

**New York Regulations\***  
**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**

- Section 415.0. Applicability (p.2)**
- Section 415.1. Definitions (p.2)**
- Section 415.2. Eligibility, Guarantees, and Priorities for Child Care Services (p.10)**
- Section 415.3. Caretaker's Responsibilities (p.19)**
- Section 415.4. Local District Responsibility (p.21)**
- Section 415.5. Methods of Making Payment for Child Care Services (p.36)**
- Section 415.6. State Reimbursement (p.38)**
- Section 415.7. Additional Requirements for the New York State Child Care Block Grant Program (p.40)**
- Section 415.8. Special Provisions Relating to Public Assistance Recipients (p.42)**
- Section 415.9. Rates (p.45)**
- Section 415.10. Waivers (p.49)**
- Section 415.11. Effective Date—Repealed (p.49)**
- Section 415.12. Eligible Providers Responsibilities (p.49)**
- Section 415.13. Requirements for legally exempt child care enrollment applicants and providers to be enrolled, maintain enrollment, and be re-enrolled to provide child care services. (p.50)**
- Section 415.14. Enrollment agency responsibilities (p.78)**
- Section 415.15. Criminal History Review and Background Clearances (p.82)**
- Section 415.16. Child Abuse and Maltreatment (p.89)**
- Section 415.17. Criminal History Disqualification Review Process (p. 90)**

### **Section 415.0. Applicability**

This Part governs the authorization and payment of publicly funded child care services for children pursuant to the portion of the Block Grant for Child Care allocated to social services districts to provide child care assistance to families receiving family assistance and to other low-income families, as defined in Social Services Law Section 410-u, and Title XX of 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 occur for 24 consecutive hours or more 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 Child and Family Services Plan that it will provide for such care. Child care services does not refer to programs providing care for children operated solely for the purpose of religious education, sports, recreation, classes, or lessons.

(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 by a physician, licensed or certified psychologist or other professional with the

415.1(c)

appropriate credentials to make such a diagnosis, as having one or more of the following conditions to such a degree that special education or related services are required, in accordance with section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401), part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794):

- (1) visual impairment;
- (2) deafness or other hearing impairment;
- (3) orthopedic impairment;
- (4) emotional disturbance;
- (5) intellectual disability;
- (6) learning disability;
- (7) speech or language impairment;
- (8) health impairment;
- (9) autism;
- (10) multiple disabilities;
- (11) traumatic brain injury;
- (12) deaf-blindness; or
- (13) other health impairment

(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 a person or entity that may provide child care services to a child receiving child care assistance. Members of the child's or the caretaker's public assistance unit, the child's caretaker, the spouse of the child's caretaker, and other members of the child care services unit are not eligible to provide subsidized child care to that child. An eligible provider is one of the following:

415.1(g)(1)

- (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 and is enrolled by an enrollment agency; 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 provider of informal child care as defined in subdivision (h) of this section who is enrolled with an enrollment agency in accordance with this Part; provided that such a provider 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 legally exempt group child care program as defined in subdivision (i) of this section which is enrolled with an enrollment agency in accordance with this Part; provided, however, that such a program 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; or
- (8) a child care provider who is licensed, registered, or otherwise permitted to operate a child care program by another Child Care and Development Fund grantee; or
- (9) a child care provider certified to operate by the United States Department of Defense.

(h) Informal child care refers to child care provided in a residence, which is not required to be licensed or registered pursuant to section 390 of the Social Services Law. Informal child care means In-Home Child Care and Family Child Care.

415.1(h)(1)

(1) *In-Home Child Care* means child care provided in the child's own home by a person who is at least 18 years of age, and who is chosen and whose services are monitored by the child's caretaker; provided, however, that the child's caretaker must furnish the child care provider with all employment benefits required by State and/or Federal law, and must pay the child care provider at least the minimum wage, if required.

(i) *Relative-only In-Home Child Care* means In-Home Child Care provided by a person, who is at least 18 years of age, and who is, by virtue of blood, marriage or court decree, related to all of the children in care receiving child care services as a grandparent, great-grandparent, sibling provided that such sibling lives in a separate residence from the child, aunt, or uncle.

(2) *Family Child Care* means child care provided in a residence in which one or more of the children in care receiving child care services do not reside, by a person who is at least 18 years of age, and who is chosen and whose services are monitored by the child's caretaker.

(i) *Relative-only Family Child Care* means Family Child Care provided by a person, who is at least 18 years of age, and who is, by virtue of blood, marriage or court decree, related to all of the children in care receiving child care services as a grandparent, great-grandparent, sibling provided that such sibling lives in a separate residence from the child, aunt, or uncle.

(i) *Legally exempt group child care* means a program in a facility, other than a residence, in which child care is provided on a regular basis and is not required to be licensed by or registered with the Office or licensed by the City of New York but which meets all applicable State or local requirements for such child care programs. Legally exempt group child care includes, but is 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. Provided, however, a kindergarten or a pre-kindergarten operated by a public school district shall not be required to be 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;

415.1(i)(4)

(4) Center-based child care programs located on Federal property which are not certified to operate by the United States Department of Defense when such programs are operated in compliance with the applicable Federal laws and regulations for such child care programs;

(5) Center-based child care programs located on tribal property which are legally operating under the auspices of a tribal authority that is not a Child Care and Development Fund grantee, and are in compliance with the applicable tribal laws and regulations for such child care programs; and

(6) child care programs caring for not more than six school-age children during non-school hours.

(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(e) 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 child care provider 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 child care provider, 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 child care provider 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 working, on average, at least the minimum number of hours per week as specified by the Office, provided there is no physical or mental incapacity that limits the person to working less than the specified amount, and 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

415.1(o)(1)(ii)

(ii) is self-employed and is able to demonstrate that the hours worked are, on average, at least the minimum number of hours per week as specified by the Office and 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 one year.

(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 Office of Temporary and Disability Assistance.

(3) For an individual who is a certified or approved foster parent and seeking child care services for a foster child, engaged in work means that the individual is working or self-employed, without regard to hours worked and/or the amount of income earned or produced.

(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) Family resources means the value of:

(1) cash on hand;

(2) money in checking and savings accounts;

(3) stocks, bonds, mutual funds, mortgages (held), mortgage certificates, and other securities;

(4) lump sum payments;

(5) individual retirement accounts and deferred compensation accounts and plans, including but not limited to IRAs, 401(k) and 457(b) plans, life insurance policies, trust funds, and annuities; and

(6) real and personal property including licensed and unlicensed vehicles, homes, buildings, land, recreational properties, other real estate property, non-essential household furnishings, art, and jewelry.

(r) *Office* means the New York State Office of Children and Family Services.

(s) *The Enrollment agency*, also known as the *Legally exempt caregiver enrollment agency* means the agency under contract with the Office to enroll legally exempt child care providers, including informal child care and legally exempt group child care to provide subsidized child care services funded under the New York State Child Care Block Grant Program. For each social services district in New York State except for the City of New York,



415.1(s)

the 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 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.

(t) *Child care provider* means a person or entity that is responsible for all matters related to the operation, oversight and direction of any child day care program or enrolled legally exempt child care provider. Child care provider includes a person providing care in a residence where the provider has responsibility for the supervision and care of the children, and any person, association, corporation, partnership, institution, organization, or agency that oversees a child care program in a facility that is not a residence.

(u) *Legally exempt child care provider* means a person or entity that provides child care and is not required to be licensed or registered pursuant to section 390 of the Social Services Law.

(v) *Director* means the person or persons who have responsibility for the development and supervision of the daily activity programs for children in care and/or the administrative authority and responsibility for the daily operations of a legally exempt group child care program. Director may include:

(1) *an administrative director*, who is the person(s) responsible for all matters related to the operation, oversight, and direction of the child care program;

(2) *an on-site director*, who is the person(s) present at the child care program during the hours of operation and responsible for the supervision of children and staff.

(w) *Employee* is used interchangeably with the term staff, and means all personnel including directors, temporary personnel, teachers, aides, para-professionals, cooks, custodians, administrative staff and any other person(s) employed by a legally exempt child care provider.

(x) *Enrollment applicant* means a person submitting an application for enrollment or re-enrollment as an informal child care provider, or the director designated to submit such an application to be a legally exempt group child care program on behalf of an entity, including, but not limited to, a person, association, corporation, partnership, institution, organization, or agency.

(y) *Family Child Care household member* means a person living in the residence where Family Child Care or Relative-only Family Child Care is provided.

(z) *Medication administrant* is a person licensed in New York State as a physician, physician assistant, registered nurse, nurse practitioner, licensed practical nurse, or advanced emergency medical technician; or a legally exempt child care provider or his or her employee, who is trained in medication administration, cardiopulmonary resuscitation, and first aid. The medication administrant must be designated in a health care plan which meets the specifications of section 415.13 of this Part and be authorized by the Office or its designees to administer medications.

415.1(aa)

(aa) *Volunteer* means any unpaid person present for the purpose of assisting with care of children or the operation of the child care program, and who has the potential for either unsupervised contact or regular and substantial contact with children in care.

(ab) *Visitor* means any person other than a child in care, employee, caretaker, volunteer, or household member.

(ac) *Child care assistance*, also known as *child care subsidy*, is administered by the Office, in accordance with the Social Services Law, to help eligible families in meeting the cost of child care services.

(ad) Non-school hours shall mean any time a specific child is not physically required to be present in school as part of the regular school day, including during virtual and/or remote learning.

(ae) State median income means the most recent state median income data published by the Bureau of the Census, for a family of the same size, updated by the department for a family size of four and adjusted by the department for family size.

**Section 415.2. Eligibility.** The following families are eligible for child care assistance under the specified child care programs when the legally responsible persons or caretakers of the child in need of child care services are not available to provide care, such child care services are in the best interest of the child and caretaker, and child care services are a necessary part of a plan for self support. For two-caretaker families, each caretaker must meet one of the eligibility criteria set forth in this subdivision.

(a) New York State Child Care Block Grant Program.

A family may be eligible for child care assistance under the New York State Child Care Block Grant Program if the resources of the family do not exceed one million dollars and 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 assistance 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 hours times the State minimum wage. Recipients of child care assistance 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, the family received child care in lieu of public assistance and 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 300 percent of the applicable state income standard, provided the family income does not exceed 85 percent of the state median income. This child care guarantee is available to

415.2(a)(1)(iv)(d)

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 300 percent of the state income standard, provided the family income does not exceed 85 percent of the state median income 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 300 percent of the

415.2(a)(2)(v)

state income standard, provided the family income does not exceed 85 percent of the state median income, 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 300 percent of the state income standard, provided the family income does not exceed 85 percent

of the state median income, 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 300 percent of the state income standard, provided the family income does not exceed 85 percent of the state median income, 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 associate's 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; and

(b) 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 basis that such child care is needed to protect the child;

(vi) a family with income up to 300 percent of the state income standard, provided the family income does not exceed 85 percent of the state median income, 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 300 percent of the state income standard, provided the family income does not exceed 85 percent of the state median income, 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.

(viii) a family with income up to 300 percent of the state income standard, provided the family income does not exceed 85 percent of the state median income, when child care services are needed for the child to be protected because one of the child's caretakers is engaged in work as defined in section 415.1(o)(1) of this Part and the child's other caretaker is physically or mentally incapacitated or has family duties away from home necessitating his or her absence.

(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 300 percent of the State income standard for families receiving child care services under the title XX provided that the income levels do not exceed 375 percent of the State income standard for a family of one or two, 355 percent of the State income standard for a family of three, or 325 percent of the State income standard for a family of four or more.



415.2(c)

(c) A social services district must provide recipients of services funded under the New York State Child Care Block Grant with such services for at least 12 months, except as provided in Section 415.2(d)(4).

(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. Very low income is defined as an income level up to 300 percent of the state income standard, provided the family income does not exceed 85 percent of the state median income;

(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 cannot replace the federally mandated priorities.

(b) Local priorities may be based on one or a combination of factors. Local priorities established under the child care block grant cannot be based on 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 for the 12-month eligibility period 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.

(i) For New York State Child Care Block Grant funds, a social services district must provide services to recipients for the duration of the 12-month eligibility period unless:

(a) The recipient family's income exceeds 85 percent of state median income;

(b) The recipient family has experienced a non-temporary cessation in work or attendance at a training or education program;

(c) The recipient failed to agree to a reasonable plan for repayment or recovery of an overpayment or failed to comply with an agreed upon plan for repayment or recovery of an overpayment;

(d) The recipient has been convicted of or voluntarily admitted to fraudulently receiving child care assistance; or

(e) The recipient certified and attested to false information on the application for child care assistance and/or enrollment form or any attachment thereto.

(ii) For Title XX funds, 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 assistance 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, or other electronic means as approved by the Office. The caretaker with whom an eligible child or children lives 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

415.3(d)

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 assistance must contribute toward the costs of child care services by paying a family share based upon the family's income with the following exceptions: a family where the parent(s) or caretaker relative(s) is receiving public assistance, a family experiencing homelessness, when such assistance is provided to a child in foster care, when such assistance is provided to a child as a protective or preventive service, or when such assistance is provided to a child where the child care services unit is comprised of the eligible child(ren) only. However, a family share may be required of any family to recoup an overpayment for child care services.

(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 at least 1 but no more than 10 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 that 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 decrease the amount of the family share, when an overpayment for child care services

has occurred and the recovery of such overpayment will be made through the family share, and at 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.

(g) The child's caretaker is responsible for responding to and providing documentation requested for an investigation, audit, or program review by a social services district, the Office, or other authorized agency to verify the accuracy and completeness of information on the application including, but not limited to, household circumstances, need for child care, and compliance with the caretaker's responsibilities under this section. The caretaker's failure to respond to or comply with requests for documentation constitutes an appropriate basis for the social services district to deny an application for child care assistance or to close the child care assistance case in accordance with 415.2(d)(4).

#### **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

415.4(a)(1)(i)

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 assistance can be made, for reporting immediately to the social services district any changes to such facts after the application has been submitted but before eligibility has been determined, 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 that puts the family income over 85 percent of the state median income, 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.

415.4(a)(2)

(2) All applications for child care assistance 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 care assistance must be determined pursuant to the requirements of this Part, Part 404 of this Title and, where applicable, Part 385 of this Title. In addition, required documentation is a necessary prerequisite to the determination of eligibility and must be retained.

(4) If an application for child care assistance is approved, the social services district must send written notice to the applicant for child care services, in accordance with section 404.1(f) of this Title. The notice must include: the determination of eligibility for child care services; the family share to be paid by the applicant, if required; the effective date(s) of such family share and the family share payment procedures which must be followed; the period for which child care assistance is authorized; the name of the worker or unit responsible for case management and the telephone number; a statement regarding the continuing responsibility of the applicant or recipient to report any change in his or her status that would impact their continued eligibility; the right of the recipient to accept or reject the service; and the applicant's right to a fair hearing in accordance with Part 358 and section 404.1(f) 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 every 12 months and when case factors indicate that redetermination could be beneficial to the family by reducing family share or increasing subsidy; 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, re-evaluated 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

415.4(b)(2)

financial circumstances that puts the family income over 85 percent of the state median income, 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. In the event the caretaker is no longer engaged in their approved activity during the 12-month eligibility period, the child care services must continue unless the recipient family has experienced a non-temporary cessation in work or attendance at a training or education program or experienced other circumstances set forth in 415.2(d)(4). Child care services must be provided, if needed, to enable an employed caretaker who works non-traditional hours to obtain up to eight hours of sleep if they have a child who is under the age of 6 and not in school for a full day. Child care services may be provided, if needed, to enable other employed caretakers who work non-traditional hours to obtain up to eight hours of sleep if the social services district indicates in its Child and Family Services 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) The social services district must take action on a claim for reimbursement for child care services submitted by an eligible provider as follows:

(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.*

415.4(d)(1)

(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,

415.4(e)(4)

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.

(7) The social services district that proposes an amendment to its Child and Family Services Plan 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 of the Social Services Law or the regulations of the Office, as applicable, prominently post on the district's website a notice of the proposed amendment 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 such notice to the Office.

(8) The social services district must provide written notice to families receiving child care services at least 30 days in advance of the effective date of an action the district takes to:

(i) implement a plan amendment to its Child and Family Services Plan that reduces the family's eligibility for child care services,

(ii) increase the family share percentage, or

(iii) implement the process for closing child care cases.

(9) When a social services district implements the process for closing child care cases for families, the district must:

415.4(e)(9)(i)

(i) no later than the day the district begins to send out the notices of intent to discontinue child care benefits, post a notice on its website, that states the district is implementing the child care case closing process set forth in its approved Child and Family Services Plan and describes the categories of families who will be impacted; and

(ii) immediately provide a copy of the website notice to the Office.

(f) Actions related to legally exempt child care providers.

(1) The social services district must provide a child's caretaker that has applied for or is receiving child care assistance under the New York State Child Care Block Grant Program and who is interested in using a legally exempt child care provider with an enrollment package and notify the caretaker that the completed package must be submitted to the applicable enrollment agency.

(2) In accordance with guidelines issued by the Office, the social services district in which a relative-only in-home or relative-only family child care provider lives must conduct a local child welfare database check to determine whether such provider has had his or her parental rights terminated under section 384-b of the Social Services Law or had a child removed from his or her care by court order under article 10 of the Family Court Act, and

(i) provide the enrollment agency with the results of the local child welfare database check within 15 days of receiving the request, and

(ii) when applicable, conduct a review of extenuating circumstances and provide the enrollment agency with the results.

(3) A social services district may only make payments for child care services provided by a legally exempt child care provider if the child care provider has been enrolled, either on a temporary or final basis, by an enrollment agency in accordance with this Part.

(4) A social services district may suspend the enrollment or deny the application for enrollment of a child care provider, which is not required to be licensed or registered under section 390 of the Social Services Law, if that provider is a subject of a report of child abuse or maltreatment under investigation by child protective services.

(5) Child care assistance cannot be authorized for a child under three years of age for child care provided in a legally exempt group child care program, except for:

(i) center-based child care programs located on tribal property which are legally operating under the auspices of a tribal authority that is not a Child Care and Development Fund grantee, which are operated in compliance with the applicable tribal laws and regulations for such child care programs; or

(ii) a child who is at least two years of age at the beginning of the school year but will turn three years of age on or before the applicable calendar date for which a

415.4(f)(5)(ii)

child must be at least five years of age to be eligible for admission to school; such a child shall be considered three years of age for the purposes of staff-to-child ratio and maximum group size.

(6) The social services district may terminate child care subsidy payments and/or take legal action against the legally exempt child care provider or caretaker as a result of any false information, certified and attested to by the child care provider or the caretaker on either the enrollment or re-enrollment form or any attachment thereto.

(g) Additional local standards for subsidized child care.

(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 provider of Family Child Care or relative-only family 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 Child and Family Services 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 providers of legally exempt child care, the district is responsible for notifying applicants for and recipients of child care assistance and child care providers of the district's requirements. The district's monitoring process must include procedures for notifying the applicable enrollment agency if the district determines that such a child care provider is not in compliance with an additional standard. Any such procedures established by the social services district shall not cause a delay which prevents the enrollment agency from completing the review of the enrollment package.

(h) Administrative actions related to child care providers.

(1) In accordance with guidelines established by the Office, a social services district may refuse to allow a child care provider that is not in compliance with 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) Disqualifications and administrative reviews.

(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;

(f) has a conviction of any activity that occurred in the past seven 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) a reduction in the amount of the payment to the child's caretaker or child care provider until the full amount of the overpayment is collected; 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 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.

415.4(i)(6)

(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 assistance who has been convicted of, or has voluntarily admitted to, fraudulently receiving child care assistance must have his or her child care assistance, if any, suspended or terminated and will not be eligible for subsequent child care assistance for a period of time determined in accordance with the time periods established in subparagraph (i) of this paragraph. If such recipient or former recipient is a recipient of public 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 assistance 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.

(i) Unless a court of appropriate jurisdiction specifies a different disqualification period, the recipient or former recipient of child care assistance would be ineligible to receive child care assistance:

(a) for 12 months for a first offense;

(b) for 24 months for a second offense or whenever there is an offense that results in the wrongful receipt of child care assistance in an amount as specified by the Office; or

(c) permanently for a third offense or whenever there is an offense that results in the wrongful receipt of child care assistance in an amount as specified by the Office.

(ii) A recipient or former recipient of child care assistance that has been disqualified from receiving child care assistance by a social services district under paragraph (13) of this subdivision is ineligible to receive child care assistance, with the exception of child care authorized as a child protective or preventive service or needed to participate in an activity required by the social services district, unless the person makes full restitution or commits to a plan of restitution of all falsely obtained funds to the social services district. If such a recipient or former recipient of child care assistance does not make full restitution or commit to a plan of restitution to the social services district, then the person will remain ineligible to receive child care assistance, with the exception of child care authorized as a child protective or child preventive service or needed to participate in an activity required by the social services district.

(14) Overpayments for child care services made as a result of payment for aid continuing for a caretaker who loses a fair hearing or whose fair hearing is withdrawn, abandoned or defaulted 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 assistance, 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 assistance must receive timely and adequate notice of any change in child care assistance, except that changes in the manner or amount of payment for child care assistance 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.

415.4(j)(2)

(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) 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 providers of subsidized child care services the social services district will review for the purpose of comparing the provider'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, or by direct deposit or debit card, and administered electronically, and in accordance with such guidelines as may be set forth by the Office, for care provided by an eligible provider and supported by a bill signed by both the child's caretaker and the provider; or

415.5(a)(1)(ii)

(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.

(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. A social services district must not establish administrative requirements for payment that impose unnecessary barriers on the caretaker's choice of an eligible child care provider.

(i) A child care provider cannot be required to participate in a direct deposit program.

(ii) Child care providers cannot be required to enter into a contract with a social services district in order to provide child care services for a family receiving child care assistance funded under the New York State Child Care Block Grant.

(4) A social services district must establish in written policy timeframes for the submittal by the child care provider and/or subsidy recipient of a bill for and documentation of child care services and for the processing of payment by the social services district. The social services district must notify the child care provider of the billing and payment policies, or, if paying the child's caretaker directly, the district must notify the caretaker.

(b) Notwithstanding the provisions in 415.5(a)(1) of this Part, upon the implementation of a statewide system, a social services district must offer eligible providers, including legally exempt providers, the option to receive payment for subsidized child care services by direct deposit into the bank account of the child care provider.

(1) Such direct deposit shall only be at the express written consent of the provider on forms to be provided by the social services district.

(2) Such written consent can be revoked at any time by the provider in writing on forms provided by the social services district.

(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**

415.6(a)

(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 absent from child care is 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.

(2) Reimbursement for absences from child care must be paid up to 24 days per year.

(3) Reimbursement for absences from child care may be paid up to 80 days per year. The social services district must specify in its Child and Family Services Plan whether it opts to make absence payments above 24 days and, if applicable, the total maximum number of absences and for which providers such payments will be made.

(4) The social services district must also specify in its contract or written agreement with, or through written notice to, all providers the maximum number of absences for which payment is allowable.

(5) 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 child day care providers or legally exempt group child care 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 providers of informal child care. The social services district must specify in its Child and Family Services 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.

415.6(c)(3)

(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 eligible families/children do not exceed the amount charged to the general public for equal care in the providing facility or home. Income-based fee structures that are applied to the general public by child care providers must be applied to child care subsidy recipients and considered as the actual cost of care. Scholarships or discounts offered by the child care provider to the general public cannot exclude child

415.6(e)(2)

care subsidy recipients if the family otherwise meets the criteria specified for that scholarship or discount.

(3) Payments per child 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 member of the child's or the caretaker's public assistance unit, the child's caretaker, the spouse of the child's caretaker, or a member of the child care services unit.

(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 providers, including monitoring compliance with any additional local child care requirements imposed pursuant to section 415.4 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;



415.7(c)(3)

- (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.

415.7(g)

(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.

415.8(e)

(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 or 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) If the parent or caretaker relative has a demonstrated inability, as determined by the social services district, to locate child care needed for the applicable child(ren) despite 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. 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 person's home or work site; and the person 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 person'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

415.8(i)(2)

(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) 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 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 or part-day 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 less than six hours per day.

(d) 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.

(e) 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.

(f) Differential payment rates for child care services.

(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.

(g) There may be multiple market rates for legally exempt group child care, the standard market rate, and the opportunity for an enhanced market rate as provided in this subdivision.

415.9(g)(1)

(1) The standard market rate of payment for legally exempt group child care programs 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.

(2) A social services district may establish one or both of the following categories of enhanced rates for child care services provided by legally exempt group child care programs:

(i) A social services district may establish an enhanced market rate for child care services provided by eligible legally exempt group child care programs up to 81 percent of the applicable market rate for day care center providers if:

(a) the program prepares a health care plan that meets the specifications of paragraph (2) of subdivision (c) of section 415.13 of this Part; and

(b) the program has at least one employee with a caregiving role in each classroom during the program's operating hours who holds a valid certificate in cardio-pulmonary resuscitation (CPR), appropriate to the ages of the children in the classroom.

(ii) A social services district may establish an enhanced market rate for child care services provided by eligible legally exempt group child care programs up to 81 percent of the applicable market rate for day care center providers, if:

(a) the director(s) of the legally exempt group child care program complete{s} the Health and Safety: Competencies in Child Care for Day Care Center, School-Age Child Care, and Enrolled Legally Exempt Group Program Directors course or other course as approved by the Office, and a minimum of 15 fifteen hours of training annually in areas approved by the Office in addition to the training required by section 415.13 of this Part; and

(b) each employee with a caregiving role at the legally exempt group child care program completes a minimum of five hours of training annually in the areas approved by the Office, in addition to the training required by section 415.13 of this Part.

(3) When a social services district establishes an enhanced market rate for child care services provided by eligible legally exempt group child care programs in accordance with subparagraphs (i) and (ii) of paragraph (2) of this subdivision, the district may pay up to 87 percent of the applicable market rate for day care centers when all requirements of both subparagraphs are met.

(4) An enhanced market rate established pursuant to this subdivision will only be available to those legally exempt group child care programs that have submitted documentation to the applicable legally exempt caregiver enrollment agency verifying compliance with:

415.9(g)(4)(i)

(i) the requirements set forth in this subdivision required to qualify for the enhanced rate; and;

(ii) all applicable health and safety requirements in this Part.

(5) The applicable social services district and its designees, or applicable legally exempt caregiver enrollment agency shall inspect any legally exempt group child care program that requests or receives an enhanced market rate pursuant to this subdivision.

(6) The social services district must indicate in the district's consolidated services plan or integrated county plan the percentage and category of any enhanced market rate it will provide for child care services provided by eligible legally exempt group child care programs.

(7) A legally exempt group child care program may receive an enhanced market rate pursuant to this subdivision and one or more differential rates pursuant to this section, provided however, that the total payment made to a legally exempt group child care program must not exceed either 100 percent of the applicable market rate for day care centers as set forth in this section, or the actual cost of care, whichever is less.

(h) Establishment of market rates.

(1) The Office will establish local market rates for child care services 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) There are two market rates for informal child care, a standard market rate and an enhanced market rate. The standard market rate for informal child care will be 65 percent of the applicable registered family day care market rate. The enhanced market rate for informal child care will be 70 percent of the applicable registered family day care market rate. The enhanced market rate will apply to those informal child care providers who have provided notice to, and have been verified by, the applicable 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](#). This 10 or more hours of training must be in addition to the training requirements in section 415.13 of this Part. 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 informal child care providers to up to 75 percent of the applicable registered family day care market rate.

(3) The social services district must use the most recent market rates established by the Office when calculating payments for child care services. The market rates are established by the Office at no less than the eightieth percentile of the most recent market-related survey.

(4) The market rate for child care services provided to a child determined to have special needs, pursuant to subdivision 415.1(c) of this Part, is a percentage specified by the office applied to the rates set under paragraph 415.9(h)(3) of this Part. The special



needs rate will only be applied if the parent demonstrates the special needs of the child require child care related services of a type or amount beyond that which is generally required by children of similar age, and the total cost of providing child care services exceeds the rates set in paragraph 415.9(h)(3) of this Part.

(i) 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 providers 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 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.

(i) An eligible provider must operate in compliance with all emergency health guidance promulgated by the Department of Health in the interest of public health during a designated public health emergency. Provided that, during a designated public health emergency, any relevant emergency directives from the executive chamber or from the Department of Health shall supersede regulations of the Office in the case of any conflict.

(2) An eligible provider must maintain daily attendance records. Such records must be kept current and accurate, be filled out when a child arrives and departs, and include:

(i) the date of attendance,

(ii) arrival and departure times,

(iii) notation of full day absences.

(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.

415.12(a)(4)

(4) An eligible provider must not charge more for subsidized child care than the provider charges for non-subsidized care.

(5) A child care provider or an employee, volunteer, visitor, or household member of the provider must admit inspectors and other representatives of the enrollment agency, social services district and the Office onto the grounds and premises at any time during the hours child care services are provided. Such inspectors and representatives must be given free access to the building or buildings used by the program, staff, employees, volunteers and children in care and any records pertaining to the program.

(i) A child care provider or an employee, volunteer, visitor, or household member of the provider must cooperate with inspectors and representatives in regard to an inspection or investigation.

(ii) A child care provider or an employee, volunteer, visitor, or household member of the provider must cooperate with local child protective services staff conducting any investigation of alleged child abuse or maltreatment.

(iii) A child care provider or an employee, volunteer, visitor, or household member of the provider may not place or attempt to place an inspector or other representative in reasonable fear of physical injury. Any intentional display of physical or verbal force or contact, which would give an inspector or representative reason to fear or expect bodily harm, is prohibited.

(iv) If a child care provider or an employee, volunteer, visitor, or household member of the provider does not admit or cooperate with an inspector or representative, or the provider or an employee, volunteer, visitor, or household member of the provider threatens an inspector or representative with physical or verbal force, the Office may deny, suspend, or terminate the provider's enrollment according to guidelines issued by the Office.

**Section 415.13. Requirements for legally exempt child care enrollment applicants and providers to be enrolled, maintain enrollment, and be re-enrolled to provide child care services.**

(a) Attestation, certification, and the exchange of true and accurate information requirements for legally exempt child care enrollment applicants and providers.

(1) The child's caretaker and the enrollment applicant must attest and certify in writing that, to the best of their knowledge, the enrollment applicant meets and will continue to meet all health and safety requirements set forth in this section, and all statements made on the enrollment form and its attachments thereto are accurate and complete.

(i) Any false information, certified and attested to by the child's caretaker or the enrollment applicant on the enrollment form or any attachment thereto, may result in: denial or termination of the enrollment, the social services district terminating child care subsidy payments, and/or legal action against the enrollment applicant, provider or caretaker.

415.13(a)(1)(ii)

(ii) The enrollment applicant or provider must immediately report to the enrollment agency any change to the information in the enrollment package that affects, or which reasonably might be expected to affect, compliance with applicable regulations.

(2) An enrollment applicant must attest and certify in writing whether, to the best of his or her knowledge, he or she 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 revoked, limited or suspended.

(i) If an enrollment applicant indicates that he or she has been denied such a license or registration, or had such a license or registration revoked, limited or suspended, the enrollment applicant must provide true and accurate information to the child's caretaker and the enrollment agency regarding any such denial, revocation, limitation, or suspension, including a description of the reason for denial, revocation, limitation or suspension, the date of the denial, revocation, limitation, or suspension, and any other relevant information, if such information has not already been provided to the child's caretaker and the enrollment agency.

(3) The requirements of this paragraph shall apply to any relative-only in-home child care provider or relative-only family child care provider:

(i) An enrollment applicant must attest and certify in writing whether he or she has ever had his or her parental rights terminated under section 384-b of the Social Services Law or a child removed from his or her care by court order under article 10 of the Family Court Act.

(ii) If an enrollment applicant indicates that he or she has had his or her parental rights terminated under section 384-b of the Social Services Law or a child removed from his or her care by court order under article 10 of the Family Court Act, the enrollment applicant must provide true and accurate information to the child's caretaker and the enrollment agency regarding the reasons underlying the loss of parental or custodial rights.

(iii) The enrollment applicant must attest and certify whether, to the best of his or her knowledge, the enrollment applicant, any employee, volunteer, or family child care household member age 18 or older, has ever been convicted of a misdemeanor or a felony in New York State or any other jurisdiction.

(a) Prior to furnishing the child's caretaker and the enrollment agency with such information, the enrollment applicant 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.

(b) When an enrollment applicant indicates that he or she or such an employee, volunteer or family child care household member age 18 or older has been convicted of a crime, the enrollment applicant must give the child's caretaker and the enrollment agency true and accurate information about the crime which will enable the caretaker and the

enrollment agency to evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child. 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.

(c) No relative-only in-home child care or relative-only family child care provider convicted of a felony or misdemeanor against children may be enrolled by an enrollment agency as a legally exempt child care provider.

(d) No relative-only in-home child care or relative-only family child care provider which employs a person or uses a volunteer convicted of a felony or misdemeanor against children may be enrolled by an enrollment agency as a legally exempt child care provider.

(e) No relative-only family child care provider whose household includes a person convicted of a felony or misdemeanor against children may be enrolled by an enrollment agency as a legally exempt child care provider.

(f) No relative-only in-home child care or relative-only family child care provider who has been convicted of other felony or misdemeanor offenses may be enrolled unless the enrollment agency finds that the circumstances are consistent with guidelines issued by the Office for evaluating applicants with criminal conviction records.

(g) No relative-only in-home child care or relative-only family child care provider which employs a person or uses a volunteer convicted of other felony or misdemeanor offenses may be enrolled unless the enrollment agency finds that the circumstances are consistent with guidelines issued by the Office for evaluating applicants with criminal conviction records.

(h) No relative-only family child care provider whose household includes a person who has been convicted of other felony or misdemeanor offenses may be enrolled unless the enrollment agency finds that the circumstances are consistent with guidelines issued by the Office for evaluating applicants with criminal conviction records.

(i) No relative-only in-home child care or relative-only family child care provider may be enrolled who knowingly makes a materially false statement in connection with a criminal background history or refuses to cooperate with the criminal history evaluation.

(iv) The enrollment applicant must furnish the child's caretaker with true and accurate information, in writing, indicating whether, to the best of the enrollment applicant's knowledge, such person, any employee, volunteer and/or any family child care 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.

(a) Prior to furnishing the child's caretaker with such information, the enrollment applicant shall inquire of each such employee, volunteer and/or any family child care household member age 18 or older regarding whether that person has ever been the subject of an indicated report of child abuse or maltreatment.

(b) The enrollment applicant 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.

(v) The enrollment applicant must provide such information required so as to allow the enrollment agency to conduct a check of each relative-only in-home child care provider and each relative-only family child care provider, any employee, volunteer, and each family child care 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 person is listed on the New York State Sex Offender Registry. When such person is listed on the New York State Sex Offender Registry, the enrollment agency must not enroll the child care provider.

(4) The requirements of this paragraph shall apply to any non-relative family child care provider:

(i) The enrollment applicant must attest and certify whether, to the best of his or her knowledge, any family child care household member age 18 or older related in any way to all children in care has ever been convicted of a misdemeanor or a felony in New York State or any other jurisdiction.

(a) Prior to furnishing the child's caretaker and the enrollment agency with such information, the enrollment applicant shall inquire of each such household member regarding whether that person has ever been convicted of a misdemeanor or any felony in New York State or any other jurisdiction.

(b) When an enrollment applicant indicates that such a household member has been convicted of a crime, the enrollment applicant must give the child's caretaker and the enrollment agency true and accurate information about the crime which will enable the caretaker and the enrollment agency to evaluate whether the criminal background poses an

unreasonable risk to the safety or welfare of the child. 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.

(c) A non-relative family child care provider whose household includes a person convicted of a felony or misdemeanor against children may not be enrolled by an enrollment agency as a legally exempt child care provider.

(d) A non-relative family child care provider whose household includes a person convicted of other felony or misdemeanor offenses may not be enrolled unless the enrollment agency finds that the circumstances are consistent with guidelines issued by the Office for evaluating applicants with criminal conviction records.

(e) A non-relative family child care provider may not be enrolled who knowingly makes a materially false statement in connection with a criminal background history or refuses to cooperate with the criminal history evaluation.

(ii) The enrollment applicant must furnish the child's caretaker with true and accurate information, in writing, indicating whether, to the best of the enrollment applicant's knowledge, any family child care household member age 18 or older related in any way to all children in care has ever been the subject of an indicated report of child abuse or maltreatment in New York State or any other jurisdiction.

(a) Prior to furnishing the child's caretaker with such information, the enrollment applicant shall inquire of each such household member regarding whether that person has ever been the subject of an indicated report of child abuse or maltreatment.

(b) The enrollment applicant 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) The enrollment applicant must provide such information required so as to allow the enrollment agency to conduct a check of each family child care household member age 18 or older related in any way to all children in care 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 person is listed on the New York State Sex Offender Registry. When such person is listed on the New York State Sex Offender Registry, the enrollment agency must not enroll the child care provider.

(b) Basic health and safety requirements for legally exempt child care providers.

#### 415.13(b)(1)

(1) To be enrolled by an enrollment agency, an informal child care provider or a legally exempt group child care program must meet and continue to meet the basic health and safety requirements of this subdivision.

#### (2) Building and equipment

(i) There must be two separate and remote ways to escape in an emergency.

(ii) Rooms for children must be well-lighted and well-ventilated. Heat, ventilating and lighting equipment must be adequate for the protection of the health of the children.

(iii) Adequate and safe water supply and sewage facilities must be provided and comply with State and local laws. Hot and cold running water must be available and accessible at all times.

(iv) Paint and plaster must be in good repair and there must be no danger of children putting paint or plaster chips in their mouths or of it getting into their food.

(v) Stairs, railings, porches, decks, and balconies must be in good repair.

(vi) Buildings, systems, and equipment must be kept in good repair and operate as designed.

#### (3) Fire protection

(i) Evacuation drills must be conducted at least monthly with the children during the hours that children are in care. The provider must maintain a written record of the evacuation drills on-site.

(ii) For informal child care providers, there must be a minimum of one operating smoke detector on each floor of the home and a minimum of one operating carbon monoxide detector. Such detectors must be checked regularly to verify proper operation.

(iii) For legally exempt group child care programs, operating carbon monoxide detectors and smoke alarms must be located and operating in accordance with the New York State Uniform Fire Prevention and Building Code or other applicable fire prevention and building codes when the Uniform Code of New York State is not applicable.

#### (4) Supervision

(i) Children must never be left unsupervised or in the care of persons who are not authorized to supervise the children.

(ii) For informal child care, the enrolled provider is the sole person authorized to supervise the children.

(iii) For legally exempt group child care, a director or person who is knowledgeable about the program's operation and policies and designated to act on behalf of the director must be present on-site at all times during the program's hours of operation.

(iv) Electronic monitoring devices may not be used as a substitute for supervision of children who are awake.

(v) Electronic monitoring devices may be used to transmit images of children in common rooms, hallways, and play areas only.

(vi) Bathrooms and changing areas must remain private and free of electronic monitoring devices.

(vii) The child's caretaker and each employee and volunteer of the provider must be informed if electronic monitoring devices are used.

(viii) For Informal child care providers, sleeping and napping arrangements must be made in writing between the parent and the program. Such arrangements shall include: where the child will nap or sleep; whether the child will nap or sleep on a cot, mat, bed or a crib; and how the child will be supervised, including whether electronic monitors can be used, and how often the provider is required to check on the child.

#### (5) Physical Environment and Safety

(i) Suitable precautions must be taken to eliminate all conditions in areas accessible to children which pose a safety or health hazard.

(ii) All potentially hazardous materials, which include, but are not limited to, matches, lighters, medicines, drugs, alcohol, cleaning materials, detergents, aerosol cans, and other poisonous or toxic materials must be:

(a) inaccessible to children in care and stored in their original containers, and

(b) used in a way that they will not contaminate play surfaces, food, or food preparation areas or constitute a hazard to children.

(iii) Barriers must be used to restrict children from unsafe areas. Such areas include, but are not limited to, swimming pools, bodies of water, open drainage ditches, wells, holes, wood and coal burning stoves, fireplaces, and permanently installed gas space heaters.

(iv) Where child care is provided on floors above the first floor, windows on floors above the first floor must be protected by barriers or locking devices to prevent children from falling out of the windows.



(v) Protective caps, covers, or permanently installed obstructive devices must be used on all electrical outlets that are accessible to young children.

(vi) Firearms and ammunition must be securely stored and inaccessible to children while care is being provided.

(vii) There must be 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 must be posted conspicuously or are readily accessible.

(viii) The use of, or being under the influence of, alcohol or drugs is prohibited while children are in care. Children must not be exposed to persons using drugs or alcohol while in care. The use of, or being under the influence of, a controlled substance is prohibited while children are in care, unless the controlled substance is prescribed by a health care provider, is being taken as directed, and does not interfere with the person's ability to provide child care services.

(ix) Smoking and vaping are prohibited in indoor areas while children are in care or in vehicles while children are being transported. Children must not be exposed to smoke or vapors from vaping in outdoor areas.

(x) The child care site must be free of vermin.

(xi) Exposure or access to any materials that are developmentally inappropriate for the age of the children in care is prohibited. Such materials include, but are not limited to, sexually and illicitly graphic materials, drug paraphernalia, and other printed or digital materials or content.

(xii) Sleeping arrangements for infants through 12 months of age require that the infant be placed flat on his or her back to sleep, unless medical information from the child's health care provider is presented to the program by the caretaker that shows that arrangement is inappropriate for that child.

(xiii) Cribs, bassinets and other sleeping areas for infants through 12 months of age must include an appropriately sized fitted sheet, and must not have bumper pads, toys, stuffed animals, blankets, pillows, wedges or infant positioners. Wedges or infant positioners will be permitted with medical documentation from the child's health care provider.

(xiv) Providers and staff must take steps to prevent a child's exposure to the foods to which the child is allergic.

(6) Transportation

(i) A child must never be left unattended in any motor vehicle or other form of transportation.

- (ii) Each child must board or leave a vehicle from the curb side of the street.
- (iii) All children must be secured in child safety seats properly installed per manufacturer's recommendations, or with safety belts, as appropriate for the age of the child in accordance with the requirements of the New York State Vehicle and Traffic Law.
- (iv) Drivers transporting children must be 18 years of age or older and hold a current valid license to drive the class of vehicle they are operating.
- (v) Any motor vehicle, other than a public form of transportation, used to transport children must have a valid registration and inspection sticker.
- (vi) Children in care may not be transported in a vehicle built to hold more than 10 passengers, including the driver, unless the vehicle: meets the National Highway Traffic Safety Administration definition of a school bus or a multifunction school activity bus; complies with the National Highway Traffic Safety Administration Federal Motor Vehicle Safety Standards applicable to a school bus or multifunction school activity bus; and is inspected per New York State Department of Transportation rules and regulations.

(7) Behavior management

- (i) Safe, suitable care to children that is supportive of the children's physical, intellectual, emotional, and social well-being must be provided.
- (ii) Acceptable techniques and approaches must be used to discipline children and to manage children's behavior.
  - (a) The use of corporal punishment is prohibited. The term corporal punishment means punishment inflicted directly on the body including, but not limited to, physical restraint, spanking, biting, shaking, slapping, twisting or squeezing; demanding excessive physical exercise, prolonged lack of movement or motion, or strenuous or bizarre postures; and compelling a child to eat or have in the child's mouth soap, hot spices, irritants or the like.
  - (b) Methods of discipline, interaction, or toilet training that frighten, demean, or humiliate children are prohibited.

(8) Health and infection control

- (i) The following health requirements must be met.
  - (a) An informal child care provider, director of a legally exempt group child care program, employees, and volunteers must be physically fit to provide child care and free of any psychiatric and emotional disorder that would preclude such person from providing care.

(b) An informal child care provider, director of a legally exempt group child care program, employees and volunteers, and each family child care household member must be free of any communicable disease unless the applicable person'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.

(c) For an informal child care provider and employees or volunteers of the informal child care provider, a medical statement may be requested by the enrollment agency when an event or condition reasonably calls into question the ability of such person to provide safe and/or suitable child care and/or if there is reasonable cause to suspect the information provided is inaccurate.

(d) For legally exempt group child care programs, the director must provide for themselves, and also must obtain a medical statement from each employee and volunteer on forms furnished by the Office. Such statement must be completed before the person begins providing care to children, must demonstrate that the person meets the requirements in clauses (a) and (b) of this subparagraph, and must be dated within 12 months preceding the date of application or hiring date.

(1) An updated medical statement may be required when an event or condition reasonably calls into question the person's ability to provide safe and/or suitable child care and/or if there is reasonable cause to suspect the information provided is inaccurate.

(ii) With the exception of children enrolled in kindergarten or a higher grade in a public or private school, child care shall not be provided to any child unless the provider 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 the requirements of New York Public Health Law. A provider may provide child care to any child not yet immunized provided the child's immunizations are in process and the caretaker gives the program specific appointment dates for required immunizations in accordance with the requirements of New York Public Health Law. Any child who is missing one or more of the required immunizations may be provided care if a physician, licensed to practice medicine in New York State furnishes the program with a signed, completed medical exemption form issued by the New York State Department of Health or New York City Department of Education. The medical exemption must be reissued annually.

(iii) A portable first aid kit must be accessible for emergency treatment. The first aid kit must be stocked to treat a broad range of injuries and situations and

restocked as necessary. The first aid kit and any other first aid supplies must be kept in a clean container or cabinet not accessible to children.

(iv) Safety precautions relating to blood and other bodily fluids must be observed.

(v) All legally exempt providers must have procedures in place to reduce the risk of infection.

(9) Nutrition

(i) Each child must receive meals and snacks in accordance with the plan developed jointly by the child care provider and the child's caretaker.

(ii) Perishable food, milk and formula must be kept refrigerated.

(iii) Heating infant formula, breast milk and other food items for infants in a microwave oven is prohibited.

(10) Management and administration

(i) The child care provider 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.

(ii) The indoor and outdoor areas of the home or the facility where children are in care must not be used for any other business or social purpose when the children are present, such that attention is diverted from the care of the children.

(iii) Informal child care providers, directors of a legally exempt group child care program, employees and volunteers must be of good character and habits.

(iv) The provider or program must take suitable precautions to prevent the following:

(a) serious injury of a child while in care at the program or being transported by the program; and

(b) death of a child while in care at the program or being transported by the program.

(v) The provider or program must immediately notify the enrollment agency and the caretakers of children in care upon learning of the following events involving a child which occurred while the child was in care at the program or was being transported by the program:

415.13(b)(10)(v)(a)

- (a) death,
- (b) serious incident,
- (c) serious injury,
- (d) serious condition,
- (e) communicable disease, or
- (f) transportation to a hospital.

(vi) The enrollment agency must be notified by a family child care provider or a relative-only family child care provider of any proposed new family child care household member.

(vii) The provider or program must immediately call 911 for children who require emergency medical care and notify the caretaker.

(viii) The provider or program must submit to the enrollment agency a written attestation and certification stating whether the program is operating under the auspices of another Federal, State, tribal, or local government agency which includes the name of the agency.

(11) Emergency Preparedness

(i) With the exception of in-home child care, each legally exempt child care provider must have on site a variety of supplies including food, water, first aid and other safety equipment to allow for the protection of the health and safety of children in the event caretakers are unable to pick up their children due to a local disaster.

(ii) Each legally exempt child care provider must have a written emergency plan that places primary emphasis on the safe and timely evacuation and relocation of children. The plan must account for the variety of needs of children, including those with disabilities, and contain the following components:

- (a) how children and adults will be made aware of an emergency;
- (b) a designation of primary and secondary evacuation routes;
- (c) methods of evacuation, including where children and adults will meet after evacuating the building, and how attendance will be taken;
- (d) a plan for the safe evacuation of children from the premises for each shift of care provided (day, evening, night);
- (e) the designation of primary and secondary emergency relocation sites to be used in the case of an emergency that prohibits re-entry to the child

care site, and how the health, safety and emotional needs of children will be met in the event it becomes necessary to evacuate to another location;

(f) a strategy for sheltering in place, and how the health, safety, and emotional needs of children will be met in the event it becomes necessary to shelter-in-place;

(g) methods of notifying authorities and the children's caretakers;

(h) roles of providers, employees and volunteers during an emergency;

(i) procedures related to the reunification of children and caretakers.

(iii) Two shelter-in-place drills must be conducted annually during which procedures and supplies are reviewed. The children's caretakers must be made aware of the drills in advance.

(iv) A record of each shelter-in-place and evacuation drill conducted, using forms provided by the Office or equivalents, must be maintained on site.

(v) The children's caretakers must be notified of the primary and secondary relocation sites and any changes to the plan in advance. In the case that a provider is directed to a different location by emergency services, the provider must notify the caretakers and the enrollment agency as soon as possible. In the event that relocation is required, a written notice must be placed on the main entry to the child care space unless an immediate threat precludes the provider from doing so.

(c) Administration of Medication

(1) Medication may not be administered to any child in care except to the extent that a person is authorized under the Education Law to administer medications or has met the requirements for the administration of medications in this subdivision, including approval of a completed health care plan, except when care is provided in the child's own home or the person administering the medication is related to a child's parent or step-parent within the third degree of consanguinity.

(i) Legally exempt child care providers and staff may administer medication only in accordance with the following:

(a) All providers that choose to administer medications other than epinephrine auto injectors, Diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers, topical ointments, lotions, creams and sprays to children must have a health care consultant of record and must address the administration of medications in the health care plan in accordance with the requirements of this subdivision.

(b) The provider must confer with a health care consultant regarding the policies and procedures related to the administration of medications. This consultation must include a review of the documentation that all staff authorized to administer medications have the necessary professional license or have completed the necessary training.

(c) Policies regarding the administration of medications must be explained to the caretaker at the time of enrollment of the child in care and when substantive changes are made thereafter. Caretakers must be made familiar with the policies of the child care program relevant to the administration of medications.

(d) Nothing in this subdivision shall be deemed to require any provider to administer any medication, treatment, or other remedy except to the extent that such medication, treatment or remedy is required under the provisions of the Americans with Disabilities Act.

(e) Nothing in this subdivision shall be deemed to prevent a caretaker, or relative within the third degree of consanguinity of the parents or step-parents of a child, even if such a person is a staff person or volunteer, from administering medications to a child while the child is in care even if the provider has chosen not to administer medications or if the staff designated to administer medications is not present when the child receives the medication.

(ii) If the legally exempt child care provider elects not to administer medications, the provider or staff must still document the dosages and time that the medications were given to the child by the child's caretaker, or relative within the third degree of consanguinity of the parents or step-parents of the child while the child was in care.

(a) Relatives within the third degree of consanguinity administering medications to the child in care must be at least 18 years of age, unless that relative is the caretaker of the child.

(b) If the only administration of medication in a child care program is done by a caretaker, or relative within the third degree of consanguinity of the parents or step-parents of a child, the staff of the program do not have to complete the administration of medication training requirements pursuant to this subdivision.

(iii) No child in care will be allowed to independently administer medications, except for those medications administered pursuant to subparagraph (ii) of paragraph (6) of this subdivision, without the assistance and direct supervision of staff that are authorized to administer medications pursuant to this subdivision. Any program that elects to offer the administration of medication to children when

children who attend the program independently administer medications or when children assist in the administration of their own medications must comply with all the provisions of this subdivision.

(iv) A legally exempt child care provider and staff may administer prescription and non-prescription (over-the-counter) medications for eyes or ears, oral medications, topical ointments, creams, lotions, sprays and medication patches and inhaled medications in accordance with this subdivision.

(v) A legally exempt child care provider and staff may not administer medications by injection, vaginally or rectally except as follows:

(a) where the provider and/or staff have been certified to administer medications in a child care setting and the caretaker and the child's health care provider have indicated such treatment is appropriate and received instruction on the administration of the medication; or

(b) for a child with special health care needs, where the caretaker, the provider and the child's health care provider have agreed on a plan pursuant to which the staff may administer medications by injection, vaginally or rectally; or

(c) where the provider and/or staff have a valid license as a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse or advanced emergency medical technician.

(vi) A legally exempt child care provider and staff authorized to administer medication who agree to administer medications to a child must do so, unless they observe the circumstances, if any, specified by the health care provider or the medication label, under which the medication must not be administered. In such instances, the provider or staff must contact the caretaker immediately.

(vii) Permissions needed from caretaker and/or health care provider in order to administer medications.

(a) Over-the-counter products, including but not limited to over-the-counter topical ointments, lotions, creams, sprays, including sunscreen products and topically applied insect repellent can be administered by the provider for one day only, with verbal permission of the caretaker. If an over-the-counter product is to be administered on a subsequent day or an ongoing basis, written permission from the caretaker must have been provided to the provider.

(b) For children less than 18 months of age, prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays, can be administered by the provider for one day only, with verbal permission of the caretaker and verbal instructions



directly from the health care provider or licensed authorized prescriber. If prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays are to be administered on a subsequent day or an ongoing basis, written permission from the caretaker and written instructions from the health care provider must have been provided to the provider prior to such administration.

(c) For children 18 months of age and older, prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays, can be administered by the provider for one day only, with the oral approval of the caretaker. If prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays are to be administered on a subsequent day or an ongoing basis, written permission from the caretaker and written instructions from the health care provider must have been provided to the provider prior to such administration.

(d) Provider and staff cannot administer medication to any child in care, if the caretaker's instructions differ from the instructions on the medication's packaging, until the provider receives permission from a health care provider or licensed authorized prescriber on how to administer the medication.

(e) The provider must immediately notify the caretaker if the provider will not administer medication due to differing instructions related to the administration of medication.

(viii) A legally exempt child care provider and staff who are authorized to administer medications must administer medication as follows:

- (a) to the right child,
- (b) at the right dose,
- (c) at the right time,
- (d) with the right medication, and
- (e) through the right route.

(ix) Documentation of Medication Administration

(a) At the time of administration, the staff must document the dosages and time that the medications are given to the child.

(b) All observable side effects must be documented and communicated to the caretaker, and when appropriate, the child's health care provider.

(c) Documentation must be made if the medication was not given and the reason for such a decision.

(x) The caretaker must be notified immediately and the Office must be notified within 24 hours of any medication administration errors. Notification to the Office must be reported on a form provided by the Office or on an approved equivalent.

(xi) For all children for whom the legally exempt child care provider administers over-the-counter medications pursuant to this subdivision (c) of this section, the provider must document that the caretaker or guardian gave verbal instructions and approval.

(xii) The legally exempt child care provider and staff authorized to administer medications must be literate in the language for which the permissions and instructions for use are written.

(xiii) Medication must be returned to the caretaker or guardian when it is no longer required by the child or, with the permission of the caretaker or guardian, be properly disposed of by the legally exempt child care provider.

(xiv) Where the legally exempt child care provider has received written permission of the caretaker and written instructions from the health care provider authorizing administration of a specified medication if the staff observes some specified condition or change of condition in the child while the child is in care, the staff person may administer the specified medication, without obtaining additional authorization from the caretaker or health care provider.

(xv) Prescription and over-the-counter medications must be kept in their original bottles or containers.

(xvi) Prescription medication labels must include the following information or be available through the licensed authorized prescriber on the form provided by the Office or equivalent form:

(a) Child's first and last name for patient-specific prescriptions;

(b) Licensed authorized prescriber's name, telephone number, and signature;

(c) Date authorized;

(d) Name of medication and dosage;

(e) Frequency the medication is to be administered;

(f) Method of administration;

(g) Reason for medication (unless this information must remain confidential pursuant to law);

(h) Most common side effects or reactions; and

(i) Special instructions or considerations, including but not limited to possible interactions with other medications the child is receiving, or concerns regarding the use of the medication as it relates to a child's age, allergies, or any pre-existing conditions.

(xvii) Medications must be kept in a clean area that is inaccessible to children.

(xviii) If refrigeration is required, the medication must be stored in either a separate refrigerator or a leak-proof container in a designated area of a food storage refrigerator, separated from food and inaccessible to children.

(xix) A legally exempt child care provider must comply with all Federal and State requirements for the storage and disposal of all types of medications, including controlled substances.

(xx) In the case of medication that needs to be given on an ongoing, long-term basis, the authorization and consent forms for children five years of age or older must be reauthorized at least once every 12 months. Any changes in the medication authorization related to dosage, time or frequency of administration shall require a legally exempt child care provider to obtain new instructions written by the licensed authorized prescriber. All other changes to the original medication authorization require a change in the prescription.

(xxi) In the case of medication that needs to be given on an ongoing, long-term basis, the authorization and consent forms for children under the age of 5 years of age must be reauthorized at least once every six months. Any changes in the medication authorization related to dosage, time or frequency of administration shall require a legally exempt child care provider to obtain new instructions written by the licensed authorized prescriber. All other changes to the original medication authorization require a change in the prescription.

(2) The Health Care Plan.

(i) Any legally exempt group or legally exempt non-relative family child care provider who elects to administer medications must prepare a health care plan on forms furnished by the Office. Such plan must protect and promote the health of children. The health care plan must be on site, followed by all staff and available upon demand by a caretaker or the Office. The health care plan must also be approved by the provider's health care consultant unless the only medications to be administered are:

(a) over-the-counter topical ointments, lotions and creams, sprays, including sunscreen products and topically applied insect repellent; and/or

(b) epinephrine auto injectors, Diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers.

(ii) The health care plan must describe the following:

(a) how a daily health check of each child for any indication of illness, injury, abuse or maltreatment will be conducted and documented;

(b) how a record of each child's illnesses, injuries and signs of suspected abuse or maltreatment will be maintained;

(c) how professional assistance will be obtained in emergencies;

(d) the advance arrangements for the care of any child who has or develops symptoms of illness or is injured, including notifying the child's caretaker;

(e) which designated staff will be administering medication; The plan must state that only a trained, designated staff person may administer medications to children, except when the only administration of medications offered will be the administration of over-the-counter topical ointments, lotions, creams, and sprays including sunscreen products and topically applied insect repellent.

(f) the contents of the first aid kit;

(g) that the trained designated staff may only administer medications to children if the designated staff is:

(1) at least 18 years of age,

(2) possesses a current certification in first aid and cardio-pulmonary resuscitation (CPR) appropriate to the ages of the children in care, and

(3) has completed the Medication Administration Training (MAT) pursuant to paragraph (4) of this subdivision or, in the case of administering patient specific epinephrine auto-injectors, Diphenhydramine in combination with the auto-injector, asthma inhalers and nebulizers, has received training on its use from the caretaker, health care provider or a health care consultant;

(h) the designation of the health care consultant of record for programs, as indicated in subparagraph (i) of this paragraph;

(i) when a health care consultant is required to approve a health care plan, the schedule of visits by a health care consultant to providers administering medications must occur at least once every year and must

include a review of the health care policies and procedures and a review of the documentation; and

(j) For legally-exempt group child care programs that will stock epinephrine auto-injectors, the plan must also designate one or more staff who will be responsible for the storage, maintenance, control and general oversight of any stock epinephrine auto-injectors acquired by the program. The plan must also state that staff may only use stock epinephrine auto-injectors, without a patient-specific prescription, after successfully completing a training course pursuant to subparagraph (i) of paragraph (7) of subdivision (c) of this section or if directed in a specific instance to use such device by a health care practitioner.

(3) Health Care Consultant.

(i) Legally exempt child care providers must demonstrate to the health care consultant how medications are administered in the program. A provider is not required to schedule a visit with a health care consultant or include a schedule of visits by a health care consultant in the health care plan when:

(a) only over-the-counter topical ointments, lotions, creams and sprays, including sunscreen products and topically applied insect repellent are administered; and/or

(b) epinephrine auto injectors, Diphenhydramine in combination with the auto injector, and asthma inhalers and nebulizers are the only medications administered in the program.

(ii) Should the health care consultant determine, after a visit to the legally exempt child care provider, that the approved health care plan is not being reasonably followed by the provider, the health care consultant may revoke his or her approval of the plan. If the health care consultant revokes his or her approval of the health care plan, the health care consultant must immediately notify the provider, no longer than 24 hours later. In that instance, the health care consultant may also notify the enrollment agency directly if he or she so desires. Should the health care consultant revoke his or her approval of the plan, the provider must notify the enrollment agency within 24 hours.

(iii) A legally exempt child care provider authorized to administer medications, which has had the authorization to administer medications revoked, or otherwise loses the ability to administer medications, must advise the caretaker of every child in care before the next day the program operates that the provider no longer has the ability to administer medications.

(iv) A legally exempt child care provider, whose health care consultant terminates his or her relationship with the provider, will be granted a 60-day grace period to hire another health care consultant, obtain approval of a health care plan from

the new health care consultant and submit the plan to the enrollment agency without the provider losing the ability to administer medications as long as:

(a) the former health care consultant did not revoke his or her approval prior to terminating the relationship with the provider;

(b) staff who have been trained in medication administration are available to continue administration of medications as per the health care plan;

(c) the provider follows the approved health care plan, as currently written, for the 60-day period;

(d) the provider notifies the enrollment agency, within 24 hours, of the termination of the relationship with the health care consultant; and

(e) the provider has the newly hired health care consultant review and approve the health care plan and sends the signed approved health care plan to the enrollment agency before the sixty-day window expires.

(v) Once the sixty-day period has expired if no health care plan approval is issued, the legally exempt child care program will no longer be able to administer medications other than over-the-counter topical medications and emergency medications.

#### (4) Training for the Administration of Medications.

(i) All legally exempt child care providers and staff except those excluded pursuant to this subdivision who have agreed to administer medication must complete the Office-approved medication administration training or an Office-approved equivalent before administering medications to children in child care. The certification of training in the administration of medications to children in child care shall be effective for a period of three-years from the date of issuance. The staff must complete a recertification training approved by the Office in order to extend the certification for each additional three-year period. Where a certification lapses, the staff may not be recertified unless the staff completes the initial medication administration training or the recertification training, as required by the Office.

(ii) Legally exempt child care providers and staff who will be responsible for administering medications must receive training in the methods of administering medications prior to administering any medications in a child care setting. Upon completion of the training, the staff must receive a written certificate from the trainer that indicates that the trainee has successfully completed this training, as required, and demonstrated competency in the administration of medications in a child care setting.

(a) In order to be trained in the administration of medications in a child care setting, providers and staff must be literate in the language or languages in which health care instructions from caretakers and health care providers will be received.

(b) Persons who receive training in the administration of medications in child care settings pursuant to this subdivision may not otherwise administer medications or represent themselves as being able to administer medications except to the extent such persons may be able to do so in accordance with the relevant provisions of the Education Law.

(iii) The training in the administration of medications must be provided by a health care provider or registered nurse who has been certified by the Office to administer the Office-approved curriculum.

(iv) The training must be documented and must include, but need not be limited to the following:

(a) training objectives;

(b) a description of the methods of administration including principles and techniques of application and dispensation of oral, topical, medication patches and inhalant medication, including the use of nebulizers, and the use of epinephrine auto injector devices when necessary to prevent anaphylaxis in emergency situations with respect to the various age groups of children;

(c) administering medication to an uncooperative child;

(d) an evaluation of whether the trainee demonstrates competency in:

(1) understanding orders from the health care professional or licensed authorized prescriber;

(2) the ability to correctly carry out the orders given by the health care provider or licensed authorized prescriber;

(3) recognition of common side effects of medications and ability to follow written directions regarding appropriate follow-up action;

(4) avoidance of medication errors and what action to take if an error occurs;

(5) understanding relevant commonly used abbreviations;

(6) maintaining required documentation including the caretaker's permission, written orders from health care professionals and

licensed authorized prescribers, and the record of administration of medications;

(7) safe handling of medications, including receiving medications from a caretaker;

(8) proper storage of medications, including controlled substances; and

(9) safe disposal of medications.

(v) A person who can produce a valid New York State license as a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse or advanced emergency medical technician will not be required to attend the training required by this paragraph in order to administer medications in a child care setting. Documentation establishing the person's credentials in one of the above fields will be required and a copy of the documentation must be provided to the Office.

(5) Stocking medications.

(i) A legally exempt child care provider may keep a supply of over-the-counter medications at a program site to be used in the event that a child develops symptoms while in care that indicate the need for over-the-counter medication.

(ii) Legally exempt child care providers that store and administer medication that is not labeled for a specific child must have an over-the-counter stock medication policy in place before beginning to store any over-the-counter medications. The over-the-counter stock medication's policy must address the safe storage and proper administration of the stored over-the-counter medication and must address the need for strict infection control practices as they pertain to stock medication.

(iii) Stock medication must be kept in a clean area that is inaccessible to children and any stock medication must be stored separate from child-specific medication.

(iv) Stock medications must be kept in the original container and have the following information on the label or in the package insert:

(a) Name of the medication,

(b) Reasons for use,

(c) Directions for use, including route of administration,

(d) Dosage instructions,

(e) Possible side effects and/or adverse reactions,



(f) Warnings or conditions under which it is inadvisable to administer the medication, and

(g) Expiration date.

(v) Legally exempt child care providers that stock supplies of over-the-counter medication, which are not in single dose packaging, must provide a separate mechanism to administer the medication for each child that may need the medication. Once a device has been used for a specific child in care, that specific device must be disposed of or reused only for that specific child and must be labeled with the child's first and last name. The program must include the procedure in the over-the-counter stock medication policy for dispensing the stock medication from the container to the device, or directly administering to the child, without contaminating the stock medication.

(vi) All stock medication must be administered using best practice techniques in accordance with the directions for use on the medication package.

(vii) Unless otherwise permitted by law, prescription medication cannot be kept as stock medication. Legally-exempt group child care programs may stock prescription epinephrine auto-injectors to be used for emergency treatment of a child appearing to experience anaphylactic symptoms, provided that the program complies with the requirements set forth in sections 415.13(c)(2)(ii)(j) and 415.13(c)(7) of this Part.

(6) Administration of Epinephrine, Diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers.

(i) When a legally exempt child care provider has not been authorized to administer medications in a child care setting in accordance with the requirements of this subdivision, a designated staff person may administer emergency care through the use of patient-specific epinephrine auto-injectors, Diphenhydramine, when prescribed in combination with the auto-injector, asthma inhalers and asthma nebulizers when necessary to prevent anaphylaxis or breathing difficulty for a child, but only when the

caretaker and the child's health care provider have indicated such treatment is appropriate. In addition:

(a) A written Individual Health Care Plan must be developed for the child;

(b) The child's health care provider must issue a standing order and prescription for the medication;

(c) The caretaker must approve, in writing, the administration of the medication as prescribed by the health care provider and keep medications current;

(d) Providers or staff administering an emergency medication pursuant to this paragraph, must be instructed on its use, and the instruction must be provided by the caretaker, the child's health care provider or a health care consultant;

(e) The provider or a staff who has been instructed on the use of the auto-injector, Diphenhydramine, inhaler or nebulizer must be present during all hours the child with the potential emergency condition is in care;

(f) The provider or staff administering the auto-injector, Diphenhydramine, asthma medication or nebulizer must be at least 18-years-old;

(g) The provider or staff must immediately contact 911 after administration of epinephrine;

(h) If an inhaler or nebulizer for asthma is administered, the provider or staff must call 911 if the child's breathing does not return to its normal functioning after its use; and

(i) Storage, documentation of the administration of medication and labeling of the auto-injector, asthma inhaler and asthma nebulizer must be in compliance with this subdivision.

(ii) When a legally exempt child care provider is approved to administer an inhaler to a child with asthma or other diagnosed respiratory condition, or an epinephrine auto injector for anaphylaxis, a school-aged child may carry and use these devices during child care hours if the provider secures written permission of such use of a duly authorized health care provider, consent from the caretaker, and completes a written Individual Health Care Plan for the child.

(iii) The written Individual Health Care Plan, consent from the caretaker and health care provider consent documenting permission for a school-age child to carry an inhaler or auto injector must be maintained on file by the legally exempt child care provider.

(7) A designated staff may use a stock epinephrine auto-injector, without a patient-specific prescription for emergency treatment of a child appearing to experience anaphylactic symptoms. In addition:

(i) All staff administering a stock epinephrine auto-injector must have successfully completed a training course in the use of epinephrine auto-injectors conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or an entity or person approved by the New York State Department of Health, or be directed in a specific instance to use such

415.13(c)(7)(i)

device by a health care practitioner. This training shall include how to recognize signs and symptoms of severe allergic reactions, including anaphylaxis; recommended dosage for adults and children; standards and procedures for the storage and administration of an epinephrine auto-injector and emergency follow-up procedures.

(ii) The staff person administering the epinephrine auto-injector must be at least 18-years-old;

(iii) The program must immediately contact 911 after administration of epinephrine; and

(iv) Storage, documentation of the administration of medication and labeling of the auto-injector must comply with this section.

(d) Training Requirements for Legally Exempt Child Care Providers.

(1) To be enrolled by or maintain enrollment with an enrollment agency, every child care provider, director, employee and volunteer, except for a relative-only in-home child care provider or relative-only family child care provider, must complete Office-approved training that complies with the Federal minimum health and safety pre-service training requirements. Such training must be completed prior to enrollment for a provider, or prior to a director, employee or volunteer's start date.

(2) To maintain enrollment with an enrollment agency, every child care provider, director, employee and volunteer, except for relative-only in-home child care providers and relative-only family child care providers, must annually complete a minimum of five additional hours of Office-approved training that complies with the Federal training requirements.

(e) Inspection Requirements for Legally Exempt Child Care Providers.

(1) To be enrolled by or maintain enrollment with an enrollment agency, a child care provider must admit and cooperate with inspectors and other representatives of the enrollment agency, social services district, and the Office in accordance with section 415.12(a)(5) of this Part.

(f) An enrollment is not transferable to any other person, entity or location.

(g) Capacity limitations for legally exempt family child care

(1) The maximum capacity is no more than eight children.

(2) No more than two children may be in care for more than three hours simultaneously per day, except when the provider is a relative within the third degree of consanguinity of the parents or step-parents of all children in care. 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;

415.13(g)(2)

the aunts and uncles of the child, including 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 spouses of the first cousins.

(h) Additional health and safety requirements for legally exempt group child care programs.

(1) Each enrolled legally exempt group child care program must meet and maintain the following minimum staff-to-child supervision ratios and maximum group size requirements, unless a more stringent standard is required by law:

(i) for three-year-old children:

(a) there must be one employee with a caregiving role for every 20 children when engaged in activities where children will be seated while working on a particular activity or skill;

(b) there must be one employee with a caregiving role for every 10 children when children are not engaged in seated activities or skills; and

(c) the maximum group size is 30 children.

(ii) for four-year-old children:

(a) there must be one employee with a caregiving role for every 20 children when engaged in activities where children will be seated while working on a particular activity or skill;

(b) there must be one employee with a caregiving role for every 12 children when children are not engaged in seated activities or skills; and

(c) the maximum group size is 36 children.

(iii) for children ages five through 12 years of age:

(a) there must be one employee with a caregiving role for every 25 children; and

(b) the maximum group size is 50 children.

(iv) When children younger than five years of age are cared for in mixed age groups, the staff-to-child supervision ratio and maximum group size applicable to the youngest child in the group must be followed.

(2) Group size refers to the number of children cared for together as a unit. Group size is used to determine the minimum staff-to-child supervision ratio based upon the age of the children in the group.

415.13(h)(3)

(3) The Office and its designees, applicable social services district and its designees, and the applicable enrollment agency are authorized to inspect any legally exempt group child care program that is enrolled or applying for enrollment.

(4) A child under three years of age who is receiving child care assistance cannot be cared for in a legally exempt group child care program, except for:

(i) child care programs located on tribal property which are operated in compliance with the applicable tribal laws and regulations for such child care programs; or

(ii) a child who is at least two years of age at the beginning of the school year but will turn three years of age on or before the applicable calendar date for which a child must be at least five years of age to be eligible for admission to school; such a child shall be considered three years of age for the purposes of staff-to-child ratio and maximum group size.

(5) Prior to being enrolled, the legally exempt group child care program must submit to the enrollment agency the following:

(i) a certificate of occupancy or other documentation from the authority having jurisdiction for such matters that shows the facility has been approved for use as a child care program. Updated documentation of compliance may be required when an event or condition reasonably calls into question whether the provider is in compliance with this requirement.

(ii) documentation from the authority having jurisdiction for determining compliance with the New York State Uniform Fire Prevention and Building Code or other applicable fire prevention and building codes when the Uniform Code of New York State is not applicable, that shows the facility has been inspected and found to be in compliance with the applicable codes within the past 12 months.

(a) The building and premises must remain in compliance with the New York State Uniform Fire Prevention and Building Code or other applicable fire prevention and building codes when the Uniform Code of New York State is not applicable. Updated documentation of compliance may be required when an event or condition reasonably calls into question whether the provider is in compliance with these requirements.

(iii) a diagram of the portion of the building to be occupied by the child care program, all adjacent areas of such building, and the grounds to be used by the child care program.

(6) No legally exempt group child care program may re-enroll with an enrollment agency on or after September 1, 2020 unless they document compliance with the requirements set forth in 415.13(h)(5)(i)–(iii).

(7) Individual children's food allergies must be posted in a discreet location visible only to directors, employees and volunteers.

(i) Additional requirements for enrollment.

(1) An application for enrollment will only be accepted by the Office when the applicant submits the minimum threshold of information as required by Office policy. An application sent to the Office that does not meet the minimum threshold will not be accepted and will be returned to the applicant. Once an application has been accepted, all additional required information must be submitted no later than 30 days. Failure to submit all required information within the required timeframes shall be considered a withdrawal of the application.

(2) An email address for the provider or other person designated to receive communications from the Office is required on all enrollment applications. If the applicant is unable to provide at least one valid email address, the applicant must provide a valid mailing address for the provider or other person designated to receive written communications from the Office.

#### **Section 415.14. Enrollment agency responsibilities.**

(a) Procedural and information collection requirements for enrollment agencies.

(1) Each enrollment agency must follow procedures established by the Office for enrolling legally exempt child care providers, which provide child care services under the New York State Child Care Block Grant Program. The enrollment agency must:

- (i) collect only such information about the provider as determined by the Office;
- (ii) assist social services districts to facilitate appropriate and prompt payments;
- (iii) permit the provider to apply for enrollment with the enrollment agency after selection by a recipient of child care assistance; and
- (iv) maintain the confidentiality of information related to a family receiving child care assistance and of the personal history of a provider and a provider's employee, volunteer, or household member. Such information cannot be disclosed without the written permission of such person to any person or organization other than the Office, a social services district, the designees of the Office or social services district, or other persons authorized by law.

(2) Each enrollment agency must use the Office's designated system of record to process, track, and maintain information pertaining to the enrollment of legally exempt child care providers, including the name and address of each such provider, information about the provider's compliance with the enrollment requirements, and any other required information at such time and in the manner and form required by the Office.

415.14(a)(3)

(3) Each enrollment agency must distribute health and safety information as specified by the Office to all newly enrolled child care providers.

(b) Enrollment and re-enrollment package review process requirements for enrollment agencies.

(1) Each enrollment agency must conduct a comprehensive review of the enrollment package prior to making an enrollment or re-enrollment decision regarding a legally exempt child care program.

(2) Prior to making an enrollment or re-enrollment decision, the enrollment agency must review the enrollment package obtained from the child care provider and determine, within five business days of receiving the enrollment package, whether the enrollment package is complete or incomplete.

(3) The enrollment agency must evaluate and process the enrollment package in accordance with guidelines issued by the Office.

(4) If the child care provider is exempt from the licensing and registration requirements and the child care provider otherwise meets the enrollment requirements, then the enrollment agency must enroll the child care provider 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, or its designee, informs the enrollment agency that the child care provider does not meet a locally-defined additional requirement set forth in the social services district's Child and Family Services Plan in accordance with section 415.4(g) of this Part.

(5) The enrollment period shall be twelve months. Enrollment information must be updated and reviewed before the end of the enrollment period, and at any other time when a change in circumstances warrants such a review, including, but not limited to, when the child care provider seeks to serve another subsidized child. The enrollment agency only must verify and review any changes that have occurred to the child care provider's enrollment information during the enrollment period since the last enrollment package was submitted.

(c) Additional review requirements regarding legally exempt child care providers applying for enrollment and re-enrollment.

(1) The enrollment agency must check each informal child care provider or legally exempt group child care director against the Office's designated system of record to determine whether the provider or director has ever been denied a child day care license or registration or had a child day care license or registration suspended, limited, revoked, or denied.

(i) When the check of the Office's designated system of record reveals that the informal child care provider or legally exempt group child care director has been denied a child day care license or registration or had a child day care license or registration revoked, limited or suspended, the provider or director must provide

415.14(c)(1)(i)

the child's caretaker and the enrollment agency true and accurate information regarding any such denial, revocation, limitation, or suspension, including a description of the reason for denial, revocation, limitation or suspension, the date of the denial, revocation, limitation, or suspension, and any other relevant information, if such information has not already been provided to the child's caretaker and the enrollment agency.

(ii) The enrollment agency must verify with the Office the truth and accuracy of the information disclosed by the provider or director for the purpose of conducting the assessment of risk to children in care.

(iii) An informal child care provider or director of a legally exempt group child care program that has a day care license or registration and is currently subject to enforcement action for denial, revocation, limitation, or suspension may not be considered for enrollment until the day care enforcement process has been finalized.

(iv) The enrollment agency must determine whether to enroll an applicant that has had such a license or registration suspended, limited, revoked, or denied based on guidelines issued by the Office.

(2) An enrollment agency must review the information in the attestations required of each enrollment and re-enrollment applicant for informal child care to determine whether the applicant has disclosed for those persons as required by section (13) of this Part:

(i) termination of parental rights under section 384-b of the Social Services Law;

(ii) removal of a child by court order under article 10 of the Family Court Act;

(iii) conviction of a misdemeanor or a felony in New York State or any other jurisdiction; and

(iv) being the subject of an indicated report of child abuse or maltreatment in New York State or any other jurisdiction.

(3) When an enrollment applicant has disclosed information relevant to the attestations contained in paragraph (2) of this subdivision, an enrollment agency must follow procedures as determined by the Office.

(4) The enrollment agency must check each relative-only in-home child care provider and each relative-only family child care provider, any employee, volunteer, and each family child care 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 person is listed on the New York State Sex Offender Registry. When such person is listed on the New York State Sex Offender Registry, the enrollment agency must not enroll the child care provider.



(d) The enrollment agency must conduct and evaluate the results of those Criminal History Review and Background Clearance checks as required by this Part, in accordance with procedures established by the Office.

(e) When any person who is required to submit to a check of the Statewide Central Register of Child Abuse and Maltreatment pursuant to section (15) of this Part is found to be the subject of an indicated report of child abuse or maltreatment, the enrollment agency must determine, on the basis of information it has available, and in accordance with guidelines developed and disseminated by the Office, whether to enroll the child care provider, approve such person as a director, employee or volunteer, or allow such person to have access to children who receive subsidized care. Whenever such person is enrolled, hired, retained, used or given access to children who receive subsidized care, such enrollment agency must maintain a written record, as part of the application file of the specific reason(s) why such person was determined to be appropriate and acceptable as a prospective legally exempt child care provider, director, employee, volunteer or household member.

(f) Inspection requirements for enrollment agencies.

(1) On an annual basis, each enrollment agency must conduct on-site inspections of all currently enrolled legally exempt group and informal child care providers with the exception of relative-only in-home child care providers and relative-only family child care providers, to determine compliance with this Part.

(2) The enrollment agency must conduct an inspection of the records and premises of a child care provider, according to guidelines established by the Office, when the enrollment agency receives:

(i) a complaint that, if true, would indicate the provider does not comply with the regulations or requirements of the Office,

(ii) information concerning a serious communicable disease of a child in care, provider, employee, volunteer, household member, or

(iii) information concerning a death or serious injury of a child while in care at or being transported by an enrolled legally exempt child care provider or an enrollment applicant.

(3) If the enrollment agency finds that a child care provider is non-compliant with any requirement of this Part, the enrollment agency may, in accordance with guidelines issued by the Office, terminate the enrollment of the child care provider or assist the child care provider in working towards compliance, which may include summary reports, corrective action plans, and follow up inspections. If the enrollment agency provides technical assistance and child care provider does not come into compliance within the required timeframes, the enrollment agency must terminate the enrollment of the child care provider in accordance with guidelines issued by the Office.

415.14(f)(4)

(4) The enrollment agency may deny or terminate the child care provider's enrollment, according to guidelines issued by the Office, if the provider does not admit an inspector or representative to the child care location; does not cooperate with an inspector or representative during an inspection; or the provider, or an employee, volunteer, or household member of the provider threatens an inspector or representative with physical or verbal force.

(5) The enrollment agency must record the results of inspections in the Office's designated system of record within seven days of the inspection date.

**Section 415.15. Criminal History Review and Background Clearances**

(a) The requirements of this section shall not apply to any relative-only in-home child care provider or relative-only family child care provider.

(b) In-Home Child Care

(1) The following criminal history review and background clearances shall be conducted pursuant to and consistent with the Child Care and Development Block Grant Act for any prospective in-home child care provider, employee or volunteer:

- (i) a criminal history record check with the New York State Division of Criminal Justice Services;
- (ii) a national criminal record check with the Federal Bureau of Investigation;
- (iii) a search of the New York State Sex Offender Registry;
- (iv) a database check of the Statewide Central Register of Child Abuse and Maltreatment in accordance with section 424-a of the Social Services Law.

(2) The following criminal history review and background clearances shall be conducted pursuant to and consistent with the Child Care and Development Block Grant Act in accordance with a schedule developed by the Office for any existing in-home child care provider, employee or volunteer:

- (i) all clearances required pursuant to paragraph (1) of this subdivision; and
- (ii) a search of the National Sex Offender Registry using the National Crime and Information Center.

(3) In addition to the clearances required pursuant to paragraphs (1) and (2) of this subdivision, the following clearances, for which ongoing criminal history results are not already provided, shall be conducted in accordance with a schedule developed by the Office for any in-home child care provider, employee or volunteer who lives or lived in any state other than New York during the preceding five years:

- (i) a search of the criminal history repository in each state other than New York where such person lives or lived during the preceding five years, unless such

415.15(b)(3)(i)

state's criminal history record information will be provided as part of the clearance conducted pursuant to subparagraph (ii) of paragraph (1) of this subdivision;

(ii) a search of any state sex offender registry or repository in each state other than New York where such person lives or lived during the preceding five years, unless such state's sex offender registry information will be provided as part of the clearance conducted pursuant to subparagraph (ii) of paragraph (2) of this subdivision; and

(iii) a search of the state-based child abuse or neglect repository of any state other than New York where such person lives or lived during the preceding five years.

(c) Legally Exempt Family Child Care

(1) The following criminal history review and background clearances shall be conducted pursuant to and consistent with the Child Care and Development Block Grant Act, for any prospective family child care provider, employee, volunteer or family child care household member age 18 and older not related in any way to all children in care:

(i) a criminal history record check with the New York State Division of Criminal Justice Services;

(ii) a national criminal record check with the Federal Bureau of Investigation;

(iii) a search of the New York State Sex Offender Registry;

(iv) a database check of the Statewide Central Register of Child Abuse and Maltreatment in accordance with section 424-a of the Social Services Law.

(2) The following criminal history review and background clearances shall be conducted pursuant to and consistent with the Child Care and Development Block Grant Act in accordance with a schedule developed by the Office for any existing family child care provider, employee, volunteer or family child care household member age 18 and older not related in any way to all child(ren) in care:

(i) all clearances required pursuant to paragraph (1) of this subdivision; and

(ii) a search of the National Sex Offender Registry using the National Crime and Information Center.

(3) In addition to the clearances required pursuant to paragraphs (1) and (2) of this subdivision, the following clearances, for which ongoing criminal history results are not already provided, shall be conducted in accordance with a schedule developed by the Office for any family child care provider, employee, volunteer or family child care household member age 18 and older not related in any way to all child(ren) in care who lives or lived in any state other than New York during the preceding five years:

415.15(c)(3)(i)

(i) a search of the criminal history repository in each state other than New York where such person lives or lived during the preceding five years, unless such state's criminal history record information will be provided as part of the clearance conducted pursuant to subparagraph (ii) of paragraph (1) of this subdivision;

(ii) a search of any state sex offender registry or repository in each state other than New York where such person lives or lived during the preceding five years, unless such state's sex offender registry information will be provided as part of the clearance conducted pursuant to subparagraph (ii) of paragraph (2) of this subdivision; and

(iii) a search of the state-based child abuse or neglect repository of any state other than New York where such person lives or lived during the preceding five years.

(d) Legally Exempt Group Child Care

(1) The following criminal history review and background clearances shall be conducted pursuant to and consistent with the Child Care and Development Block Grant Act for any prospective legally exempt group child care director, employee or volunteer:

(i) a criminal history record check with the New York State Division of Criminal Justice Services;

(ii) a national criminal record check with the Federal Bureau of Investigation;

(iii) a search of the New York State Sex Offender Registry;

(iv) a database check of the Statewide Central Register of Child Abuse and Maltreatment in accordance with section 424-a of the Social Services Law.

(2) The following criminal history review and background clearances shall be conducted pursuant to and consistent with the Child Care and Development Block Grant Act in accordance with a schedule developed by the Office for any existing legally exempt group child care director, employee or volunteer:

(i) all clearances required pursuant to paragraph (1) of this subdivision; and

(ii) a search of the National Sex Offender Registry using the National Crime and Information Center.

(3) In addition to the clearances required pursuant to paragraphs (1) and (2) of this subdivision, the following clearances, for which ongoing criminal history results are not already provided, shall be conducted in accordance with a schedule developed by the Office for any legally exempt group child care director, employee or volunteer who lives or lived in any state other than New York during the preceding five years:

415.15(d)(3)(i)

(i) a search of the criminal history repository in each state other than New York where such person lives or lived during the preceding five years, unless such state's criminal history record information will be provided as part of the clearance conducted pursuant to subparagraph (ii) of paragraph (1) of this subdivision;

(ii) a search of any state sex offender registry or repository in each state other than New York where such person lives or lived during the preceding five years, unless such state's sex offender registry information will be provided as part of the clearance conducted pursuant to subparagraph (ii) of paragraph (2) of this subdivision; and

(iii) a search of the state-based child abuse or neglect repository of any state other than New York where such person lives or lived during the preceding five years.

(e) Process

(1) In accordance with the requirements for those persons pursuant to subdivisions (b), (c) and (d) of this section, any application to enroll shall include the submission of fingerprint images for any provider, employee, volunteer or family child care household member required to submit to criminal history review and background clearances.

(2) Every provider shall submit fingerprint images for any prospective employee, volunteer, or family child care household member required to submit to criminal history review and background clearances.

(3) The enrollment agency shall furnish a fingerprint imaging application form and a description of how the completed fingerprint images will be used to each provider, employee, volunteer or family child care household member required to submit to criminal history review and background clearances.

(4) The clearances required pursuant to this section, other than those for which on-going criminal history results are provided, shall be conducted at least once every five years in accordance with a schedule developed by the Office.

(5) A prospective employee or volunteer may begin to work or volunteer at an enrolled legally exempt group child care program after completing either the check described in subparagraphs (i) or (ii) of paragraph (1) of subdivision (d) of this section. Pending completion of all background check components in paragraph (1) of subdivision (d) of this section, such person must be supervised at all times by an individual who received a qualifying result on the background checks described in this subdivision within the past five years.

(6) For informal child care programs a prospective provider cannot be enrolled, and a prospective employee, volunteer or family child care household member age 18 or older not related in any way to all children in care cannot work, volunteer, or live in an enrolled

415.15(e)(6)

legally exempt child care program until the Office notifies the provider that every required person has completed all clearance requirements in this section.

(7) A person who has separated from his or her role in a child care program within New York State for a period of more than 180 consecutive days is required to submit the clearances pursuant to this section when applying for a role in any child care program.

(f) Ineligibility based on results

(1) Any person or program required to submit to clearances pursuant to this section shall be deemed ineligible, as such term is defined in paragraph (2) of this subdivision, if such person:

(i) refuses to consent to such clearances;

(ii) knowingly makes a materially false statement in connection with such clearances;

(iii) is registered, or is required to be registered, on a state sex offender registry or repository or the national sex offender registry;

(iv) has been convicted of a felony consisting of:

(a) murder, as described in section 1111 of title 18, United States Code;

(b) child abuse or neglect;

(c) a crime against children, including child pornography;

(d) spousal abuse;

(e) a crime involving rape or sexual assault;

(f) kidnapping;

(g) arson;

(h) physical assault or battery; or

(v) has been convicted of a violent misdemeanor committed as an adult against a child, including child abuse, child endangerment and sexual assault, or of a misdemeanor involving child pornography.

(2) For purposes of this subdivision, the term "ineligible" shall mean:

(i) The person who engaged in conduct listed in paragraph (1) of this subdivision shall not be permitted to be a provider, director, employee or volunteer at a child care program.

(ii) A legally exempt provider shall not be permitted to provide care if a family child care household member age 18 or older not related in any way to all children in care engaged in conduct listed in paragraph (1) of this subdivision.

(g) Actions taken based on criminal history review and background clearance results.

(1) Conviction for a mandatory disqualifying offense

(i) When a clearance conducted pursuant to this section reveals that a prospective or existing legally exempt provider, director, employee, volunteer or family child care household member age 18 or older has been convicted of a crime set forth in subparagraphs (iv) and (v) of paragraph (1) of subdivision (f) of this section, such person may not be enrolled, volunteer in, work in, or live in a child care program.

(2) Conviction for crime other than a mandatory disqualifier

(i) When a clearance conducted pursuant to this section reveals that a prospective legally exempt provider, director, employee, volunteer or family child care household member age 18 or older has been convicted of a crime not set forth in subparagraphs (iv) and (v) of paragraph (1) of subdivision (f) of this section, the Office may conduct a safety assessment and take one or more of the following actions:

(a) deny the application, consistent with Article 23-A of the Correction Law;

(b) direct that such person not be hired, consistent with Article 23-A of the Correction Law;

(c) take any other appropriate steps to protect the health and safety of the children in care.

(ii) When a clearance conducted pursuant to this section reveals that an existing legally exempt provider, director, employee, volunteer or family child care household member age 18 or older has been convicted of a crime not set forth in subparagraphs (iv) and (v) of paragraph (1) of subdivision (f) of this section, the Office shall conduct a safety assessment and take one or more of the following actions:

(a) terminate or reject such program's enrollment unless the Office determines, in its discretion, that continued enrollment will not in any way jeopardize the health and safety of the children in care;

(b) direct that such person be terminated, consistent with Article 23-A of the Correction Law;

(c) take any other appropriate steps to protect the health and safety of the children in care.

(3) Pending criminal charge

(i) When a clearance conducted pursuant to this section reveals that a prospective legally exempt provider, director, employee, volunteer, or family child care household member age 18 or older has been charged with a crime, the Office shall hold the application in abeyance until the charge is finally resolved.

(ii) When a clearance conducted pursuant to this section reveals that an existing legally exempt provider, director, employee, volunteer or family child care household member age 18 or older has been charged with a crime, the Office shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in care. The Office may terminate such program's enrollment based on such a charge when necessary to protect the health and safety of children in care.

(h) Safety Assessment. A safety assessment performed in accordance with this section shall include, but not be limited to:

(1) a review of the duties of the person with the criminal conviction or charge;

(2) the extent to which such person may have contact with children in the child care program; and

(3) the status and nature of the criminal conviction or charge.

(i) Any person who the Office determines, pursuant to this section, should be denied enrollment, a volunteer position, and/or employment at a child care program based on an offense not listed in paragraph (1) of subdivision (f) of this section and to which Article 23-A of the Correction Law is applicable, shall have the ability to request a de novo review of the determination, to be held and completed before the employer is notified of such determination. Such person shall have reasonable notice concerning the determination, information regarding how to request a review of that determination, and an opportunity to provide any additional information that such person deems relevant to such determination. Such person may choose whether the review will be conducted either through the submission of written materials to a hearing officer, or to be heard in person in an administrative hearing before a hearing officer, or by video conference in an administrative hearing before a hearing officer if reasonably available. Regardless of the method in which the review is conducted, the Office shall also have an opportunity to be heard.

(j) Upon receipt of a criminal history record, the Office may request, and is entitled to receive, information pertaining to any crime contained in such criminal history record from any state or local law enforcement agency, district attorney, parole officer, probation officer or court for the purposes of determining whether any ground relating to such criminal conviction or pending criminal charge exists for denying enrollment or employment.



(k) Notifications. Where the Office or its designee denies an application based on the criminal history record, the enrollment agency must notify the applicant that such criminal history record is the basis of the denial. The Office shall also notify such person that the criminal record check was the basis for the denial of clearance and shall provide such person with a copy of the results of the national criminal record check upon which such action was based, a written statement setting forth the reasons for the denial and a copy of Article 23-A of the Correction Law, and inform such person of his or her right to seek correction of any incorrect information contained in such national record check provided by the federal bureau of investigation. The Office shall not release the content of such results to any non-public entity.

(l) A legally exempt child care provider must inform the Office or its designee when:

(1) any applicant who is subject to criminal history record review in accordance with this section has withdrawn the application or is no longer being considered for the position for which the person applied;

(2) any employee or volunteer who is subject to criminal history record review in accordance with this section is no longer employed by or volunteering at the program; and

(3) any household member age 18 or older who is subject to criminal history record review is no longer residing in the residence.

(m) After completion of required inquiries as provided for in this section, the Office shall notify the applicant and program whether the applicant is authorized or unauthorized to care for children.

(n) For the purposes of this section, individuals providing services pursuant to the federal Individuals with Disabilities Education Improvement Act (IDEA) Part B, IDEA Part C, Section 504 of the federal Rehabilitation Act of 1973, or Article 89 of the New York Education Law, may be considered volunteers.

#### **Section 415.16. Child Abuse and Maltreatment**

(a) Any abuse or maltreatment of a child is prohibited. An abused child or maltreated child means a child defined as an abused child or maltreated child pursuant to Section 412 of the Social Services Law.

(b) With regard to any person required to submit to a check of the Statewide Central Register of Child Abuse and Maltreatment pursuant to section (15) of this Part:

(1) The Office or its designee must inquire of the Statewide Central Register of Child Abuse and Maltreatment whether such person is the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment.

(2) The Office or its designee must check the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of Persons with Special Needs.

(3) No provider, director, employee or volunteer shall have unsupervised contact with children who receive subsidized care prior to obtaining the result of the inquiries required by this section.

(i) Any informal child care provider, director of a legally exempt group child care program, employee, or volunteer must report or cause such a report to be made to the Statewide Central Register of Child Abuse and Maltreatment when there is reasonable cause to suspect that a child has been abused or maltreated. In the case that a child is in immediate danger, any informal child care provider, director of a legally exempt group child care program, or employee must call 911 or the local emergency number.

(ii) The legally exempt child care provider is responsible for implementing procedures which ensure the safety and protection of any child named in a report of child abuse or maltreatment.

### **Section 415.17. Criminal History Disqualification Review Process**

(a) Any person who the Office determines, pursuant to Section (15) of this Part, should be denied enrollment, employment, or a volunteer position at a child care program based on an offense not listed in paragraph (1) of subdivision (f) of section (15) of this Part and to which Article 23-A of the Correction Law is applicable, shall have the ability to request a de novo review of the determination, to be held and completed before the employer is notified of such determination. Such person shall have reasonable notice concerning the determination, information regarding how to request a review of that determination, and an opportunity to provide any additional information that such person deems relevant to such determination. Such person may choose whether the review will be conducted either through the submission of written materials to a hearing officer, or to be heard in person in an administrative hearing before a hearing officer, or by video conference in an administrative hearing before a hearing officer if reasonably available. Regardless of the method in which the review is conducted, the Office shall also have an opportunity to be heard.

(b) A review pursuant to this section must be requested within 30 days of receipt of the letter notifying the applicant he or she is ineligible for enrollment, employment, or a volunteer position at a child care program and that they have a right for review.

(c) The pleadings in a review pursuant to this section will consist of the notice of review and any additional information submitted by either party as being relevant to the determination.

(d) Neither formal discovery procedures nor formal procedures for bills of particulars will apply.

(e) Disclosure of evidence by deposition will not be permitted.

(f) The review will be conducted by a hearing officer who is an attorney employed by the Office for that purpose and who has not been involved in any way with the matter. He or she will have

415.17(f)

all the powers conferred by law and regulations of the Office to administer oaths, issue subpoenas, require the production of records and the attendance of witnesses, rule upon requests for adjournment, rule upon objections to the introduction of evidence, and to otherwise regulate the review, preserve requirements of due process, and effectuate the purpose and provisions of applicable law and regulations.

(g) The rules of evidence as applied in a court of law will not apply, except that privileges recognized by law will be given effect. The hearing officer may exclude evidence that is irrelevant or unduly repetitious. The burden of proof at such reviews shall be on the applicant to show that the denial is not supported by substantial evidence and that such person should not have been denied enrollment, employment, and/or the ability to volunteer at a child care program.

(h) The review may be adjourned only for good cause by the hearing officer on his or her own application or at the request of either party.

(i) An individual, other than an attorney, representing the applicant must have an appropriate written authorization for representation signed by the applicant.

(j) Review

(1) Through submission of written materials

(i) A review through submission of written materials must be scheduled within a reasonable time period of the request.

(ii) Where an applicant for enrollment, employment, or a volunteer position at a child care program timely requests a review pursuant to this section and requests that the review be conducted through the submission of written materials to a hearing officer, a notice must be sent to the applicant and the Office and must specify:

(a) the date and location of where such materials must be submitted to the hearing officer and opposing party;

(b) the manner in which the review will be conducted;

(c) the offense(s) which are the basis for the denial, including the statute(s);

(d) that he or she has the opportunity to submit written materials, including evidence of rehabilitation;

(e) that he or she has the right to be represented by an attorney or other representative of his or her choice; and

(f) that he or she has the right to examine any document or item submitted.

(iii) The applicant will be entitled to present relevant and material evidence on his or her behalf, be represented by an attorney or other representative of his or her choice, and examine any document or item submitted.

(iv) The Office will be entitled to submit proof of the conviction(s), the safety assessment, and review of the factors enumerated in Article 23-A of the Correction Law. The hearing officer will accept the information provided to the Office by the Division of Criminal Justice Services as proof of the criminal convictions.

(v) The record of a review on written materials will include:

- (a) all pleadings;
- (b) all written materials submitted;
- (c) any matters officially noticed;
- (d) all proposed findings and exceptions;
- (e) any report rendered by the hearing officer; and
- (f) any request for disqualification of a hearing officer.

(2) To be heard in person in an administrative hearing

(i) A hearing pursuant to this section must be scheduled to commence within a reasonable time period of the request.

(ii) Where an applicant for enrollment, employment, or a volunteer position at a child care program timely requests a review pursuant to this section and requests that the review be conducted through an administrative hearing before a hearing officer, a notice must be sent to the applicant and the Office, and must specify:

- (a) the date, time, and place of the hearing;
- (b) the manner in which the hearing will be conducted;
- (c) the offense(s) which are the basis for the denial, including the statute(s);
- (d) that he or she has the opportunity to call witnesses, and present evidence and arguments on issues of fact and law at the hearing, including evidence of rehabilitation;
- (e) that he or she has the right to be represented by an attorney or other representative of his or her choice;
- (f) that he or she has the right to cross-examine witnesses and examine any document or item offered into evidence;

(g) that all witnesses will be sworn; and

(h) that the hearing will be recorded verbatim.

(iii) The applicant will be entitled to be represented by an attorney or other representative of his or her choice, to have witnesses give testimony, to present relevant and material evidence on his or her behalf, to cross-examine witnesses, and to examine any document or item offered into evidence.

(iv) The Office will be entitled to submit proof of the conviction(s), the safety assessment, and review of the factors enumerated in Article 23-A of the Correction Law. The hearing officer will accept the information provided to the Office by the Division of Criminal Justice Services as proof of the criminal convictions.

(v) The applicant, his or her representative(s), counsel, other representatives of the Office, witnesses of both parties, and any person who may be called by the hearing officer may be present at the hearing, together with such other persons as may be admitted by the hearing officer in his or her discretion. Upon his or her own application, or upon the application of either party, the hearing officer may exclude potential witnesses and those who have given prior testimony from the hearing during the testimony of other witnesses.

(vi) The hearing officer will preside and will make all procedural rulings. He or she will make an opening statement describing the nature of the proceedings, the issues, and the manner in which the hearing will be conducted.

(vii) All testimony will be given under oath or affirmation.

(viii) All hearings will be recorded verbatim by either the Office or a private contractor. Where the hearing is recorded by other than a private contractor, on request made upon the Office by any party to a hearing, the Office will prepare any transcript of the proceedings, and will furnish a copy of the transcript or any part thereof to any party as requested. At the applicant's request, the Office can provide a digital audio file of the hearing in a file format determined by the Office at a lower cost rather than furnishing a transcript. The Office is authorized to charge not more than its cost for the preparation of the transcript. Where a private contractor records the hearing, the party requesting a transcript must make all arrangements for the obtainment thereof directly with the private contractor.

(ix) The record of a hearing will include:

(a) all pleadings and intermediate rulings;

(b) the transcript or recording of the hearing;

(c) all exhibits received into evidence;

(d) any matters officially noticed;

415.17(j)(2)(ix)(e)

(e) all questions and offers of proof, objections thereto, and rulings thereon;

(f) all proposed findings and exceptions;

(g) any report rendered by the hearing officer; and

(h) any request for disqualification of a hearing officer.

(k) After the hearing has concluded, the hearing officer will submit a report to the Commissioner of the Office or his or her designee containing findings of fact, conclusions of law, and a recommended and/or final decision. Findings of fact will be based exclusively on the record of the review.

(l) The decision will be made and issued by the commissioner or his or her designee and must be based exclusively on the record of the review.

(1) The decision will be in writing and will describe the issues, recite the relevant facts and pertinent provisions of law and regulations, make appropriate findings, determine the issues, state reasons for the determination, and direct specific action.

(2) A copy of the decision will be mailed to the applicant and his or her attorney or other designated representative and the Office, together with a notice of the right to judicial review in accordance with Article 78 of the Civil Practice Law and Rules.

(3) If the decision determines that an application for enrollment, employment, and/or the ability to volunteer at a child care program should not have been denied, the applicant's criminal history shall not be a bar when considering his or her eligibility pursuant to section 15 of this Part.

(4) In the event the decision is adverse to the applicant, the employer will be notified that the applicant has been denied such role.

(m) Upon reasonable notice to the Office, the record of review may be examined by any party to the review at the offices of the Bureau of Special Hearings during regular business hours or by the Office preparing and providing a copy of the record to any party as requested, whichever is deemed more practicable by the Office.