not be eligible to provide child care if I have a history of an Article 10 (child protective) removal of a child by court order, termination of parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program. I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow me to provide child care. If I request an exception, I will provide all information, documents or references required by the Department of Social Services.

### **B. PARENT/CARETAKER CERTIFICATIONS**

I understand that my provider may not be eligible to provide child care if he or she has a history of an Article 10 (child protective) removal of a child by court order, termination of parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program. I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow my provider to provide child care. If I request an exception, the provider must provide all information, documents or references required by the Department of Social Services.

I understand that the Department of Social Services may not be able to pay a provider when:

- The provider, any volunteer who is likely to have regular contact with my children, any employee, or person living in the home (other than the child's home) age 18 years or older has been convicted of a crime; or
- The provider has a history of an Article 10 (child protective) removal of a child by court order; termination of parental rights; or denial, revocation and/or suspension of a license or registration to operate a child day care program.

If the Department of Social Services determines that payment cannot be made to the provider when any of the above events have occurred, I have the right and responsibility to decide whether I want to use this provider. If I choose to continue using such a provider, I am responsible to pay for the child care myself. I understand that I have the right to select another provider.

I will notify the Department of Social Services if the hours that I need child care or other circumstances related to my need or eligibility for child care change. I agree to pay my family share (fee), if any, as directed by the Department of Social Services.

I certify that I have selected this provider to care for my child(ren). I understand that it is my responsibility to monitor the quality of care furnished to my child(ren).

### **C. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS**

We state that to the best of our knowledge and belief all statements made on this form and any attachments are accurate and true. We understand that providing false information may result in the termination of payments and legal action by the Department of Social Services.

We state that the parent/caretaker has specifically asked the provider if the provider, volunteers who are likely to have regular contact with children in care, employees, and if care is provided in the provider's home, persons living in the home age 18 years or over, have been the subject of an indicated report of child abuse or maltreatment. The provider has asked volunteers who are likely to have regular contact with children in care, employees, and if care is provided in the provider's home persons living in the home age 18 years or over, if they have been the subject of an indicated report of child abuse or maltreatment. The provider has given the parent/caretaker true and accurate information in writing regarding any indications of child abuse or maltreatment. The parent/caretaker has considered the information given on child abuse and maltreatment indications and is selecting this provider. The parent/caretaker understands he or she has the right to select another provider.



We state that we completed the Home Safety Checklist together. We understand that payment cannot be made until items marked "No" on the Home Safety Checklist have been corrected. We agree to notify and provide documentation to the Department of Social Services when any item on the Checklist has been corrected or changed.

**By signing this form, the parent/caretaker and provider agree to all of the requirements listed above.**

PARENT/CARETAKER SIGNATURE:	DATE:
PROVIDER SIGNATURE:	DATE:

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**ENROLLMENT FORM FOR PROVIDER OF LEGALLY-EXEMPT GROUP CHILD CARE**

Parent/Caretaker's Name:		Case Number:
Address:		
Telephone:	Social Security Number* (Not required, please see below):	
Provider's Name:		Date Of Birth**:
Address Where Care Is Given:		
Provider's Address (If Different):		
Telephone:	Social Security Number:	
<p>* The parent/caretaker may, but does not have to list his/her social security number. You cannot be required to disclose your social security number as a condition of eligibility for child care services. If provided, your social security number will be used to assist in identifying your child care file. It may also be used by federal, State and local agencies to prevent duplication of services and fraud, and for federal reporting.</p> <p>** If the provider is less than 18 years old, the <u>Employment of Minors Form</u> must be completed.</p>		

**I. HOW MUCH IS THE PROVIDER CHARGING FOR EACH CHILD (IN THIS CASE)?**

<u>Child's Name</u>	<u>Date of Birth</u>	<u>Amount Charged (per hour/day/week)</u>
A) _____	_____	_____
B) _____	_____	_____
C) _____	_____	_____

I agree that the amount I am charging the parent/caretaker signing this form is NOT MORE THAN the amount I am charging for other children of the same age and similar care.

**Who will supply meals and snacks?**

Meals and snacks may be supplied either by the parent/caretaker or by the provider. *Check the box that states what you have agreed to.* If you want information about how your child care program can get money to help pay for meals and snacks, call the Child and Adult Care Food Program at 1(800) 942-3858.

The provider will supply snacks and meals.

The parent/caretaker will supply snacks and meals.

Other – Explain: \_\_\_\_\_

## II. TYPE OF PROGRAM

*Provider: Check the statement that describes your program:*

1. This program is a nursery school, pre-kindergarten or day care program for children three years of age or older or a program for school-age children conducted during non-school hours, **operated by a public school district** that is providing elementary or secondary education or both in accordance with the compulsory education requirements of the NYS Education Law. The program is located on the same premises or campus where the elementary or secondary education is provided.
2. This program is a nursery school that is **voluntarily registered with the NYS Education Department** and operated in accordance with Part 125 of its regulations. **Attach a copy of your registration.**
3. This program is a summer day camp operated in accordance with Subpart 7-2 of the State Sanitary Code. **Attach a copy of your permit from the NYS Department of Health to operate a summer day camp.**
4. This program is a day care center, family day care home or other child care program **located on federal or tribal property** and operated in compliance with applicable federal or tribal laws and regulations.
5. This is a nursery school, pre-kindergarten or day care program for children three years of age or older or a program for school-aged children conducted during non-school hours, **operated by a private school or academy** which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the NYS Education Law. The program is located on the same premises or campus where the elementary or secondary education is provided.
6. This program is a nursery school or program for preschool-aged children **operated by a nonprofit agency or organization or a private proprietary agency** which is not voluntarily registered with NYS Education Department and which provides services to children for three or less hours per day.
7. This is a school age program that cares for not more than six children.
8. None of the above statements describe this program. If this is your answer, you may need to be licensed or registered. Until you are licensed or registered or can provide documentation that you are legally-exempt from licensing and registering requirements, the Department of Social Services cannot pay you to provide child care. For information about licensing, contact the Bureau of Early Childhood Services at 1-800-732-5207.

*If your program meets the definition found in **statements 1, 2, 3, or 4** above, proceed to **Section IV, Criminal History Certifications**. You do not need to complete the following sections:*

- **Section III, Facility Safety Checklist;**
- **Section V, Administration of Medication,**
- **Section VI, History of Court Ordered Article 10 Removal of a Child**
- **Section VII, History of Termination of Parental Rights**
- **Section VIII, History Of A Suspension, Revocation or Denial of a License or Registration to Operate a Child Day Care Program.**

*If your program meets the definition found in **statements 5, 6, 7 or 8**, then you must complete all sections in this enrollment form.*

**All providers must complete Section IX, Parent/Caretaker and Provider Certifications.**

### III. FACILITY SAFETY CHECKLIST

*Provider and parent/caretaker should complete this together.*

#### A. THE PROVIDER MEETS THESE REQUIREMENTS BEFORE CARING FOR CHILDREN:

**Yes**    **No**

- |                          |                          |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | The provider and all children have two separate & remote ways to leave the building in an emergency.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Rooms for children are well-heated, well-lighted and well-ventilated.   |
| <input type="checkbox"/> | <input type="checkbox"/> | The facility is free of unsafe areas (such as swimming pools, open drainage ditches, wells, holes, wood or coal burning stoves, fireplaces, and gas space heaters). If there are unsafe areas, sturdy barriers are in place around the unsafe areas that keep children from getting to them.  |
| <input type="checkbox"/> | <input type="checkbox"/> | If child care is provided above the first floor, there are barriers or locks on the windows so children can not fall out.   |
| <input type="checkbox"/> | <input type="checkbox"/> | The water supply is safe. There are working toilets. There is hot and cold running water all the time.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider, each volunteer who is likely to have regular contact with the children and each employee are physically able to provide child care and are free of any communicable disease.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The facility is free of any dangerous or unsafe conditions that could hurt a child. This includes: <ul style="list-style-type: none"> <li>• Knives and other sharp objects are out of the reach of children.</li> <li>• Small rugs, runners, and electrical cords are held in place so a child won't trip.</li> <li>• Electrical cords do not run under furniture or rugs and are out of the reach of small children.</li> <li>• Extension cords are not overloaded.</li> <li>• Any guns and other firearms are unloaded and stored in a locked drawer or cabinet and the key is kept in a safe place.</li> <li>• Cords to window blinds and shades are out of the reach of children.</li> <li>• Hot liquids are out of the reach of children.</li> <li>• Small items that a child could choke on are out of the children's reach.</li> </ul> |
| <input type="checkbox"/> | <input type="checkbox"/> | All matches, lighters, medicines/drugs, cleaning materials, detergents, aerosol spray cans and other poisonous or toxic materials are stored in their original containers. Care is taken so that they do not come in contact with children, where food is prepared, or otherwise be a danger to the children. All of these materials are stored safely away from the children.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Each child will receive meals and snacks according to what the parent/caretaker and the provider have agreed.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Milk, formula and any food that goes bad if left out will be kept refrigerated.   |
| <input type="checkbox"/> | <input type="checkbox"/> | If the provider cares for infants, formula, breast milk and other food items for infants will not be heated in a microwave oven.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider will always allow the custodial parent/caretaker or caretaker to have access to his/her children in care, to the facility while the child is in care, and to any written records concerning the child.   |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider will hold evacuation drills at least once a month with the children so they will know what to do in an emergency.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider has a working telephone OR can get to one very quickly in an emergency. Emergency telephone numbers for the fire department, local police or sheriff's department, poison control center and ambulance service are posted near the phone and are easy to see.  |
| <input type="checkbox"/> | <input type="checkbox"/> | If a child in care is under 5 years old, protective caps, covers or permanently installed safety devices are used on all electrical outlets that children could reach.  |

**Yes    No**

- Paint and plaster are in good repair so that there is no danger of children putting paint or plaster chips in their mouths or of it getting into food.
- There is at least one operating smoke detector on each floor of the facility. The provider will check regularly to make sure all detectors work.
- The facility has a portable first aid kit that is easy to get to in an emergency and is kept in a clean container away from children. It is stocked to treat common childhood injuries and problems. The provider will always replace things in the first aid kit as soon as possible after something has been used or is too old to be used.
- The parent/caretaker has given the provider signed proof from a doctor or other health care provider that: the child has received all of the immunizations they should have for the child's age; OR that one or more of the immunizations would harm the child's health; OR the child's parent/caretaker provides a statement saying that the child has not been immunized due to the parent/caretaker's religious beliefs.
- Stairs, railings, porches and balconies are in good repair.

**B. THE PROVIDER AGREES TO THE FOLLOWING CONDITIONS:**

The provider WILL NEVER use corporal punishment or let others use corporal punishment while children are in care. Corporal punishment means doing things directly to a child's body to punish them such as: spanking; biting; shaking; slapping; twisting or squeezing; making the child do physical exercises beyond what is normal; forcing the child to stay still for long periods of time; making the child stay in positions that hurt the child or are bizarre; bathing the child in unusually hot or cold water; and forcing the child to eat or have in the child's mouth soap, foods, hot spices or foreign substances.

The provider WILL NEVER use or be under the influence of alcohol or drugs while children are in care and will make sure that children that being cared for do not have contact with people using drugs or alcohol.

The provider WILL NOT smoke or allow smoking in in-door areas or in other enclosed areas, such as in cars or other vehicles, when children are present.

The provider, volunteers, and employees WILL NEVER leave children alone or in the care of other people.

**BY SIGNING THE FACILITY SAFETY CHECKLIST, THE PARENT/CARETAKER AND PROVIDER AGREE THAT THEY HAVE INSPECTED THE FACILITY AND THAT ALL STATEMENTS ON THE FORM ARE TRUE AND ACCURATE.**

PROVIDER NAME (PRINT):	PROVIDER SIGNATURE:	DATE:
PARENT/CARETAKER NAME (PRINT):	PARENT/CARETAKER SIGNATURE:	DATE:

**IV. CRIMINAL HISTORY CERTIFICATIONS:**

*To be completed by provider*

**A. PROVIDER HISTORY**

I certify to the best of my knowledge and belief that **I** (Choose one):

- have** been convicted of a crime in New York State or any other place.
- have not** been convicted of a crime in New York State or any other place.

**B. OTHER CAREGIVER (EMPLOYEE AND VOLUNTEER) HISTORY**

I certify to the best of my knowledge and belief that **any VOLUNTEER**, who is likely to have regular contact with children in care, and **any EMPLOYEE** (Choose one):

- has** been convicted of a crime in New York State or any other place.
- has not** been convicted of a crime in New York State or any other place.

**C. CERTIFICATION**

I certify that I have asked each volunteer, who is likely to have regular contact with children in care, and I have asked each employee, if he or she has been convicted of a crime.

If I, or any other person listed below has been convicted of a crime, I or that other person will provide true and accurate information in writing to the parent/caretaker(s) of the children I will be caring for and to the Department of Social Services concerning the crime(s), the date(s) of such convictions and any other relevant information.

I understand that I am not eligible to provide child care if I, or any other person listed below, has been convicted of a felony or misdemeanor against children.

I understand that I am not eligible to provide child care if I, or any such other person listed below, has been convicted of a violent or other serious crime unless extenuating circumstances relating to the conviction(s) exist.

I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow me to provide child care. If I request an exception, I will provide all documents or references required by the Department of Social Services.

List all employees, and all volunteers who are likely to have regular contact with children in care.

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**BY SIGNING THIS FORM THE PROVIDER AGREES THAT ALL STATEMENTS ARE TRUE AND ACCURATE.**

PROVIDER NAME (PRINT):	PROVIDER SIGNATURE:	DATE:
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*If your program is program type 1, 2, 3, or 4 as defined in Section II, proceed to **Section IX, Parent/Caretaker and Provider Certifications.***

**V. ADMINISTRATION OF MEDICATION**

NYS Law restricts the right to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to specific medical professionals who are authorized by NYS to administer medication. Some individuals are exempt from this requirement based on their relationship to the child, family or household, and are permitted to administer medications, including:

- The child’s parent, step-parent, legal custodian, legal guardian, or a member of the child’s household,
- A child care provider employed by the parent/caretaker to provide child care in the child’s home,
- Family members who are related within the 3<sup>rd</sup> degree of consanguinity to the child’s parent or step-parent, and
- Effective January 31, 2005, child care providers who are trained and authorized by the Office of Children and Family Services (OCFS), under a Health Care Plan for Administration of Medication, approved by a qualified health care consultant, may administer medication when such providers are:
  - ▲ operating in compliance with the NYS regulations,
  - ▲ authorized by the child’s parent/caretaker, step-parent, legal guardian, or legal custodian to administer medication, and
  - ▲ administering medication to subsidized children in care.

To receive OCFS authorization to administer medication, a child care provider must be at least 18 years of age and literate in the language in which the parental permissions and health care provider’s instructions will be given.

**Any person who is not authorized by NYS Law, or not exempt from this legal requirement, may only administer over-the-counter topical ointments, sunscreen and topical insect repellent.** Examples of medication such providers may not administer include, but are not limited to: Tylenol®; Ritalin®; insulin; antibiotics; and ear, eye or nose drops.

**A. QUALIFICATIONS TO ADMINISTER MEDICATION**

*Provider must complete.*

**1. Is the provider legally permitted to administer medication to subsidized children when authorized by a parent/caretaker, legal guardian, or legal custodian?**

**Yes.**

**No.** You are not authorized or permitted to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to the children in your care.

**2. Is an employee or volunteer of the program legally permitted to administer medication to subsidized children when authorized by a parent/caretaker, legal guardian, or legal custodian?**

**Yes.** Give employee/volunteer's name: \_\_\_\_\_

**No.** Your employee/volunteer(s) is not authorized or permitted to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to the children in your care.

**3. Give the reason that allows the provider and/or the employee/volunteer to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to subsidized children in the program. Answer this question only if you answered "Yes" to question 1 or 2.**

*Check the box(es) below that show the reason(s) that the provider or the employee/volunteer named above is allowed to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to subsidized children in the program. If there is a different answer or reason for different children, the provider must check all answers that apply.*

*The provider must attach the documentation required for each answer, as indicated.*

**A)** I have a valid professional health care license as a physician, physician assistant, registered nurse or nurse practitioner that authorizes me to administer medication. I am *not* required to have a Health Care Plan for Administration of Medication.

**I have attached a copy of my current medical license.**

**B)** My employee/volunteer has a valid professional health care license as a physician, physician assistant, registered nurse, or nurse practitioner that authorizes him/her to administer medication. I am required to have a Health Care Plan for Administration of Medication.

**I have attached a copy of the approval page of my Health Care Plan for Administration of Medication, and a copy of my employee/volunteer's current medical license.**

**C)** I have, or my employee/volunteer has, a valid professional license as a practical nurse or certification as an advanced emergency medical technician that allows me, or my employee/volunteer, to administer medication. I am required to have a Health Care Plan for Administration of Medication.

**I have attached a copy of my or my employee's/volunteer's current medical license or certification, and a copy of the approval page of the Health Care Plan for Administration of Medication.**

**D)** I have, or my employee/volunteer has, met the training requirements of OCFS regulations, 18 NYCRR Part 415.4 (f)(7)(iv)(z). I am required to have a Health Care Plan for Administration of Medication.

**I have attached a copy of the approval page of the Health Care Plan for Administration of Medication.**

**B. INTENT TO SEEK AUTHORIZATION TO ADMINISTER MEDICATION TO SUBSIDIZED DAY CARE CHILDREN**

*Providers who are not permitted to administer medications must answer this.*

**Will the provider be seeking authorization to administer medication to subsidized day care children? (choose one).**

**Yes.** I want to learn how to start the process. *Ask the Department of Social Services representative, or in New York City, the Human Resource Administration (HRA) or Administration for Children's Services (ACS) representative, for the following form: Obtaining Authorization to Administer Medication to Children in Legally-Exempt Care.*

**No.** I will not be seeking authorization to administer medication at this time.

**C. PARENT/CARETAKER AND PROVIDER AGREEMENT FOR ADMINISTRATION OF MEDICATION**

*Parent/caretaker must complete this section.*

**Who will be responsible for administering medication to your child(ren) in the provider’s care?** *(Check all that apply).*

- The child care provider or qualified employee/volunteer named previously will administer medication to the child.
- The legally-exempt child care provider or employee/volunteer will not administer medication. Instead, the parent/caretaker will administer medication or choose a person who is permitted under NYS Education Law to administer medication. This may include a member of the child’s household or certain relatives. The relatives who may be authorized include: the child’s grandparent, great-grandparent, great-great-grandparent, aunt/uncle (and spouse), great aunt/great uncle (and spouse), brother/sister or first cousin (and spouse). The parent/caretaker will inform the provider in writing when he or she has chosen a person to give medication to his or her child.

**D. PROVIDER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION**

*Provider must complete this section:*

I will administer medication in compliance with NYS law and only to the extent that I am permitted by NYS law to do so.

If I have employees, I will make sure that each of my employees administers medication in compliance with NYS law and only to the extent permitted by NYS law.

If I have volunteers, I will make sure that each of my volunteers administers medication in compliance with NYS law and only to the extent permitted by NYS law.

**By signing this, I agree that the all statements on this form are true and accurate.**

PROVIDER SIGNATURE:	DATE:
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**E. PARENT/CARETAKER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION**

**I certify that all statements on this form are true and accurate.**

I understand that it is **my responsibility** to make sure my child(ren) receive(s) any necessary medication. I understand that if I choose a child care provider who is not able to meet all of my child(ren)’s health care needs, I am responsible for making additional arrangements to meet the child(ren)’s needs. I will make all necessary arrangements prior to placing my child in the provider’s care.

My provider has informed me whether he or she (or his/her employee/volunteer) is legally permitted to administer medication. I have read the Qualifications For Administration Of Medication, Section V A, of this enrollment form, and I understand whether or not my provider or his/her employee/volunteer is legally permitted to give medication to my child(ren).

My child care provider and I have discussed who will administer medication to my child(ren) while the child(ren) is in the provider’s care. Our agreement regarding who will be responsible for administering medication to my child(ren) is indicated on this form in Section V C.

I understand that I may administer medication to my child, or that I may authorize another person that is legally permitted to administer medication to my child. I may authorize a member of my child’s household or certain relatives of the child to administer medication. The relatives who may be authorized include: the child’s grandparent, great-grandparent, great-great-grandparent, aunt/uncle (and spouse), great aunt/great uncle (and spouse), brother/sister or first cousin (and spouse).

PARENT/CARETAKER SIGNATURE	DATE:
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**VI. HISTORY OF COURT-ORDERED ARTICLE 10 REMOVAL OF A CHILD**

*Provider must complete.*

**A. PROVIDER HISTORY**

1. I certify that (*choose one*):
  - I *have never* had a child removed from my care by court order in a proceeding under Article 10 (child protective) of the Family Court Act (FCA). (*Go to section B.*)
  - I *have* had a child removed from my care by court order in a proceeding under Article 10 of the Family Court Act.
2. Date(s) removal(s) occurred: \_\_\_\_\_
3. As a result of the FCA Article 10 hearing, was there a judicial finding of abuse or neglect?
  - Yes, there was a judicial finding of abuse or neglect. (*Indicate type of finding below.*)
    - Neglect                                       Abuse, severe or repeated                                       Abuse
  - No, there was no judicial finding of abuse or neglect. (*Indicate reason below.*)
    - petition was withdrawn       Article 10 petition was not filed with the court
    - case was dismissed               Other, *explain*: \_\_\_\_\_
4. Length of time that the child(ren) were removed from the home (*choose one*):
  - 3 days or less                                       more than 3 days and as many as 60 days
  - more than 60 days but less than 15 months       15 months or longer
5. *Provider must attach a written description of what led to the removal and the underlying reasons for the removal.*

**B. PROVIDER CERTIFICATION REGARDING HISTORY OF ARTICLE 10 REMOVAL.**

*The provider must complete this certification.*

**By signing this form, I agree that I have provided true and accurate information regarding any history of an Article 10 removal of a child in my care.**

SIGNATURE OF PROVIDER:	DATE:
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**VII. HISTORY OF TERMINATION OF PARENTAL RIGHTS**

*Provider must complete.*

**A. PROVIDER HISTORY**

1. I certify and attest that (*Choose one*):
  - I *have never* had my parental rights terminated. (*Proceed to Part B.*)
  - I *have* had my parental rights terminated.
2. My parental rights were terminated based on: (*Check reason below*):
  - Abandonment                                       Mental illness                                       Permanent neglect
  - Mental retardation                                       Severe or repeated abuse                                       Other: \_\_\_\_\_
3. *Provider must attach a written description of what led to the termination of parental rights and the underlying reasons for the termination of parental rights.*

**B. PROVIDER CERTIFICATION REGARDING HISTORY OF TERMINATION OF PARENTAL RIGHTS**

*The provider must sign this certification.*

**By signing this form, I agree that I have provided true and accurate information regarding any history of a termination of my parental rights.**

SIGNATURE OF PROVIDER:	DATE:
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**VIII. HISTORY OF A SUSPENSION, REVOCATION OR DENIAL OF A LICENSE OR REGISTRATION TO OPERATE A CHILD DAY CARE PROGRAM**

(CHILD DAY CARE includes: day care centers, family day care homes, group family day care homes, small day care centers and/or school age child care programs.) *Provider must complete.*

**A. PROVIDER HISTORY**

1. I certify and attest (*Choose all that apply*):

- I have applied for an *initial* license or registration to operate a child day care program, and been denied.
- I have applied for a *renewal* of a license or registration to operate a child day care program and been denied.
- I have applied for an initial or renewed license or registration to operate a child day care program and I *have never been denied* an application for or a renewal of a license or registration to operate a child day care program.
- I have never applied for a license or registration to operate a child day care program. (*Go to Part B.*)

2. I certify and attest that (*Choose one*):

- I *have never had* a license or registration to operate a child day care revoked or suspended.
- I *have had* a license or registration to operate a child day care revoked or suspended.

3. If you have ever had a license or registration revoked, suspended or denied, give name and location of the child day care program(s) for which this action occurred \_\_\_\_\_

\_\_\_\_\_

4. *Provider must attach a written description of what led to the denial, revocation or suspension of the license or registration to operate a day care program, and the reasons this occurred.*

**B. PROVIDER CERTIFICATION REGARDING LICENSING/REGISTRATION HISTORY**

*The provider must sign this certification.*

**By signing this form, I agree that I have provided true and accurate information regarding my history of denial, revocation or suspension of a license or registration to operate a child day care program.**

SIGNATURE OF PROVIDER:	DATE:
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**IX. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS**

**A. PROVIDER CERTIFICATIONS**

I will notify the Department of Social Services immediately if the hours of care or number of children in my care changes.

I agree to collect the family share (fee) if instructed to do so by the Department of Social Services. I will immediately notify the Department of Social Services if the parent/caretaker fails to pay the required family share. I agree to provide accurate attendance records as required by the Department of Social Services.

I understand that representatives of the Department of Social Services and the State of New York may visit my child care program to confirm that the information on my enrollment form and/or on attendance forms is true and accurate, and that child care services are being provided as listed on those forms. I agree to allow representatives of the Department of Social Services and the State of New York access to all areas where child care is provided for a child receiving a child care subsidy. I understand that if I do not allow such access, then I will be considered an ineligible provider. Any child care that I provide to a child receiving a child care subsidy while I am deemed an ineligible provider by the Department of Social Services will not be reimbursed by the Department of Social Services.

I understand that I may not be eligible to provide child care if I have a history of an Article 10 (child protective) removal of a child by court order, termination of my parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program. I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow me to provide child care. If I request an exception, I will provide all information, documents or references required by the Department of Social Services.

**B. PARENT/CARETAKER CERTIFICATIONS**

I understand that my provider may not be eligible to provide child care if he or she has a history of an Article 10 (child protective) removal of a child by court order, termination of parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program. I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow my provider to provide child care. If I request an exception, the provider must provide all information, documents or references required by the Department of Social Services.

I understand that the Department of Social Services may not be able to pay a provider when:

- The provider, any volunteer, who is likely to have regular contact with my children, or any employee has been convicted of a crime; or
- The provider has a history of an Article 10 removal of a child by court order, termination of parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program.

If the Department of Social Services determines that payment cannot be made to the provider when any of the above events have occurred, I have the right and responsibility to decide whether I want to use this provider. If I choose to continue using such a provider, I am responsible to pay for the child care myself. I understand that I have the right to select another provider.

I will notify the Department of Social Services if the hours that I need child care or other circumstances related to my need or eligibility for child care change. I agree to pay my family share (fee), if any, as directed by the Department of Social Services.

I certify that I have selected this provider to care for my child(ren). I understand that it is my responsibility to monitor the quality of care furnished to my child(ren).

**C. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS**

We state that to the best of our knowledge and belief all statements made on this form and any attachments are accurate and true. We understand that providing false or inaccurate information may result in the termination of payments and legal action by the Department of Social Services.

We state that the parent/caretaker has specifically asked the provider if the provider, volunteers who are likely to have regular contact with children in care, or employees have been the subject of an indicated report of child abuse or maltreatment. The provider has asked all volunteers who are likely to have regular contact with children in care and all employees if they have been the subject of an indicated report of child abuse or maltreatment. The provider has given the parent/caretaker true and accurate information in writing regarding any indications of child abuse or maltreatment. The parent/caretaker has considered the information given on child abuse and maltreatment indications and is selecting this provider. The parent/caretaker understands he/she has the right to select another provider.

If the provider is required to complete the Facility Safety Checklist, we state that we have completed it together. We understand that payment cannot be made until items marked "No" on the Facility Safety Checklist have been corrected. We agree to notify and provide documentation to the Department of Social Services when any item on the Checklist has been corrected or changed.

**By signing this form, the parent/caretaker and provider agree to all of the requirements listed above.**

PARENT/CARETAKER SIGNATURE	DATE
PROVIDER SIGNATURE	DATE

**NOTICE OF CHILD CARE ASSISTANCE OVERPAYMENT AND REPAYMENT REQUIREMENTS**

NOTICE DATE CASE NUMBER      CIN NUMBER CASE Name (And C/O Name if Present) and ADDRESS   	NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE  GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP OR Agency Conference _____ Fair Hearing Information and Assistance <b>1-800-342-3334</b> Record Access _____ Legal Assistance Information _____
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OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	TELEPHONE NO.
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**YOU HAVE THE RIGHT TO A FAIR HEARING TO APPEAL THIS DECISION. YOU ALSO HAVE THE RIGHT TO AN AGENCY CONFERENCE. BE SURE TO READ THE BACK OF THIS NOTICE ON HOW TO APPEAL THIS DECISION AT A FAIR HEARING AND/OR REQUEST AN AGENCY CONFERENCE.**

**Section I-Notice of Child Care Assistance Overpayment**  
 You received more child care benefits than you should have (overpayment) from \_\_\_\_\_ to \_\_\_\_\_. The amount of the overpayment is \$\_\_\_\_\_.

The reason the overpayment occurred is:

You or someone in your household failed to inform us of changes that affect your eligibility or benefit level.

We incorrectly gave you more benefits than you should have gotten due to: \_\_\_\_\_

Other: \_\_\_\_\_

Explanation and Calculation of Overpayment: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The regulations that allow us to do this are 18 NYCRR 415.4 (i) and (j).

**Section II-Repayment Plan Agreement**  
**If you are requesting a Fair Hearing regarding this decision, you are not required to complete and sign the repayment plan at this time. However, you must complete and sign the Fair Hearing request on the reverse side of this form and return it to the address indicated on the reverse.**

You are required to make full repayment by \_\_\_\_\_. If you are unable to repay the overpayment as shown below or you want to set up another agreement plan, or if you have any questions please call \_\_\_\_\_ at \_\_\_\_\_, right away. Otherwise, sign this agreement, make a copy of it for yourself, and return the agreement to the address at the bottom of this page.

If you do not respond to this notice, your case will be closed.

**Your repayment plan is shown below.**

Revised Family Share--Recovery will be made from your child care benefits. To repay this debt, you must pay \$\_\_\_\_\_ per week. This is in addition to your current family share of \$\_\_\_\_\_ per week. **Your total family share** is now \$\_\_\_\_\_ per week. You must make this payment each week to your child care provider. Your first payment is due on \_\_\_\_\_. We will pay your provider \$\_\_\_\_\_ per week.

You must make weekly payments of \$\_\_\_\_\_ to the Department of Social Services. You must send payment to the address below. Your first payment is due on \_\_\_\_\_. We will pay your provider \$\_\_\_\_\_ per week.

**I agree to repay by this method. I understand that failure to pay the amount stated on time will result in a discontinuation of my child care benefits and/or legal action may be taken in the court to recover this overpayment.**

\_\_\_\_\_  
**Signature**      \_\_\_\_\_  
**Date**

**Return this repayment plan agreement to:**

**RIGHT TO A CONFERENCE:** You may have an agency conference to review these actions. A conference is when you meet with someone from the agency, other than the person who made the decision, to discuss your case. You may request an agency conference by calling the number on the front of this notice, in the upper right hand corner. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. Requesting an agency conference is not the same as requesting a fair hearing. Read below for fair hearing information.

**RIGHT TO A FAIR HEARING:** If you disagree with the decision made by our agency, you may request a fair hearing. At the hearing you will have the opportunity to present written and oral evidence to demonstrate why you think the agency’s decision is wrong and the action should not be taken. You have the right to be represented by legal counsel, a relative, friend or other person, or you may represent yourself. You have the right to bring witnesses and to question witnesses at the fair hearing. You have the right to present written and oral evidence at the hearing, and should bring any documents that may be helpful in presenting your case, such as this notice, pay stubs, receipts, child care bills, medical verification, letters, etc. There is additional information below on how to obtain access to your file and copies of documents in your file.

**YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING:**

When you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or, to represent yourself.

**TO REQUEST A FAIR HEARING:**

**Telephoning:** 1 800-342-3334 (Please have this notice with you when you call).

**Online:** Complete an online request form at: <http://www.otda.state.ny.us/oah/forms.asp>.

**Walk In Locations:** 14 Boerum Place, Brooklyn, NY OR 330 West 34<sup>th</sup> Street, Third Floor, Manhattan, NY.

**Writing:** Complete the following information, sign and mail a copy of this entire notice to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201.

**Please keep a copy for yourself.**

**Faxing:** Complete the following information, sign and fax this entire notice to the New York State Office of Administrative Hearings at: 518-473-6735.

<input type="checkbox"/> <b>I want a fair hearing. The Agency’s action is wrong because:</b> _____  <input type="checkbox"/> <b>I understand I may be eligible for aid continuing (current recipients only). My benefits have been stopped and I wish to have my benefits restored (aid continuing) until the hearing decision is issued.</b> If you request a fair hearing and aid continuing, within ten (10) days of the date of the postmark of the mailing of this notice, your child care will be reinstated and will be unchanged until the fair hearing decision is issued. However, if you lose the fair hearing, you will owe any child care that you should not have received. We are required to recover any child care overpayments. We must make a claim against you for any child care you receive that you were not entitled to, which may be collected by reduction of future child care benefits, through lump sum installment payments, or through legal action. If you want to avoid this possibility you can check the box below. You can also indicate over the telephone or in a letter that you do not want reinstatement of your child care. <input type="checkbox"/> <b>I do not want my benefits continued until the hearing decision is issued.</b> <b>Signature of Client:</b> _____ <b>Date:</b> _____
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**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under “Lawyers” or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** You have a right to look at your case file, and to receive free copies of the documents that the agency will put into evidence and other documents necessary for you to prepare for the fair hearing. To review your file or receive copies of any documents in your file, you can call us at the Record Access telephone number listed at the top of page 1 of this notice or write us at the address printed at the top of page 1 of this notice. If you want the documents mailed to you, you must specifically ask that they be mailed. You should ask for documents ahead of time. They will be provided to you within a reasonable time before the date of the hearing.

**INFORMATION:** If you want more information about your case, how to ask for a fair hearing, how to see your file, or how to get copies of documents, call us at the telephone numbers listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice.

**NOTICE OF FRAUD DETERMINATION, DISQUALIFICATION FOR CHILD CARE BENEFITS AND REPAYMENT PLAN**

NOTICE DATE:		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE		
CASE NUMBER	CIN NUMBER	GENERAL TELEPHONE NUMBER FOR QUESTIONS OR HELP _____ ----- OR Agency Conference _____ Fair Hearing Information and Assistance <b>1-800-342-3334</b> _____ Record Access _____ Legal Assistance Information _____		
CASE NAME (And C/O Name if Present) AND ADDRESS				
OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	TELEPHONE NO.

**YOU HAVE THE RIGHT TO AN AGENCY CONFERENCE AND TO A FAIR HEARING TO APPEAL THIS DECISION. BE SURE TO READ THE BACK OF THIS NOTICE ON HOW TO REQUEST AN AGENCY CONFERENCE AND/OR A FAIR HEARING.**

**Section I: This notice is to inform you:**

1. The Department of Social Services has determined that you have fraudulently received child care benefits and you are disqualified from receiving child care benefits, AND
2. You have received an overpayment and you must repay the overpayment.

**The regulation which allows us to do this is: 18 NYCRR 415.4(i).**

**Section II: Fraud Determination**

The Department's finding of fraudulent receipt of child care benefits was based on:

- Your conviction by a court of law on \_\_\_\_\_ of fraudulently receiving child care benefits.
- Your signing a voluntarily admission dated \_\_\_\_\_.

The fraudulent activity resulted in an overpayment of \$ \_\_\_\_\_, occurring from \_\_\_\_\_ to \_\_\_\_\_.

**Section III: Length of Disqualification Period**

As a result of the fraudulent receipt of benefits, you are disqualified from receiving child care benefits. New York State regulations, 18 NYCRR 415.4(i)(13), establish time periods for suspension or termination of benefits depending on the number of offenses and the amount of fraudulent benefits received.

Your disqualification period is:

- Six months, because this is your first offense.
- 12 months, because this is your second offense or the amount of fraudulent benefits you received was between \$1,000 and \$3,900.
- 18 months because this is your third offense, or the amount of fraudulent benefits you received was in excess of \$3,900.
- Five years, because you have committed four or more previous offenses.
- Other (*State length of period and reason*): \_\_\_\_\_.

**Section IV: Effective Date of Disqualification**

- Your disqualification will begin on \_\_\_\_\_ and end on \_\_\_\_\_.
- You will be subject to the above disqualification penalty if you apply for and are found eligible for child care benefits at a future date.
- Your disqualification period will begin or resume once you are no longer participating in an activity required by TA.

**Section V: Repayment Plan Agreement**

**If you are requesting a Fair Hearing regarding this decision, you are not required to complete and sign the repayment plan at this time. However, you must complete and sign the Fair Hearing request on the reverse side of this form and return it to the address indicated.**

You are required to make full repayment by \_\_\_\_\_. If you are unable to repay the overpayment as shown below or you want to set up another agreement plan, or if you have any questions please call \_\_\_\_\_ at \_\_\_\_\_, right away. Otherwise, sign this agreement, make a copy of it for yourself, and return the agreement to the address at the bottom of this page.

**Your repayment plan is shown below.**

- Recovery will be made from your child care benefits. To repay this debt, you must pay \$ \_\_\_\_\_ each week to your child care provider. This is in addition to your current family share of \$ \_\_\_\_\_ per week. Effective \_\_\_\_\_, your **total family share** will be \$ \_\_\_\_\_ per week and the amount we pay to your provider will be reduced to \$ \_\_\_\_\_.
- To repay this debt, you must pay the Department of Social Services \$ \_\_\_\_\_ per week. Your first payment is due on \_\_\_\_\_. The final payment is due on \_\_\_\_\_. Send payments to:
- You must continue to follow the repayment plan and/or court order that is already in effect, and is attached to this notice.

**I agree to repay by this method. I understand that failure to pay the amount stated above on time will result in a discontinuation of my child care benefits and/or legal action may be taken in the court to recover this overpayment.**

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Return this repayment plan agreement to:**

**RIGHT TO A CONFERENCE:** You may have an agency conference to review these actions. A conference is when you meet with someone from the agency, other than the person who made the decision, to discuss your case. You may request an agency conference by calling the number on the front of this notice, in the upper right hand corner. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. Requesting an agency conference is not the same as requesting a fair hearing. Read below for fair hearing information.

**RIGHT TO A FAIR HEARING:** If you disagree with the decision made by our agency, you may request a fair hearing. At the hearing you will have the opportunity to present written and oral evidence to demonstrate why you think the agency's decision is wrong and the action should not be taken. You have the right to be represented by legal counsel, a relative, friend or other person, or you may represent yourself. You have the right to bring witnesses and to question witnesses at the fair hearing. You have the right to present written and oral evidence at the hearing, and should bring any documents that may be helpful in presenting your case, such as this notice, pay stubs, receipts, child care bills, medical verification, letters, etc. There is additional information below on how to obtain access to your file and copies of documents in your file.

**YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING**

When you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or, to represent yourself.

**TO REQUEST A FAIR HEARING:**

**Telephoning:** 1 800-342-3334 (Please have this notice with you when you call).

**Online:** Complete an online request form at: <http://www.otda.state.ny.us/oah/forms.asp>.

**Walk In Locations:** 14 Boerum Place, Brooklyn, NY OR 330 West 34<sup>th</sup> Street, Third Floor, Manhattan, NY.

**Writing:** Complete the information below, sign and mail a copy of this entire notice to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201. **Please keep a copy for yourself.**

**Faxing:** Complete the information below, sign and fax this entire notice to the New York State Office of Administrative Hearings at: 518-473-6735.

<input type="checkbox"/> <b>I want a fair hearing. The Agency's action is wrong because:</b> _____ _____ _____
<input type="checkbox"/> <b>I understand I may be eligible for aid continuing (current recipients only). My benefits have been stopped and I wish to have my benefits restored (aid continuing) until the hearing decision is issued.</b> If you request a fair hearing and aid continuing, within ten (10) days of the date of the postmark of the mailing of this notice, your child care will be reinstated and will be unchanged until the fair hearing decision is issued. However, if you lose the fair hearing, you will owe any child care that you should not have received. We are required to recover any child care overpayments. We must make a claim against you for any child care you receive that you were not entitled to, which may be collected by reduction of future child care benefits, through lump sum installment payments, or through legal action. If you want to avoid this possibility you can check the box below. You can also indicate over the telephone or in a letter that you do not want reinstatement of your child care.  <b>I do not want my benefits continued until the hearing decision is issued.</b> <b>Signature of Client:</b> _____ <b>Date:</b> _____

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** You have a right to look at your case file, and to receive free copies of the documents that the agency will put into evidence and other documents necessary for you to prepare for the fair hearing. To review your file or receive copies of any documents in your file, you can call us at the Record Access telephone number listed at the top of page 1 of this notice or write us at the address printed at the top of page 1 of this notice. If you want the documents mailed to you, you must specifically ask that they be mailed. You should ask for documents ahead of time. They will be provided to you within a reasonable time before the date of the hearing.

**INFORMATION:** If you want more information about your case, how to ask for a fair hearing, how to see your file, or how to get copies of documents, call us at the telephone numbers listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice.

Notice Date: \_\_\_\_\_

Case Number: \_\_\_\_\_

CIN Number: \_\_\_\_\_

Dear \_\_\_\_\_:

New York State requires that low-income families who are applying for or receiving child care benefits *actively pursue child support*. This is required whenever a non-custodial parent is absent from the home, unless the Department of Social Services determines you have *good cause* not to actively pursue child support. This requirement to actively pursue child support, which became effective on May 15, 2004, is necessary because:

- all children deserve support from both parents;
- child support is an important part of assisting a family to become self-sufficient; and
- by obtaining child support, more families in need of child care benefits may receive them.

You will be ineligible for child care benefits, unless you demonstrate to your child care worker that you are actively pursuing child support or you have good cause not to pursue child support. This requirement applies to all of your dependent children, even if you are not applying for child care for each child.

Enclosed with this letter is information on:

- Actively pursuing child support;
- Documenting your efforts to actively pursue child support;
- Claiming good cause not to actively pursue child support;
- Proving that good cause exists; and
- A father's rights when paternity is established.

Also enclosed is the Agreement to Actively Pursue Child Support or Good Cause Claim form, OCFS-LDSS-7011, which you should complete after you read the other enclosures. On this form you must indicate either your willingness to actively pursue child support or your inability to actively pursue child support because you are claiming good cause. **By \_\_\_\_\_, you must return the enclosed form, OCFS/LDSS-7011, and either demonstrate that you are actively pursuing child support or claim good cause not to actively pursue child support.** You have 20 days to submit proof of your good cause claim. If you are claiming good cause and need additional time to gather documentation, please tell your child care worker.

If you have any questions regarding the child support requirements, please call \_\_\_\_\_, at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_



## **Actively Pursuing Child Support**

*You can actively pursue child support in the following ways:*

- Establish paternity for your child (legally determining the child's father),
- Obtain a court order of child support, and
- Get the child support owed to you.

*Things you may be required to do when actively pursuing child support include, but are not limited to:*

- Provide information to identify and locate the non-custodial parent,
- Provide information or documentation needed to establish paternity (legally determining the child's father),
- Take all actions deemed necessary for genetic testing for yourself and the child,
- Take all actions deemed necessary to establish child support orders,
- Take all actions deemed necessary to modify an existing order that does not address child care,
- Take all actions deemed necessary to enforce an existing child support order when you are not receiving the support payments as ordered,
- Appear as a party/witness at a court proceeding, and
- Provide additional information as needed or attest to the lack of information under penalty of perjury.

*You can do this by:*

- Hiring private legal counsel who will prepare and file petitions, represent you in court and work to actively pursue support,
- Doing these things on your own, or
- Applying for child support enforcement services with the Department of Social Services' Child Support Enforcement Unit (CSEU). With the exception of legal services, child support services through the CSEU are provided free of charge.

### **Documenting Your Efforts**

*If you do not have a court order for child support:*

- Show your child care worker that you have an appointment with or have applied for child support services from the CSEU and are actively pursuing support; or
- Submit your detailed written plan of activities and timeframes which includes the actions you or your legal representative have taken or will take to actively pursue child support, and documentation which supports these actions.

*If you have a court order for support:*

- Show your child care worker a copy of the court order for child support and evidence of child support payments, such as deposit records of child support payment checks or other payment records; OR
- Show your child care worker a copy of the court order for child support. If support is not being received, document your attempts to have the child support order enforced. Proof may include court documentation such as a copy of the violation petition, court summonses, court orders following the violation.

You must provide a report at case opening and at each recertification to show you are actively pursuing child support. Your worker may require more frequent reports depending on your case circumstances. The report must list the actions you have taken and/or will take to pursue child support, and when you expect to complete these actions. You must document the actions you describe in the report.

### **Claiming Good Cause Not To Actively Pursue Child Support**

You have the right to claim good cause not to actively pursue child support if pursuing child support would adversely affect your health, safety or welfare; the health, safety and welfare of the child on whose behalf child care payments are to be made; or the health, safety and welfare of other persons in the child's household. Some of the reasons that may be considered good cause include:

- Your active pursuit of child support is likely to cause physical or emotional harm to you, your child, or someone living in your household; OR
- Your child came from a pregnancy due to incest or rape; OR
- You are working with the court or an authorized adoption agency to have your child adopted.

To establish that good cause exists, you must claim good cause on the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim form and submit it to the Department of Social Services. Then, you must prove that good cause exists by providing documentation.

If you are claiming good cause, your application or recertification for child care benefits will be processed for a maximum authorization period of three months, while the good cause determination is made. The Department of Social Services will inform you of its decision on the OCFS/LDSS-7012, Notice of Good Cause Determination. If good cause is established, the authorization period will be extended to the normal six or twelve month reauthorization period.

You have the right to make a good cause claim **at any time** by telling your child care worker about your concern.

### **Proving That Good Cause Exists**

In addition to submitting your claim of good cause, you must prove to the Department of Social Services that good cause exists. To do this, you must explain the circumstances and provide evidence by the date it is required. If you need additional time to gather evidence, you must tell your worker. The Department of Social Services may give you up to an additional 20 days to obtain the evidence.

Examples of evidence you can give for a good cause claim include:

- Birth certificate, medical or law enforcement records which show that your child came from a pregnancy due to incest or rape;
- Court records or other records that show that a legal adoption proceeding is pending in court;
- Court, medical, criminal, child protective, social services, psychological or law enforcement records which show that the non-custodial parent might physically or emotionally harm you, the child or another household member;
- Medical records indicating that the child, custodial parent/caretaker or other household member has an emotional health history and a present emotional health status which indicates that pursuing child support would be detrimental to the mental and or emotional health of that person;

- A written statement from a public or private agency that you are being aided in a decision on whether to keep or put your child up for adoption;
- Sworn statements from individuals, other than yourself, with knowledge of the good cause circumstances. Such individuals might include friends, relatives, neighbors, clergy, social workers and medical staff. The sworn statement must attest to circumstances that indicate pursuing child support would adversely affect the health, safety or welfare of the child on whose behalf child care payments are to be made or of other person's in the child's household. It must be signed in front of and witnessed by a person who is empowered to administer an oath to the testifier. Persons authorized to administer an oath include public notaries, commissioners of deeds, judges, town justices, and justices of the peace; or
- A domestic violence waiver received while you were getting Temporary Assistance. The domestic violence waiver must be dated within the last 12 months of your application or recertification for child care.

If you need help, ask the Department of Social Services. If your good cause claim is due to physical harm, the Department of Social Services may still be able to approve your good cause claim if you cannot get the evidence.

You must submit your evidence within 20 days of completing the good cause claim. If you need additional time to get the evidence, ask your child care worker if you can be granted an extension.

Once you make a good cause claim and submit your evidence, the Department of Social Services will examine the evidence and notify you if additional evidence is needed. If you do not submit any evidence or no evidence exists, and your good cause claim is based on anticipated physical harm, the Department of Social Services may still investigate the good cause claim even without evidence, as long as you submit a sworn statement signed by an individual other than yourself and the Department of Social Services feels the sworn statement is credible.

The Department of Social Services will determine whether good cause exists based on the parent/caretaker's evidence and the investigation by the Department of Social Services, if needed. You will receive notification of the decision made by the Department of Social Services on the OCFS/LDSS-7012, Notice of Good Cause Determination.

A final good cause determination will be made within 30 days after you sign and submit the Good Cause Claim, unless the Department of Social Services allows you additional time to provide documentation. If additional time is allowed for you to submit documentation, the final determination of good cause will be made within 10 days following the extended due date.

If you do not provide the required information by the required date, you will receive a notice that the Department of Social Services intends to deny or discontinue your child care benefits because you have not actively pursued child support and have not demonstrated good cause not to pursue support.

If the Department of Social Services determines that good cause does not exist, refusal to actively pursue support will result in the Department of Social Services denying your application or closing your child care case. If this happens, you will be notified of your right to request a fair hearing to review the Department of Social Services' decision in this matter.

### **A Father's Rights When Paternity is Established**

Prior to establishing an order for child support it may be necessary to legally establish the child's father. This is known as establishing paternity. A court may establish paternity by naming the legal father of a child, or paternity may be established when the mother and father acknowledge a child's father by signing an acknowledgment of paternity form anytime after the child is born. Your child care worker will need to verify that the form was properly filed and the father is registered in the Putative Father Registry.

Establishing paternity provides a father legal responsibilities *and* legal rights to a child, including:

- The right to seek custody of the child;
- The right to seek visitation with the child;
- The right to take part in any adoption or foster care plans for the child;
- The right to object to any adoption or foster care placements of the child; and
- The right to inherit from the child.

**AGREEMENT TO ACTIVELY PURSUE CHILD SUPPORT OR GOOD CAUSE CLAIM**

<b>1) APPLICANT/RECIPIENT INFORMATION</b>		
NAME	PHONE	CASE NUMBER
ADDRESS		
<b>2) CHILD SUPPORT REQUIREMENTS NOTIFICATION LETTER</b> The <b>Child Support Requirements Notification Letter</b> explains that you are <b>required</b> to actively pursue child support for your children and any child living with you, unless the Department of Social Services determines that you have “good cause” not to pursue such support. Please read the letter and make sure you understand your rights and responsibilities regarding child support, before you complete and sign this form. <i>Indicate below if you have received the Child Support Requirements Notification Letter.</i> <input type="checkbox"/> I have received the Child Support Requirements Notification Letter. <input type="checkbox"/> I have not received the Child Support Requirements Notification Letter.		
<b>3) ACTIVE PURSUIT OF CHILD SUPPORT OR GOOD CAUSE CLAIM</b> Will you actively pursue child support? <i>Choose one.</i> <input type="checkbox"/> Yes. <i>Complete 3A, the Agreement to Actively Pursue Child Support.</i> <input type="checkbox"/> No. I cannot pursue child support as it would expose myself, my child or another household member to physical or emotional harm. <i>Complete 3B, the Good Cause Claim.</i> The Department of Social Services will inform you of its decision on the OCFS/LDSS-7012, Notice of Good Cause Determination. <b>3A) AGREEMENT TO ACTIVELY PURSUE CHILD SUPPORT</b> I agree to actively pursue child support. I can actively pursue child support without exposing myself, my child or anyone in my household, to physical or emotional harm. I will actively pursue child support in the following way: <i>Choose one.</i> <input type="checkbox"/> I will pursue child support through the Child Support Enforcement Unit (CSEU). I understand that, with the exception of legal services, CSEU services are provided free of charge. I understand I must give my child care worker a written report which includes: the actions I have taken to actively pursue child support and the documentation which confirms these actions. <input type="checkbox"/> I will pursue support on my own behalf or hire an attorney to represent me. I understand I must give my child care worker a detailed written plan of activities and timeframes which includes the actions I (or my attorney) have taken or will take to actively pursue child support and documentation which confirms these actions. I understand if circumstances change, that I may claim good cause at any time by informing my child care worker. <b>3B) GOOD CAUSE CLAIM</b> I am making a Good Cause Claim. I <b>cannot</b> pursue child support for <i>one or more</i> of the following reasons: <ul style="list-style-type: none"><li>• It would expose myself, my child or another household member to physical or emotional harm;</li><li>• The child for whom child support is sought was conceived as a result of incest or forcible rape;</li><li>• A legal proceeding for the adoption of the child is pending before a court;</li><li>• I am being assisted by a public or licensed private social agency to resolve the issue of whether I will relinquish my child for adoption; and discussions have gone on for less than 3 months; or</li><li>• The non-custodial parent’s rights have been terminated or voluntarily surrendered.</li></ul> <i>Indicate below if you have enclosed documentation of your good cause claim.</i> <input type="checkbox"/> I have enclosed the following documentation (proof) of my good cause claim: _____ <input type="checkbox"/> I have not enclosed documentation of my good cause claim. I understand I have 20 days to submit proof of my good cause claim. I understand that I may ask my child care worker for additional time if the documents I need to prove my good cause claim cannot be obtained within 20 days.		
<b>4) CERTIFICATION</b> I certify and attest that all statements made on this form are true and accurate. SIGNATURE OF APPLICANT/RECIPIENT DATE		

Return this form to:

**ATTACHMENT H**

**NOTICE OF GOOD CAUSE DETERMINATION**

NOTICE DATE:		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE		
CASE NUMBER	CIN NUMBER	GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP _____ ----- OR Agency Conference _____ Fair Hearing information and assistance <b>1-800-342-3334</b>  Record Access _____ Legal Assistance information _____		
CASE NAME (And C/O Name if Present) AND ADDRESS				
<div style="border: 1px solid black; width: 90%; margin: auto; height: 80%;"></div>				
OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	TELEPHONE NO.

**Good Cause Found**

The Department of Social Services has reviewed the documentation you provided and has determined that you have good cause not to actively pursue child support. Therefore, you have been granted a good cause exception from the child support requirement to actively pursue child support, which means you do not have to actively pursue child support. You are required to immediately notify your worker of any change in circumstances that may affect your good cause exception. Your good cause exception will be reassessed no later than \_\_\_\_\_.

This decision was based on 18 NYCRR 415.3(c).

**Good Cause NOT Found**

- You have **not** been granted a good cause exception from the child support requirement. The Department of Social Services has reviewed the documentation used to support your claim of good cause and determined that you do not qualify for a good cause exception from the child support requirement.
- You have **not** been granted a good cause exception from the child support requirement because you did not provide evidence within 20 days of submitting the good cause claim form (or by the date required if you were granted an extension).

This decision was based on 18 NYCRR 415.3(c).

**If you think the agency's determination is incorrect, please see the information on the reverse of this form, which provides you with instructions for requesting an agency conference or fair hearing to challenge the agency's good cause exception determination.**

**If your good cause claim has been denied, please read the additional information below.**

Because your good cause claim has been denied, you must actively pursue child support to be eligible for child care benefits. Refusal to actively pursue child support, without a good cause exception, will result in the Department denying your application or closing your child care case.

**You are required to demonstrate no later than \_\_\_\_\_ that you are actively pursuing child support.** You can actively pursue child support from the non-custodial parent through the Child Support Enforcement Unit (CSEU) or by private legal means.

- Actively pursuing a court order for child support *through the CSEU* means that you must: obtain an appointment with the CSEU, if necessary; complete the DSS-2521, Application for Child Support Services; and continue to participate in child support activities, as required.
- If pursuing a child support order *privately*, you (or your legal representative) must participate in child support activities that will lead to the establishment, modification or enforcement of court-ordered support within a reasonable period of time. You must give your child care worker a detailed written plan of activities and timeframes which includes the actions you (or your legal representative) have taken to actively pursue child support, documentation which confirms these actions; and, the actions you (or your legal representative) plan to take to actively pursue child support in the future.

**YOU HAVE THE RIGHT TO APPEAL THIS DECISION.  
BE SURE TO READ THE BACK OF THIS NOTICE ON HOW TO APPEAL THIS DECISION**

**RIGHT TO A CONFERENCE:** You may have an agency conference to review these actions. A conference is when you meet with someone from the agency, other than the person who made the decision, to discuss your case. You may request an agency conference by calling the number on the front of this notice, in the upper right hand corner. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. Requesting an agency conference is not the same as requesting a fair hearing. Read below for fair hearing information.

**RIGHT TO A FAIR HEARING:** If you disagree with the decision made by our agency, you may request a fair hearing. At the hearing you will have the opportunity to present written and oral evidence to demonstrate why you think the agency's decision is wrong and the action should not be taken. You have the right to be represented by legal counsel, a relative, friend or other person, or you may represent yourself. You have the right to bring witnesses and to question witnesses at the fair hearing. You have the right to present written and oral evidence at the hearing, and should bring any documents that may be helpful in presenting your case, such as this notice, pay stubs, receipts, child care bills, medical verification, letters, etc. There is additional information below on how to obtain access to your file and copies of documents in your file.

**YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING**

When you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or, to represent yourself.

**TO REQUEST A FAIR HEARING:**

**Telephoning:** 1 800-342-3334 (Please have this notice with you when you call).

**Online:** Complete an online request form at: <http://www.otda.state.ny.us/oah/forms.asp>.

**Walk In Locations:** 14 Boerum Place, Brooklyn, NY OR 330 West 34<sup>th</sup> Street, Third Floor, Manhattan, NY.

**Writing:** Complete the information below, sign and mail a copy of this entire notice to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201. **Please keep a copy for yourself.**

**Faxing:** Complete the information below, sign and fax this entire notice to the New York State Office of Administrative Hearings at: 518-473-6735.

I want a fair hearing. The Agency's action is wrong because:

\_\_\_\_\_

\_\_\_\_\_

—

\_\_\_\_\_

—

I understand I may be eligible for aid continuing (current recipients only). My benefits have been stopped and I wish to have my benefits restored (aid continuing) until the hearing decision is issued.

If you request a fair hearing and aid continuing, within ten (10) days of the date of the postmark of the mailing of this notice, your child care will be reinstated and will be unchanged until the fair hearing decision is issued. However, if you lose the fair hearing, you will owe any child care that you should not have received. We are required to recover any child care overpayments. We must make a claim against you for any child care you receive that you were not entitled to, which may be collected by reduction of future child care benefits, through lump sum installment payments, or through legal action. If you want to avoid this possibility you can check the box below. You can also indicate over the telephone or in a letter that you do not want reinstatement of your child care.

I do not want my benefits continued until the hearing decision is issued.

**Signature of Client:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** You have a right to look at your case file, and to receive free copies of the documents that the agency will put into evidence and other documents necessary for you to prepare for the fair hearing. To review your file or receive copies of any documents in your file, you can call us at the Record Access telephone number listed at the top of page one of this notice or write us at the address printed at the top of page 1 of this notice. If you want the documents mailed to you, you must specifically ask that they be mailed. You should ask for documents ahead of time. They will be provided to you within a reasonable time before the date of the hearing.

**INFORMATION:** If you want more information about your case, how to ask for a fair hearing, how to see your file, or how to get copies of documents, call us at the telephone numbers listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice.





Andrew M. Cuomo  
Governor

NEW YORK STATE  
OFFICE OF CHILDREN & FAMILY SERVICES  
52 WASHINGTON STREET  
RENSSELAER, NY 12144

Sheila J. Poole  
Acting Commissioner

## Local Commissioners Memorandum

<b>Transmittal:</b>	14-OCFS-LCM-04
<b>To:</b>	Local District Commissioners
<b>Issuing Division/Office:</b>	Division of Child Care Services
<b>Date:</b>	May 30, 2014
<b>Subject:</b>	<b>Child Care Subsidy Fraud Regulations</b>
<b>Contact Person(s):</b>	Rhonda Duffney (518) 474-9454 <a href="mailto:Rhonda.Duffney@ocfs.ny.gov">Rhonda.Duffney@ocfs.ny.gov</a>
<b>Attachments:</b>	Attachment A: Desk Aid for Administrative Review Process for Child Care Subsidy Claims Attachment B: Provider Notice of Deferral of Claim(s) for Reimbursement Attachment C: Deferred Claim Review-Claims are Reimbursable Attachment D: Preliminary Review Report-Inaccurate Claim(s) Submitted Attachment E: Final Review Report-Inaccurate Claim(s) Submitted Attachment F: Final Review Report-Inaccurate Claim(s) Unsubstantiated Attachment G: Final Determination-False Claim(s) Substantiated Attachment H: Final Determination-False Claim(s) Unsubstantiated Attachment I: Provider Notice of Disqualification from Receiving Child Care Subsidy Reimbursement Attachment J: Parent Notice of Provider Disqualification from Receiving Child Care Subsidy Reimbursement Attachment K: Notice of Your Responsibilities as an Eligible Provider of Subsidized Child Care
<b>Attachment Available Online:</b>	No

### I. PURPOSE

The purpose of this Local Commissioners Memorandum (LCM) is to inform local social services districts (districts) of the regulatory changes to Part 415 of the Rules and Regulations of the State of New York (NYCRR) for child care subsidies funded through

the New York State Child Care Block Grant (NYSCCBG) and the federal Social Security Act.

The Child Care Subsidy Fraud Regulations, which went into effect October 5, 2011, promote the fiscal integrity of the child care subsidy program by establishing a clear, regulatory basis for holding child care providers accountable for committing fraud.

1. 18 NYCRR § 415.4(c)(9) establishes a 30-day timeframe for districts to review and determine whether to allow, disallow, or defer a claim for reimbursement to an eligible provider of subsidized child care and specifies the circumstances when a deferral or disallowance can be made.
2. 18 NYCRR § 415.4(h)(2) delineates the circumstances under which a district may disqualify licensed, registered, and enrolled legally-exempt child care providers from receiving subsidy funds; allows for a district to establish an administrative procedure for internally reviewing claims and imposing a disqualification when the district has determined an eligible provider has submitted false claims; establishes periods of disqualification during which child care providers are ineligible to receive child care subsidies; and requires a district to inform the appropriate New York State Office of Children and Family Services (OCFS) child care regional office of disqualified licensed or registered child care providers, and appropriate legally-exempt enrollment agencies of disqualified enrolled legally exempt providers.
3. 18 NYCRR § 415.4(h)(3) allows districts to make announced or unannounced inspections of the records or premises of any provider of subsidized child care in accordance with a plan approved by OCFS.
4. Subparagraphs were added to 18 NYCRR § 414, 416, 417, 418-1 and 418-2 to clarify the ability of OCFS to revoke/deny renewal of the registrations/licenses of providers who file false child care subsidy claims with districts by clearly stating that all registered school age child care programs, licensed group family day care homes, registered family day care homes, licensed day care centers, and registered small day care centers that accept direct and indirect payments from a district or a payment from a parent or caretaker for providing subsidized child care must comply with all relevant requirements of the Child Care Subsidy Program.
5. 18 NYCRR § 415.12 describes the responsibilities that are applicable to all eligible providers of subsidized child care services. It provides the basis for OCFS to take enforcement action against a licensed or registered provider who is not in compliance with the Child Care Subsidy Program regulations; requires providers of subsidized child care to maintain current and accurate attendance records for each child and certify to the accuracy and truthfulness of information and documentation provided to a district; and reiterates the district's right to act on false or fraudulent claims by deferring or disallowing payment on claims, referring a provider for criminal prosecution, and/or making a referral to OCFS for the revocation of a provider's registration or license to operate a child care program.

## **II. BACKGROUND**

OCFS has oversight responsibilities for the provision of child care subsidies funded under the NYSCCBG for over 223,000 children as of Federal Fiscal Year (FFY) 2013. It also promotes the development of children in a safe, caring, and healthy environment through licensure and registration of over 19,000, child day care programs and the annual enrollment of approximately 39,000 legally-exempt child care providers.

In recent years, concerns regarding program integrity prompted OCFS to take strong steps to minimize waste, fraud, and abuse in the Child Care Subsidy Program and maintain the health and safety of children in child care. According to national estimates, anywhere from 10% to 40% of child care subsidy dollars are spent fraudulently. In October 2010, OCFS hosted a Roundtable Discussion seeking to identify strategies to prevent and eliminate fraud in the Child Care Subsidy Program and to maximize the efficient use of limited child care funds. The roundtable was attended by more than 90 local district staff, fraud investigators, local county prosecutors, child care advocates, and others who discussed what changes were needed in current law, regulations, policies, and procedures, and what would be needed to make those changes. There was consensus among the stakeholders that districts need the regulatory authority to hold fraudulent providers accountable.

## **III. PROGRAM IMPLICATIONS**

It is important to note that nothing contained within this guidance document will diminish the authority of the districts to refer a matter to the appropriate district attorney or law enforcement agency.

OCFS recommends that districts establish timeframes for providers to submit claims, include these timeframes in local written policies, and notify child care providers and parents in writing of these timeframes. OCFS also recommends that districts establish a local payment policy and make every effort to issue a payment to the provider for child care services within 30 days from the date a child care claim is submitted to the district.

Contained in this LCM are model notices that may be used to defer claims, inform providers of various decisions made in the Administrative Review process, and inform child care provider's and parents of child care provider's disqualification. Districts may elect to use these notices or develop their own notices. Also attached to this LCM is a Desk Aid that provides a flow chart of the Administrative Review Process for Child Care Provider Disqualification, see Attachment A: Administrative Review Process for Child Care Providers Disqualification.

### **A. District Determinations on Payment of Provider Claims for Reimbursement**

- 1) Districts have up to 30 days from receipt of a claim for reimbursement from an eligible provider to review the claim and make a payment determination to allow, defer, or disallow a payment. An eligible provider is a licensed, registered, or

enrolled provider who has been found to meet the criteria to participate in the Child Care Subsidy Program. “Eligible provider” is defined in 18 NYCRR § 415.1(g).

- 2) A district may **defer** – that is, postpone the payment determination for – a claim(s) only in the three following circumstances:
  - a) A federal, state, or local government agency has recommended that the district postpone payments, and informed the district that the district is at risk of making payments for services that were not provided in accordance with applicable state regulations. Examples of agencies whose recommendation may be considered include, but are not limited to: NYS OCFS, NYS Office of the State Comptroller, U.S. Government Accountability Office (GAO), New York State Department of Health, applicable county Comptroller, etc. OCFS recommends that the district send a notification of deferral of payment to the implicated child care provider while it completes a more intensive review and makes a determination within 30 days of the date postmarked on the notification of deferral as to whether it will allow or disallow the payment(s) in question.
  - b) The district has conducted an initial review of the claim and found inaccuracies that warrant a more detailed review. OCFS recommends that the district send a notification of deferral of payment to the implicated child care provider while it completes a more intensive review and makes a determination within 30 days of the date postmarked on the notification of deferral as to whether it will allow or disallow the payment(s) in question.
  - c) The district has been notified of the existence of a pending criminal charge against the provider involving fraud. “Pending” means that there are open criminal charges against the provider that have not yet reached disposition. In such instances, the district can defer its determination about payment until the charges have reached disposition.

When a district defers a claim, regardless of the circumstances, they must notify the provider, in writing, of the claims that have been deferred (see Attachment B: Provider Notice of Deferral of Claim(s) for Reimbursement). The district should conduct a more intensive review and inform the affected provider of the district’s determination within the 30-day timeframes unless there is a pending criminal charge (see Attachment C: Deferred Claim Review-Claims are Reimbursable or Attachment D: Preliminary Review Report-False Claims Submitted).

- 3) In accordance with 18 NYCRR § 415.4(c)(9)(iii), districts may **disallow** claims for reimbursement for services provided to children receiving a subsidy for the time period in which OCFS has determined that:
  - a) A licensed or registered provider is found to be operating or has operated over its licensed or registered capacity. A district may disallow subsidy payments for the number of children over the provider’s licensed or registered capacity, but this number shall not exceed the total number of subsidized children during the period of time the program was overcapacity. For example, a program has a licensed capacity of 50 children. After investigation, it was determined that the program is caring on a full time basis for 55 children, which is five children over its licensed

capacity. Six of the 55 children are subsidized. In this example, the district may choose to disallow payments for five of the six children at the highest payment rate. The disallowance may be held from future subsidy payments.

- b) An enrolled legally-exempt family child care or in-home child care provider is caring for, or has cared for, more children than the limits defined in 18 NYCRR § 415.1(h), which stipulates that informal child care does not include members of the child's or caretaker's public assistance unit, nor does it include other adult members of the child care service unit except the child's sibling. For example, an enrolled legally-exempt in-home child care provider who is in receipt of Temporary Assistance (TA) is receiving child care subsidy payments to care for her sibling and an unrelated infant. After an investigation, it was determined that the provider and the provider's sibling are in the same TA filing unit and therefore the provider is not eligible to receive child care subsidy payments to care for her sibling. In this example, the district would disallow payment for the provider's sibling. The provider's sibling may continue to receive child care subsidy as long as the care is provided by an eligible provider who is not a member of the TA filing unit
- c) An enrolled legally-exempt provider is found to be operating or operated, a child care program which was required to be licensed or registered, without obtaining such license or registration. For example, an enrolled legally-exempt family child care provider is caring for two siblings; the mother of the two children now brings her infant to this provider. After an investigation, it was determined that the enrolled legally-exempt provider was caring full-time for all three children. In this example, the district may choose to disallow payments for one of the three children at the highest payment rate.

#### **B. Reasons for District Disqualification of Providers from Receiving Child Care Subsidy Payments**

- 1) A district may **disqualify** licensed, registered, and enrolled legally-exempt child care providers from receiving subsidy funds if any of the following circumstances occurs:
  - a) The provider is criminally convicted of child care subsidy fraud.
  - b) The provider is found to be civilly liable for child care subsidy fraud.
  - c) The provider has voluntarily admitted, in writing, to filing a false claim for reimbursement for child care services.
  - d) The provider has been disqualified from the Child and Adult Care Food Program by the New York State Department of Health or its sponsoring agency for submission of false information on the application, submission of a false claim for reimbursement, or failure to keep required records.
  - e) The provider has failed to comply with the terms of a repayment plan with the district.
  - f) The provider has a conviction of any activity that occurred in the past seven years that indicated a lack of business integrity. For some examples, see articles from the New York State Penal Law: Article 156, Offenses Involving Computers;

Article 158; Welfare Fraud; Article 170, Forgery; Article 175, False Written Statements; Article 176, Insurance Fraud; Article 177, Health Care Fraud; Article 180, Bribery; Article 185, Frauds on Creditors; Article 187, Residential Mortgage Fraud; Article 190, Other Frauds; Article 195, Official Misconduct; Article 200, Bribery Involving Public Servants.

- g) The provider has been found by a district, after completion of an Administrative Review in accordance with 18 NYCRR § 415.4(h)(2)(ii), to have submitted a false claim(s) to a district for reimbursement. (See below: Administrative Review by the District)

### **C. Administrative Review by the District for Child Care Provider Disqualification**

A district may conduct an *Administrative Review* of a provider's claims submitted for reimbursement to determine the accuracy of the information contained in the claims. If, after the completion of the Administrative Review, the district has determined that the provider submitted a false claim(s), the district may disqualify the provider from providing subsidized child care.

The Administrative Review must include the following:

- 1) ***Review of Claims and/or Payments:*** The district will conduct a review of the claims and/or payments and any other information or documentation obtained by the district to determine the accuracy of the information contained in the claims. If the district determines that deferred claims are accurate the district will reimburse the claims and send written notice to the provider (See Attachment C: Deferred Claim Review-Claim(s) are Reimbursable).
- 2) ***Preliminary Review Report Issued to the Provider:*** If after a review of the claims and/or payments, a district determines that a provider submitted inaccurate information in the claims, then a Preliminary Review Report must be prepared by the district and sent to the child care provider that is the subject of the Administrative Review for a response (see Attachment D: Preliminary Review Report-Inaccurate Claim(s) Submitted). The district must inform the child care provider of the following:
  - a) The district has reviewed claims and made a preliminary determination that inaccurate claims for payment have been submitted.
  - b) The dates and hours of the child care services, the amount billed, and the names of the affiliated subsidy eligible child(ren) the district determined as inaccurate.
  - c) The child care provider has 20 days, from the date postmarked on the Preliminary Review Report to respond.
  - d) The child care provider may respond by presenting written evidence and arguments that the provider believes refute the findings of the Preliminary Review Report or the child care provider, may request in writing, a Formal Review by the

district, which allows the provider, or his or her designee, to present evidence and arguments, in person, in support of his/her position.

- 3) ***Provider's Response to Preliminary Review Report:*** There are three possible provider responses to a Preliminary Review Report: provider non-response, provider responds in writing, provider requests Formal Review.
- a) ***No Response to Preliminary Review Report from Provider—Preliminary Review Report becomes Final Determination:*** If the district does not receive a written response from the provider who is the subject of the Administrative Review within 20 days from the date of the postmark of the Preliminary Review Report, this report becomes the basis for the district to issue the Final Determination (see Attachment G: Final Determination-False Claim(s) Substantiated). Such Final Determination may be the basis for a district to disqualify a provider from providing subsidized child care. If a provider fails to respond to the Preliminary Review Report, the provider cannot request a Formal Review after the Final Determination has been made.
- b) ***Provider Responds to the Preliminary Review Report in Writing:*** If the district receives a response from the child care provider, who is the subject of the Administrative Review, within 20 days from the date of the postmark of the Preliminary Review Report, the district:
- i. must evaluate the evidence and arguments presented in writing or in person by the provider;
  - ii. make appropriate changes to the Report based on the evidence and arguments presented by the provider, before issuing the Final Review Report (see below Final Review Report).
- c) ***Provider Responds to the Preliminary Review Report with a written request for a Formal Review:*** If the district receives a written request for a Formal Review within 20 days from the date of the postmark of the Preliminary Review Report, the district must:
- I. conduct a Formal Review within 30 days of receipt of the request;
  - II. notify the provider, in writing, five or more days in advance of the Formal Review date;
  - III. allow a provider, or his or her designee, to present evidence and arguments, in person, in support of the provider's position;
  - IV. evaluate the evidence and arguments presented in writing or in person by the provider and or his or her designee;
  - V. make appropriate changes to the findings before issuing the Final Determination.
- 4) ***Final Review Report Issued to the Provider:*** A Final Review Report must be sent to the child care provider that is the subject of the Administrative Review and it must describe how the district reached its determination (see Attachment E: Final Review

Report – Inaccurate Claim(s) Submitted and Attachment F: Final Review Report – Inaccurate Claim(s) Unsubstantiated).

- a) The district must state what reliance, if any, it placed upon documents/arguments received from the provider in opposition to the district’s findings, including any additional documentation provided by the provider in response to the Preliminary Review Report.
  - b) A child care provider, upon receipt of a Final Review Report, must be given 10 days from the date of the postmark of the Final Review Report to respond, and to request, in writing, a Formal Review by the district.
  - c) If a district does not receive a written request for a Formal Review within 10 days from the date of the postmark of the Final Review Report, this will finalize the report.
- 5) **Formal Review:** A district, upon written receipt of a request for a Formal Review within the required timeframes stated above by a provider, or his or her designee, must:
- a) Conduct a Formal Review within 30 days of receipt of the request;
  - b) Notify the provider, in writing, five or more days in advance of the Formal Review date;
  - c) Allow a provider, or his or her designee, to present evidence and arguments, in person, in support of the provider’s position; and
  - d) Evaluate the evidence and arguments presented in writing or in person by the provider and or his or her designee;
  - e) Make appropriate changes to the findings before issuing the Final Determination.
- 6) **Final Determination Issued to the Provider**
- a) After reviewing the evidence and arguments supplied by a provider, or his or her designee, at a Formal Review, the district must make a Final Determination to uphold, amend or reverse the findings contained in the Preliminary Review or Final Review Report. Within 30 days of the Formal Review, the district must issue a Final Determination Report (see Attachment G Final Determination-False Claims(s) Substantiated and Attachment H: Final Determination-False Claim(s) Unsubstantiated).
  - b) A final determination that a provider submitted false claims may be the basis for a district to disqualify a provider from providing subsidized child care (see section D below for required notifications of provider disqualifications).



#### **D. Duration of District Disqualification of Providers from Receiving Child Care Subsidy Payments**

A provider who has been disqualified by a district from receiving payment for child care services provided under the Child Care Subsidy Program is ineligible to receive such services through any district for five years from the date of the disqualification. If after five (5) years from the date of the disqualification, such provider paid full restitution of any and all falsely obtained funds to the district then the provider will be eligible to provide subsidized child care. However, if after five (5) years from the date of the disqualification, such a provider did not make full restitution to the district, then the provider will remain ineligible to provide subsidized child care indefinitely.

#### **E. Required Notifications of District Disqualifications of Providers from Receiving Child Care Subsidy Payments**

When a district disqualifies a licensed, registered, or enrolled legally-exempt child care provider from receiving subsidy funds, the following notifications must be issued:

- 1) ***Child Care Provider***: The district must notify the child care provider, in writing, within ten (10) days upon reaching the decision to disqualify the provider (see Attachment I: Provider Notice of Provider Disqualification form Receiving Child Care Subsidy Reimbursement). In determining the date of disqualification the district must allow the parent/caretaker time to locate an eligible child care provider, therefore, the provider disqualification date should be made two weeks from the date of the provider notice of disqualification.
- 2) ***Parent/Caretaker***: The district must notify, in writing, the parent/caretaker within ten (10) days upon reaching the decision to disqualify the provider. This notification to the parent must indicate that the district's decision to disqualify a provider from child care subsidy payment has no bearing on the parent's continuing eligibility for child care services, as long as the parent finds a different, eligible provider (see Attachment J: Parent Notice of Provider Disqualification from Receiving Child Care Subsidy Reimbursement). In addition, the district should include the name and contact information of the local Child Care Resource and Referral agency to assist the parent/caretaker with finding child care.
- 3) ***OCFS Division of Child Care Services Home Office and Enrollment Agency or Regional Office***: The district must send written notice of all provider disqualifications to both OCFS Division of Child Care Services Home Office and the appropriate Enrollment Agency when the disqualified provider is an enrolled legally exempt child care provider or the appropriate OCFS child care Regional Office Manager when the disqualification pertains to a licensed or registered child care provider. Said notification must identify the provider who is being disqualified, and include the reason(s) for the disqualification and the timeframe of the disqualification i.e., a minimum of five years or indefinitely in adherence to the regulation (see Attachment I: Provider Notice of Provider Disqualification form Receiving Child Care Subsidy Reimbursement).

- 4) ***Legally Exempt Child Care Provider:*** The Enrollment Agency must notify the legally exempt child care provider that he/she is disqualified from receiving child care subsidies and his/her enrollment is terminated. OCFS CCFS LE 010: Notice of Termination of Enrollment Legally-Exempt Child Care will be used by the Enrollment Agency.

**F. Recording Child Care Provider Disqualifications in the Child Care Facility System (CCFS)**

If the provider who has been disqualified by the district is an enrolled legally-exempt provider, the district must provide the Enrollment Agency with the disqualification start and end date. The enrollment agency must document the district's disqualification and the termination of enrollment of the provider in the Child Care Facility System (CCFS), the State system of record for child care providers.

If the provider who has been disqualified by the district from receiving child care subsidy funding, is a licensed or registered provider, the district must provide the OCFS child care Regional Office with the disqualification start and end date. The OCFS child care Regional Office will enter the child care subsidy disqualification start and end date in CCFS. The disqualification from receiving child care subsidy funding may affect the provider's license or registration.

**G. Other Sources of Information**

1) ***Announced and Unannounced Inspections by Social Services Districts***

In accordance with OCFS regulations, districts may conduct announced or unannounced inspections of the records and premises of any child care provider that provides care for subsidized children. Subsequently, a social services district must inform the appropriate OCFS child care Regional Office of any violations of child care subsidy regulations, where applicable, and must provide the Regional Office with an inspection report documenting the results of the inspection.

This does not take away the district's right to conduct an audit or fraud investigation of a child care provider. Districts have the authority to examine all of a provider's payment records, including those of private pay families, to determine if the provider is charging more for subsidized child care than for private pay, in violation of state regulation 18 NYCRR 415.6(e)(2).

2) ***New York State Department of Health Child and Adult Care Food Program (CACFP)***

CACFP is a meal reimbursement program that helps child care providers serve nutritious meals and snacks to the children in their care. CACFP Sponsor agencies are required to conduct three on-site monitoring reviews of participating providers per year. CACFP encourages its Sponsor agencies to share child enrollment and attendance records for any participating provider, regardless of modality, with local social services districts for the purpose of investigating child care subsidy fraud. Districts may also contact CACFP to request information about specific providers.

## H. Compliance of Subsidized Child Care Providers with OCFS Regulations

- 1) ***Provider Responsibilities:*** Districts must notify all eligible providers who are in receipt of child care subsidy funds of their responsibilities for complying with OCFS regulations (see Attachment K: Notice of Your Responsibilities as an Eligible Provider of Subsidized Child Care). Providers of subsidized child care must:
  - a) Adhere to all applicable OCFS regulations when operating their program and sign an agreement that sets forth and underlines their responsibilities when participating in the Child Care Subsidy Program;
  - b) Maintain current and accurate daily attendance records at the program site for each child, showing the date of attendance with the time of arrival and departure, and noting full day absences, where applicable;
  - c) Certify that all documents and information provided to the district are accurate and true and that any false claims for payments by a provider may result in the deferral or disallowance of payment for such claims, a referral to OCFS for the revocation of a provider's license or registration, and/or a referral for criminal prosecution; and
  - d) Not charge more for subsidized child care than the provider charges for private pay child care.
- 2) ***Provider Non-Compliance:*** Districts may request that OCFS initiate an enforcement action against child care providers who receive child care subsidies and are found to be non-compliant with the subsidy regulations. A district seeking such action shall contact the appropriate OCFS child care Regional Office and present such evidence as requested by the Regional Office of the provider's non-compliant actions, where appropriate.

## IV. SYSTEM IMPLICATIONS

This LCM has no Welfare Management System or Child Care Time and Attendance system implications.

## V. CONTACT PERSONS

If you have any program questions regarding information contained in this LCM, contact Rhonda Duffney of the Division of Child Care Services at (518) 474-9454 or [Rhonda.Duffney@ocfs.ny.gov](mailto:Rhonda.Duffney@ocfs.ny.gov)

If you need to contact an OCFS Regional Manager about a potential enforcement action against a regulated child care provider, contact the following:

OCFS Region 1 (Buffalo Regional Office): Patricia Harper at (716) 847-3828; [Patricia.Harper@ocfs.ny.gov](mailto:Patricia.Harper@ocfs.ny.gov)  
OCFS Region 2 (Rochester Regional Office): Terry Chylinski at (585) 238-8531; [Terry.Chylinski@ocfs.ny.gov](mailto:Terry.Chylinski@ocfs.ny.gov)  
OCFS Region 3 (Syracuse Regional Office): Dianne McLaughlin at (315) 423-1202; [Dianne.McLaughlin@ocfs.ny.gov](mailto:Dianne.McLaughlin@ocfs.ny.gov)  
OCFS Region 4 (Albany Regional Office): Tracey Turner at (518) 402-3038; [Tracey.Turner@ocfs.ny.gov](mailto:Tracey.Turner@ocfs.ny.gov)  
OCFS Region 5 (Spring Valley Regional Office): Frances Franco-Montero at (845) 708-2400; [Frances.Franco-Montero@ocfs.ny.gov](mailto:Frances.Franco-Montero@ocfs.ny.gov)  
OCFS Region 6 (NYC Regional Office): Patricia Lewis at (212) 383-1415; [Patricia.Lewis@ocfs.ny.gov](mailto:Patricia.Lewis@ocfs.ny.gov)  
OCFS Region 7 (Long Island Regional Office): Robin Beller at (631) 342-7100; [Robin.Beller@ocfs.ny.gov](mailto:Robin.Beller@ocfs.ny.gov)

*/s/ Janice M. Molnar*

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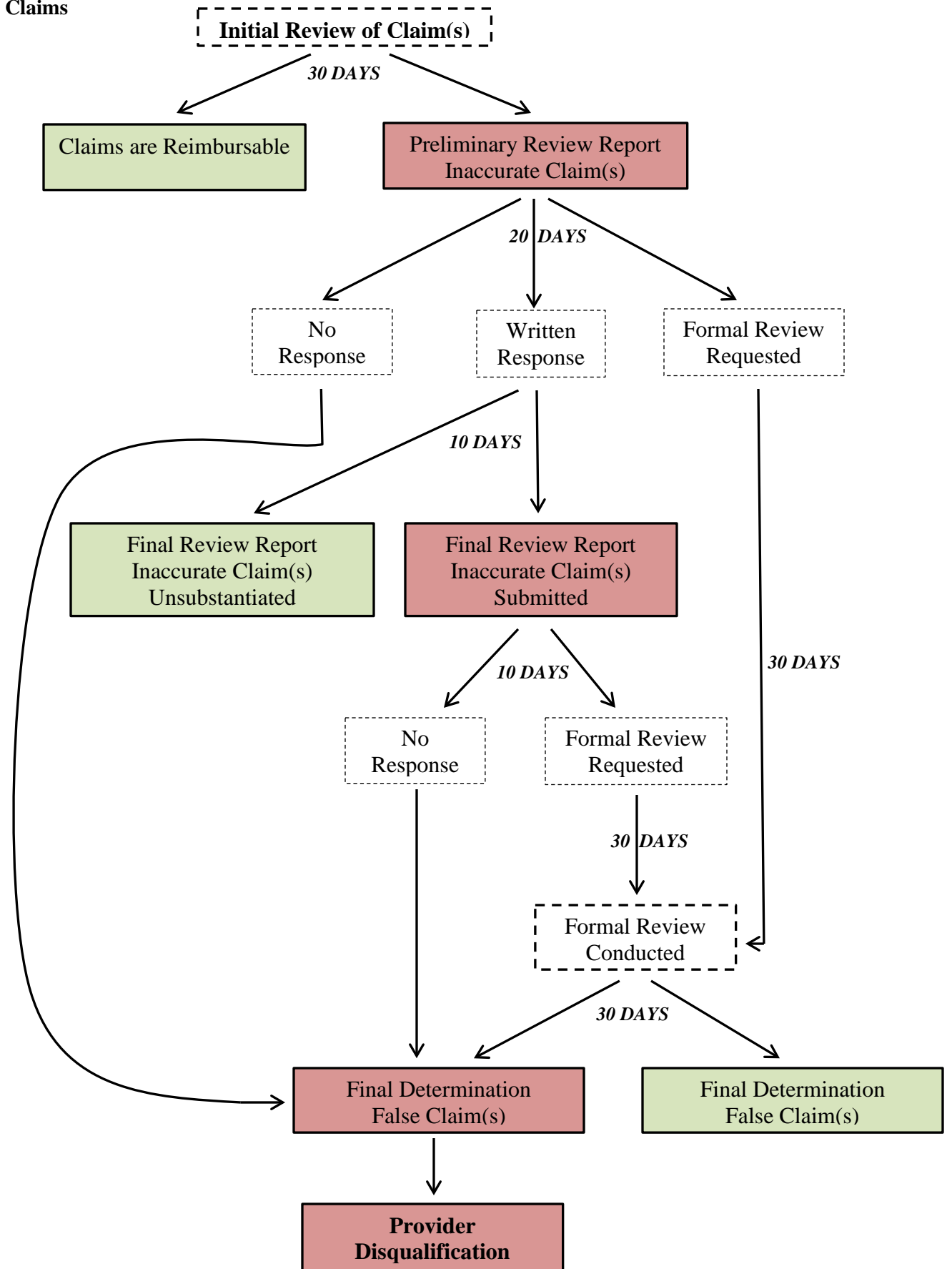
**Issued By:**

Janice M. Molnar Ph.D.

Deputy Commissioner

Division of Child Care Services

**Attachment A: DESK AID for Administrative Review Process for Child Care Subsidy Claims**



**Attachment B: Provider Notice of Deferral of Claim(s) for Reimbursement**

*[County Name and Address/Logo]*

*[Date]*

*[Provider Name and Address]*

**Provider Notice of Deferral of Claim(s) for Reimbursement**

Dear *[Child Care Provider]*:

This notice is to advise you that the *[local social services district]* is deferring or postponing your claim(s) for reimbursement for the following:

<b>Child’s Name</b>	<b>Service Date(s) and Time in /Time out</b>	<b>Amount of Deferred Claim(s)</b>

Following Title 18 of the New York State Codes Rules and Regulations § 415.4(c)(9)(ii), the local social services district is deferring the claim(s) listed above for the following reason(s):

- The district has conducted an initial review of the claim(s) and found inaccuracies that warrant a more detailed review.
- A federal, state, or local government agency has recommended that the district postpone payments because the district is at risk of making payments for services that were not provided in accordance with applicable state regulations.
- The district has been notified of the existence of a pending criminal charge against you involving fraud.

The social services district has begun an administrative review of the claim(s) in accordance with 18 NYCRR § 415.4(h)(2)(ii) You will be notified, in writing, of our decision.

Sincerely,

**Attachment C: Deferred Claim Review—Claim(s) are Reimbursable**

*[County Name and Address/Logo]*

*[Date]*

*[Provider Name and Address]*

**Deferred Claim Review—Claim(s) are Reimbursable**

Dear *[Child Care Provider]*:

You were previously notified that the *[local social services district]* deferred or postponed payment of your claim(s) for reimbursement for providing child care services under the child care subsidy program. We have reviewed those deferred claim(s) listed below, and found that **the claim(s) are reimbursable and will be paid.**

CLAIMS		
Child's Name	Service Date(s) and Time in / Time Out	Amount of Deferred Claim(s)

Any reviewed claims that were found to be accurate and were previously deferred are now eligible for payment. Payment of those claim(s):

- Is included with this notice.
- Will be sent at a later date.

No response is required by you at this time. Thank you for your cooperation.

The social services district retains its rights to review these and any other claims made by you and/or payments made to you for providing child care services under the subsidy program as new claims and evidence are received in the future.

Sincerely,

**Attachment D: Preliminary Review Report—Inaccurate Claim(s) Submitted**

[County Name and Address/Logo]

[Date]

[Provider Name and Address]

**Preliminary Review Report—Inaccurate Claim(s) Submitted**

Dear [Child Care Provider]:

This notice is to advise you that the [local social services district] has conducted a Preliminary Review of claim(s) for subsidized child care reimbursement in accordance with Title 18 of the New York Code of Rules and Regulations § 415.4(h)(2)(ii)(a). We have found that you **submitted inaccurate claim(s)** and are **ineligible for payment(s)** of the following:

CLAIMS REVIEWED		
Child’s Name	Service Date(s) and Time in / Time out	Amount of Claim(s)

This decision was based on the following reason(s)/documentation:

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**What does this mean for you?**

The purpose of this Administrative Review Process is to allow you the opportunity to refute the district’s findings, and for the district to make a Final Determination as to whether or not you submitted false claim(s) for reimbursement to the Child Care Subsidy Program. If there is a Final Determination that you submitted false claim(s), **you will be required to repay any overpayments** that the district identifies during the course of their review, and the district **may disqualify you from receiving child care subsidy for a minimum period of five (5) years.**



**Your Response Options pursuant to 18 NYCRR § 415.4(h)(2)(ii)(b)&(c):**

**Option 1:** You may respond in writing presenting evidence and arguments that you believe refute the findings of the Preliminary Review. In order to be considered, your response must be received by the social service district within 20 days from the postmarked date of this letter. Please send your response to:  
\_\_\_\_\_

**Option 2:** You may request, in writing, a formal review by the social services district, where you, or your designee, will be allowed to present evidence and arguments in person in support of your position. In order to be granted a formal review, your response must be received by the social services district within 20 days from the postmarked date of this letter. Please send your response to: \_\_\_\_\_

**Option 3:** If you do not respond within 20 days from the postmarked date of this Notice, the findings of the Preliminary Review will become Final, and you will not receive payment for any deferred claim(s) listed above, or if you have received any payment(s) that you were not eligible for, you will be required to repay that amount. Additionally, you may be disqualified from receiving payment for child care services provided under the child care subsidy program for a minimum period of five (5) years. Failure to repay the full amount of money that you were ineligible to receive may disqualify you from receiving payment for child care services under the Child Care Subsidy Program indefinitely.

The social services district retains its rights to pursue other administrative, civil, or criminal remedies in connection with this matter, as determined appropriate.

Sincerely,

**Attachment E: Final Review Report of Administrative Review—Inaccurate Claim(s) Submitted**

*[County Name and Address/Logo]*

*[Date]*

*[Provider Name and Address]*

**Final Review Report of Administrative Review—Inaccurate Claim(s) Submitted**

Dear *[Child Care Provider]*:

In accordance with Title 18 of the New York Code of Rules and Regulations § 415.4(h)(2)(ii)(d), the *[local social services district]* has conducted a final review of the available documentation and evidence related to claim(s) that you submitted for payment for providing child care services under the subsidy program (including your timely response to the Preliminary Review Report). We have found that you **submitted an inaccurate claim(s)** and are **ineligible for payment(s)** on the following claim(s):

<b>CLAIMS REVIEWED</b>		
<b>Child's Name</b>	<b>Service Date(s) and Time In / Time Out</b>	<b>Amount of Claim(s)</b>

This decision was based on the following reason(s)/documentation:

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**What does this mean for you?**

The purpose of this Administrative Review Process is to allow you the opportunity to refute the district's findings, and for the district to make a Final Determination as to whether or not you submitted false claim(s) for reimbursement to the Child Care Subsidy Program. If there is a Final Determination that you submitted false claim(s), **you will be required to repay any overpayments** that the district identifies during the course of their review, and the district **may disqualify you from receiving child care subsidy for a minimum period of five (5) years.**

**Your Response Options pursuant to 18 NYCRR § 415.4(h)(2)(ii)(e):**

**Option1:** You may request, in writing, a formal review by the social services district, where you, or your designee, will be allowed to present evidence and arguments in person in support of your position. In order to be granted a formal review, your response must be received by the social services district within 10 days from the postmarked date of this letter. Please send your response to: \_\_\_\_\_

**Option2:** If you do not request a Formal Review within 10 days from the postmarked date of this Notice, the findings of the Final Review will become the Final Determination, and you will not receive payment for any deferred claim(s) listed above, or if you have received any payment(s) that you were not eligible for, you will be required to repay that amount. Additionally, you may be disqualified from receiving payment for child care services provided under the child care subsidy program for a minimum period of five (5) years. Failure to repay the full amount of money that you were ineligible to receive may disqualify you from receiving payment for child care services under the child care subsidy program indefinitely.

The social services district retains its rights to pursue other administrative, civil, or criminal remedies in connection with this matter, as determined appropriate.

Sincerely,

**Attachment F: Final Report of Administrative Review—Inaccurate Claim(s)  
Unsubstantiated**

*[County Name and Address/Logo]*

*[Date]*

*[Provider Name and Address]*

**Final Report of Administrative Review—Inaccurate Claim(s) Unsubstantiated**

Dear *[Child Care Provider]*:

This notice is to inform you that the *[local social services district]* has conducted a final review of the additional information that you provided regarding the claim(s) and/or payment(s) listed below, and we found that **the claim(s) are reimbursable and will be paid.**

<b>CLAIMS REVIEWED</b>		
<b>Child's Name</b>	<b>Service Date(s) and Time in / Time Out</b>	<b>Amount of Deferred Claim(s)</b>

Any reviewed claims that were found to be accurate and were previously deferred are now eligible for payment. Payment of those claim(s):

- Is included with this notice.
- Will be sent at a later date.

No response is required at this time. Thank you for your cooperation.

The social services district retains its rights to review these and any other claims made by you and/or payments made to you for providing child care services under the subsidy program as new claims and evidence are received in the future.

Sincerely,

**Attachment G: Final Determination—False Claim(s) Substantiated**

*[County Name and Address/Logo]*

*[Date]*

*[Provider Name and Address]*

**Final Determination—False Claim(s) Substantiated**

Dear *[Child Care Provider]*:

The *[local social services district]* has considered all available documentation and evidence. Pursuant to Title 18 of the New York Code of Rules and Regulations § 415.4(h)(2)(ii)(h), we have made a Final Determination that you **submitted a false claim(s)** and are **ineligible for payments** on the following claim(s):

CLAIMS REVIEWED		
Child's Name	Service Date(s) and Time In/Time Out	Amount of Claim(s)

This decision was based on the following reason(s)/documentation:

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You will not receive payment for any deferred claim(s) listed above that have been found ineligible for payment.

If you have received any payment(s) that you were not eligible for, you will receive a Notice of Overpayment with the amount owed and payment instructions. Additionally, you may be disqualified from receiving payment for child care services provided under the child care subsidy program for a minimum period of five (5) years. Failure to repay the full amount of money that you were ineligible to receive may disqualify you from receiving payment for child care services under the child care subsidy program indefinitely.

The social services district retains its rights to pursue other administrative, civil, or criminal remedies in connection with this matter, as determined appropriate.

Sincerely,

**Attachment H: Final Determination—False Claim(s) Unsubstantiated**

*[County Name and Address/Logo]*

*[Date]*

*[Provider Name and Address]*

**Final Determination— False Claim(s) Unsubstantiated**

Dear *[Child Care Provider]*:

The *[local social services district]* has considered all available documentation and evidence. Pursuant to Title 18 of the New York Code of Rules and Regulations § 415.4(h)(2)(ii)(h), we have made a Final Determination that **the claims are reimbursable**. The claim(s) included in this review are listed below.

CLAIMS REVIEWED		
Child's Name	Service Date(s) and Time In / Time Out	Amount of Claim(s)

Any reviewed claims that were found to be accurate and were previously deferred are now eligible for payment. Payment of those claim(s):

- Is included with this notice.
- Will be sent at a later date.

No response is required at this time. Thank you for your cooperation.

The social services district retains its rights to review these and any other claims made by you and/or payments made to you for providing child care services under the subsidy program as new claims and evidence are received in the future.

Sincerely,

**Attachment I: Provider Notice of Disqualification from Receiving Child Care Subsidy Reimbursement**

[County Name and Address/Logo]

[Date]

[Provider Name and Address]

[Provider's Vendor ID]

**Provider Notice of Disqualification from Receiving Child Care Subsidy Reimbursement**

Dear [Child Care Provider]:

This notice is to advise you that the [local social services district] has **disqualified** you from receiving child care subsidy reimbursement for a **minimum period of five (5) years**. The regulations that allow us to take this action are Title 18 of the New York State Codes Rules and Regulations § 415.4(h)(2)(ii)(h) & § 415.4(h)(2)(iii).

If after five (5) years from the effective date of the disqualification, you make full restitution of all falsely obtained funds to the social services district, you will be eligible to provide subsidized child care. However, if after five (5) years from the effective date of the disqualification, you have not made full restitution to the social services district, you will remain ineligible to provide subsidized child care indefinitely.

**The effective date of your disqualification is \_\_\_\_\_ .**

**Disqualification Reason**

You have been disqualified from receiving child care subsidy reimbursement because:

<input type="checkbox"/>	You have been criminally convicted of fraud.
<input type="checkbox"/>	You have been found to be civilly liable for fraud.
<input type="checkbox"/>	You voluntarily admitted to filing a false claim for reimbursement for child care services.
<input type="checkbox"/>	You were disqualified from the Child and Adult Care Food Program, by the New York State Department of Health and/or its sponsoring agency, for submission of false information on the application, submission of a false claim for reimbursement or failure to keep required records.
<input type="checkbox"/>	You failed to comply with the terms of a repayment plan with the social services district.
<input type="checkbox"/>	You have been convicted of an activity that occurred in the past seven (7) years that indicated a lack of business integrity.
<input type="checkbox"/>	You have been found by a social services district, after the social services district has conducted an administrative review, to have submitted a false claim(s) to the social services district for reimbursement.

Our exercise of regulatory authority does not waive the social services district's rights to pursue other administrative, civil, or criminal remedies in connection with this matter, as determined appropriate.

Sincerely,

**Copy 1:** OCFS Division of Child Care Services Home Office

**Copy 2:** Regional Office (if licensed or registered) OR Enrollment Agency (if enrolled legally exempt)

**Attachment J: Parent Notice of Provider Disqualification from Receiving Child Care Subsidy Reimbursement**

*[County Name and Address/Logo]*

*[Date]*

*[Parent(s) Name and Address]*

**Parent Notice of Provider Disqualification from Receiving Child Care Subsidy Reimbursement**

**Provider Name:** \_\_\_\_\_

**Effective Date of Provider Disqualification:** \_\_\_\_\_

Dear *[Parent(s) Name]*:

This notice is to advise you that *[local social services district]* has **disqualified your child care provider** from receiving child care subsidy reimbursement. Your child care provider will be disqualified from receiving payment for child care services provided under the child care subsidy program through any social services district for a minimum period of **five (5) years**. The regulations that allow us to take this action are Title 18 of the New York State Codes Rules and Regulations § 415.4(h)(2)(ii)(h) & § 415.4(h)(2)(iii).

The provider's disqualification **does not affect your eligibility for child assistance**. However, you must select a different child care provider who is eligible to provide subsidized child care. An eligible child care provider is any provider that is licensed, registered, or enrolled and has not been disqualified from receiving child care subsidy reimbursement.

If you need assistance finding another child care provider, you can contact *[Child Care Resource and Referral Name and phone number]*. Information about child care providers is also available on the New York State Office of Children and Family Services website at <http://ocfs.ny.gov/main/childcare/looking.asp>.

If you decide to continue to use the provider listed above after the disqualification date, the social services district will not pay the provider and you will be responsible for paying the provider for services provided.

If you have questions about your eligibility, please contact *[worker name]* at *[worker phone number]*.

Sincerely,



**Attachment K: Notice of Your Responsibilities as an Eligible Provider of Subsidized Child Care**

**Notice of Your Responsibilities as an Eligible Provider of Subsidized Child Care**

Dear Child Care Provider:

This notice is being sent to you to advise you of **your responsibilities** as an eligible provider of subsidized child care.

1. **Compliance with NYS Regulations.** You must operate your child care program in compliance with all applicable New York State Office of Children and Family Services (OCFS) regulations. Failure to do so may result in OCFS taking enforcement action pursuant to Title 18 of the New York Code of Rules and Regulations § 413.3. You can find the full text of the regulations on the OCFS website [http://www.ocfs.state.ny.us/main/childcare/daycare\\_regs.asp](http://www.ocfs.state.ny.us/main/childcare/daycare_regs.asp).
  - a. Child care subsidy program regulations can be found in 18 NYCRR § 415.
  - b. Some child care provider regulations are specific to your provider type. You can use the chart below to find regulations that apply specifically to your provider type.

<b>Eligible Provider Type</b>	<b>NYS Regulations</b>
Enrolled Legally-Exempt In-Home Child Care Provider	18 NYCRR § 415
Enrolled Legally-Exempt Family Child Care Provider	
Enrolled Legally-Exempt Group Child Care Provider	
Registered Family Day Care Home	18 NYCRR § 417 & 413
Registered School Age Child Care	18 NYCRR § 414 & 413
Licensed Group Family Day Care Home	18 NYCRR § 416 & 413
Licensed Child Day Care Center	18 NYCRR § 418-1 & 413
Registered Small Child Day Care Center	18 NYCRR § 418-2 & 413
Public school district operating a child care program that meets State and Federal Requirements	18 NYCRR § 413

2. **Attendance Records.** You must, keep current and accurate attendance records for each child on a daily basis at the child care site. The records must show the date of attendance, the time of arrival, and time of departure. Full day absences must also be recorded.
3. **True and Accurate Claims for Reimbursement.** You must submit true and accurate attendance information to the social services district for reimbursement for providing child care to a child receiving a subsidy. Any false or fraudulent claims for payments by a provider may result in:
  - a. Deferral or disallowance of payment(s) for such claims with a social services district;
  - b. Referral to the New York State Office of Children and Family Services Regional Office or Enrollment Agency, which may lead to revocation of a provider’s registration or license, or termination of enrollment;
  - c. Referral for criminal prosecution; and/or
  - d. Disqualification to provide subsidized child care for five (5) or more years.
4. **Subsidized Child Care Charges.** You must not charge more for subsidized child care than you charge for non-subsidized care.





# Office of Children and Family Services

Andrew M. Cuomo  
Governor

52 WASHINGTON STREET  
RENSSELAER, NY 12144

Sheila J. Poole  
Acting Commissioner

## Local Commissioners Memorandum

<b>Transmittal:</b>	16-OCFS-LCM-18
<b>To:</b>	Commissioners of Local Social Services Districts
<b>Issuing Division/Office:</b>	Division of Child Care Services
<b>Date:</b>	August 30, 2016
<b>Subject:</b>	<b>Child Care Market Rates 2016</b>
<b>Contact Person(s):</b>	Melinda Denham (518) 402-6785 <a href="mailto:Melinda.Denham@ocfs.ny.gov">Melinda.Denham@ocfs.ny.gov</a>
<b>Attachments:</b>	Yes – Attachment A: Child Care Market Rates
<b>Attachment Available Online:</b>	N/A

### I. Purpose

The purpose of this release is to advise local departments of social services (LDSSs) of the adoption of regulations related to the market rates and the maximum reimbursements for expenditures for child care services funded under the New York State Child Care Block Grant (NYSCCBG) and Social Services Block Grant (Title XX). These changes to Title 18 of the New York Codes, Rules and Regulations (NYCRR) Section 415.9 were filed as a notice of emergency adoption and proposed rule-making. The emergency regulations became effective June 1, 2016. LDSSs were previously notified in 16-OCFS-INF-06, issued on May 27, 2016, about the revisions to the child care market rates. The proposed regulations were adopted as a final rule on August 17, 2016.

### II. Background

Federal and New York State law require the state to establish payment rates for child care subsidies that are sufficient to ensure equal access to child care services for eligible children [42 USC 9858c(c)(4)(A); 45 CFR Part 98.43(a); Section 410-x(4) of the Social Services Law]. Federal regulation requires that payment rates be based on a local market rate survey [45 CFR Part 98.43(b)(2)]. State law requires the Office of Children and Family Services (OCFS) to establish, in regulation, the

applicable market-related payment rate, which establishes a ceiling for state and federal reimbursement for payments for child care services (Section 410-x(4) of the Social Services Law).

Payment rates must be sufficient to ensure equal access for eligible families to child care services, comparable to those provided to children whose parents are not eligible to receive assistance under any federal or state child care programs. In addition, market rates must take into account the variations in costs of providing child care in different settings and to children of different age groups, as well as the additional cost of providing child care for children with special needs.

In accordance with the federal regulatory requirement, OCFS contracted with a preferred source contractor in NYS to conduct a telephone survey of a sample of licensed/registered child care providers. Prior to conducting the telephone survey, a letter was sent to all licensed/registered child care providers to inform them that they might be included in the sample of providers called to participate in the market rate survey. A copy of the questions accompanied the letters so that providers could prepare their responses in advance of their possible participation in the market rate survey. The contractor conducted the telephone survey in English and in Spanish, and had resources available to assist providers in other languages. Market rate data was collected from 4,467 providers.

OCFS analyzed data from the survey for five distinct groupings of districts. Market rates were established for each county cluster at the 69<sup>th</sup> percentile.

The standard market rates for legally-exempt family child care and legally-exempt in-home child care providers are established at a 65 percent differential applied to the market rate established for registered family day care. The enhanced market rates for legally-exempt family child care and legally-exempt in-home child care providers are established at a 70 percent differential applied to the market rates established for registered family day care. Information pertaining to the establishment of the market rates for legally-exempt family child care and legally-exempt in-home child care can be found on pages 10-11.

The market rates for legally exempt group child care providers are established at a 75 percent differential applied to the market rate established for licensed or registered day care centers.

### **III. Program Implications**

#### **Actual Cost of Care**

Payments for child care services under the NYSCCBG and under Title XX must be only for the actual cost of care, up to the applicable market rate as updated in Attachment A. The actual cost of care is:

- for care provided pursuant to a contract between the LDSS and the provider, the payment rate set forth in the contract; or,

- for care provided in instances other than pursuant to a contract between the LDSS and the provider, the amount charged to the general public for equal care in that facility or home. However, if the facility or home cares only for subsidized children, then the actual cost of care is the amount the provider is currently receiving from the LDSS for such children, unless the provider can demonstrate to the LDSS that the actual cost of providing care to such children is higher than that amount.

Federal and state reimbursement is available for child care services for eligible families only when the cost does not exceed the amount charged by the provider to the general public for similar care.

LDSSs may negotiate contracts with individual providers. The negotiated payment rates may be the same as or lower than the rates charged to non-subsidized families. Even though the negotiated rate may be less than the usual charge to non-subsidized families, the negotiated rate is considered to be the actual cost of care for those child care services provided under a contractual agreement between the LDSS and the provider.

A contract cannot be made a condition of receiving payment under the NYSCCBG.

#### **Determining Actual Cost of Care for Providers Without a Contract Who Care Only for Subsidized Children**

If a provider cares only for children receiving child care subsidies, and does not have a contract with the LDSS, then the actual cost of care is the rate the provider currently receives from the LDSS. However, if the provider can document that he or she provides similar child care services to a non-subsidized child, currently or in the recent past, and that a higher rate was charged and received from the non-subsidized family, then the LDSS can establish that rate as the actual cost of care. Additionally, if a provider can document that the costs, excluding those that are reimbursed by other sources of funding, related to the provision of child care services have increased in the previous 12 months, then that provider may request a higher payment rate from the LDSS. For this purpose only, the LDSS should consider the increases in costs related to employees' salaries and benefits, occupancy, insurance, equipment, supplies, and food.

The increases in costs have to be solely related to or clearly attributable to the operation of the child care program. For instance, not all costs of homeowners' insurance can be considered; only those costs that the insurance carrier has specifically attributed to the existence of the child care program should be considered. Furthermore, costs of home improvement or maintenance to the general residence would not be considered attributable solely to the operation of the child care program.

The costs associated with the child care program to maintain compliance with existing regulatory standards should not be considered. In offering services as a child care provider, the provider is attesting to the fact that he or she has been and

will be satisfying the basic regulatory standards. A statement that he or she now has to charge more because the program was compelled to meet those standards does not present a legitimate expense attributable to the operation of a child care program. However, if new regulatory standards are created, the costs incurred by an existing program to meet the new regulatory standards should be considered. For instance, when Alyssa's Law was enacted, some providers' properties required physical modifications to comply with Alyssa's Law. The cost of modifications that were amortized by the provider over a reasonable period of time should have been considered solely attributable to the operation of the child care program. Other potential includable costs are those associated with compliance with the administration of medication requirements. For example, when out-of-pocket expenses related to retaining a health care consultant or obtaining required training are documented by a provider, who is newly choosing to come into compliance with the administration of medication requirements, those expenses are to be considered by the LDSS.

In order to determine the amount of increase that is reasonable, the LDSS should annualize the appropriate costs, including amortizing any relevant capital expenditures over a reasonable multiple-year period; then the LDSS should spread the annualized costs over the capacity of the program and convert the costs to a weekly (or daily) increased cost per child. Providers and/or LDSSs can contact the local child care resource and referral agency if they need additional information on how to maintain business records for child care programs.

When considering increased food costs, the LDSS may consider whether the provider has chosen to use other available resources to offset food costs, particularly the Child and Adult Care Food Program (CACFP). If a provider has experienced increased food costs because he or she has voluntarily or involuntarily left the CACFP program, such additional food costs should not be considered. If the provider has never participated in CACFP, the LDSS could deny an increase or deny that part of the increase that could be offset by the provider by using the CACFP program.

Generally, the increase in the provider's own salary or profit drawn from the program would not be considered. However, to the extent that the provider has granted increases in the salaries to his or her employees and the provider also delivers direct child care services on-site to the children in his or her program, then a similar increase in the provider's own salary, if any, can be considered as an increase in costs to the program. Increased personnel costs for a substitute or additional staff that are documented by the provider may also be considered, so long as it is clear that the enhanced staffing was not offset by additional revenues that the provider was able to generate by serving more children.

### **Determining the Applicable Market Rate**

The LDSS must consider at least three factors when selecting the applicable market rate for child care services. The factors that affect payment are: the type of provider, the age of the child, and the duration of care.

Additional factors affecting rates may apply when care is provided outside of the family's district of residence, when care is provided to a child with special needs, when a program is accredited or provides care during non-traditional hours, and when care is provided in excess of a weekly or daily period.

## 1. Type of Provider

- a. **Licensed or registered day care centers** - The maximum payment rate for care provided by licensed or registered day care centers is the applicable market rate for day care centers.
- b. **Registered family day care homes** - The maximum payment rate for care provided by registered family day care homes is the applicable market rate for family day care homes.
- c. **Licensed group family day care homes** - The maximum payment rate for care provided by licensed group family day care homes is the applicable market rate for group family day care homes.
- d. **Registered school-age child care programs** - The maximum payment rate for care provided by registered school-age child care programs is the applicable market rate for school-age child care programs.
- e. **Legally-exempt group child care** – The maximum payment rate for care provided by caregivers of legally-exempt group child care as defined in 18 NYCRR Section 415.1 is the applicable market rate for legally-exempt group child care.
- f. **Legally-exempt family child care and legally-exempt in-home child care providers** - The maximum payment rate for care provided by legally-exempt family child care and legally-exempt in-home child care providers is the applicable market rate for legally-exempt family child care and in-home child care.

Note: All legally-exempt providers -- including legally-exempt group, legally-exempt family, and legally-exempt in-home providers -- must meet applicable health and safety standards and must be **temporarily enrolled or enrolled** by the legally-exempt caregiver enrollment agency before payment is made.

## 2. Age of Child

Market rates differ according to the age of the child. The age categories differ for center-based child care (licensed or registered day care centers, registered school age child care programs, and legally exempt group care) and home-based child care (registered family day care, licensed group family day care, legally-exempt family child care, and legally-exempt in-home child care). Only two age categories apply to school-age child care programs: 3 years through 5 years and 6 years through 12 years. The age categories are:

- a. **under** 1 ½ years (center-based) or **under** 2 years (home-based);
- b. 1 ½ years **through** 2 years (center-based) or 2 years (home-based);
- c. 3 years **through** 5 years; and
- d. 6 years **through** 12 years.

When a change in a child's age results in his/her movement from one age category to another, the new market rate limit must be applied at the beginning of the first full month following such a change.

### 3. Duration of Care

Market rates also differ according to the number of hours of care that are needed.

#### a. Weekly

The LDSS must apply the weekly market rates as the maximum payment limit only when the child care services are provided for **30 or more hours over the course of five or fewer days in a single week**.

#### b. Daily

The LDSS must apply the daily market rates as the maximum payment limit only when the child care services are provided for **less than 30 hours over the course of five or fewer days in a single week and for at least six but fewer than twelve hours per day**.

Some providers charge a daily rate for child care services provided for 30 or more hours over the course of five or fewer days in a single week. The daily market rates do not apply in those instances. The LDSS must apply the weekly market rates divided by five as the maximum daily payment limit.

#### c. Part-day

The LDSS must apply the part-day market rates as the maximum payment limit when the child care services are provided for **at least three but fewer than six hours per day**. Part-day market rates also must be applied for children who are enrolled in full-day pre-kindergarten, kindergarten, or higher grade who are provided care before and/or after school for less than three hours per day by day care centers or school-age child care programs that do not charge on an hourly basis.

#### d. Hourly

With the exception noted in the definition of the part-day rate, the LDSS must apply the hourly market rates as the maximum payment limit when the child care



services are provided for **fewer than three hours per day**.

### **Weekly Versus Daily Market Rates**

When a child care provider routinely charges non-subsidized parents on a weekly basis and has not signed a purchase of service contract or other written agreement for payment on a different basis, the LDSS must apply the weekly market rate as the maximum payment limit for child care services that are provided for 30 or more hours over the course of five or fewer days in a single week. To determine if care is provided for 30 or more hours over the course of five or fewer days in a single week, LDSSs must use Monday as the start of the weekly period.

When a child care provider routinely charges non-subsidized parents on a daily basis for child care provided for 30 or more hours over the course of five or fewer days in a single week and has not signed a purchase of service contract or other written agreement for payment on a different basis, the LDSS must apply the weekly market rate divided by five as the maximum daily payment limit for child care services.

When the child care services are provided for fewer than 30 hours over the course of five or fewer days in a single week, the LDSS must apply the daily, part-day or hourly market rates, or a combination thereof, as applicable. The market rate charts reflect daily rates for care that is provided for at least six but less than twelve hours per day, but for less than 30 hours over the course of five or fewer days in a single week.

### **Care in Excess of a Weekly or Daily Market Rate Period**

When child care services are provided by a single provider in excess of one weekly or daily market rate period and the provider routinely charges an additional rate for these additional periods, payment for child care services must be based on the actual cost of care up to the applicable market rates. If care is provided for six or seven days in a week, then an additional market rate would apply for the sixth and/or seventh day. If care is provided for 12 hours or more in a day, then an additional market rate (daily, part-day, or hourly) would be applied. When determining the appropriate market rates, LDSSs must use Monday as the start of the weekly period.

An example of care in excess of a daily market rate period is as follows: a provider, whose normal operating hours are 7:00 AM to 5:30 PM, cares for a child from 7:00 AM to 11:00 PM (16 hours) per day, Monday through Friday, and charges an additional amount for care after 5:30 PM. In this example, the maximum payment available is one weekly market rate plus five part-day rates. One weekly market rate applies since care is provided for 30 or more hours over the course of five or fewer days in a single week. Since care is provided for 12 or more hours per day, five part-day market rates also apply for the four additional hours of care above the 12 hours per day provided from 7:00 PM to 11:00 PM, Monday through Friday.

An example of care in excess of a weekly market rate period is as follows: a provider, whose normal operating hours are Monday through Friday 7:00 AM to 5:30 PM, cares for a child from 9:00 AM to 5:00 PM (8 hours) per day, Monday through Friday, and from 7:00 AM to 11:00 AM (4 hours) on Sunday, and charges an additional amount for care after 5:30 PM and for care on the weekend. To determine if care is provided for 30 or more hours over the course of five or fewer days in a single week, start on Monday and determine the number of hours, if any, that service was provided for five days. Then, determine if any care is provided for any days beyond the five days and determine if the daily, part-day or hourly market rate applies. In this example, the maximum payment available is one weekly market rate plus one part-day market rate for Sunday. One weekly market rate applies because care is provided for 30 or more hours for the five-day period Monday through Friday. Because care is provided for a sixth day in the week, one part-day market rate applies for the four hours of care on Sunday.

### **Care Provided for 24 Hours in a Day**

LDSSs have the option to pay for child care services that are needed for 24 hours in a single day. Reimbursement is available to the LDSS if the LDSS has selected this option in its Child and Family Services Plan.

When a single provider provides child care services for 24 hours in a day, the LDSS must determine if care is provided for 30 or more hours over the course of five or fewer days in a single week. Then, the LDSS must evaluate whether the care provided is in excess of a weekly or daily market rate period. Payment for the child care services must be based on the actual cost of care up to the applicable market rate.

An example of 24-hour care that leads to a total amount of care in excess of 30 or more hours over the course of five or fewer days in a single week is as follows: a provider, whose normal operating hours are Monday through Friday 7:00 AM to 5:30 PM, cares for a child from 12:00 AM on Monday to 12:00 AM on Tuesday (24 hours) and from 9:00 AM to 5:00 PM (8 hours) per day, Tuesday through Friday. The provider also charges an additional amount for care after 5:30 PM. In this example, the maximum payment available is one weekly market rate plus one daily market rate. One weekly market rate applies since care is provided for 30 or more hours during Monday through Friday. One daily market rate also applies because care is provided for 12 or more hours per day on Monday.

### **Care Provided by Multiple Providers**

Where child care services are provided by multiple providers, reimbursement will be made for the actual cost of such services up to the applicable rate for each provider used. However, if the combined reimbursement to the multiple providers would exceed one weekly market rate, then in order to receive such reimbursement, the parent or caretaker must demonstrate that their schedule of employment, or other approved activity, or the special needs of the child necessitate that child care services be arranged with multiple providers. If the

LDSS determines that the parent or caretaker has not demonstrated that there is a necessity to use multiple providers, reimbursement is limited to the one weekly market rate that is applicable for the type of provider who provides care for the highest number of hours. The LDSS will determine how to distribute the reimbursement for the multiple providers.

If the LDSS determines that the parent or caretaker has demonstrated that there is a need to use multiple providers when the combined reimbursement to the multiple providers would exceed one weekly market rate, reimbursement will be made to each provider for the actual cost of such services up to the applicable market rate for each provider. For example, a provider cares for a child from 7:30 AM to 4:30 PM, Monday through Friday. Another provider cares for that child from 6:00 PM to 9:30 PM on Tuesday and Thursday. The maximum payment available is one weekly market rate for the first provider and two part-day market rates for the second provider.

### **Children with Special Needs**

When child care services are provided for a child with special needs, LDSSs will receive reimbursement for payments in excess of the applicable market rate up to the statewide limit. Any payments in excess of the market rates must be related to the increased costs associated with meeting the special care needs of the particular child. Detailed requirements relative to the provision of child care services to children with special needs are set forth in 91 ADM-34.

The rate of reimbursement to a provider caring for a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the state, as applicable, based on the amount of time the child care services are provided per week, irrespective of the type of child care provider used or the age of the child.

The highest applicable market rates in the state are as follows. These rates are also the maximum reimbursable rates for special needs children:

Weekly	\$371.00
Daily	\$60.00
Part-Day	\$40.00
Hourly	\$17.00

### **Location of Care**

Whenever child care services are provided by a provider located outside the social services district that authorizes the subsidy, the LDSS must make payments based on the cost of care, up to applicable market rates, for the county in which the care is provided. The same standard applies to care provided in another state, but the LDSS must use NYS rules for calculating payments.

### **Standard and Enhanced Market Rates for Legally-Exempt Family Child Care Homes and Legally-Exempt In-Home Child Care Providers**

The standard market rates for legally-exempt family child care and legally-exempt in-home child care providers are based on a 65 percent differential applied to the market rates established for registered family day care. The enhanced market rate for legally-exempt family and legally-exempt in-home child care providers is a 70 percent differential applied to the market rates established for registered family day care.

The enhanced market rate is available for providers of legally-exempt family child care and legally-exempt in-home child care who have demonstrated to the enrollment agency that they have completed ten or more hours of training annually in the areas set forth in section 390-a(3)(b) of the Social Services Law.

The enrollment agency will inform the LDSS of the providers whom they have verified to have completed ten or more hours of training. When the LDSS is notified by the enrollment agency that a legally-exempt family child care or legally-exempt in-home child care provider has completed ten or more hours of training, then the provider is eligible to receive the enhanced market rate for a period of 12 consecutive months. The LDSS must increase the payment amount to the enhanced market rate no later than the beginning of the first full month after the LDSS has been notified that the provider completed the ten hours of training. The LDSS must send the required notice, OCFS/LDSS-4781, *Notice of Intent to Change Child Care Benefits*, to the parent/caretaker. The provider remains eligible to receive the enhanced market rate for a period of 12 consecutive months, even if there is a gap in the family's child care subsidy or if the child care subsidy ends and the provider begins providing care for a different subsidized child during the 12-month period. In order to continue to receive the enhanced market rate beyond the 12-month enhanced rate eligibility period, the provider must complete an additional ten or more hours of training and submit documentation to the enrollment agency. The enrollment agency will notify the LDSS if the provider has completed an additional ten or more hours of training.

The regulation also provides flexibility to those LDSSs that wish to maintain the enhanced rate at a higher level (up to 75 percent of the registered family day care market rate). An LDSS has the option, if it so chooses in the child care portion of its Child and Family Services Plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories up to 75 percent of the applicable registered family day care market rate:

- for all such providers; or
- for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten-hour annual training requirement.

The standard and enhanced market rates for legally-exempt family child care and legally-exempt in-home providers are included in Attachment A.

### **Market Rates for Legally-Exempt Group Child Care Providers**

The market rates for legally exempt group child care providers are established at a 75 percent differential applied to the market rate established for licensed or registered day care centers.

### **Differential Payment Rates**

#### Nationally Accredited Programs

LDSSs may establish differential payment rates for child care services provided by validly licensed or registered child care providers that have been accredited by a nationally recognized child care organization. Nationally recognized organizations that provide accreditation to licensed/registered child care providers include the National Association for Education of Young Children (NAEYC), National Association for Family Child Care (NAFCC), and National School Age Child Care Association (NSACCA).

Legally-exempt group child care, legally-exempt family child care and legally-exempt in-home child care providers are **not** eligible for the differential payment rate for nationally accredited programs.

#### Non-traditional Hours

LDSSs may establish differential payment rates for any eligible child care provider for child care services that are provided during non-traditional hours: evening, night or weekend hours. Social services districts may establish a differential rate for non-traditional hours provided by legally-exempt group, legally-exempt family, and legally-exempt in-home child care providers as well as by licensed/registered providers.

#### Conditions Pertaining to Differential Payments

If an LDSS chooses to offer a differential payment, the LDSS must indicate this in its Child and Family Services Plan. The information in the plan must include the percentage above the applicable market rate that the LDSS opts to allow for accredited programs and/or for care provided during non-traditional hours, as applicable. The LDSS must also indicate in its Child and Family Services Plan if any restrictions or limitations are placed on providers who may be eligible for any differential payment.

The differential payment rates established by the LDSS may be up to 15 percent higher than the applicable market rates. For example, if the market rate is \$200, a differential of 15 percent would raise the market rate up to \$230 for eligible providers. LDSSs must pay a provider who qualifies for a differential payment rate the lower of the rate charged by that provider to the general public for equal care,

or the differential payment rate.

The differential payment rates the LDSS sets for accredited programs may be different than the rates it sets for care provided during non-traditional hours. There can be a total of only 15 percent in differential payment to any one provider. For instance, a provider who is nationally accredited and who also provides child care during non-traditional hours is eligible only for a maximum rate of a 15 percent increase above the market rate for the respective type of care and age of the child.

#### Waivers to Exceed 15 Percent

LDSSs may request a waiver from OCFS to establish differential payment rates that are in excess of 15 percent above the applicable market rate. The LDSS waiver request must show that the 15 percent maximum is insufficient to provide access within the district to accredited programs and/or care provided during non-traditional hours.

#### **IV. System Implications**

This LCM has no Welfare Management System implications.

#### **V. Required Actions**

All previous market rates are superseded by those published in this issuance.

LDSSs are required to use these market rates when determining the payment amounts for all cases that are opened on or after the effective date of the rates, and they must review all currently authorized cases to determine that payment is authorized for the actual cost of care up to the applicable market rate. Reviews must take place as soon as possible, but no later than the next case action or redetermination, whichever comes first.

Recipients of child care subsidies that have paid for child care costs in excess of the previous market rate are eligible for an increased payment from the LDSS (their actual child care charges up to the updated market rate). For example, a parent who has been paying an amount in excess of the previous market rates as of January 1, 2016, would only be eligible for the increased amount as of June 1, 2016. Parents who have documented out of pocket payments for the increased cost must be reimbursed for the out of pocket payment up to the market rate effective June 1, 2016.

Where the new market rates have increased from the previous market rates, providers who can provide documentation of the cost of care to private pay families in excess of the previous market rate are eligible for an increased payment from the LDSS (their actual child care charges for private pay families, up to the updated market rate). The increased payment is effective the date the provider begins charging the increased rate, but no earlier than June 1, 2016. For example, a provider who has been charging private pay families an amount in excess of the

previous market rates as of January 1, 2016, would only be eligible for the increased amount as of June 1, 2016. However, if the provider increased the rate for private pay families on or after June 1, 2016, the provider is eligible for the cost of care up to the market rate from the date the provider increased the rate or June 1, 2016, whichever is later, upon proper documentation of this increase.

In instances in which the market rates have decreased from the previous market rates, the LDSS will need to reduce benefits. Please note that when a benefit is reduced due to changes in the market rates, the effective date for the reduction is not retroactive to June 1, 2016. Benefit reductions are to be made prospectively. For those cases in which an LDSS did not make the necessary reductions at the next case action that occurred on or after June 1, 2016, the amount the LDSS paid above the market rate is not reimbursable from State and federal funds.

Whenever the amount of child care benefits changes, LDSSs must provide recipients with appropriate notice as required by 18 NYCRR Subpart 358-2.

If the provider's rate is in excess of the market rate and the LDSS does not have a contract with the provider, the parent who chooses to continue care with the provider must make up the difference. If the LDSS has a contract to pay a rate that is higher than the market rate, the amount above the market rate is not reimbursable from State and federal funds.

## **VI. Effective Date**

The effective date of this release is June 1, 2016.

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Janice M. Molnar, Ph.D.  
Deputy Commissioner  
Division of Child Care Services

**ATTACHMENT A****CHILD CARE MARKET RATES**

Market rates are established in five groupings of social services districts as follows:

- Group 1: Nassau, Putnam, Rockland, Suffolk, Westchester
- Group 2: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Schenectady, Tompkins, Warren
- Group 3: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates
- Group 4: Albany, Dutchess, Orange, Saratoga, Ulster
- Group 5: Bronx, Kings, New York, Queens, Richmond

**MARKET RATES**

The market rates established for each group apply to all districts in the designated group.



**GROUP 1 COUNTIES:****Nassau, Putnam, Rockland, Suffolk, and Westchester**

## DAY CARE CENTER

	<b>AGE OF CHILD</b>			
	<b><u>Under 1 ½</u></b>	<b><u>1 ½ - 2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$350	\$312	\$289	\$290
DAILY	\$60	\$57	\$50	\$57
PART-DAY	\$40	\$38	\$33	\$38
HOURLY	\$9.50	\$10.00	\$10.00	\$10.00

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## FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$295	\$275	\$275	\$265
DAILY	\$60	\$55	\$53	\$51
PART-DAY	\$40	\$37	\$35	\$34
HOURLY	\$10.00	\$10.00	\$10.00	\$10.00

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## SCHOOL-AGE CHILD CARE

	<b>AGE OF CHILD</b>			
	<b><u>Under 1 ½</u></b>	<b><u>1 ½ - 2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$0	\$0	\$289	\$290
DAILY	\$0	\$0	\$50	\$57
PART-DAY	\$0	\$0	\$33	\$38
HOURLY	\$0	\$0	\$10.00	\$10.00

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(Group 1 Counties)  
LEGALLY-EXEMPT GROUP CHILD CARE

	<b>AGE OF CHILD</b>			
	<b><u>Under 1 ½</u></b>	<b><u>1 1/2 – 2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$0	\$0	\$217	\$218
DAILY	\$0	\$0	\$38	\$43
PART-DAY	\$0	\$0	\$25	\$29
HOURLY	\$0	\$0	\$7.50	\$7.50

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
STANDARD RATE

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$192	\$179	\$179	\$172
DAILY	\$39	\$36	\$34	\$33
PART-DAY	\$26	\$24	\$23	\$22
HOURLY	\$6.50	\$6.50	\$6.50	\$6.50

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
ENHANCED RATE

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$207	\$193	\$193	\$186
DAILY	\$42	\$39	\$37	\$36
PART-DAY	\$28	\$26	\$25	\$24
HOURLY	\$7.00	\$7.00	\$7.00	\$7.00

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**GROUP 2 COUNTIES: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Schenectady, Tompkins and Warren**

## DAY CARE CENTER

	AGE OF CHILD			
	<u>Under 1 ½</u>	<u>1 ½ - 2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$259	\$242	\$225	\$200
DAILY	\$53	\$49	\$45	\$42
PART-DAY	\$35	\$33	\$30	\$28
HOURLY	\$9.00	\$8.50	\$8.25	\$8.00

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## FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME

	AGE OF CHILD			
	<u>Under 2</u>	<u>2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$185	\$175	\$175	\$165
DAILY	\$40	\$36	\$35	\$34
PART-DAY	\$27	\$24	\$23	\$23
HOURLY	\$6.00	\$6.00	\$6.00	\$6.00

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## SCHOOL-AGE CHILD CARE

	AGE OF CHILD			
	<u>Under 1 ½</u>	<u>1 ½ - 2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$0	\$0	\$225	\$200
DAILY	\$0	\$0	\$45	\$42
PART-DAY	\$0	\$0	\$30	\$28
HOURLY	\$0	\$0	\$8.25	\$8.00

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(Group 2 Counties)  
LEGALLY-EXEMPT GROUP CHILD CARE

	<b>AGE OF CHILD</b>			
	<b><u>Under 1 ½</u></b>	<b><u>1 1/2 – 2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$0	\$0	\$169	\$150
DAILY	\$0	\$0	\$34	\$32
PART-DAY	\$0	\$0	\$23	\$21
HOURLY	\$0	\$0	\$6.19	\$6.00

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
STANDARD RATE

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$120	\$114	\$114	\$107
DAILY	\$26	\$23	\$23	\$22
PART-DAY	\$18	\$16	\$15	\$15
HOURLY	\$3.90	\$3.90	\$3.90	\$3.90

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
ENHANCED RATE

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$130	\$123	\$123	\$116
DAILY	\$28	\$25	\$25	\$24
PART-DAY	\$19	\$17	\$16	\$16
HOURLY	\$4.20	\$4.20	\$4.20	\$4.20

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**GROUP 3 COUNTIES:**

**Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates**

## DAY CARE CENTER

	AGE OF CHILD			
	<u>Under 1 ½</u>	<u>1 ½ - 2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$200	\$190	\$180	\$170
DAILY	\$43	\$41	\$38	\$37
PART-DAY	\$29	\$27	\$25	\$25
HOURLY	\$7.00	\$7.50	\$7.50	\$7.00

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## FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME

	AGE OF CHILD			
	<u>Under 2</u>	<u>2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$150	\$150	\$150	\$143
DAILY	\$33	\$30	\$30	\$30
PART-DAY	\$22	\$20	\$20	\$20
HOURLY	\$5.00	\$5.00	\$5.00	\$5.00

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## SCHOOL-AGE CHILD CARE

	AGE OF CHILD			
	<u>Under 1 ½</u>	<u>1 ½ - 2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$0	\$0	\$180	\$170
DAILY	\$0	\$0	\$38	\$37
PART-DAY	\$0	\$0	\$25	\$25
HOURLY	\$0	\$0	\$7.50	\$7.00

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(Group 3 Counties)

## LEGALLY-EXEMPT GROUP CHILD CARE

	AGE OF CHILD			
	<u>Under 1 ½</u>	<u>1 1/2 – 2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$0	\$0	\$135	\$128
DAILY	\$0	\$0	\$29	\$28
PART-DAY	\$0	\$0	\$19	\$19
HOURLY	\$0	\$0	\$5.63	\$5.25

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
STANDARD RATE

	AGE OF CHILD			
	<u>Under 2</u>	<u>2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$98	\$98	\$98	\$93
DAILY	\$21	\$20	\$20	\$20
PART-DAY	\$14	\$13	\$13	\$13
HOURLY	\$3.25	\$3.25	\$3.25	\$3.25

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
ENHANCED RATE

	AGE OF CHILD			
	<u>Under 2</u>	<u>2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$105	\$105	\$105	\$100
DAILY	\$23	\$21	\$21	\$21
PART-DAY	\$15	\$14	\$14	\$14
HOURLY	\$3.50	\$3.50	\$3.50	\$3.50

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**GROUP 4 COUNTIES:  
Albany, Dutchess, Orange, Saratoga, and Ulster**

**DAY CARE CENTER**

	<b>AGE OF CHILD</b>			
	<b><u>Under 1 ½</u></b>	<b><u>1 ½ - 2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$262	\$247	\$225	\$220
DAILY	\$56	\$51	\$46	\$46
PART-DAY	\$37	\$34	\$31	\$31
HOURLY	\$8.50	\$8.25	\$8.50	\$9.00

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**FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME**

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$225	\$200	\$200	\$200
DAILY	\$45	\$45	\$42	\$40
PART-DAY	\$30	\$30	\$28	\$27
HOURLY	\$8.75	\$8.00	\$8.00	\$8.00

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**SCHOOL-AGE CHILD CARE**

	<b>AGE OF CHILD</b>			
	<b><u>Under 1 ½</u></b>	<b><u>1 ½ - 2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$0	\$0	\$225	\$220
DAILY	\$0	\$0	\$46	\$46
PART-DAY	\$0	\$0	\$31	\$31
HOURLY	\$0	\$0	\$8.50	\$9.00

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(Group 4 Counties)  
LEGALLY-EXEMPT GROUP CHILD CARE

	<b>AGE OF CHILD</b>			
	<b><u>Under 1 ½</u></b>	<b><u>1 1/2 – 2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$0	\$0	\$169	\$165
DAILY	\$0	\$0	\$35	\$35
PART-DAY	\$0	\$0	\$23	\$23
HOURLY	\$0	\$0	\$6.38	\$6.75

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
STANDARD RATE

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$146	\$130	\$130	\$130
DAILY	\$29	\$29	\$27	\$26
PART-DAY	\$20	\$20	\$18	\$18
HOURLY	\$5.69	\$5.20	\$5.20	\$5.20

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
ENHANCED RATE

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$158	\$140	\$140	\$140
DAILY	\$32	\$32	\$29	\$28
PART-DAY	\$21	\$21	\$20	\$19
HOURLY	\$6.13	\$5.60	\$5.60	\$5.60

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**GROUP 5 COUNTIES:  
Bronx, Kings, New York, Queens, and Richmond**

DAY CARE CENTER

	AGE OF CHILD			
	<u>Under 1 ½</u>	<u>1 ½ - 2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$371	\$268	\$242	\$210
DAILY	\$59	\$51	\$46	\$42
PART-DAY	\$39	\$34	\$31	\$28
HOURLY	\$15.75	\$17.00	\$15.75	\$9.00

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FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME

	AGE OF CHILD			
	<u>Under 2</u>	<u>2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$200	\$185	\$175	\$160
DAILY	\$37	\$35	\$33	\$32
PART-DAY	\$25	\$23	\$22	\$21
HOURLY	\$12.00	\$12.00	\$10.00	\$12.00

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SCHOOL-AGE CHILD CARE

	AGE OF CHILD			
	<u>Under 1 ½</u>	<u>1 ½ - 2</u>	<u>3 - 5</u>	<u>6-12</u>
WEEKLY	\$0	\$0	\$242	\$210
DAILY	\$0	\$0	\$46	\$42
PART-DAY	\$0	\$0	\$31	\$28
HOURLY	\$0	\$0	\$15.75	\$9.00

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(Group 5 Counties)  
 LEGALLY-EXEMPT GROUP CHILD CARE

	<b>AGE OF CHILD</b>			
	<b><u>Under 1 ½</u></b>	<b><u>1 1/2 – 2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$0	\$0	\$182	\$158
DAILY	\$0	\$0	\$35	\$32
PART-DAY	\$0	\$0	\$23	\$21
HOURLY	\$0	\$0	\$11.81	\$6.75

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
 STANDARD RATE

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$130	\$120	\$114	\$104
DAILY	\$24	\$23	\$21	\$21
PART-DAY	\$16	\$15	\$14	\$14
HOURLY	\$7.80	\$7.80	\$6.50	\$7.80

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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
 ENHANCED RATE

	<b>AGE OF CHILD</b>			
	<b><u>Under 2</u></b>	<b><u>2</u></b>	<b><u>3 - 5</u></b>	<b><u>6-12</u></b>
WEEKLY	\$140	\$130	\$123	\$112
DAILY	\$26	\$25	\$23	\$22
PART-DAY	\$18	\$16	\$15	\$15
HOURLY	\$8.40	\$8.40	\$7.00	\$8.40

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**SPECIAL NEEDS CHILD CARE**

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY           \$ 371

DAILY             \$ 60

PART-DAY        \$ 40

HOURLY           \$ 17.00





# Office of Children and Family Services

Andrew M. Cuomo  
Governor

52 WASHINGTON STREET  
RENSSELAER, NY 12144

Sheila J. Poole  
Acting Commissioner

## Local Commissioners Memorandum

<b>Transmittal:</b>	16-OCFS-LCM-03
<b>To:</b>	Local District Commissioners Director of Services Child Care Unit Supervisors Temporary Assistance Unit Supervisors
<b>Issuing Division/Office:</b>	Division of Child Care Services
<b>Date:</b>	February 26, 2016
<b>Subject:</b>	<b>30-Day Client Notification for Child Care Subsidy and Revised Client Notices</b>
<b>Contact Person(s):</b>	Michael Miller, Division of Child Care Services, (518) 408-3395 or <a href="mailto:Michael.Miller@ocfs.ny.gov">Michael.Miller@ocfs.ny.gov</a>
<b>Attachments:</b>	A: OCFS-LDSS-4779 Approval of Your Application for Child Care Benefits B: OCFS-LDSS-4780 Denial of Your Application for Child Care Benefits C: OCFS-LDSS-4781 Notice of Intent to Change Child Care Benefits and Family Share Payments D: OCFS-LDSS-4782 Notice of Intent to Discontinue Child Care Benefits E: OCFS-LDSS-4783 Delinquent Family Share F: OCFS-LDSS-4784 Approval of Your Redetermination for Child Care Benefits G: OCFS-LDSS-4785 Approval of Your Transitional Child Care Benefits H: OCFS-4773- Child Care Eligibility Re-Determination Coming Due I: OCFS-LDSS-7009 Notice of Child Care Overpayment
<b>Attachment Available Online:</b>	Original forms are available on the OCFS <i>intranet</i> only, at: <a href="http://ocfs.state.nyenet/admin/Forms/">http://ocfs.state.nyenet/admin/Forms/</a> Sample forms are available on the OCFS internet at: <a href="http://ocfs.ny.gov/main/documents/docsChildCare.asp">http://ocfs.ny.gov/main/documents/docsChildCare.asp</a>

### I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to advise local departments of social services (LDSSs) that on August 13, 2015, the Governor signed into law Chapter 144 of the Laws of 2015, which included language to repeal and revise certain provisions of the Social Services Law (SSL) regarding notification to families receiving child care assistance.

This LCM also informs LDSSs of several revised client notices that must be used by LDSSs to provide notifications to families about actions related to their child care subsidy benefit as required by Sections 34-a(9) and 410-w(8) of the SSL and Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) Parts 358, 404, and 415.

## II. Background

A January 28, 2015, letter to LDSS commissioners notified the LDSSs of a new subdivision (9) that was added to Section 34-a of SSL, which took effect on January 1, 2015. This provision specified the amount of notice an LDSS must provide to the New York State Office of Children and Family Services (OCFS) when the LDSS plans to lower eligibility levels or increase its co-payment multiplier with regard to child care assistance.

An August 18, 2015, letter to LDSS Commissioners notified the LDSSs that on August 13, 2015, Chapter 144 of the Laws of 2015 repealed and replaced subdivision (9) of Section 34-a of the SSL with a new subdivision (9), and also added a new subdivision (8) to Section 410-w of the SSL regarding notification to families receiving child care assistance.

## III. Program Implications

The first relevant change pursuant to Chapter 144 of the Laws of 2015 repeals subdivision (9) of Section 34-a of the SSL and replaces it with a new subdivision (9), retroactive to January 1, 2015. The requirements created by this change were imposed on LDSSs pursuant to 14-OCFS-LCM-01. The new subdivision (9) in conjunction with 14-OCFS-LCM-01 requires that an LDSS proposing an amendment to the child care portion of its Child and Family Services Plan (CFSP) that reduces eligibility or increases the family share percentage for child care services must:

- (i) no later than the first day the public notice appears in a newspaper pursuant to Section 34-a(3) of the SSL or the OCFS regulations, as applicable, prominently post on the LDSS's website a notice of the proposed amendment to the CFSP describing the categories of families whose cases will be impacted; and
- (ii) at the time the public notice is submitted to the newspaper for publication, provide a copy of the notice to OCFS.

The newly enacted Section 34-a(9) also requires that if an LDSS implements its process for closing child care cases, as set forth in its approved CFSP, due to the LDSS determining that it cannot maintain its current caseload because all of the available funds are projected to be needed for open cases, the LDSS must:

- (i) no later than the first day the LDSS begins to send individual client notices to impacted families in accordance with SSL 410-w(8), prominently post a notice on its website stating that the LDSS is implementing the child care case closing process set forth in its approved CFSP and describing the categories of families whose cases will be closed; and

- (ii) immediately provide a copy of such notice to OCFS.

OCFS will prominently post the notices received pursuant to SSL Section 34-a(9) on its website.

The other relevant change made pursuant to Chapter 144 of the Laws of 2015 added a new subdivision (8) to Section 410-w of the SSL, effective July 1, 2015. This new provision requires an LDSS to provide at least a 30-day written notice to all families whose eligibility for child care assistance or family share percentage will be impacted by:

- the LDSS implementing a plan amendment to the child care portion of its CFSP either as part of an annual plan update or through a separate plan amendment process, where such amendment reduces eligibility for, or increases the family share percentage of, families receiving child care services, or
- the LDSS implementing the process for closing child care cases as set forth in the LDSS's approved CFSP, due to the LDSS determining that it cannot maintain its current caseload because all of the available funds are projected to be needed for open cases.

While LDSSs are encouraged to provide families with as much notice as possible of an action that will impact their child care subsidy benefit, this statutory change does not require a 30-day notice prior to denying benefits or issuing a discontinuance notice because the client is over income or is no longer engaged in their approved activity. For these actions, an LDSS is only required to provide a minimum 10-day notice to the affected families.

#### **IV. Revised Client Notices**

LDSSs were previously notified in 13-OCFS-LCM-04, dated April 18, 2013, of the requirement to provide client notification to applicants of child care subsidy benefits funded under the New York State Child Care Block Grant (NYSCCBG) and Title XX. This LCM replaces 13-OCFS-LCM-04, and revises the client notices issued with that release and the two client notices issued after 13-OCFS-LCM-04 (OCFS-LDSS-4784 Approval of Your Redetermination and OCFS-LDSS 4785 Approval of Your Transitional Child Care Benefits).

Minor changes have been made to the first page of the client notices, and the fair hearing information has been reorganized and written in easy-to-understand language.

If an LDSS wishes to use local equivalents of the required forms listed in this LCM, such forms must be approved by the OCFS's Division of Child Care Services (DCCS) prior to their use by the LDSS. Any previously approved local equivalents of the client notices must be revised and resubmitted for approval to DCCS prior to their continued use by the LDSS.

The revised forms described below meet the standards for timely and adequate notice in accordance with 18 NYCRR §§358.-2.2 and 358-2.23. Two copies of the notice

should be sent so that applicants/recipients can use one copy to request a fair hearing and retain one for their records.

**Attachment A: OCFS-LDSS-4779 (Rev.9/15) Approval of Your Application for Child Care Benefits** must be used by the LDSS when an application for child care benefits has been approved. The LDSS must show how the family share was calculated in the family share portion of the form and indicate in the child care benefits portion of the form if the child care benefits will be paid to the parent or provider. The effective dates of the child care benefits must also be included on the notice.

**Attachment B: OCFS-LDSS-4780 (Rev.9/15) Denial of Your Application for Child Care Benefits** must be used by the LDSS when an application for child care benefits has been denied at initial application. The LDSS must select one or more of the denial reasons listed on the form. Below is the list of denial reasons and the information that must be provided.

- **The family's income for their family size exceeds 200 percent of the State Income Standard (SIS).** The LDSS must indicate the family's monthly gross income, the family's size, and the maximum SIS for the family's size. On the addendum, the LDSS must show what sources were used to determine the family's monthly gross income, and what the maximum SIS monthly income is for the family's size.
- **The family did not provide all of the required documentation.** The LDSS selects this denial reason if the family failed to provide the required documentation. The LDSS must specify what documentation the family failed to provide that led to the denial of benefits.
- **The family is not programmatically eligible.** The LDSS selects this denial reason if the reason for care is not allowed under New York State SSL or regulations, or if the LDSS has not included this category of family in its CFSP. The LDSS must cite the applicable statutory or regulatory reference and inform the applicant as to why the family's reason for care cannot be approved.
- **Due to insufficient funding, the LDSS is not opening cases.** The LDSS selects this denial reason if it has been determined that it only has sufficient funding to maintain its current caseload. At a fair hearing, the LDSS must be prepared to present supporting documentation confirming that the LDSS does not have sufficient funding to open cases for all eligible families. Supporting documentation includes, but is not limited to, the relevant allocation LCM, ceiling reports, spreadsheets showing monthly claims and available funds, and the approved child care section of its CFSP along with the plan approval letter.
- **Due to insufficient funding, the LDSS can only open cases up to a percentage (determined by the LDSS) of the State Income Standard.** The LDSS selects this denial reason if it has determined that there are insufficient funds to open cases for all eligible families. The LDSS must specify what its local priority level is for the monthly gross income standard, compared to the family's monthly gross income for the family's size. On the addendum, the LDSS must show what sources were used to determine the family's monthly gross income and what its priority level is for the monthly gross income standard for its family size. At a fair hearing, the LDSS must be prepared to present



documentation supporting its determination that it does not have sufficient funding to provide child care benefits to all eligible families. Supporting documentation includes, but is not limited to, the relevant allocation LCM, ceiling report, spreadsheets showing monthly claims and available funds, and the approved child care section of its CFSP along with the plan approval letter.

- **Other.** The LDSS selects this option when none of the options listed above apply. The LDSS must inform the applicant of the reason for the denial of his/her application. The LDSS may select this option when it denies child care services to a family that has a child with special needs who needs child care. The LDSS must describe why, in sufficient detail, a family with a special needs child needing child care was not eligible for child care benefits.

**Attachment C: OCFS-LDSS-4781 (Rev. 9/15) Notice of Intent to Change Child Care Benefits and Family Share Payments** must be used by the LDSS when there is a change in family share due to an increase or decrease in the family's income, child care provider, and/or authorization of benefits. The LDSS must give the family a minimum of a 30-day notice when they intend to increase the family share percentage; all other changes require that an LDSS provide a minimum of a 10-day notice prior to taking the action.

**Attachment D: OCFS-LDSS-4782 (Rev. 9/15) Notice of Intent to Discontinue Child Care Benefits** must be used by the LDSS when it intends to end the child care benefit. The LDSS must give the family a minimum of a 30-day notice when it intends to reduce eligibility by amending its CFSP or implements the process for closing child care cases as described in either its approved CFSP or the annual plan update. LDSSs are encouraged to provide families with as much notice as possible; however, the LDSS must still provide a minimum 10-day notice when denying a child care benefit because the client is over income or no longer engaged in their approved activity.

The LDSS must select one or more of the closing reasons listed on the form. Below is the list of closing reasons and the information that must be provided.

- **The family's income for their family size exceeds 200 percent of the SIS.** The LDSS must indicate the family's monthly gross income and the maximum SIS for its family size. On the addendum, the LDSS must show what sources were used to determine the family's monthly gross income and specify what the maximum SIS monthly income is for its family size.
- **The family did not provide all of the required documentation.** The LDSS selects this denial reason if the family failed to provide the required documentation. The LDSS must specify the documentation the family failed to provide that led to the denial of benefits.
- **The family is not programmatically eligible.** The LDSS selects this denial reason if the reason for care is not allowed under SSL or New York State regulations, or if this category of family was not included in the LDSS's CFSP. The LDSS must inform the applicant as to why the family's reason for care cannot be approved. If the denial is based on SSL or New York State

regulations, the LDSS must cite the statutory or regulatory requirement in the reason for denial.

- **Due to insufficient funding, the LDSS is not able to serve all eligible families.** The LDSS selects this closing reason if it has projected that it does not have sufficient funding to maintain its current caseload. The LDSS must specify its income priority level for the monthly gross income standard for the family's size compared to the family's monthly gross income. On the addendum, the LDSS must show what sources were used to determine the family's monthly gross income, and indicate the LDSS's priority level for the monthly gross income standard for the family's size. At a fair hearing, the LDSS must be prepared to present documentation showing that the LDSS does not have sufficient funding to provide child care benefits to all eligible families. Supporting documentation includes, but is not limited to, the relevant allocation LCM, ceiling reports, spreadsheets showing monthly claims and available funds, and the approved child care section of its CFSP along with the plan approval letter.
- **Other.** The LDSS selects this option when none of the options listed above apply. The LDSS must inform the recipient why their child care case is closing. The LDSS may select this option when it discontinues child care services to a family needing child care for a child with special needs. The LDSS must describe, in sufficient detail, the reason a family with a child with special needs needing child care will no longer be eligible for child care benefits.

**Attachment E: OCFS-LDSS-4783 (Rev. 9/15) Delinquent Family Share** must be used by the LDSS when a family has been delinquent in paying its family share.

**Attachment F: OCFS-LDSS-4784 (Rev. 9/15) Approval of Your Redetermination for Child Care Benefits** must be used by the LDSS when an application for child care benefits has been approved at redetermination. This new client notice provides recipients of child care benefits with the option of choosing to have aid continuing.

**Attachment G: OCFS-LDSS-4785 (Rev 9/15) Approval of Your Transitional Child Care Benefits** must be used by the LDSS when a family has been approved for transitional child care benefits. The LDSS must show how the family share was calculated in the family share portion of the form and indicate if the child care benefits will be paid to the parent or provider in the benefits portion of the form. The effective dates of the child care benefits must also be included on the notice. This new client notice provides recipients the option to choose to have aid continuing; this notice also eliminates the need to send the OCFS-LDSS-4781 Notice of Intent to Change Child Care Benefits and Family Share Payments to inform the client that they must now pay a family share.

**Attachment H: OCFS-4773 (Rev. 3/13) Child Care Eligibility Re-Determination Coming Due** may be used by the LDSS to notify the family that the re-determination of their programmatic and financial eligibility is coming due. The form advises the family what documentation is needed to re-determine the family's eligibility.

**Attachment I: OCFS-LDSS-7009 (Rev. 9/15) Notice of Child Care Overpayment** must be used when it has been determined that a child care overpayment to a recipient or former recipient has occurred. The LDSS must include: the amount of the overpayment, the reason the overpayment occurred, and a repayment plan agreement.

#### **VI. Access to Client Notices Forms**

The client notices are available in English and Spanish on the OCFS intranet site at <http://ocfs.state.nyenet/admin/Forms/> and will soon be available in Chinese, Russian, Creole, Korean, and Italian.

The client notices are available in English and Spanish through the Child Care Time and Attendance System (CCTA). LDSSs are encouraged to use the client notices through CCTA as most of the information will auto-fill, decreasing the staff time needed to complete the forms.

Hard copies of the client notices will be available 30 days from the release of this LCM.

#### **VII. Effective Date**

The change repealing Section 34-a(9) of the SSL and adding a new Section 34-a(9) became effective January 1, 2015.

The change adding subdivision (8) to Section 410-w of the SSL became effective on July 1, 2015.

LDSSs must begin using the revised client notices immediately.

*/s/ Janice M. Molnar Ph.D.*

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**Issued By:**

Janice M. Molnar Ph.D.  
Deputy Commissioner  
Division of Child Care Services



NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**APPROVAL OF YOUR APPLICATION FOR CHILD CARE BENEFITS**

NOTICE DATE:	EFFECTIVE ELIGIBILITY DATE	NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE
CASE NUMBER	CIN NUMBER	
CASE NAME (And C/O Name if Present) AND ADDRESS		GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP
		OR Agency Conference _____
		Fair Hearing information and assistance <b>1-800-342-3334</b>
		Record Access _____
		Legal Assistance Information _____

OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	WORKER TELEPHONE NO.
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Your application dated \_\_\_\_\_ for child care benefits has been approved. You are eligible to receive child care benefits for child care provided on \_\_\_\_\_ through \_\_\_\_\_ while you are \_\_\_\_\_

Comments:

**YOU HAVE THE RIGHT TO A CONFERENCE AND/OR A HEARING TO APPEAL THIS DECISION  
READ THE BACK OF THIS NOTICE ON HOW TO REQUEST A CONFERENCE AND/OR HEARING TO APPEAL THIS DECISION**

**BENEFITS. Payment will be provided on behalf of the following:**

Child(ren):	For this provider:	For the amount of:**	Full Time or Part Time:

*\*\*Payment may vary based on fluctuations in your approved activity and/or absences.*

**Benefits will be paid:**  Directly to you.  Directly to your provider.  
Your child care provider must submit a bill and attendance sheet to your local department of social services.

**FAMILY SHARE. You are responsible for paying the following fees:**

- Effective \_\_\_\_\_, a **Weekly Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week.
- Effective \_\_\_\_\_, an **Additional Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week.
- Effective \_\_\_\_\_, a **Court Ordered Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week, for the child(ren) \_\_\_\_\_.

**The following information is an explanation of how your weekly family share was determined.**

Family's annual gross income	\$ _____
Minus 100% annual state income standard for a family size of _____	\$ _____
Remaining income	\$ _____
Remaining income	\$ _____ X family share % _____ % = \$ _____
\$ _____ / 52 weeks =	\$ _____ weekly family share

All family share amounts are rounded to the nearest \$0.50. There is a minimum fee of \$1 per week for all families not receiving TA.

**In order to continue to receive benefits these are your responsibilities:**

- Notify your caseworker immediately of any change in family income, who lives in your house, employment, child care arrangements or other changes which may affect your continued eligibility or the amount of your benefit.
- Promptly pay any family share required.

The LAW(S) AND/OR REGULATION(S) that allows us to do this is:

**RIGHT TO ACCEPT OR DECLINE SERVICES:** Approval of your benefits does not obligate you to accept the services. You may choose to decline the services by contacting your local department of social services.

**If you disagree with your local department of social services decision you may request a conference and/or a fair hearing.**

- 1. **CONFERENCE:** You have a right to a conference with your local department of social services to review the determination. If you want a conference, you should request one AS SOON AS POSSIBLE, because the outcome of the conference may impact your decision to request a fair hearing. At the conference, you may present information to demonstrate why you believe the agency action is not correct.

**You may request a conference by:**

(1) **Calling:** \_\_\_\_\_ (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Writing:** Check the box below and mail to \_\_\_\_\_  
Please keep a copy for yourself.

I want a conference. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

- 2. **FAIR HEARING:** You have a right to a fair hearing to appeal the determination of the local department of social services. If you want a fair hearing, you have 60 DAYS from the NOTICE DATE, located on the front page, to make the request. You can request a fair hearing without requesting a conference.

**You may request a fair hearing by:**

(1) **Calling:** 1-800-342-3334 (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Online:** To send your fair hearing request online, go to <http://www.otda.ny.gov/oah>, click on the links to request a fair hearing using the online form, and follow the instructions to complete and submit the form online.

(3) **Writing:** Check the box, complete the information below and mail to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York, 12201-1930. Please keep a copy for yourself.

(4) **Faxing:** Check the box, complete the information below and fax both sides of this form to (518) 473-6735.

I want a fair hearing. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

Name: \_\_\_\_\_

District: \_\_\_\_\_

Address: \_\_\_\_\_

Case Number: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, pay-stubs, receipts, child care bills, medical verification, letters, etc. that may be helpful in presenting your case.

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will provide you with free copies of the documents from your file, which we will give to the hearing officer at the fair hearing. To ask for documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice. Also, if you call or write to us, we will provide you with free copies of other documents from your file which you may need to prepare for your fair hearing. If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you **only** if you specifically ask that they be mailed.

**INFORMATION:** If you want more information about your case, how to ask for a conference or fair hearing, how to see your file, or how to get additional copies of documents, call us at the telephone numbers listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice.

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**DENIAL OF YOUR APPLICATION FOR CHILD CARE BENEFITS**

NOTICE DATE:		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE	
CASE NUMBER	CIN NUMBER		
CASE NAME (And C/O Name if Present) AND ADDRESS			
		GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP	
		OR Agency Conference	
		Fair Hearing information and assistance <b>1-800-342-3334</b>	
		Record Access	
		Legal Assistance Information	

OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	WORKER TELEPHONE NO.
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Your application dated \_\_\_\_\_ for child care benefits has been **denied** and the reason(s) your application has denied are explained below.

Comments: \_\_\_\_\_

**YOU HAVE THE RIGHT TO A CONFERENCE AND/OR A HEARING TO APPEAL THIS DECISION  
READ THE BACK OF THIS NOTICE ON HOW TO REQUEST A CONFERENCE AND/OR HEARING TO APPEAL THIS DECISION**

**You are ineligible to receive benefits because:**

- Your family's gross income exceeds 200% of the State Income Standard, which is the maximum income allowed by New York State regulation to be eligible for child care subsidy. Your family's monthly gross income of \$ \_\_\_\_\_ exceeds the maximum monthly income of \$ \_\_\_\_\_ for a family size of \_\_\_\_\_.  
*(Please see the attached addendum for additional information)*
- You have not provided us with the following documents: \_\_\_\_\_  
\_\_\_\_\_
- You are not programmatically eligible for child care services because: \_\_\_\_\_  
\_\_\_\_\_
- Due to insufficient funding the district is not opening cases at this time.
- Due to insufficient funding, the district is only opening cases up to \_\_\_\_\_% of the State Income Standard. Your family's monthly gross income of \$ \_\_\_\_\_ exceeds the maximum monthly gross income of \$ \_\_\_\_\_ for your family size. Also, your family does not meet the eligibility criteria for a child care guarantee designation. *(Please see attached addendum for additional information)*
- Other: \_\_\_\_\_  
\_\_\_\_\_

The LAW(S) AND/OR REGULATION(S) that allows us to do this is: \_\_\_\_\_  
\_\_\_\_\_

**If you disagree with your local department of social services decision you may request a conference and/or a fair hearing.**

- 1. **CONFERENCE:** You have a right to a conference with your local department of social services to review the determination. If you want a conference, you should request one AS SOON AS POSSIBLE, because the outcome of the conference may impact your decision to request a fair hearing. At the conference, you may present information to demonstrate why you believe the agency action is not correct.

**You may request a conference by:**

(1) **Calling:** \_\_\_\_\_ (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Writing:** Check the box below and mail to \_\_\_\_\_  
Please keep a copy for yourself.

I want a conference. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

- 2. **FAIR HEARING:** You have a right to a fair hearing to appeal the determination of the local department of social services. If you want a fair hearing, you have 60 DAYS from the NOTICE DATE, located on the front page, to make the request. You can request a fair hearing without requesting a conference.

**You may request a fair hearing by:**

(1) **Calling:** 1-800-342-3334 (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Online:** To send your fair hearing request online, go to <http://www.otda.ny.gov/oah>, click on the links to request a fair hearing using the online form, and follow the instructions to complete and submit the form online.

(3) **Writing:** Check the box, complete the information below and mail to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York, 12201-1930. Please keep a copy for yourself.

(4) **Faxing:** Check the box, complete the information below and fax both sides of this form to (518) 473-6735.

I want a fair hearing. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

District: \_\_\_\_\_  
Case Number: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, pay-stubs, receipts, child care bills, medical verification, letters, etc. that may be helpful in presenting your case.

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will provide you with free copies of the documents from your file, which we will give to the hearing officer at the fair hearing. To ask for documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice. Also, if you call or write to us, we will provide you with free copies of other documents from your file which you may need to prepare for your fair hearing. If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you **only** if you specifically ask that they be mailed.

**INFORMATION:** If you want more information about your case, how to ask for a conference or fair hearing, how to see your file, or how to get additional copies of documents, call us at the telephone numbers listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice.



**ADDENDUM TO DENIAL OF YOUR APPLICATION  
FOR CHILD CARE BENEFITS-FINANCIAL ELIGIBILITY CALCULATION**

Effective Date: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

We have determined that you are not eligible for child care benefits. Your family's monthly gross income is \$ \_\_\_\_\_.

This exceeds the maximum monthly gross income standard of \$ \_\_\_\_\_ for a family size of \_\_\_\_\_.

**Please check the information below. If there is a mistake contact your caseworker listed on page one of this notice. If there is a mistake, it could mean that the decision made about your benefits is not correct.**

There is a child with special needs residing in your household.  Yes  No **If you have a child with special needs, that needs child care, you may have received this notice in error. Contact your caseworker on page one of this notice to determine if you were denied child care benefits in error.**

Your family's <b>monthly gross income</b> was determined from the following sources:		
<input type="checkbox"/>	Wages or salary (18 NYCRR § 404.5(b)(5)(i)) before taxes in the amount of:	\$ _____ per month.
<input type="checkbox"/>	Social Security (18 NYCRR §404.5(b)(5)(iv)) in the amount of:	\$ _____ per month.
<input type="checkbox"/>	Child Support (18 NYCRR §404.5(b)(5)(xi)) in the amount of:	\$ _____ per month.
<input type="checkbox"/>	*Other income not listed above as defined in New York State regulation 18 NYCRR §404.5(b)(5) in the amount of:	\$ _____ per month.
	<b>Your family's total monthly gross income:</b>	\$ _____ per month.

The following information is an explanation of how your eligibility for child care benefits was determined. To determine eligibility for child care benefits, your family's monthly gross income for your family size was compared to the Social Service District's (SSD) priority level for the monthly income standard. For a family to be eligible for child care benefits, a family must make less than the Monthly Income Standard amount listed below for their family size. Below are the Monthly Income Standards used by the district to determine your eligibility for child care benefits.

Family Size	SSD's Priority Level = ____% Monthly Income Standard
1	
2	
3	
4	
5	
6	
7	
8	

For families with more than 8 persons, add \$ \_\_\_\_\_ for each additional person.

**Your family's monthly gross income is \$ \_\_\_\_\_ for a family size of \_\_\_\_\_. This exceeds the maximum of \$ \_\_\_\_\_.**

\*Other income not listed above and defined in New York State regulation 18 NYCRR 404.5(b)(5) are defined as but not limited to the following: net income for non-farm self-employment, i.e. gross receipts minus expenses from one's own business, professional enterprise or partnership; or net income from farm self-employment, i.e. gross receipts minus operation expenses from the operation of a firm by a person on his own account, as owner, renter or sharecropper; or dividends, interest (on savings or bonds) income from estates or trusts, net rental income or royalties; public assistance (PA) or welfare payments include PA payments such as SSI and home relief; or pensions and annuities include pensions or retirement benefits paid to a retired person or his survivors; or unemployment compensation, workers' compensation; or alimony; or veterans' pensions.

In addition to the citations listed on the attached notice refer to the district's Child and Family Services Plan, at <http://ocfs.ny.gov/main/childcare/plans/plans.asp> for additional information on how the district closes cases in the event that there are insufficient funds to provide child care benefits to all eligible families and the order in which they will open new cases should funding become available.



NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES

**NOTICE OF INTENT TO CHANGE CHILD CARE BENEFITS AND FAMILY SHARE PAYMENTS**

NOTICE DATE:		EFFECTIVE BENEFIT CHANGE DATE	NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE	
CASE NUMBER		CIN NUMBER		
CASE NAME (And C/O Name if Present) AND ADDRESS			GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP	
			OR Agency Conference	
			Fair Hearing information and assistance <b>1-800-342-3334</b>	
			Record Access	
			Legal Assistance Information	

OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	WORKER TELEPHONE NO.
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This agency intends to change your child care benefit. Your current benefit will end and a new benefit will begin. Your current benefit will include services provided through \_\_\_\_\_  
 The new benefit will begin with child care services provided on \_\_\_\_\_ through \_\_\_\_\_  
 The changes are: \_\_\_\_\_

Comments:

**YOU HAVE THE RIGHT TO A CONFERENCE AND/OR A HEARING TO APPEAL THIS DECISION  
 READ THE BACK OF THIS NOTICE ON HOW TO REQUEST A CONFERENCE AND/OR HEARING TO APPEAL THIS DECISION**

**BENEFITS:**

Child(ren):	For this provider:	For the amount of:*	Full Time or Part Time:

*\*Payment may vary based on fluctuations in your approved activity and/or absences.*

**FAMILY SHARE. You are responsible for paying the following fees:**

- Effective \_\_\_\_\_, a **Weekly Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week.
- Effective \_\_\_\_\_, an **Additional Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week.
- Effective \_\_\_\_\_, a **Court Ordered Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week, for the child(ren) \_\_\_\_\_.

**The following information is an explanation of how your weekly family share was determined.**

Family's annual gross income	\$	_____
Minus 100% annual state income standard for a family size of _____	\$	_____
Remaining income	\$	_____
Remaining income	\$	_____ X family share % _____ % = \$
\$ _____ / 52 weeks =	\$	_____ weekly family share.

All family share amounts are rounded to the nearest \$0.50. There is a minimum fee of \$1 per week for all families not receiving TA.

The reason for this action is: \_\_\_\_\_

The LAW(S) AND/OR REGULATION(S) that allows us to do this is: \_\_\_\_\_

**If you disagree with your local department of social services decision you may request a conference and/or a fair hearing.**

- 1. **CONFERENCE:** You have a right to a conference with your local department of social services to review the determination. If you want a conference, you should request one AS SOON AS POSSIBLE, because the outcome of the conference may impact your decision to request a fair hearing. If you want a fair hearing and your child care benefit to remain unchanged (aid continuing) until the fair hearing decision is issued you must request a fair hearing before the EFFECTIVE BENEFIT CHANGE DATE on the front page of this notice. A request for a conference alone will not result in your benefits being continued. At the conference, you may present information to demonstrate why you believe the agency action is not correct.

**You may request a conference by:**

(1) **Calling:** \_\_\_\_\_ (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Writing:** Check the box below and mail to \_\_\_\_\_  
Please keep a copy for yourself.

I want a conference. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

- 2. **FAIR HEARING:** You have a right to a fair hearing to appeal the determination of the local department of social services. If you want a fair hearing, you have 60 DAYS from the NOTICE DATE, located on the front page, to make the request. If you do not want your child care benefit to change until the fair hearing decision is issued, you must request a fair hearing before the EFFECTIVE BENEFIT CHANGE DATE listed on the front page of this notice. You do not have to request a conference before requesting a fair hearing.

You may request to keep your child care benefit unchanged until a fair hearing decision has been issued. If you request your benefit not to be changed until a fair hearing decision has been issued, and you lose the fair hearing, you will have been overpaid. The local department of social services will seek to recover the overpayment from you by reducing future child care benefits, by collecting a lump sum payment or installment payments, or through legal action.

**You may request a fair hearing by:**

(1) **Calling:** 1-800-342-3334 (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Online:** To send your fair hearing request online, go to <http://www.otda.ny.gov/oah>, click on the links to request a fair hearing using the online form, and follow the instructions to complete and submit the form online.

(3) **Writing:** Check the box and complete the information below. Mail to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York, 12201-1930. Please keep a copy for yourself.

(4) **Faxing:** Check the box and complete the information below. Fax both sides of this form to (518) 473-6735.

I want a fair hearing. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

**Select one.**

Do **NOT** change my child care benefit until a fair hearing decision has been issued.

Change my child care benefit on the effective date listed on this notice, pending the fair hearing decision.

Name: \_\_\_\_\_

District: \_\_\_\_\_

Address: \_\_\_\_\_

Case Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, pay-stubs, receipts, child care bills, medical verification, letters, etc. that may be helpful in presenting your case

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will provide you with free copies of the documents from your file, which we will give to the hearing officer at the fair hearing. To ask for documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice. Also, if you call or write to us, we will provide you with free copies of other documents from your file which you may need to prepare for your fair hearing. If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you **only** if you specifically ask that they be mailed.

**INFORMATION:** If you want more information about your case, how to ask for a conference or fair hearing, how to see your file, or how to get additional copies of documents, call us at the telephone numbers listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice.

### ADDENDUM TO NOTICE OF INTENT TO CHANGE CHILD CARE BENEFITS AND FAMILY SHARE PAYMENTS-FINANCIAL ELIGIBILITY CALCULATION

Effective Date: \_\_\_\_\_  
 Case Name: \_\_\_\_\_  
 Case Number: \_\_\_\_\_

The amount that you pay for your family share has changed from \_\_\_\_\_ to \_\_\_\_\_

**Below are the sources of income used to calculate your family's income and the calculation used to determine your family share.**

**Please check the information below. If there is a mistake contact your caseworker listed on page one of this notice.**

Your family's <b>monthly gross income</b> was determined from the following sources:		
<input type="checkbox"/> Wages or salary (18 NYCRR § 404.5(b)(5)(i)) before taxes in the amount of:	\$ _____	per month.
<input type="checkbox"/> Social Security (18 NYCRR §404.5(b)(5)(iv)) in the amount of:	\$ _____	per month.
<input type="checkbox"/> Child Support (18 NYCRR §404.5(b)(5)(xi)) in the amount of:	\$ _____	per month.
*Other income not listed above as defined in New York State regulation		
<input type="checkbox"/> 18 NYCRR §404.5(b)(5) in the amount of:	\$ _____	per month.
<b>Your family's total monthly gross income:</b>	<b>\$ _____</b>	<b>per month.</b>

The following information is an explanation of how your weekly family share was determined.		
	Family's total monthly gross income	\$ _____ X 12 months = \$ _____ Annual Income
	Family's annual gross income	\$ _____
Minus 100% state income standard for a family size of _____		\$ _____
	Remaining income	\$ _____
	Remaining income	\$ _____ X family share % _____ % = \$ _____
	\$ _____ / 52 weeks =	\$ _____ weekly family share.

Family Size	100% Annual State Income Standard
1	
2	
3	
4	
5	
6	
7	
8	

For families with more than 8 persons, add \$ \_\_\_\_\_ for each additional person.

\*Other income not listed above and defined in New York State regulation 18 NYCRR 404.5(b)(5) are defined as but not limited to the following: net income for non-farm self-employment, i.e. gross receipts minus expenses from one's own business, professional enterprise or partnership; or net income from farm self-employment, i.e. gross receipts minus operation expenses from the operation of a firm by a person on his own account, as owner, renter or sharecropper; or dividends, interest (on savings or bonds) income from estates or trusts, net rental income or royalties; public assistance (PA) or welfare payments include PA payments such as PA, SSI and home relief; or pensions and annuities include pensions or retirement benefits paid to a retired person or his survivors; or unemployment compensation, workers' compensation; or alimony; or veterans' pensions.



NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**NOTICE OF INTENT TO DISCONTINUE CHILD CARE BENEFITS**

NOTICE DATE:		EFFECTIVE CLOSING DATE		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE	
CASE NUMBER		CIN NUMBER		GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP ----- OR    Agency Conference Fair Hearing information and assistance <b>1-800-342-3334</b> Record Access Legal Assistance Information	
CASE NAME (And C/O Name if Present) AND ADDRESS					
OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	WORKER TELEPHONE NO.	
This notice is to inform you that your child care benefit case will be closed on (date) ____ / ____ / ____ . You are not eligible for child care benefits for services provided after _____.					
Comments: _____					
<b>YOU HAVE THE RIGHT TO A CONFERENCE AND/OR A HEARING TO APPEAL THIS DECISION</b> <b>READ THE BACK OF THIS NOTICE ON HOW TO REQUEST A CONFERENCE AND/OR HEARING TO APPEAL THIS DECISION</b>					
<b>The reason for this action is:</b>					
<input type="checkbox"/> Your family's gross income exceeds 200% of the State Income Standard, which is the maximum income allowed by New York State regulation to be eligible for child care subsidy. Your family's monthly gross income of \$ _____ exceeds the maximum monthly income of \$ _____ for a family size of _____. (Please see the attached addendum for additional information)					
<input type="checkbox"/> Due to insufficient funding, the district is closing cases at or above _____ % of the State Income Standard. Your family's monthly gross income of \$ _____ exceeds the maximum monthly gross income of \$ _____ for your family size. Also, your family does not meet the eligibility criteria for a child care guarantee designation. (Please see the attached addendum for additional information)					
<input type="checkbox"/> You are not programmatically eligible for child care services because: _____ _____ _____					
<input type="checkbox"/> You did not provide the following documentation or the following documentation was not adequate: _____ _____ _____					
<input type="checkbox"/> Other _____ _____ _____					
The LAW(S) AND/OR REGULATION(S) that allows us to do this is: _____ _____ _____					

**If you disagree with your local department of social services decision you may request a conference and/or a fair hearing.**

1. **CONFERENCE:** You have a right to a conference with your local department of social services to review the determination. If you want a conference, you should request one AS SOON AS POSSIBLE, because the outcome of the conference may impact your decision to request a fair hearing. If you want a fair hearing and your child care benefit to remain unchanged (aid continuing) until the fair hearing decision is issued you must request a fair hearing before the EFFECTIVE CLOSING DATE on the front page of this notice. A request for a conference alone will not result in your benefits being continued. At the conference, you may present information to demonstrate why you believe the agency action is not correct.

**You may request a conference by:**

(1) **Calling:** \_\_\_\_\_ (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Writing:** Check the box below and mail to \_\_\_\_\_  
Please keep a copy for yourself.

I want a conference. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

2. **FAIR HEARING:** You have a right to a fair hearing to appeal the determination of the local department of social services. If you want a fair hearing, you have 60 DAYS from the NOTICE DATE, located on the front page, to make the request. If you do not want your child care benefit to change until the fair hearing decision is issued, you must request a fair hearing before the EFFECTIVE CLOSING DATE listed on the front page of this notice. You do not have to request a conference before requesting a fair hearing.

You may request to keep your child care benefit until a fair hearing decision has been issued. If you request your benefit to be continued until a fair hearing decision has been issued, and you lose the fair hearing, you will have been overpaid. The local department of social services will seek to recover the overpayment from you by reducing future child care benefits, by collecting a lump sum payment or installment payments, or through legal action.

**You may request a fair hearing by:**

(1) **Calling: 1-800-342-3334.** (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL)

(2) **Online:** To send your fair hearing request online, go to <http://www.otda.ny.gov/oah>, click on the links to request a fair hearing using the online form, and follow the instructions to complete and submit the form online.

(3) **Writing:** Check the box and complete the information below. Mail to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York, 12201-1930. Please keep a copy for yourself.

(4) **Faxing:** Check the box and complete the information below. Fax both sides of this form to (518) 473-6735.

I want a fair hearing. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

**Select one.**

Do **NOT** stop my child care benefit until a fair hearing decision has been issued.

Stop my child care benefit on the effective date listed on this notice, pending the fair hearing decision.

Name: \_\_\_\_\_ District: \_\_\_\_\_

Address: \_\_\_\_\_ Case Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, pay-stubs, receipts, child care bills, medical verification, letters, etc. that may be helpful in presenting your case.

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will provide you with free copies of the documents from your file, which we will give to the hearing officer at the fair hearing. To ask for documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice. Also, if you call or write to us, we will provide you with free copies of other documents from your file which you may need to prepare for your fair hearing. If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you **only** if you specifically ask that they be mailed.

**INFORMATION:** If you want more information about your case, how to ask for a conference or fair hearing, how to see your file, or how to get additional copies of documents, call us at the telephone numbers listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice.



**ADDENDUM TO NOTICE OF INTENT  
TO DISCONTINUE CHILD CARE BENEFITS-FINANCIAL ELIGIBILITY CALCULATION**

Effective Date: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

We have determined that you are no longer eligible for child care benefits. Your family's monthly gross income is \$ \_\_\_\_\_.

This exceeds the maximum monthly gross income standard of \$ \_\_\_\_\_ for a family size of \_\_\_\_\_.

**Please check the information below. If there is a mistake contact your caseworker listed on page one of this notice. If there is a mistake, it could mean that the decision made about your benefits is not correct.**

There is a child with special needs residing in your household.  Yes  No **If you have a child with special needs, that needs child care, you may have received this notice in error. Contact your caseworker listed on page one of this notice to determine if your case was closed in error.**

Your family's monthly gross income was determined from the following sources:		
<input type="checkbox"/>	Wages or salary (18 NYCRR § 404.5(b)(5)(i)) before taxes in the amount of:	\$ _____ per month.
<input type="checkbox"/>	Social Security (18 NYCRR §404.5(b)(5)(iv)) in the amount of:	\$ _____ per month.
<input type="checkbox"/>	Child Support (18 NYCRR §404.5(b)(5)(xi)) in the amount of:	\$ _____ per month.
<input type="checkbox"/>	*Other income not listed above as defined in New York State regulation 18 NYCRR §404.5(b)(5) in the amount of:	\$ _____ per month.
	<b>Your family's total monthly gross income:</b>	\$ _____ per month.

The following information is an explanation of how your eligibility for child care benefits was determined. To determine eligibility for child care benefits, your family's monthly gross income for your family size was compared to the Social Service District's (SSD) priority level for the monthly income standard. For a family to be eligible for child care benefits, a family must make less than the Monthly Income Standard amount listed below for their family size. Below are the Monthly Income Standards used by the district to determine your eligibility for child care benefits.

Family Size	SSD's Priority level = _____% Monthly Income Standard
1	
2	
3	
4	
5	
6	
7	
8	

For families with more than 8 persons, add \$ \_\_\_\_\_ for each additional person.

**Your family's monthly gross income is \$ \_\_\_\_\_ for a family size of \_\_\_\_\_.**

**This exceeds the maximum income of \$ \_\_\_\_\_.**

\*Other income not listed above and defined in New York State regulation 18NYCRR 404.5(b)(5) are defined as but not limited to the following: net income for non-farm self-employment, i.e. gross receipts minus expenses from one's own business, professional enterprise or partnership; or net income from farm self-employment, i.e. gross receipts minus operation expenses from the operation of a firm by a person on his own account, as owner, renter or sharecropper; or dividends, interest (on savings or bonds) income from estates or trusts, net rental income or royalties, public assistance (PA) or welfare payments include PA payments such as PA, SSI and home relief; or pensions and annuities include pensions or retirement benefits paid to a retired person or his survivors; or unemployment compensation, workers' compensation; or alimony; or veterans' pensions.

In addition to the citations listed on the attached notice refer to the district's Child and Family Services Plan, at <http://ocfs.ny.gov/main/childcare/plans/plans.asp> for additional information on how the district closes cases in the event that there are insufficient funds to provide child care benefits to all eligible families and the order in which they will open new cases should funding become available.



NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**DELINQUENT FAMILY SHARE FOR CHILD CARE BENEFITS**

NOTICE DATE:			NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE		
CASE NUMBER		CIN NUMBER			
CASE NAME (And C/O Name if Present) AND ADDRESS					
			GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP		
			OR Record Access _____ Legal Assistance Information _____		
OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME		TELEPHONE NO.
This notice is to tell you that you are delinquent in making payment of your family share of \$ _____ per _____ (week/month). The total amount overdue is \$ _____. If the total amount overdue has not been paid, or if a satisfactory arrangement to make payment of the amount overdue has not been made by _____, this agency will take action to discontinue your child care benefits.					
You must pay the total amount overdue <u>or</u> make a satisfactory arrangement for payment of the overdue amount no later than _____ to avoid further action by this agency.					
If you need to arrange a payment plan, contact: _____					
Your overdue fees should be paid to: _____					
The Law(s) and/or Regulation(s) that allow us to do this is: <b>18 NYCRR Section 404.6(a) and 404.6(b).</b>					

**FAILURE TO PAY FAMILY SHARE OR MEET THE REQUIREMENTS OF YOUR PAYMENT PLAN WILL LEAD TO DISCONTINUANCE OF YOUR CHILD CARE BENEFITS.**



NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**APPROVAL OF YOUR REDETERMINATION FOR CHILD CARE BENEFITS**

NOTICE DATE:	EFFECTIVE DATE	NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE	
CASE NUMBER	CIN NUMBER		
CASE NAME (And C/O Name if Present) AND ADDRESS		GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP	
		OR Agency Conference	
		Fair Hearing information and assistance <b>1-800-342-3334</b>	
		Record Access	
		Legal Assistance Information	

OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	WORKER TELEPHONE NO.
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Your application dated \_\_\_\_\_ for child care benefits has been approved. You are eligible to receive child care benefits for child care provided \_\_\_\_\_ on \_\_\_\_\_ through \_\_\_\_\_ while you are \_\_\_\_\_.

Comments:

**YOU HAVE THE RIGHT TO A CONFERENCE AND/OR A HEARING TO APPEAL THIS DECISION  
READ THE BACK OF THIS NOTICE ON HOW TO REQUEST A CONFERENCE AND/OR HEARING TO APPEAL THIS DECISION**

**BENEFITS. Payment will be provided on behalf of the following:**

Child(ren):	For this provider:	For the amount of:**	Full Time or Part Time:

**\*\*Payment may vary based on fluctuations in your approved activity and/or absences.**

**Benefits will be paid:**  Directly to you.  Directly to your provider.  
Your provider must submit a bill and attendance sheet to your local department of social services.

**FAMILY SHARE. You are responsible for paying the following fees:**

- Effective \_\_\_\_\_, a **Weekly Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week.
- Effective \_\_\_\_\_, an **Additional Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week.
- Effective \_\_\_\_\_, a **Court Ordered Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week, for the child(ren) \_\_\_\_\_.

**The following information is an explanation of how your weekly family share was determined.**

Family's annual gross income \$ \_\_\_\_\_  
 Minus 100% annual state income standard for a family size of \_\_\_\_\_ \$ \_\_\_\_\_  
 Remaining income \$ \_\_\_\_\_  
 Remaining income \$ \_\_\_\_\_ X family share % \_\_\_\_\_ % = \$ \_\_\_\_\_  
 \$ \_\_\_\_\_ / 52 weeks = \$ \_\_\_\_\_ weekly family share

All family share amounts are rounded to the nearest \$0.50. There is a minimum fee of \$1 per week for all families not receiving TA.

**In order to continue to receive benefits these are your responsibilities:**

- Notify your caseworker immediately of any change in family income, who lives in your house, employment, child care arrangements or other changes which may affect your continued eligibility or the amount of your benefit.
- Promptly pay any family share required.

The LAW(S) AND/OR REGLATIONS(S) that allows us to do this is:

**RIGHT TO ACCEPT OR DECLINE SERVICES:** Approval of your benefits does not obligate you to accept the services. You may choose to decline the services by contacting your local department of social services.

**If you disagree with your local department of social services decision you may request a conference and/or a fair hearing.**

1. **CONFERENCE:** You have a right to a conference with your local department of social services to review the determination. If you want a conference, you should request one AS SOON AS POSSIBLE, because the outcome of the conference may impact your decision to request a fair hearing. If you want a fair hearing and your child care benefit to remain unchanged (aid continuing) until the fair hearing decision is issued you must request a fair hearing before the EFFECTIVE DATE on the front page of this notice. A request for a conference alone will not result in your benefits being continued. At the conference, you may present information to demonstrate why you believe the agency action is not correct.

**You may request a conference by:**

(1) **Calling:** \_\_\_\_\_ (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Writing:** Check the box below and mail to \_\_\_\_\_  
Please keep a copy for yourself.

I want a conference. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

2. **FAIR HEARING:** You have a right to a fair hearing to appeal the determination of the local department of social services. If you want a fair hearing, you have 60 DAYS from the NOTICE DATE, located on the front page, to make the request. If you do not want your child care benefit to change until the fair hearing decision is issued, you must request a fair hearing before the EFFECTIVE DATE listed on the front page of this notice. You can request a fair hearing without requesting a conference.

You may request to keep your child care benefit unchanged until a fair hearing decision has been issued. If you request your benefit not to be changed until a fair hearing decision has been issued, and you lose the fair hearing, you will have been overpaid. The local department of social services will seek to recover the overpayment from you by reducing future child care benefits, by collecting a lump sum payment or installment payments, or through legal action.

**You may request a fair hearing by:**

(1) **Calling:** 1-800-342-3334 (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Online:** To send your fair hearing request online, go to <http://www.otda.ny.gov/oah>, click on the links to request a fair hearing using the online form, and follow the instructions to complete and submit the form online.

(3) **Writing:** Check the box, complete the information below and mail to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York, 12201-1930. Please keep a copy for yourself.

(4) **Faxing:** Check the box, complete the information below and fax both sides of this form to (518) 473-6735.

I want a fair hearing. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

**Select one.**

Do **NOT** change my child care benefit until a fair hearing decision has been issued.

Change my child care benefit on the effective date listed on this notice, pending the fair hearing decision.

Name: \_\_\_\_\_

District: \_\_\_\_\_

Address: \_\_\_\_\_

Case Number: \_\_\_\_\_

Phone: \_\_\_\_\_

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, pay-stubs, receipts, child care bills, medical verification, letters, etc. that may be helpful in presenting your case.

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will provide you with free copies of the documents from your file, which we will give to the hearing officer at the fair hearing. To ask for documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice. Also, if you call or write to us, we will provide you with free copies of other documents from your file which you may need to prepare for your fair hearing. If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you **only** if you specifically ask that they be mailed.

**INFORMATION:** If you want more information about your case, how to ask for a conference or fair hearing, how to see your file, or how to get additional copies of documents, call us at the telephone numbers listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice.

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**APPROVAL OF YOUR TRANSITIONAL CHILD CARE BENEFITS**

NOTICE DATE:	EFFECTIVE DATE	NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE	
CASE NUMBER	CIN NUMBER		
CASE NAME (And C/O Name if Present) AND ADDRESS			
		GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP	
		OR Agency Conference	
		Fair Hearing information and assistance	<b>1-800-342-3334</b>
		Record Access	
		Legal Assistance Information	

OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	WORKER TELEPHONE NO.
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Your transitional child care benefits have been approved. You are eligible to receive child care benefits for child care services provided on \_\_\_\_\_ through \_\_\_\_\_ while you are working.

Comments:

**YOU HAVE THE RIGHT TO A CONFERENCE AND/OR A HEARING TO APPEAL THIS DECISION  
READ THE BACK OF THIS NOTICE ON HOW TO REQUEST A CONFERENCE AND/OR HEARING TO APPEAL THIS DECISION**

**BENEFITS. Payment will be provided on behalf of the following:**

Child(ren):	For this provider:	For the amount of:**	Full Time or Part Time:

**\*\*Payment may vary based on fluctuations in your approved activity and/or absences.**

**Benefits will be paid:**  Directly to you.  Directly to your provider.  
Your provider must submit a bill and attendance sheet to your local department of social services.

**FAMILY SHARE. You are responsible for paying the following fees:**

- Effective \_\_\_\_\_, a **Weekly Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week.
- Effective \_\_\_\_\_, an **Additional Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week.
- Effective \_\_\_\_\_, a **Court Ordered Family Share** must be paid to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per week, for the child(ren) \_\_\_\_\_.

**The following information is an explanation of how your weekly family share was determined.**

	Family's annual gross income \$ _____
Minus 100% annual state income standard for a family size of _____	\$ _____
	Remaining income \$ _____
	Remaining income \$ _____ X family share % _____ % = \$ _____
	\$ _____ / 52 weeks = \$ _____ weekly family share

All family share amounts are rounded to the nearest \$0.50. There is a minimum fee of \$1 per week for all families not receiving TA.

**In order to continue to receive benefits these are your responsibilities:**

- Notify your caseworker immediately of any change in family income, who lives in your house, employment, child care arrangements or other changes which may affect your continued eligibility or the amount of your benefit.
- Promptly pay any family share required.

The LAW(S) AND/OR REGLATIONS(S) that allows us to do this is:

**RIGHT TO ACCEPT OR DECLINE SERVICES:** Approval of your benefits does not obligate you to accept the services. You may choose to decline the services by contacting your local department of social services.

**If you disagree with your local department of social services decision you may request a conference and/or a fair hearing.**

- 1. **CONFERENCE:** You have a right to a conference with your local department of social services to review the determination. If you want a conference, you should request one AS SOON AS POSSIBLE, because the outcome of the conference may impact your decision to request a fair hearing. If you want a fair hearing and your child care benefit to remain unchanged (aid continuing) until the fair hearing decision is issued you must request a fair hearing before the EFFECTIVE DATE on the front page of this notice. A request for a conference alone will not result in your benefits being continued. At the conference, you may present information to demonstrate why you believe the agency action is not correct.

**You may request a conference by:**

(1) **Calling:** \_\_\_\_\_ (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Writing:** Check the box below and mail to \_\_\_\_\_

(3) Please keep a copy for yourself.

I want a conference. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

- 2. **FAIR HEARING:** You have a right to a fair hearing to appeal the determination of the local department of social services. If you want a fair hearing, you have 60 DAYS from the NOTICE DATE, located on the front page, to make the request. If you do not want your child care benefit to change until the fair hearing decision is issued, you must request a fair hearing before the EFFECTIVE DATE listed on the front page of this notice. You do not have to request a conference before requesting a fair hearing.

You may request to keep your child care benefit unchanged until a fair hearing decision has been issued. If you request your benefit not to be changed until a fair hearing decision has been issued, and you lose the fair hearing, you will have been overpaid. The local department of social services will seek to recover the overpayment from you by reducing future child care benefits, by collecting a lump sum payment or installment payments, or through legal action.

**You may request a fair hearing by:**

(1) **Calling:** 1-800-342-3334 (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).

(2) **Online:** To send your fair hearing request online, go to <http://www.otda.ny.gov/oah>, click on the links to request a fair hearing using the online form, and follow the instructions to complete and submit the form online.

(3) **Writing:** Check the box and complete the information below. Mail to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York, 12201-1930. Please keep a copy for yourself.

(4) **Faxing:** Check the box and complete the information below. Fax both sides of this form to (518) 473-6735.

I want a fair hearing. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

**Select one.**

Do **NOT** change my child care benefit until a fair hearing decision has been issued.

Change my child care benefit on the effective date listed on this notice, pending the fair hearing decision.

Name: \_\_\_\_\_

District: \_\_\_\_\_

Address: \_\_\_\_\_

Case Number: \_\_\_\_\_

Phone: \_\_\_\_\_

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, pay-stubs, receipts, child care bills, medical verification, letters, etc. that may be helpful in presenting your case.

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will provide you with free copies of the documents from your file, which we will give to the hearing officer at the fair hearing. To ask for documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice. Also, if you call or write to us, we will provide you with free copies of other documents from your file which you may need to prepare for your fair hearing. If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you **only** if you specifically ask that they be mailed.

**INFORMATION:** If you want more information about your case, how to ask for a conference or fair hearing, how to see your file, or how to get additional copies of documents, call us at the telephone numbers listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice.



NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**CHILD CARE ELIGIBILITY RE-DETERMINATION COMING DUE**

NOTICE DATE:	EFFECTIVE DATE	NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE
CASE NUMBER	CIN NUMBER	
CASE NAME (And C/O Name if Present) AND ADDRESS		GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP
		OR Agency Conference _____
		Fair Hearing information and assistance _____
		Record Access _____
		Legal Assistance Information _____

OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	WORKER TELEPHONE NO.
------------	----------	------------	---------------------	----------------------

In order for your child care assistance to continue, the Local Social Services District must re-determine your continued eligibility for child care assistance. Please complete and return the enclosed application along with all the required documentation indicated below by \_\_\_\_\_. If you fail to complete the application and submit the required documentation by the above date, you will no longer be receiving child care benefits beginning on \_\_\_\_\_. If this happens, you will receive the Notice of Intent to Discontinue Child Care Benefits that will advise you again when your child care will be discontinued and what appeal rights you have to challenge this action.

We are required to re-determine your eligibility for child care assistance per 18 NYCRR 404.1(d)(2). You must submit the following documentation so that your eligibility for child care assistance can be determined.

- **LDSS-2921 Common Application or Local Child Care Application**  
The application must be completed, signed and returned to your Social Services District.

- **Verification of Earned Income of Household Members**  
If you receive child care assistance because you are working:
  - You must provide copies of the last 8 weeks of pay stubs, if the amount you are paid is roughly the same from paycheck to paycheck; or, if your income often notably changes from paycheck to paycheck, you must provide the last 6 months of pay stubs. If you have questions about how many pay stubs you must submit, please contact your worker at the number listed above for help.
 If you are self-employed:
  - You must provide business records, tax records, or records and related materials concerning self-employment earnings and expenses.
 If you or any other household member receives money from the following, you must provide proof of income.

- |  |  |   |
|--|--|---|
| <ul style="list-style-type: none"> <li>• Social Security</li> <li>• Pensions/Annuities</li> <li>• Alimony</li> <li>• Other Income</li> </ul> | <ul style="list-style-type: none"> <li>• Dividends, Interest Income</li> <li>• Unemployment Compensation</li> <li>• Child Support</li> </ul> | <ul style="list-style-type: none"> <li>• Public Assistance</li> <li>• Worker's Compensation</li> <li>• Veterans Pensions</li> </ul> |
|--|--|---|

- If you receive child care assistance because you are participating in an Education/Training program you must provide:
- A copy of your last report card or transcript, and
  - Documentation of the educational/training program you are attending
- **Verification of Residency**
    - A statement from your landlord verifying your residency or
    - A copy of current rent receipt, lease, or mortgage statement

● **Other:** \_\_\_\_\_

If you cannot obtain these items by the above date or have questions, please call your case worker at your Local Social Services District at the number listed above for assistance.

**Additional Comments:** \_\_\_\_\_

\_\_\_\_\_



NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**NOTICE OF CHILD CARE ASSISTANCE OVERPAYMENT  
AND REPAYMENT REQUIREMENTS**

NOTICE DATE:		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE		
CASE NUMBER:	CIN NUMBER:	GENERAL TELEPHONE NO. FOR <b>QUESTIONS OR HELP</b>		
CASE Name (And C/O Name if Present) and ADDRESS				
		<b>OR</b> Agency Conference		
		Fair Hearings Information and Assistance		<b>1-800-342-3334</b>
		Record Access		
		Legal Assistance Information		
OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	TELEPHONE NO.
<b>YOU HAVE THE RIGHT TO A CONFERENCE AND/OR A HEARING TO APPEAL THIS DECISION READ THE BACK OF THIS NOTICE ON HOW TO REQUEST A CONFERENCE AND/OR HEARING TO APPEAL THIS DECISION</b>				
<b>SECTION I – NOTICE OF CHILD CARE ASSISTANCE OVERPAYMENT</b>				
You received more child care benefits than you should have (an overpayment) from _____ to _____ . The amount of the overpayment is \$ _____ .				
The reason the overpayment occurred is:				
<input type="checkbox"/> You or someone in your household failed to inform us of changes that affect your eligibility or benefit level. <input type="checkbox"/> We incorrectly gave you more benefits than you should have gotten due to: _____ <input type="checkbox"/> Other: _____				
Explanation and Calculation of Overpayment: _____				
<b>The regulations that allow us to do this are 18 NYCRR 415.4(i) and (j).</b>				
<b>SECTION II – REPAYMENT PLAN AGREEMENT: DO NOT COMPLETE IF REQUESTING A CONFERENCE OR FAIR HEARING</b>				
If you agree that you received an overpayment, as shown in Section I, you are required to make full repayment by _____ .				
Please select a repayment option below, sign, make a copy for yourself, and return to the address at the bottom of this page.				
If you are unable to repay the overpayment, want to set up another repayment agreement, or have questions please call _____ .				
<b>Please select one of the following repayment plan options:</b>				
<input type="checkbox"/> Revised Family Share – Recovery will be made from my child care benefits. This option is only available if you are still receiving child care benefits. I will pay \$ _____ per week, in addition to my current family share of \$ _____ per week. <b>My total family share is now \$ _____ per week.</b> I will make this payment each week to my child care provider. My first payment is due on _____. The Department of Social Services will pay the child care provider \$ _____ per week.				
<input type="checkbox"/> Installment Payment. I will make weekly payments of \$ _____ to the Department of Social Services. I will send payment to the address below. My first payment is due on _____. The Department of Social Services will pay the child care provider \$ _____ per week.				
<input type="checkbox"/> Lump Sum Payment. I will make one payment of \$ _____ to the Department of Social Services. I will send payment to the address below. My payment is due on _____.				
<b>I agree to repay by this method. I understand that failure to pay the amount stated on time will result in a discontinuation of my child care benefits and/or legal action may be taken in the court to recover this overpayment.</b>				
SIGNATURE				DATE

**Return this repayment plan agreement to:**

**Return Payment to:**

**If you disagree with your local department of social services decision you may request a conference and/or a fair hearing.**

- 1. **CONFERENCE:** You have a right to a conference with your local department of social services to review the determination. If you want a conference, you should request one AS SOON AS POSSIBLE, because the outcome of the conference may impact your decision to request a fair hearing. At the conference, you may present information to demonstrate why you believe the agency action is not correct.

**You may request a conference by:**

- (1) **Calling:** \_\_\_\_\_ (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).
- (2) **Writing:** Check the box below and mail to \_\_\_\_\_  
Please keep a copy for yourself.

I want a conference. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

- 2. **FAIR HEARING:** You have a right to a fair hearing to appeal the determination of the local department of social services. If you want a fair hearing, you have 60 DAYS from the NOTICE DATE, located on the front page, to make the request. You can request a fair hearing without requesting a conference.

**You may request a fair hearing by:**

- (1) **Calling:** 1-800-342-3334 (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL).
- (2) **Online:** To send your fair hearing request online, go to <http://www.otda.ny.gov/oah>, click on the links to request a fair hearing using the online form, and follow the instructions to complete and submit the form online.
- (3) **Writing:** Check the box, complete the information below and mail to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York, 12201-1930. Please keep a copy for yourself.
- (4) **Faxing:** Check the box, complete the information below and fax both sides of this form to (518) 473-6735.

I want a fair hearing. I do not agree with the agency's action. You may explain on a separate paper why you disagree, but you do not have to include a written explanation.

Name: \_\_\_\_\_ District: \_\_\_\_\_  
 Address: \_\_\_\_\_ Case Number: \_\_\_\_\_  
 \_\_\_\_\_ Phone Number: \_\_\_\_\_

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, pay-stubs, receipts, child care bills, medical verification, letters, etc. that may be helpful in presenting your case.

**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will provide you with free copies of the documents from your file, which we will give to the hearing officer at the fair hearing. To ask for documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice. Also, if you call or write to us, we will provide you with free copies of other documents from your file which you may need to prepare for your fair hearing. If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you **only** if you specifically ask that they be mailed.

**INFORMATION:** If you want more information about your case, how to ask for a conference or fair hearing, how to see your file, or how to get additional copies of documents, call us at the telephone numbers listed at the top of page one of this notice or write to us at the address printed at the top of page one of this notice.

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**NOTICE OF FRAUD DETERMINATION,  
DISQUALIFICATION FOR CHILD CARE BENEFITS  
AND REPAYMENT PLAN**

NOTICE DATE		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE		
CASE NUMBER:	CIN NUMBER:			
CASE Name (And C/O Name if Present) and ADDRESS		GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP		
		OR Agency Conference		
		Fair Hearings Information and Assistance		<b>1-800-342-3334</b>
		Record Access		
		Legal Assistance Information		
OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	TELEPHONE NO.

**YOU HAVE THE RIGHT TO AN AGENCY CONFERENCE AND TO A FAIR HEARING TO APPEAL THIS DECISION. BE SURE TO READ THE BACK OF THIS NOTICE ON HOW TO REQUEST AN AGENCY CONFERENCE AND/OR A FAIR HEARING.**

**SECTION I – THIS NOTICE IS TO INFORM YOU:**

1. The Department of Social Services has determined that you have fraudulently received child care benefits and you are disqualified from receiving child care benefits, AND
  2. You have received an overpayment and you must repay the overpayment.
- The regulation which allows us to do this is: 18 NYCRR 415.4(i).**

**SECTION II – FRAUD DETERMINATION**

The Department's finding of fraudulent receipt of child care benefits was based on:

- Your conviction by a court of law on \_\_\_\_\_ of fraudulently receiving child care benefits.
- Your signing a voluntarily admission dated \_\_\_\_\_.
- The fraudulent activity resulted in an overpayment of \$ \_\_\_\_\_, occurring from \_\_\_\_\_ to \_\_\_\_\_.

**SECTION III – LENGTH OF DISQUALIFICATION PERIOD**

As a result of the fraudulent receipt of benefits, you are disqualified from receiving child care benefits. New York State regulation, 18 NYCRR 415.4(i)(13), establishes time periods for suspension or termination of benefits depending on the number of offenses and the amount of fraudulent benefits received.

- Six months, because this is your first offense.
- 12 months, because this is your second offense or the amount of fraudulent benefits you received was between \$1,000 and \$3,900.
- 18 months because this is your third offense, or the amount of fraudulent benefits you received was in excess of \$3,900.
- Five years, because you have committed four or more previous offenses.
- Other (State length of period and reason): \_\_\_\_\_

**SECTION IV – EFFECTIVE DATE OF DISQUALIFICATION**

- Your disqualification will begin on \_\_\_\_\_ and end on \_\_\_\_\_.
- You will be subject to the above disqualification penalty if you apply for and are found eligible for child care benefits at a future date.
- Your disqualification period will begin or resume once you are no longer participating in an activity required by TA.

**SECTION V: REPAYMENT PLAN AGREEMENT**

**If you are requesting a Fair Hearing regarding this decision, you are not required to complete and sign the repayment plan at this time. However, you must complete and sign the Fair Hearing request on the reverse side of this form and return it to the address indicated.**

You are required to make full repayment by \_\_\_\_\_. If you are unable to repay the overpayment as shown below or you want to set up another agreement plan, or if you have any questions, please call \_\_\_\_\_ at \_\_\_\_\_, right away. Otherwise, sign this agreement, make a copy of it for yourself, and return the agreement to the address at the bottom of this page.

**Your repayment plan is shown below.**

- Recovery will be made from your child care benefits. To repay this debt, you must pay \$ \_\_\_\_\_ each week to your child care provider. This is in addition to your current family share of \$ \_\_\_\_\_ per week. Effective \_\_\_\_\_, your **total family share** will be \$ \_\_\_\_\_ per week and the amount we pay to your provider will be reduced to \$ \_\_\_\_\_.
- To repay this debt, you must pay the Department of Social Services \$ \_\_\_\_\_ per week. Your first payment is due on \_\_\_\_\_. The final payment is due on \_\_\_\_\_.

Send payments to:

- You must continue to follow the repayment plan and/or court order that is already in effect, and is attached to this notice.

**I agree to repay by this method. I understand that failure to pay the amount stated above on time will result in a discontinuation of my child care benefits and/or legal action may be taken in the court to recover this overpayment.**

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

Return this repayment plan agreement to:

**RIGHT TO A CONFERENCE:** You may have an agency conference to review these actions. A conference is when you meet with someone from the agency, other than the person who made the decision, to discuss your case. You may request an agency conference by calling the number on the front of this notice, in the upper right hand corner. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. Requesting an agency conference is not the same as requesting a fair hearing. Read below for fair hearing information.

**RIGHT TO A FAIR HEARING:** If you disagree with the decision made by our agency, you may request a fair hearing. At the hearing you will have the opportunity to present written and oral evidence to demonstrate why you think the agency's decision is wrong and the action should not be taken. You have the right to be represented by legal counsel, a relative, friend or other person, or you may represent yourself. You have the right to bring witnesses and to question witnesses at the fair hearing. You have the right to present written and oral evidence at the hearing, and should bring any documents that may be helpful in presenting your case, such as this notice, pay stubs, receipts, child care bills, medical verification, letters, etc. There is additional information below on how to obtain access to your file and copies of documents in your file.

**YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING:**

When you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or, to represent yourself.

**TO REQUEST A FAIR HEARING:**

**Telephoning:** 1 800-342-3334 (Please have this notice with you when you call).

**Online:** Complete an online request form at: <http://www.otda.state.ny.us/oah/forms.asp>.

**Walk In Locations:** 14 Boerum Place, Brooklyn, NY OR 330 West 34<sup>th</sup> Street, Third Floor, Manhattan, NY.

**Writing:** Complete the following information, sign and mail a copy of this entire notice to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201. **Please keep a copy for yourself.**

**Faxing:** Complete the following information, sign and fax this entire notice to the New York State Office of Administrative Hearings at: 518-473-6735.

<input type="checkbox"/>	<b>I want a fair hearing. The Agency's action is wrong because:</b> _____  _____
<input type="checkbox"/>	<b>I understand I may be eligible for aid continuing (current recipients only). My benefits have been stopped and I wish to have my benefits restored (aid continuing) until the hearing decision is issued.</b> If you request a fair hearing and aid continuing, within ten (10) days of the date of the postmark of the mailing of this notice, your child care will be reinstated and will be unchanged until the fair hearing decision is issued. However, if you lose the fair hearing, you will owe any child care that you should not have received. We are required to recover any child care overpayments. We must make a claim against you for any child care you receive that you were not entitled to, which may be collected by reduction of future child care benefits, through lump sum installment payments, or through legal action. If you want to avoid this possibility you can check the box below. You can also indicate over the telephone or in a letter that you do not want reinstatement of your child care.
<input type="checkbox"/>	<b>I do not want my benefits continued until the hearing decision is issued.</b>

<b>Signature of Client:</b>	<b>Date:</b>
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**LEGAL ASSISTANCE:** If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS:** You have a right to look at your case file, and to receive free copies of the documents that the agency will put into evidence and other documents necessary for you to prepare for the fair hearing. To review your file or receive copies of any documents in your file, you can call us at the Record Access telephone number listed at the top of page 1 of this notice or write us at the address printed at the top of page 1 of this notice. If you want the documents mailed to you, you must specifically ask that they be mailed. You should ask for documents ahead of time. They will be provided to you within a reasonable time before the date of the hearing.

**INFORMATION:** If you want more information about your case, how to ask for a fair hearing, how to see your file, or how to get copies of documents, call us at the telephone numbers listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice.

UAAA;  
3 ADMINISTRATIVE DIRECTIVE 3  
AAA

TRANSMITTAL: 91 ADM-34

TO: Commissioners of  
Social Services

DIVISION: Family and  
Children  
Services

DATE: August 23, 1991

SUBJECT: Child Care: Reimbursement of Payments for Children with  
Special Needs

AA

SUGGESTED 3

- DISTRIBUTION: 3 Services Supervisors
- 3 Day Care Staff
- 3 Income Maintenance Supervisors
- 3 Staff Development Coordinators
- 3
- 3
- 3

CONTACT 3

PERSON: 3 Dee Woolley, Bureau of Child Care, 1-800-342-3715,  
3 ext. 4-9614 or (518) 474-9614  
3  
3  
3  
3  
3  
3

- ATTACHMENTS: 3 Quarterly Report -- Child Day Care for Children with  
3 Special Needs (available on-line)  
3  
3  
3

FILING REFERENCES

AA

Previous	Releases	Dept. Regs.	Soc. Serv.	Manual Ref.	Misc. Ref.
ADMs/INFs	Cancelled		Law & Other		
			Legal Ref.		
90 ADM-27		415.6	PL 100-485		
90 ADM-31			Title 9B		

DSS-296EL (REV. 9/89)  
Date August 23, 1991

**I. Purpose:**

The purpose of this ADM is to advise social services districts of policies and procedures related to the provision of child day care services for children with special needs. These policies and procedures apply to the provision of JOBS, Transitional, Employment-Related, Low Income and Title XX Child Care, including Preventive and Protective Child Care.

**II. Background:**

Child day care is an important service for parents who are or were in receipt of public assistance or who are among the population of the working poor. The lack of available and affordable child care can restrict the parents' opportunities to pursue training and educational activities which increase their employability. The availability of reliable and affordable child care also impacts on the ability of many individuals to obtain and maintain steady employment and self-support.

The importance of the availability of quality child day care increases when a child has special needs. Children with special needs often require services beyond those offered by most child care providers. Locating appropriate placements which provide the specialized services needed by a child with special needs is often difficult. When such placements are identified their cost frequently exceeds the cost of other forms of child day care in the area.

The federal Family Support Act of 1988 recognized the need for making higher child care payments for children who have special needs and allowed states to establish separate statewide limits for the care of such children. However, higher payments for child care for children with special needs are not allowed to cover special educational, therapeutic or other services not directly related to the provision of appropriate child care.

To assist social services districts in accessing appropriate placements, child day care payments for children with special needs will be reimbursed based upon the actual cost of care up to the statewide maximum rate of \$204 per week for weekly care, regardless of the child's age, the type of care or the local market rate. Part time care for such children will be based upon the actual cost of care up to a maximum rate of \$136 per week. The existence of special needs must be documented on a case by case basis by the social services districts. The social services districts must also verify that the child care provider is providing child care related services or is accruing additional costs as the result of caring for a child with special needs.



**III. Program Implications:**

**A. Definitions of Special Needs**

To be eligible for reimbursement for the actual cost of care up to the statewide maximum rate for weekly or part time child care, social services districts must document that a child has special needs. Children who have one or more of the following conditions as derived from education regulations 8 NYCRR 200.1(cc)(1-11) and Head Start Performance Standards are considered to be children with special needs.

1. **Visual impairment** -- A visual handicap which, even with correction, adversely affects a child's ability to function normally. The term includes impairments that result in a child having partial sight or blindness. Diagnosis of the child's condition must be made by an ophthalmologist, optometrist, physician or pediatrician.
2. **Deafness** -- A hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and which adversely affects the child's ability to function normally. Diagnosis of the child's condition must be made by an audiologist, otolaryngologist, physician or pediatrician.
3. **Hard of hearing** -- A hearing impairment, whether permanent or fluctuating, which adversely affects the child's ability to function normally but which is not included under the definition of deaf. Diagnosis of the child's condition must be made by an audiologist, otolaryngologist, physician or pediatrician.
4. **Orthopedic impairment** -- A physical handicap resulting from a severe orthopedic impairment which adversely affects a child's ability to function normally. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some limb or digits, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputation, and fractures or burns which cause contractures). Diagnosis of the child's condition must be made by a physician, pediatrician, orthopedist, or neurologist.
5. **Emotional disturbance** -- An inability to learn which cannot be explained by intellectual, sensory or health factors and which causes a child to exhibit, to a marked degree, one or more of the following characteristics over a long period of time:
  - a. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - b. inappropriate types of behavior or feelings under normal circumstances;
  - c. a general pervasive mood of unhappiness or depression; or

- d. a tendency to develop physical symptoms or fears associated with personal or school problems.

Diagnosis of a child as emotionally disturbed must be made by a psychologist, psychiatrist or other clinically trained and State-qualified mental health professional.

6. **Mental retardation** -- General intellectual functioning that is determined to be 1.5 standard deviations or more below the mean of the general population on the basis of a comprehensive evaluation which includes an individual psychological evaluation and which results in a consistent demonstrable deficit in a child's ability to adapt to his or her learning environment. Diagnosis of the child's condition must be made by a psychologist, physician or pediatrician.
7. **Learning disability** -- A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, neurological impairment, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems which are primarily the result of visual, hearing or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage. A child who exhibits a discrepancy of 50 percent or more between expected achievement and actual achievement determined on an individual basis shall be deemed to have a learning disability. Diagnosis of the child's condition must be made by a psychologist, special education professional, psychiatric social worker or other mental health professional.
8. **Speech impairment** -- A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment which adversely affects the child's ability to function normally. A child should not be classified as having a communication disorder when speech and language differences may be attributed to cultural, ethnic, bilingual, or dialectical differences or being non-English speaking. Diagnosis of the child's condition must be made by a speech or language pathologist, audiologist, otolaryngologist, physician, or pediatrician.
9. **Health impairment** -- A physical handicap which limits a child's strength, vitality or alertness caused by chronic or acute health problems which adversely affect a child's ability to function normally. Examples of such health problems include, but are not limited to, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia,

diabetes, tourette syndrome or HIV or AIDS. Diagnosis of the child's condition must be made by a pediatrician, physician or other medical specialist.

10. **Autism** -- A behaviorally defined syndrome which occurs in children of all levels of intelligence. The essential features of autism are typically manifested prior to 30 months of age and include severe disturbances of developmental rates and/or sequences of responses to sensory stimuli, of speech, of language, of cognitive capacities, and of the ability to relate to people, events and objects. Diagnosis of the child's condition must be made by a psychologist, psychiatrist or other clinically trained and State-qualified mental health professional.
11. **Multiple handicaps** -- Two or more handicapping conditions identified in Section III. A (1-10) of this ADM that result in multi-sensory or motor deficiencies and developmental lags in the cognitive, affective, or psychomotor areas, the combination of which cause problems which interfere with the child's ability to function normally. Diagnosis of the child's condition must be made by a pediatrician, physician or other medical specialist.

In the provision of child care services for children of the homeless, children of drug-involved individuals and children requiring protective or preventive services, the social services district should carefully evaluate whether such children have special needs as defined by Section III. A (1-11) of this ADM.

Social services districts may submit written requests for Department approval of any category of special need not otherwise defined in this ADM.

**B. Child Care Related Services**

Social services districts must verify that child care providers who request child care payments in excess of the applicable local market rates are providing child care services related to the care of children with special needs or are incurring additional costs as the result of caring for such children. **Reimbursement for child care payments in excess of the local market rates will not be allowed to cover special education or other therapeutic services not directly related to the provision of appropriate child care.** Possible child care related services or additional costs include:

1. purchase or rental of equipment needed to provide appropriate care to a child with special needs;
2. maintenance of apparatus which assists in breathing, feeding or toileting;

3. supervision of physical activities such as infant stimulation and follow-up activities recommended by a therapist, physician or other specialist;
4. minor modifications to the environment to make it appropriate for a specific child, such as installation of a ramp or handrails in the bathroom;
5. materials and supplies for use with a child on a routine basis as recommended by a therapist, physician or other specialist;
6. increased utility costs due to use of therapeutic machines, such as respirators;
7. transportation of children to and from prescribed therapy sessions;
8. additional staffing when needed to allow a caregiver to work on an individualized basis with a child for scheduled time periods; or
9. increased time and attention needed to provide appropriate care is such that a child care provider is unable to accept additional children.

One-time child care related costs may be paid as administrative expenses under the Low Income Day Care or Title XX Child Care programs rather than as part of an increased rate if the social services district wishes. However, to cover one-time costs using JOBS, Employment-Related or Transitional Child Care funds, the child care related costs must be included as part of the child care rate. Therefore, the social services district may wish to prorate the one-time expense into the child care rate over a specified period of time rather than paying a higher rate indefinitely.

The availability of reimbursement for child care payments for children with special needs for the actual cost of care up to \$204 per week is not intended to supplant either the existing pre-school programs for children with handicapping conditions or programs described by Article 89 (Section 4401-4410) of the Education Law. Social services districts should seek funding and services through these sources and through the medical assistance program for items such as special equipment, transportation and materials and supplies recommended by a physician, before either adjusting a child care provider's rate or paying for an item as an administrative expense.

The social services district may submit a written request for Department approval of other child care related services and related additional costs that are not covered by this ADM.

**C. Eligibility**

Reimbursement for the actual cost of care up to the statewide limit of \$204 per week or \$884 per month is available for care of children with special needs when such care is provided as JOBS, Employment-Related, Transitional, Low Income, or Title XX Child Care, including Preventive and Protective Child Care. All other eligibility criteria which apply to the specific program must be met.

When providing child care services for children with special needs under the JOBS, Employment-Related and Transitional Child Care programs such reimbursement is available for children up to age 18, or 19 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and who are reasonably expected to complete the program before reaching age 19 who are in receipt or were formerly in receipt of ADC benefits. Such care is available for children less than 21 years of age who are in receipt or were formerly in receipt of HR or VA benefits. Children, otherwise identified above, who reside with ADC, HR, or VA families, and who are in receipt of Supplemental Security Income (SSI) benefits or IV-E foster care benefits are also eligible for child care at the special needs rate when any of the conditions identified in Section III. A. of this ADM exist.

Social services districts should note that when providing child care services for children with special needs reimbursement is available only when care is provided by licensed, certified or registered child day care providers, regardless of program funding.

Reimbursement will be available retroactive to April 1, 1990 for Transitional Child Care and October 1, 1990 for all other child care. However, retroactive payment will only apply to cases in which either the social services district or the parent has absorbed costs in excess of the local market rates in order to provide appropriate care for a child with special needs.

**IV. Required Action:**

**A. Documentation of Special Needs**

It is the social services district's responsibility to document the diagnosis of the child's condition and special service needs which have been identified by the appropriate physicians or other specialists as outlined in Section III. A. of this ADM. A written statement or report which has been obtained from the appropriate physician or specialist will constitute appropriate documentation.

An Individualized Education Plan (IEP) from the child's school may provide acceptable documentation of special needs when it is based on the opinions of appropriate professionals as identified in Section I. A. of this ADM. In order to be considered appropriate

documentation an IEP must identify a child's special **care needs** in addition to his/her special education needs.

**B. Referral**

Upon receipt of documentation that a child has special needs, the social services district must determine if the child is receiving program services as authorized either by Article 89 of the Education Law or the Medical Rehabilitation Program for Handicapped Children. If the child has not been evaluated for participation in the above programs, the social services district must assist the parent in applying for benefits under those programs.

**C. Verification of Additional Costs and/or Services**

Before authorizing payment in excess of the local market rate for child day care services for children with special needs, the social services district must verify that the caregiver is providing related services which are designed to meet the child's special needs and/or that the provision of care to the child with special needs results in additional costs to the child care provider. Verification of the provision of additional child care related services and/or the accrual of additional child care related costs may be in the form of an attestation from the child care provider and must be maintained in the case record. Social services districts may, but are not required to, visit a child care provider who is receiving a higher reimbursement for a child with special needs in order to verify that the child care provider is, in fact, providing additional child care related services or accruing additional costs.

**D. Redetermining Eligibility**

It is the social services district's responsibility to reevaluate a child's condition and special service needs at the time that a family's eligibility for publicly funded child care services is redetermined in accordance with the specific program requirements. A statement or report from the appropriate physician or other specialist must be obtained at the time of redetermination.

**E. Reporting**

The social services district is responsible for submitting a quarterly report to the State Department of Social Services which provides information on the number of children with special needs served at rates exceeding the local market rates, the ages of such children, the types of providers utilized for such children, the diagnosis categories and special services provided and the payment rates for such care. (See attachment) This information is not available on the system for all funding streams. Quarterly reports from social services districts will allow the Department to monitor the usage and costs associated with reimbursement of child care payments for children with special needs based upon the actual cost of care up to the statewide limit. The need to continue quarterly reporting will be assessed at the end of the first year.

**V. Systems Implications:**

**A. Upstate**

**1. JOBS- and Employment-Related Child Care**

Specific instructions for ABEL calculations for payment of child day care for a child with special needs are discussed in ABEL Transmittal 90-6.

**2. Transitional, Low Income and Title XX Child Care**

Payment for child day care for a child with special needs may be authorized through use of the usual WMS procedures.

**B. New York City**

**1. Transitional, JOBS- and Employment-Related Child Care**

Specific instructions for authorization of child day care for children with special needs is discussed in the Public Assistance Budgeting Manual.

**2. Low Income and Title XX Child Care**

Payment for child day care for a child with special needs may be authorized using the appropriate local procedures for Low Income and Title XX Child Care.

**VI. Additional Information**

**A. Claiming Instructions**

Day Care for children with special needs should be claimed in the same manner all other day care within the Category of Assistance in the RF-2 and RF-2A claim packages.

Employment-related special needs day care should be authorized and paid through the Non-Services authorization. These expenditures should be claimed on the Schedule A for ADC and PG-ADC related expenditures, and the Schedule F for EAF Day Care.

All services authorized day care for special needs children should be claimed on line 2 of the Schedule G. The appropriate column to claim should be based on the category of assistance. Title XX expenditures are claimed in columns 2 through 8, depending on the Title XX breakout. EAF expenditures are claimed in column 10, while Low Income would be claimed in Column 11. Federally Participating Transitional Day Care expenditures are claimed in column 12, with PG-ADC Transitional Day Care expenditures being claimed under column 13, on line 2.

When Low Income Day Care or Title XX Child Care program costs are paid as administrative expenses, as explained on Page No. 6 of this ADM in relation to one-time child care related costs, these should be claimed on the Schedule D-2.

In addition, all special needs should be reported statistically on the Schedule G-2 along with all other Services and Non-Services Day Care.

**VII. Effective Date:**

The effective date of this ADM is September 1, 1991, retroactive to April 1, 1990 for Transitional Child Care and retroactive to October 1, 1990 for Low Income, Title XX, JOBS and Employment-Related Child Care.

\_\_\_\_\_  
Joseph Semidei  
Deputy Commissioner  
Family and Children Services

**ATTACHMENT  
QUARTERLY REPORT  
CHILD CARE FOR CHILDREN WITH SPECIAL NEEDS**

COUNTY \_\_\_\_\_ REPORTING PERIOD \_\_\_\_\_

This report should reflect the number of children with special needs served at rates exceeding the local market rates.

**1. Number of children served by age group:**

under 18 months	_____	5 - 10 years	_____
18 mos. - 3 years	_____	10-13 years	_____
3 - 5 years	_____	<b>TOTAL:</b>	_____

**2. Number of children served by provider type:**

____day care center	____family/group family day care
____informal (provider's home)	____informal (in child's home)

**3. Number of children served by diagnosis:**

____visual impairment	____deafness
____hard of hearing	____orthopedic impairment
____emotional disturbance	____mental retardation
____learning disability	____speech impairment
____health impairment	____autism
____multiple handicaps	____other

**4. Describe the child care related services and additional costs accrued by providers which justified authorization of child care payments in excess of the local market**



rates.

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5. When payments for child care for children with special needs exceeded the local market rates, what range of fees did you pay?

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REPORTED BY: \_\_\_\_\_  
signature

\_\_\_\_\_ title and work unit

DATE: \_\_\_\_\_

