

New York Regulations\*  
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Chapter II. Regulations of the Department of Social Services  
Subchapter C. Social Services  
Article 2. Family and Children's Services  
Part 415. Child Care Services

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**Section 415.0. Applicability**

This Part governs the authorization and payment of publicly funded child care services for children under any provision of the Social Services Law or the Federal Social Security Act to the extent of appropriations made available therefor.

**Section 415.1. Definitions**

For purposes of this Part and instruction of the department pertaining thereto, the following definitions of terms shall apply:

(a) *Child care services* means care for an eligible child provided on a regular basis either in or away from the child's residence for less than 24 hours per day which is provided by an eligible provider as defined in subdivision (g) of this section. Child care services may exceed 24 consecutive hours when such services are provided on a short-term emergency basis or in other cases where the caretaker's approved activity necessitates care for 24 hours or more on a limited basis, if the district has indicated in its consolidated services plan or integrated county plan that it will provide for such care.

(b) *Eligible child* means a child who resides with a caretaker which meets the program and financial eligibility requirements for the particular type of child care services and who:

(1) is under 13 years of age. For child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services under other than under the New York State Child Care Block Grant Program, a child who turns 13 years of age during a school year may continue to receive child care services through the end of that school year; or

(2) is under 18 years of age; and

(i) is a child with special needs as defined in subdivision (c) of this section; or

(ii) is under court supervision; or

(3) is under 19 years of age, is a full-time student in a secondary school, or in an equivalent level of vocational or technical training, and:

(i) is a child with special needs as defined in subdivision (c) of this section; or

(ii) is under court supervision.

(c) *Child with special needs* means a child who is incapable of caring for himself or herself and who has been diagnosed as having one or more of the following conditions to such a degree that it adversely affects the child's ability to function normally:

(1) visual impairment;

(2) deafness or other hearing impairment;

- (3) orthopedic impairment;
- (4) emotional disturbance;
- (5) mental retardation;
- (6) learning disability;
- (7) speech impairment;
- (8) health impairment;
- (9) autism; or
- (10) multiple handicaps.

Any such diagnosis must be made by a physician, licensed or certified psychologist or other professional with the appropriate credentials to make such a diagnosis.

(d) *Caretaker* means the child's parent, legal guardian or caretaker relative, or any other person in *loco parentis* to the child.

(e) *Caretaker relative* means any person who is a parent or other relative as set forth in section 369.1(b) of this Title who exercises responsibility for the day-to-day care of, and who lives with, a child.

(f) *Person in loco parentis to a child* means the child's guardian or caretaker relative or any other person with whom a child lives who has assumed responsibility for the day-to-day care and custody of the child.

(g) *Eligible provider* means one of the following:

(1) a validly licensed or properly registered day care center or a properly registered school-age child care program operated by a voluntary non-profit corporation or association or an authorized child caring agency; or

(2) a validly licensed or properly registered child day care center or a properly registered school-age child care program operated by a private proprietary corporation or organization or by an individual; provided, however, that for child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services that are funded other than under the New York State Child Care Block Grant Program, such a provider will be an eligible provider only with the prior approval of the commissioner of the Office of Children and Family Services upon the demonstration by the social services district that conveniently accessible non-profit facilities are unavailable or unable to provide the required care; or

(3) a public school district operating a child care program which meets State and Federal requirements; or

(4) a family day care home properly registered with the department to provide child care services to children; or

(5) a group family day care home issued a valid license by the department to provide child care services to children; or

(6) a caregiver of informal child care as defined in subdivision (h) of this section who is enrolled with the social services district in accordance with section 415.4(f) of this Part; provided, however, that such a caregiver is not an eligible provider for child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services that are funded other than under the New York State Child Care Block Grant Program; or

(7) a caregiver of legally-exempt group child care as defined in subdivision (i) of this section which is enrolled with the social services district in accordance with section 415.4(f) of this Part; provided, however, that such a caregiver is not an eligible provider for child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services that are funded other than under the New York State Child Care Block Grant Program except as provided in paragraph (3) of this subdivision.

(h) Informal child care includes legally-exempt family child care and legally-exempt in-home child care. Members of the child's or the caretaker's public assistance unit, and other adult members of the child care service unit except the child's siblings, are not eligible to provide subsidized child care.

(1) *Legally-exempt family child care* means:

(i) child care for one or two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in article 4 of the New York State Labor Law, and who is chosen and whose services are monitored by the child's caretaker; or

(ii) child care for more than two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in article 4 of the New York State Labor Law, who provides such care for less than three hours per day and who is chosen and whose services are monitored by the child's caretaker; or

(iii) child care provided by a relative within the third degree of consanguinity of the parent(s) or step-parent(s) of the child or children except where such relative is a person legally responsible for, or the caretaker relative of, such child or children. Relatives within the third degree of consanguinity of the parent(s) or step-parent(s) of the child include: the grandparents of the child; the great-grandparents of the child; the great-great-grandparents of the child; the aunts and uncles of the child, including the spouses

of the aunts and uncles; the great-aunts and great-uncles of the child, including the spouses of the great-aunts and great-uncles; the siblings of the child; and the first cousins of the child, including the spouses of the first cousins.

(2) *Legally-exempt in-home child care* means:

(i) child care furnished in the child's own home by a caregiver who is chosen and monitored by the child's caretaker and who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in article 4 of the New York State Labor Law; provided, however, that the child's caretaker must provide the caregiver with all employment benefits required by State and/or Federal law, and must pay the caregiver at least the minimum wage, if required.

(i) *Legally-exempt group child care* means care provided by those caregivers, other than caregivers of informal child care as defined in subdivision (h) of this section, which are not required to be licensed by or registered with the department or licensed by the City of New York but which meet all applicable State or local requirements for such child care programs. Caregivers of legally-exempt group child care include, but are not limited to:

(1) pre-kindergarten and nursery school programs for children three years of age or older, and programs for school-age children conducted during non-school hours, operated by public school districts or by private schools or academies which provide elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such pre-kindergarten, nursery school or school-age programs are located on the premises or campus where the elementary or secondary education is provided;

(2) nursery schools and programs for pre-school-aged children operated by non-profit agencies or organizations or private proprietary agencies which provide services for three or less hours per day;

(3) summer day camps operated by non-profit agencies or organizations or private proprietary agencies in accordance with Subpart 7-2 of the State Sanitary Code;

(4) day care centers, family day care homes and other child care programs located on Federal property which are operated in compliance with the applicable Federal laws and regulations for such child care programs; and

(5) day care centers, family day care homes and other child care programs located on tribal property which are operated in compliance with the applicable tribal laws and regulations for such child care programs.

(j) *Family share* means the weekly amount paid by the child's caretaker toward the costs of the child care services determined in accordance with section 415.3(f) of this Part.

(k) *State income standard* means the most recent Federal income official poverty line, as defined and annually revised by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), updated by the department for a family size of four and adjusted by the department for family size.

(l) *Child care services unit* means those adults and/or children residing in the same household who will be considered for the purposes of determining a family's eligibility for child care services. For the purposes of this Part, an *adult* means any person 18 years of age or older unless the individual meets the definition of a child with special needs or the district has elected to include 18-, 19- or 20-year old individuals in the same child care services unit as their parent by indicating such option in its consolidated services plan or integrated county plan. Districts have the option to include all 18-, 19- or 20-year olds in the child care services unit or to include only those 18-, 19- or 20-year olds whose inclusion in the child care services unit would benefit the family. The district's approved consolidated services plan or integrated county plan must specify the criteria it will use to determine whether or not an 18-, 19- or 20-year old is included in the child care services unit.

(1) For families where the child's caretaker is receiving public assistance, the child care services unit will be comprised of the caretaker, his or her children and any other member of the public assistance unit. For families where no adult family member is in receipt of public assistance, the child care service unit will be comprised as follows:

(i) when adults, other than spouses, reside together and do not have a child in common, each adult along with his or her child(ren) will be considered a separate child care services unit;

(ii) when adults, other than spouses, reside together and have at least one child in common, the child care services unit will be comprised of the adults who have child(ren) in common, the child(ren) those adults have in common, and the other child(ren) of each such adult;

(iii) when a custodial parent who is under the age of 21 years is residing with his or her parent(s), or has established his or her own household, or resides with an individual other than his or her parent(s), the child care services unit will be comprised of the custodial parent who is under 21 years of age, his or her child(ren), and any other individual in the household with legal responsibility for the custodial parent's child(ren);

(iv) when an eligible child(ren) resides only with individuals who are not the child(ren)'s parent, step-parent, adoptive parent or legal guardian with financial responsibility for the child(ren), the child care services unit will be comprised of the eligible child(ren) only; and

(v) individuals who would otherwise be included in the child care services unit but who are temporarily absent from a household who meet the following criteria will be considered part of the child care services unit:

(a) individuals whose needs are partially or fully being met by members of the household, such as children or minors attending school away from home; provided, however, that a child away from home due to a foster care placement will not be considered part of the child care services unit; and

(b) individuals who are required to contribute to the needs of the household.

(m) *Actual cost of care* means the rate usually charged by the caregiver for non-subsidized child care services. When child care services are provided in accordance with the terms of a contract between a social services district and the caregiver, the negotiated contract rate is the actual cost of care for such services even if such rate is less than the rate usually charged by the caregiver for non-subsidized child care services.

(n) *Child care certificate* means a certificate that is issued directly to a child's caretaker which verifies that the caretaker is eligible for subsidized child care services which the caretaker arranges.

(o) *Engaged in work*.

(1) For an individual who is not receiving public assistance, *engaged in work* means that the individual:

(i) is earning wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law for the type of employment; or

(ii) is self-employed and is able to demonstrate that such self-employment produces personal income equal to or greater than the minimum wage or has the potential for growth in earnings to produce such an income within a reasonable period of time.

(2) For an individual receiving public assistance, *engaged in work* means the individual is engaged in work as defined by the social services district in the district's employment plan submitted to and approved by the New York State Department of Labor.

(p) *Seeking employment*. For an individual who is not receiving public assistance, *seeking employment* means making in-person job applications, going on job interviews, registering with a New York State Department of Labor's Division of Employment Services Office to obtain job listings, and participating in such other job seeking activities as are approved by the social services district.

(q) *Child welfare service plan* means a clearly defined service plan as developed and approved by the appropriate children's service unit, including a description of the immediate home situation of the children, the reason for care, kind of service needed, planned hours of care, and the goal of the service, including an evaluation of the plan and goal at the six-month redetermination of eligibility for the day-care service provided.

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

(s) *Legally-exempt caregiver enrollment agency* means the agency under contract with the office to enroll caregivers of legally-exempt child care to provide subsidized services under the New York State Child Care Block Grant. For each district in New York State except for the City of New York, the legally-exempt caregiver enrollment agency will be the applicable child care resource and referral agency under contract with the office to serve that district. For the City of New York, the legally-exempt caregiver enrollment agency will be an entity or entities identified by the office in consultation with the New York City Human Resources Administration and the New York City Administration for Children's Services.

#### **Section 415.2. Eligibility, guarantees, and priorities for child care services**

*Eligibility.* The following families are eligible for child care services under the specified child care programs when such care is not otherwise available from a legally responsible relative or caretaker of the child in need of services and the care is a necessary part of a plan for self support. For two-parent or two-caretaker families, each parent or caretaker must meet one of the eligibility criteria set forth in this subdivision.

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

A family will be eligible for child care services under the New York State Child Care Block Grant Program, if the family meets one or more of the following criteria:

(1) Families which are guaranteed child care services. A social services district must guarantee child care services to a family which meets the criteria set forth in any subparagraph of this paragraph regardless of whether the social services district has any State or Federal funds available under this program to pay for all or a portion of such costs. In accordance with subdivision (d) of this section, a district may set aside funds and/or establish priorities for families eligible for a child care guarantee.

(i) A social services district must guarantee child care services to a family who has applied for or is receiving public assistance when such services are needed for a child under 13 years of age in order to enable the child's parent(s) or caretaker relative(s) to participate in activities required by a social services official including orientation, assessment, or work activities as defined in 18 NYCRR Part 385. The guarantee applies to all of the eligible children of the parent(s) or caretaker relative(s) regardless of the child's status as part of the public assistance filing unit.

(ii) A local social services district must guarantee to applicants who would otherwise be eligible for, or are recipients of, public assistance benefits and who are employed, the option to choose to receive continuing child care subsidies in lieu of public assistance benefits, for such period of time as the recipient continues to be eligible for public assistance. For the purposes of this section, an eligible applicant for, or recipient of, public assistance benefits and who is employed, includes a person whose gross earnings equal, or are greater than, the required number of work hours times the State minimum wage. Recipients of child care subsidies under this section who are no longer



eligible for public assistance benefits, shall be eligible for transitional child care described in subparagraph (iv) of this paragraph as if they had been recipients of public assistance.

(iii) A social services district must guarantee child care services to a family which is receiving public assistance when such services are needed for a child under 13 years of age in order to enable the child's parent(s) or caretaker relative(s) to engage in work as defined by the social services district.

(iv) A social services district must guarantee child care services for a period of up to 12 consecutive months after the month in which a family's public assistance case closed or, for those who chose child care in lieu of public assistance, the month after the family is no longer financially eligible for public assistance, provided:

(a) the case closed or the family became financially ineligible for public assistance due to:

(1) increased income from either employment or child support; or

(2) the family voluntarily ending assistance and their income is no longer within public assistance standards; and

(b) the family received public assistance in at least three of the six months immediately preceding the case closing; or, for a family which chose child care in lieu of public assistance, was eligible for public assistance in at least three of the six months immediately preceding their ineligibility for public assistance; and

(c) the family includes an eligible child that is under the age of 13 who needs child care services in order to enable the child's parent(s) or caretaker relative(s) to be engaged in work as defined in section 415.1(o)(1) of this Part; and

(d) the family has income at or below 200 percent of the applicable State income standard. This child care guarantee is available to eligible families for 12 months from the month after the family's eligibility for public assistance has terminated or ended. Families may ask for and begin to receive child care in any month during the 12-month period of the child care guarantee. The start date for eligibility may precede the date services were requested and cover any period during the 12 months of the guarantee.

(2) Families that are eligible when funds are available. A social services district must provide child care services to a family eligible under any one of the subparagraphs of this paragraph, to the extent that the district continues to have funds available under either the district's allocation from the State Child Care Block Grant Program or any local funds appropriated for

such program subject to any priorities and set asides established pursuant to subdivision (d) of this section.

(i) A family which has applied for or is receiving public assistance when such services are needed for an eligible child aged 13 or older, who has special needs or is under court supervision, in order to enable the child's parent(s) or caretaker relative(s) to participate in activities required by social services officials including orientation, assessment, or work activities defined in 18 NYCRR Part 385.

(ii) A family receiving public assistance when such services are needed for a child aged 13 or older, who has special needs or is under court supervision, in order to enable the child's parent(s) or caretaker relative(s) to engage in work as defined by the social services district.

(iii) A family receiving public assistance when child care services are necessary:

(a) to enable a teenage parent to attend high school or an equivalency program;  
or

(b) for the child to be protected because the child's parent(s) or caretaker relative(s) is physically or mentally incapacitated or has family duties away from home necessitating his or her absence.

(iv) A family with income up to 200 percent of the State income standard when the family is at risk of becoming dependent on public assistance and child care services are needed:

(a) for the child's caretaker(s) to be engaged in work as defined in section 415.1(o)(1) of this Part; or

(b) to enable a teenage parent to attend high school or an equivalency program.

(v) A family experiencing homelessness, in accordance with section 725 of Subtitle VII-B of the McKinney-Vento Act, with income up to 200 percent of the State income standard and child care services are needed for the child's caretaker(s) to seek housing and:

(a) for the child's caretaker(s) to seek employment as defined in section 415.1(p); or

(b) for the child's caretaker(s) to be engaged in work as defined in section 415.1(o); or

(c) for the child's caretaker(s) to attend educational or vocational activities as defined in section 415.2(a)(3)(vii)(b) or section 415.2(a)(3)(iv). Notwithstanding the potential for some of these educational or vocational training programs to

allow for the eventual attainment of a bachelor's degree or like certificate of completion for a four-year college program, this regulation does not permit the renewal of such educational or vocational training program enrollment for any additional period in excess of 30 consecutive calendar months except as for those programs defined in section 415.2(a)(3)(iv), nor does it permit enrollment in more than one such program; or

(d) for the child's caretaker(s) to access or participate in counseling services programs.

(3) Families that are eligible if funds are available under this program and if the social services district has listed such families as eligible in the district's consolidated services plan or integrated county plan. A social services district must provide child care services for an eligible child as defined in section 415.1(b) of this Part to a family eligible under this paragraph, to the extent that the district continues to have funds available under either the district's allocation for the State Child Care Block Grant Program or any local funds appropriated for such program subject to any priorities and set asides established pursuant to subdivision (d) of this section, provided the social services district has listed such families as eligible families in the district's consolidated services plan or integrated county plan:

(i) a family receiving public assistance when child care services are necessary for a parent or caretaker relative to participate in an approved activity in addition to their required work activity;

(ii) a family receiving public assistance when child care services are necessary for a sanctioned parent or caretaker relative to participate in unsubsidized employment whereby the parent or caretaker relative receives earned wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law;

(iii) a family receiving public assistance or with income up to 200 percent of the State income standard when child care services are needed for the child to be protected because the child's caretaker is:

(a) participating in an approved substance abuse treatment program, or in screening for or an assessment of the need for substance abuse treatment;

(b) homeless or receiving services for victims of domestic violence and needs child care in order to participate in an approved activity, or in screening for or an assessment of the need for services for victims of domestic violence; or

(c) in an emergency situation of short duration including, but not limited to, cases where the caretaker's absence from the home for a substantial part of the day is necessary because of extenuating circumstances such as a fire, being

dispossessed from the home, seeking living quarters, or providing chore/housekeeper services for an elderly or disabled relative.

(iv) a family is receiving public assistance or has income up to 200 percent of the State income standard and child care services are needed for the child's caretaker to attend a two- year program other than one with a specific vocational sequence leading to an associates degree or a certificate of completion, or a four year college or university program leading to a bachelor's degree provided:

(a) the program is reasonably expected to improve the earning capacity of the caretaker;

(b) the caretaker is and continues to participate in non-subsidized employment whereby the caretaker works at least 17 1/2 hours per week and earns wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law while pursuing the course of study; and

(c) the caretaker can demonstrate his or her ability to successfully complete the course of study;

(v) a family with an open child protective services case when it is determined on a case-by-case basis that such child care is needed to protect the child;

(vi) a family with income up to 200 percent of the State income standard when child care services are needed for the child to be protected because the child's caretaker is physically or mentally incapacitated or has family duties away from home necessitating his or her absence;

(vii) a family with income up to 200 percent of the State income standard when child care services are needed for the child's caretaker to participate in one of the following activities provided such activity is an allowable activity set forth in the social services district's consolidated services plan or integrated county plan and the district determines that the activity is a necessary part of a plan for the family's self-support:

(a) actively seeking employment as defined in section 415.1(p) of this Part for a period of up to six months as established by the social services district in its consolidated services plan or integrated county plan, if the caretaker documents that he or she is currently registered with a New York State Department of Labor's Division of Employment Services Office, provided that child care services will be available only for the portion of the day the family is able to document is directly related to the parent or caretaker engaging in such activities;

(b) educational or vocational activities including attendance in one of the following secondary or post-secondary programs:

(1) a public or private educational facility providing a standard high school curriculum offered by or approved by the local school district;

(2) an education program that prepares an individual to obtain a New York State high school equivalency diploma;

(3) a program providing basic remedial education in the areas of reading, writing, mathematics and oral communications for individuals functioning below the ninth month of the eighth grade level in those areas;

(4) a program providing literacy training designed to help individuals improve their ability to read and write;

(5) an English as a second language (ESL) instructional program designed to develop skills in listening, speaking, reading and writing the English language for individuals whose native or primary language is other than English;

(6) a two year full-time degree granting program at a community college, a two year college, or an undergraduate college with a specific vocational goal leading to an associate degree or certificate of completion within a determined time frame which must not exceed 30 consecutive calendar months;

(7) a training program which has a specific occupational goal and is conducted by an institution licensed or approved by the State Education Department other than a college or university;

(8) a prevocational skills training program such as a basic education and literacy training program; or

(9) a demonstration project designed for vocational training or other projects approved by the Department of Labor;

(c) a program to train workers in an employment field that currently is or is likely to be in demand in the near future, if the caretaker documents that he or she is a dislocated worker and is currently registered in such a program, provided that child care services are only used for the portion of the day the caretaker is able to document is directly related to the caretaker engaging in such a program. For the purposes of this provision, a dislocated worker is any person who: has been terminated or laid off from employment; has received a notice of termination or layoff from employment that will occur within six months of such notice; or was self-employed but is unemployed as a result of

general economic conditions in the community in which the individual resides or because of natural disasters.

Notwithstanding the potential for some of these educational or vocational training programs to allow for the eventual attainment of a bachelor's degree or like certificate of completion for a four-year college program, this regulation does not permit the renewal of such educational or vocational training program enrollment for any additional period in excess of 30 consecutive calendar months except as authorized under subparagraph (iv) of this paragraph, nor does it permit enrollment in more than one such program.

(b) Title XX program.

(1) To the extent that the social services district has made title XX funds available for child care services, a family is eligible for child care services funded under title XX of the Federal Social Security Act if the family meets one or more of the criteria set forth in subdivision (a) of this section or the child is in need of child care as a preventive service provided the social services district has listed such families as eligible families in the district's consolidated services plan or integrated county plan, subject to any applicable priorities and set asides established pursuant to subdivision (d) of this section.

(2) A social services district may establish in its consolidated services plan or integrated county plan upper income levels above 200 percent of the State income standard for families receiving child care services under the title XX provided that the income levels do not exceed 275 percent of the State income standard for a family of one or two, 255 percent of the State income standard for a family of three, or 225 percent of the State income standard for a family of four or more.

(c) Child care services during breaks in activities.

(1) A social services district must provide New York State Child Care Block Grant services to families receiving public assistance, during breaks in activities, for a period of up to two weeks when the parent or caretaker relative is: engaged in work; participating in work activities or performing community service pursuant to title 9-B of article 5 of the Social Services Law; a teen parent attending high school or other equivalent training; physically or mentally incapacitated; or absent from the home due to family duties. Such child care services may be authorized for up to one month if child care arrangements would be lost if the services were not continued, and the program or employment is scheduled to begin within that one-month period.

(2) For all other families that are eligible under subdivision (a) or (b) of this section, a social services district may provide child care services while the caretaker is waiting to enter an approved activity or employment or on a break between approved activities for a period not to exceed two weeks or for a period not to exceed one month where child care arrangements would otherwise be lost and the subsequent activity is expected to begin within that period.

(d) *Priority populations and funding set asides.*

(1) Priority populations.

(i) For child care services funded under the New York State Child Care Block Grant Program, each social services district must give priority to the following federally-mandated populations:

(a) families with very low income. Each social services district must establish in its consolidated services plan or integrated county plan an income level at or below 200 percent of the State income standard which will constitute the upper income level for families with very low income;

(b) families with children who have special needs; and

(c) families experiencing homelessness.

(ii) For child care services funded under the New York State Child Care Block Grant Program and/or under title XX of the Federal Social Security Act, each social services district may establish local priorities for child care services provided that the priorities provide eligible families with equitable access to child care assistance funds to the extent that these funds are available. Any local priorities must be set forth in the district's consolidated services plan or integrated county plan.

(a) Local priorities may refine but can not replace the federally mandated priorities.

(b) Local priorities may be based on one or a combination of factors, including, but not limited to, household composition, reason for child care, and income level.

(c) Local priorities may not have the effect of limiting a caretaker's choice of any eligible child care provider or be based on a caretaker's choice of a child care certificate.

(2) Funding set-asides.

(i) Each social services district may set aside a portion of the district's New York State Child Care Block Grant allocation and/or its title XX allocation to serve one or more of the Federal and/or the district's local priority populations including families eligible for a child care guarantee; provided that the method of disbursement of funds to priority groups provides that eligible families within a priority group will receive equitable access to child care assistance funds to the extent that such funds are available.

(ii) Each funding set aside must be based on a 12-month period and must be described in the district's consolidated services plan or integrated county plan along with the rationale for the set aside amount based on the projected need for that population.

(iii) Within each 12-month period, the amount of the set aside for each particular priority population may be adjusted up or down by 10 percent without the prior written approval of the office. Each such adjustment to a set aside amount must be reported to the office within 30 days of the adjustment.

(iv) The prior approval of the office is needed for any adjustment in the amount of a set aside for a particular priority population which would exceed 10 percent of the amount for that set aside originally specified in the district's consolidated services plan or integrated county plan.

(3) Waiting lists and denial of services.

(i) If a social services district has set aside funds to serve one or more priority populations and all of the available funds that are not set aside are projected to be needed for open child care cases, the district may deny services to a family which is not eligible for a child care guarantee and which does not fall within the priority populations for the set asides or place the family on a waiting list for subsidies.

(ii) A social services district that has not established set asides must open a new case for an eligible family if the district has sufficient funding available to provide child care services to that family at the time the family is determined to be eligible. If the district does not have sufficient funding available because all of the available funds are projected to be needed for open child care cases, the district may deny services to a family which is not eligible for a child care guarantee or place the family on a waiting list for subsidies.

(4) Case closings. Once a social services district has committed all of the funds available to it, either through set asides approved in the district's consolidated services plan or integrated county plan and/or because all of the available funds are projected to be needed for open child care cases, the social services district may discontinue funding to those families which are not eligible for a child care guarantee that have lower priorities in order to serve families with higher priorities. If no priorities are established beyond the federally-mandated priorities and all funds are committed, case closings for families which are not eligible under a child care guarantee and are not a federally-mandated priority must be based on the length of time in receipt of services. The length of time used to close cases may be based either on the shortest or longest time receiving child care services but must be consistent for all families. The social services district must specify in its consolidated services plan or integrated county plan whether case closings will be based on the shortest or longest length of time receiving child care services.



(5) Each social services district must collect and submit to the office information, in the form and manner and at the times specified by the office, concerning the disbursement of child care subsidy funds showing the geographic distribution of children receiving child care services from the district.

### **Section 415.3. Caretaker's responsibilities**

(a) An applicant for child care and development block grant services must apply, in writing, on forms and in a manner prescribed by the social services district in accordance with Part 404 of this Title. The social services district must permit the applicant to submit an application by mail. The caretaker with whom an eligible child or children reside(s) is the applicant for such services.

(b) The applicant is responsible for providing accurate, complete and current information regarding family income and composition, child care arrangements and any other circumstances related to the family's eligibility for child care services, and for notifying the social services district immediately of any changes in such information.

(c) The child(ren)'s caretaker is responsible for locating a child care provider(s) that meets the needs of his or her child(ren). A caretaker that is unable to locate a child care provider(s) may ask the social services district for assistance.

(d) A family which chooses to have a caregiver of informal child care provide child care services in the child(ren)'s own home must provide such caregiver with all employment benefits required by State and/or Federal law and pay the caregiver at least minimum wage, if required by State and/or Federal law.

(e) *Family share.*

(1) Each family receiving child care services, except for a family where the parent(s) or caretaker relative(s) is receiving public assistance or a family experiencing homelessness, must contribute toward the costs of such services by paying a family share based upon the family's income. A family share also may be required of any family to recoup an overpayment for a child care services regardless of whether any member of the family is receiving public assistance.

(2) The income-based portion of the family share for child care services must be determined by the social services district in accordance with a sliding fee scale developed pursuant to paragraph (3) of this subdivision. The overpayment portion of the family share, if any, must be reflected separately from any income-based portion of the family share and must be determined in accordance with section 415.4(i) of this Part.

(3) The sliding fee scale developed by the social services district must be calculated by subtracting the State income standard, as defined in section 415.1(k) of this Part, for the specific family size of the eligible family from the annual gross income of the eligible family, multiplying the remaining income by a factor of 10 to 35 percent, as selected by the social services district and included in the district's consolidated services plan or integrated county plan, and dividing

the product by 52 to determine a weekly family share. The same percentage factor must be used for all families receiving child care services which are required to pay an income-based portion of a family share.

(4) A minimum weekly family share of \$1 must be charged to each family receiving child care services which is required to pay an income-based portion of a family share.

(5) Each family receiving child care services is responsible for paying only one family share regardless of the number of children in the family who are receiving child care services.

(6) The family is responsible for paying the family share in the manner determined by the social services district. The social services district may require the family to pay the family share to the social services district or to one or more child care providers used by the family.

(7) The family share will be recalculated by the social services district whenever there is a change in income, household circumstances or child care provider that would affect the amount of the family share, or when an overpayment for child care services has occurred and the recovery of such overpayment will be made through the family share, but no less frequently than each recertification.

(8) The failure of a family receiving child care services to pay the family share for such services established by the social services district or to cooperate with such district to develop an arrangement satisfactory to the district to make full payment of all delinquent family shares constitutes an appropriate basis for suspending or terminating such child care services in accordance with the procedures set forth in section 404.6 of this Title.

(f) A caretaker seeking child care services to enable the caretaker to participate in an approved training program must provide documentation that includes, but is not limited to, the following:

(1) the name of the institution offering or conducting the training program;

(2) the course of study to be pursued or in which the person is participating;

(3) the specific vocational or rehabilitative goal;

(4) the duration of the training (hours per day) including no more than a total of three hours per day to commute (from home) to and from training location; and

(5) progress reports (marks, transcripts, letters, and like documents) which indicate that the caretaker is progressing satisfactorily towards attaining the established vocational or rehabilitative goal.

#### **Section 415.4. Local district responsibility**

Each local social services district shall be responsible for compliance with the following requirements:

(a) *Initial eligibility.*

(1) At the time of application for child care services, the social services district must inform the applicant of:

(i) the various child care services programs available and the requirements of the child care services programs for which the applicant may be eligible including information about the child care guarantee for applicants and recipients of public assistance and for families transitioning from public assistance set forth in section 410-w(3) of the Social Services Law. Such information must describe the actions that the family needs to take in order to be eligible for the child care guarantee;

(ii) the applicant's responsibility for reporting all relevant facts to the social services district in order that a proper determination of the applicant's eligibility for child care services can be made and for providing the documents or other information which the applicant must submit to verify such facts;

(iii) the fact that any investigation needed in order to determine the applicant's eligibility will be undertaken;

(iv) a recipient's responsibility for notifying the social services district immediately of any change in financial circumstances, living arrangements, employment, household composition, child care provider or other circumstances that affect the family's need or eligibility for child care services;

(v) a recipient's responsibility to contribute toward the costs of the child care services by paying a family share, if required as determined in accordance with section 415.3(e) of this Part;

(vi) the child care providers with which the social services district has arrangements for the provision of child care services to recipients;

(vii) a recipient's option to choose between the eligible providers set forth in section 415.1(g) of this Part;

(viii) a recipient's responsibility to locate child care. In addition, a public assistance recipient who needs child care in order to comply with his or her work requirements must be notified of the provisions in section 415.8 of this Part regarding the recipient's responsibility to locate child care and to inform the district of the recipient's efforts to locate child care including following up on referrals from the district, the applicable local child care resource and referral agency and/or any other child care agency to which the recipient is referred by the district;

(ix) information to assist a recipient to make an informed choice regarding the provider from which the recipient wishes to receive child care services; and

(x) a recipient's right to have child care services provided without discrimination on the basis of race, religion, national origin, sex, handicapping condition or political belief.

(2) All applications for child care services must be processed promptly. A determination of programmatic and financial eligibility must be completed within the time-frame set forth in section 404.1(d) of this Title except where the applicant requests additional time, where difficulties in verifying eligibility lead to a delay or where other reasons beyond the social services district's control lead to a delay. The reason for a delay in making such determination must be recorded in the case record and communicated to the applicant.

(3) Initial eligibility for child day care, informal child care and legally-exempt group child care services must be determined pursuant to the requirements of this Part, Part 404 of this Title and, where applicable, 18 NYCRR Part 385. In addition, required documentation and a completed service plan are necessary prerequisites to the determination of eligibility and must be retained in the case folder.

(4) If an application for child care services is approved, the social services district must:

(i) send written notice to the applicant of the determination of eligibility for child care services; the family share to be paid by the applicant, if required, the date(s) such family share is due and the family share payment procedures which must be followed; and the applicant's right to a fair hearing in accordance with Part 358 and section 404.1(f) of this Title; and

(ii) provide an authorization for child care services to the applicant in accordance with section 404.7 of this Title.

(5) If an application for child care services is denied, the social services district must send written notice to the applicant of the determination of ineligibility and of the applicant's right to a fair hearing in accordance with Part 358 and section 404.1(f) of this Title.

*(b) Continuing eligibility.*

(1) Continuing eligibility for child care services must be redetermined as often as case factors indicate, but no less frequently than every 12 months; provided, however, that a social services district may not require the submission of a new application merely because the applicant is no longer eligible for public assistance or no longer eligible for a child care guarantee. The district must establish procedures to enable families to keep their child care services without interruption as long as the families remain eligible for such services including procedures to transfer families from one unit of the district to another when necessary.

(2) All factors concerning need and eligibility for child care services must be reconsidered, 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 financial circumstances, living arrangements, child care

arrangements, employment, household composition or other circumstances that affect the family's need or eligibility for child care services.

(3) If a recipient is redetermined to be eligible for child care services, the social services district must send written notice to the recipient of the determination of eligibility for child care services; the family share payment procedures which must be followed; and the recipient's right to a fair hearing in accordance with Parts 358 and 404 of this Title.

(4) If a recipient is determined to no longer be eligible for child care services, the social services district must send written notice to the recipient of the determination of ineligibility and of the recipient's right to a fair hearing in accordance with Part 358 and section 404.1(f) of this Title.

*(c) Child care services requirements.*

(1) A recipient must have the option to choose between the eligible providers set forth in section 415.1(g) of this Part; provided, however, that:

(i) a recipient may choose a provider of informal child care or a provider of legally-exempt group child care only for child care services provided under the New York State Child Care Block Grant Program;

(ii) a social services district may disapprove a provider chosen by a recipient in a preventive or child protective case if the district has reason to believe that it would be contrary to the health, safety or welfare of the child to receive child care services from that provider;

(iii) a child care provider chosen by a recipient must be validly licensed, properly registered or enrolled, as appropriate; and

(iv) a child care provider chosen by a recipient must permit a child's caretaker to have: unlimited and on demand access to such child; the right to inspect, on demand and at any time during the hours of operation of the home or facility, all parts of such home or facility used for child care or which could present a hazard to the health or safety of a child; unlimited and on demand access to the provider(s) caring for such child whenever such child is in care and during the normal hours of operation; and, unlimited and on demand access to written records concerning such child except where access to such records is otherwise restricted by law.

(2) A recipient who chooses a caregiver of legally-exempt in-home child care who will be providing such care in a child's own home must be advised of the recipient's responsibility to provide such provider with all employment benefits required by State and/or Federal law and the recipient's responsibility to pay the provider at least the minimum wage if required by State and/or Federal law.

(3) The child care services provided must be reasonably related to the hours of employment, education or training of a child's caretaker, as applicable, and permit time for delivery and pick-up of the child. Up to eight hours of child care services may be provided, if needed, to enable an employed caretaker who works a second or third shift to sleep if the social services district indicates in its consolidated services plan or integrated county plan that it will provide such services.

(4) When arranging child care services, the needs of the child must be taken into account including: continuity of child care; reasonable proximity of the care either to the child's home and school or to the child's caretaker's place of employment, education or training, as applicable; and, the appropriateness of the child care to the child's age and special needs.

(5) No child may be moved by a social services district from an existing placement with an eligible provider unless the recipient of child care services consents to such move; provided, however, that a social services district may require that a child receiving child care services as part of a preventive case or a child protective case be moved from an existing placement with an eligible provider if the district has reason to believe that it would be contrary to the child's health, safety or welfare to continue receiving child care services from that provider.

(6) A current list of the licensed or registered child day care providers located in the social services district must be maintained and made available to applicants for and recipients of child care services.

(7) Social services districts must inform public [public] assistance recipients that:

(i) the exemption from work requirements for lack of child care, if applicable, will not extend the time limitations on the receipt of family assistance; and

(ii) the recipient will not be sanctioned for failure to comply with work requirements as long as the recipient can demonstrate an inability to find child care in accordance with section 415.8 of this Part. The information provided to the recipient must include the definitions and procedures set forth in such section.

(8) A social services district must notify applicants for and recipients of public assistance of the guarantee for child care services and for transitional child care services available to applicants or recipients that choose child care services in lieu of public assistance. Recipients of public assistance also must be informed of their potential eligibility for the guarantee for transitional child care services when their public assistance benefits are terminated. Such notification must describe the actions an applicant or recipient must take to obtain the guaranteed transitional child care services. A social services district may not require that an applicant or recipient reapply to receive the guaranteed transitional child care services as long as the family remains eligible for child care services.

(9)

(i) The social services district shall allow, disallow, or defer a claim for reimbursement, submitted by an eligible provider to the social services district, for the purpose of providing child care services pursuant to this Part within 30 days of receiving such claim.

(ii) The social services district may defer a claim for reimbursement only in the following circumstances:

(a) upon the recommendation of a federal, state, or local agency, when the agency has informed the social services district that continued payments of such claims place the social service district at risk of making payments for services that were not provided in accordance with the applicable state regulations; or

(b) after an initial review of the claim by the social services district revealed inaccuracies in the claim that warrant a more detailed review; or

(c) upon notification of the existence of a pending criminal charge involving fraud.

(iii) The social services district may disallow payment for claims for services provided to any and all children receiving a child care subsidy for the time period in which:

(a) an enrolled provider is found by the office to be operating or have operated a child care program, required to be licensed or registered with the office, without obtaining such license or registration; or

(b) a licensed or registered provider is found by the office to be operating or have operated over its licensed or registered capacity; or

(c) an enrolled informal provider is found by the office to be caring or have cared for more children than the limits defined in section 415.1(h) of this Part.

*(d) Jurisdiction.*

(1) When a family which is guaranteed child care services moves from one social services district to another social services district within the State, the new social services district of residence is responsible for paying for the family's child care services beginning with the second full month that the family lives in that district, provided the family continues to be eligible for guaranteed child care services. The former social services district is obligated to continue to pay for the guaranteed child care services during the month the family moves to the other district and the first full month following the month the family moved.

(2) Notwithstanding paragraph (1) of this subdivision, if a social services district continues to have responsibility for providing public assistance benefits for a family which has moved to another district, such as when the parent(s) or caretaker relative(s) is required to attend a substance abuse program located in another district, the district which is responsible for the

public assistance benefits remains responsible for all child care services needed for any child(ren) of that parent(s) or caretaker relative(s) who moves to live with, or be near, the parent(s) or caretaker relative(s).

(3) When a child(ren) is placed in foster care in a social services district outside of the district where the child(ren) resided at the time of placement, and the foster family needs child care services for the foster child(ren) and the foster family is eligible to receive such services pursuant to section 415.2(a) of this Part, the district that has financial responsibility for the foster child(ren) will be responsible for providing child care services for the foster child(ren).

(4) For all other families not described in paragraph (1), (2) or (3) of this subdivision, the social services district where a family resides will be responsible for providing child care services.

*(e) Administration.*

(1) In the case of providers from whom or from which the social services district purchases child care services, contracts, when required by section 405.3 of this Title, will be negotiated in accordance with the purchase of service requirements set forth in such section; provider budgets may be reviewed and attendance and payment records will be monitored.

(2) Required reports and claims for reimbursement must be prepared and submitted in the form and manner and at the times as required by the office.

(3) Records required to be maintained by the State and Federal law and by instructions of the office must be retained as appropriate. Under this subdivision, local districts must keep and retain adequate claiming records, retain appropriate documentation in the recipient's case file, and make appropriate records available for audit by appropriate State and Federal agencies.

(4) Social services districts may alter their participation in activities related to arranging for, subsidizing, delivering, and monitoring the provision of subsidized child day care, provided that the total participation of an individual district in all activities related to the provision of subsidized child day care must be no less than the participation level engaged in by such individual district on the effective date of this section, to be determined based on a review of expenditures for the calendar year January 1, 1990 through December 31, 1990.

(5) The social services district is responsible for reporting to the office, in the form and manner and at the times required by the office, specific information regarding child care services, including, but not limited to, the number of children receiving each specific child care services, the costs of such services separated by the type of child care providers used, and any additional information required for the State to meet Federal reporting requirements.

(6) Each social services district must submit a child care services plan to the office for approval as part of the district's multi-year consolidated services plan or integrated county plan and any annual implementation reports, in the form and manner and at the times required by the office.



A social services district must implement its child care services programs in accordance with the child care services plan approved by the office.

(f) *Enrollment of caregivers of informal and legally-exempt group child care.* A social services district may only make payments for child care provided by caregivers of informal or legally-exempt group child care if the caregiver has been enrolled by a legally-exempt caregiver enrollment agency on either a temporary or final basis in accordance with this subdivision. Each social services district must provide a child's caretaker that has applied for or is receiving child care subsidies under the New York State Child Care Block Grant and who is interested in using a caregiver of legally-exempt child care with an enrollment package and notify the caretaker that the completed package must be submitted to the applicable legal-exempt caregiver enrollment agency.

(1) Each legally-exempt caregiver enrollment agency must establish procedures for enrolling, for payment purposes, a caregiver of informal child care or a caregiver of legally-exempt group child care, as defined in section 415.1 of this Part, who or which chooses to provide child care services under the New York State Child Care Block Grant Program. Such enrollment procedures must:

(i) collect only such information about the caregiver as determined by the Office of Children and Family Services to be necessary to make payments and to furnish information to the caregiver or to a recipient;

(ii) facilitate appropriate and prompt payments; and

(iii) permit the caregiver to enroll with the legally-exempt caregiver enrollment agency after selection by a recipient.

(2) Each legally-exempt caregiver enrollment agency must distribute health and safety information as specified by the office to all newly enrolled caregivers of informal child care and caregivers of legally-exempt group child care.

(3)

(i) Prior to enrolling or re-enrolling a caregiver of informal child care or a caregiver of legally-exempt group child care, the legally-exempt caregiver enrollment agency must review the enrollment package obtained from the caregiver and determine, within 10 days of receiving the enrollment package, whether the enrollment package is complete and the caregiver is exempt from the State's child day care licensing and registration requirements.

(ii) If the caregiver is exempt from the State's child day care licensing and registration requirements, and the completed checklist and attestations in the enrollment package do not raise any immediate concerns, the legally-exempt caregiver enrollment agency must enroll the caregiver on a temporary basis until the legally-exempt caregiver enrollment agency completes a full review of the package. The legally-exempt caregiver

enrollment agency must notify the applicable social services district of the enrollment of the legally-exempt caregiver on a temporary basis.

(iii) The legally-exempt caregiver enrollment agency must complete a full review of the enrollment package within 40 days of receiving the completed enrollment package to determine whether the caregiver meets the enrollment requirements including the basic health and safety requirements set forth in paragraph (7) of this subdivision and the additional requirements for informal child care caregivers set forth in paragraph (8) of this subdivision, if applicable. The legally-exempt caregiver enrollment agency must notify the applicable social services district of its final determination regarding the enrollment of the legally-exempt caregiver.

(iv) Caregivers enrolled with a social services district on or before the effective date of these regulations, must document compliance with the requirements set forth in paragraph (7) of this subdivision and the additional requirements for informal child care caregivers in paragraph (8) of this subdivision, if applicable, before or as part of the next redetermination of eligibility for child care services for a child in the caregiver's care.

(v) Enrollment information must be updated and reviewed at least annually and at any other time when a change in circumstances warrants such a review including but not limited to when the caregiver seeks to serve another child. The legally-exempt caregiver enrollment agency only must verify any changes that have occurred to the caregiver's enrollment information since the last enrollment package was submitted.

(4) If the caregiver is exempt from the licensing and registration requirements and the caregiver otherwise meets the qualifications set forth in section 415.1(h) or (i) of this Part, and meets the basic health and safety requirements set forth in paragraph (7) of this subdivision and the additional requirements for informal child care set forth in paragraph (8) of this subdivision, if applicable, or integrated county plan, then the legally-exempt caregiver enrollment agency must enroll the caregiver for the purpose of providing child care services to eligible families under the New York State Child Care Block Grant Program unless the applicable social services district informs the legally-exempt caregiver enrollment agency that the caregiver does not meet a locally-defined additional requirement set forth in the social services district's consolidated services plan or integrated county plan in accordance with subdivision (h) of this section.

(5) A caregiver of informal child care or a caregiver of legally-exempt group child care must be enrolled with the legally-exempt caregiver enrollment agency before payment is made to such caregiver by a district for providing child care services under the New York State Child Care Block Grant Program.

(6) Each legally-exempt caregiver enrollment agency must maintain an automated roster, in the New York State Child Care Facilities System, of the caregivers of informal child care and caregivers of legally-exempt group child care enrolled with such legally-exempt caregiver enrollment agency including the name and address of each such caregiver and information

about the caregiver's compliance with the enrollment requirements at such time and in manner and form required by the office.

(7) Basic health and safety requirements for caregivers of informal or legally-exempt group child care.

(i) At the time of applying for enrollment and for re-enrollment, the caregiver must furnish a sworn statement indicating whether, to the best of his or her knowledge, such caregiver, any employee of the caregiver, and any volunteer who has the potential for regular and substantial contact with children in care, and, for caregivers of legally-exempt family child care, each household member age 18 or older, has ever been convicted of a misdemeanor or a felony in New York State or any other jurisdiction. Prior to furnishing the caretaker and the legally-exempt caregiver enrollment agency with such information, the caregiver shall inquire of each such employee, volunteer and household member regarding whether that person has ever been convicted of a misdemeanor or any felony in New York State or any other jurisdiction.

(a) When a caregiver, indicates that he or she or such an employee, volunteer or household member has been convicted of a crime, the caregiver must give the caretaker and the legally-exempt caregiver enrollment agency true and accurate information about the crime which will enable the caretaker and the legally-exempt caregiver enrollment agency to evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child(ren). Such information must include, but is not limited to, the nature of the crime, the penalties imposed as a result of the conviction, and the length of time which has elapsed since the conviction.

(b) No person convicted of a felony or misdemeanor against children or, for caregivers of legally-exempt family child care, whose household includes an individual convicted of such a crime may be enrolled by a legally-exempt caregiver enrollment agency as a child care caregiver.

(c) No legally-exempt informal child care program or legally-exempt group child care program which employs an individual or uses a volunteer convicted of a felony or misdemeanor against children may be enrolled by a legally-exempt caregiver enrollment agency as a child care caregiver.

(d) A legally-exempt caregiver enrollment agency may enroll a caregiver who has been convicted or whose employee, volunteer or household member has been convicted of other felony or misdemeanor offenses, consistent with guidelines issued by the office for evaluating applicants with criminal conviction records.

(ii) The caregiver must furnish the child's caretaker with true and accurate information, in writing, indicating whether, to the best of the caregiver's knowledge, such caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children and, for caregivers of legally-exempt family child care, any household member age 18 or older, has ever been the subject of an indicated report of child abuse or maltreatment in New York State or any other jurisdiction. Prior to furnishing the caretaker with such information, the caregiver shall inquire of each such employee, volunteer and household member regarding whether that person has ever been the subject of an indicated report of child abuse or maltreatment. The caregiver must furnish the child's caretaker with information regarding any such indicated report including a description of the incident, the date of the indication and any other relevant information.

(iii) To be enrolled by a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of informal child care or a caregiver of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State or local government agency must attest and certify in writing:

(a) whether, to the best of his or her knowledge, the caregiver has ever been denied a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home, or had such a license or registration suspended or revoked. If a caregiver indicates that he or she has been denied such a license or registration or had such a license or registration suspended or revoked, the caregiver must provide true and accurate information to the child's caretaker and the legally-exempt caregiver enrollment agency about the reasons for the denial, suspension or revocation. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked, based on guidelines issued by the office; and

(b) whether the caregiver has ever had his or her parental rights terminated, or had a child(ren) removed from his or her care by court order under article 10 of the Family Court Act. If a caregiver indicates that he or she has had his or her parental rights terminated or has had a child(ren) removed from his or her care by court order under article 10 of the Family Court Act, the caregiver must provide true and accurate information regarding the reasons underlying the loss of parental or custodial rights. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had his or her parental rights terminated or has lost custody of a child(ren) by court order under article 10 of the Family Court Act, based on guidelines issued by the office.

(iv) To be enrolled with a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of legally-exempt group child care must attest and certify in writing either that:

(a) the caregiver is legally operating under the auspices of another Federal, State or local government agency; or

(b) if the caregiver of legally-exempt group child care is not required to operate under the auspices of another Federal, State or local governmental agency, then the caregiver must meet the additional health and safety requirements set forth in section 415.4(f)(7).

(v) To be enrolled by a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of informal child care or a caregiver of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State or local governmental agency also must attest and certify in writing, and the child's caretaker must attest and certify in writing, that the caregiver meets and has agreed to continue to meet the following basic health and safety requirements:

(a) The caregiver and all children have two separate and remote ways to escape in an emergency.

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

(c) The caregiver will use barriers to restrict children from unsafe areas. Such areas include, but are not limited to, swimming pools, open drainage ditches, wells, holes, wood and coal burning stoves, fireplaces and permanently installed gas space heaters.

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

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

(f) The caregiver certifies that the caregiver and each employee and each volunteer with the potential for regular and substantial contact with children in care is physically fit to provide child care and are free of any communicable disease and, for caregivers of legally-exempt family child care, that all persons residing in the home are free of any communicable disease unless the caregiver's or household member's health care provider has indicated that the

presence of a communicable disease does not pose a risk to the health and safety of the children in care. If the legally-exempt caregiver enrollment agency has reasonable cause to suspect that the information provided by the caregiver is incorrect, the legally-exempt caregiver enrollment agency may require that the caregiver submit a statement from a physician, physician's assistant or nurse practitioner verifying the information.

(g) Suitable precautions will be taken to eliminate any conditions in areas accessible to children that pose a safety hazard.

(h) All matches, lighters, medicines, drugs, cleaning materials, detergents, aerosol cans and other poisonous or toxic materials are stored in their original containers and used in such a way that they will not contaminate play surfaces, food or food preparation areas or constitute a hazard to children. Such materials will be kept in a place inaccessible to children.

(i) The caregiver will ensure that each child receives meals and snacks in accordance with the plan developed jointly by the caregiver and the child's caretaker.

(j) Perishable food, milk and formula will be kept refrigerated.

(k) When the caregiver cares for infants, formula, breast milk and other food items for infants will not be heated in a microwave oven.

(l) The caretaker of a child will have unlimited access to the child, and to the premises when the child is in care and to written records regarding the child.

(m) Evacuation drills will be conducted at least monthly with the children during the hours that children are in care.

(n) The caregiver will never use corporal punishment or allow others to use corporal punishment while children are in care.

(o) The caregiver will never use or be under the influence of alcohol or drugs while children are in care and will make sure that children are not exposed to individuals using drugs or alcohol while in care.

(p) The caregiver will not smoke or allow smoking in indoor areas while children are in care or in vehicles while children are being transported.

(q) The caregiver will never leave children unsupervised or in the care of individuals who are not authorized to supervise the children.

(r) The caregiver has either a working telephone or immediate access to one. Emergency telephone numbers for the fire department, local or State Police or

sheriff's department, poison control center and ambulance service are posted conspicuously on or adjacent to the telephone.

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

(t) Paint and plaster are in good repair so that there is no danger of children putting paint or plaster chips in their mouths or of it getting into their food.

(u) There is one operating smoke detector on each floor of the home or facility. Such detectors will be checked regularly to insure proper operation.

(v) The home or facility is equipped with a portable first aid kit that is accessible for emergency treatment. The first aid kit is stocked to treat a broad range of injuries and situations and will be restocked as necessary. The first aid kit and any other first aid supplies are kept in a clean container or cabinet not accessible to children.

(w) The caregiver shall not provide child care to any child unless the caregiver has been furnished with a statement signed by a physician or other authorized individual who specifies that the child has received age appropriate immunizations in accordance with New York State Public Health Law or a statement signed by a physician or other authorized individual who indicates that one or more of the immunizations would be detrimental to the child's health, or the child's caretaker provides a statement indicating that the child has not been immunized due to the caretaker's religious beliefs.

(x) Stairs, railings, porches and balconies are in good repair.

(y) The caretaker and the caregiver certified in writing that to the best of their knowledge, all statements made on the enrollment or re-enrollment form and any attachments thereto are accurate and true. Any false information, certified and attested to by the caregiver or the caretaker on either the enrollment or re-enrollment form or any attachment thereto, may result in the caregiver being denied enrollment or the termination of the caregiver's enrollment by the legally-exempt caregiver enrollment agency and/or the social services district terminating child care subsidy payments and/or taking legal action against the caregiver or caretaker.

(z) The caregiver may not administer medication to any child in his or her care except to the extent that the caregiver is authorized under the Education Law to administer medications or has met the requirements for the administration of medications as defined in section 418-1.11 of this Title.

(vi) To be enrolled by or to maintain enrollment with a legally-exempt caregiver enrollment agency to provide child care services to families receiving child care subsidies under the New York State Child Care Block Grant Program, every legally exempt caregiver, employee with a caregiving role, and volunteer with the potential for regular and substantial contact with children in care, except for a grandparent, great grandparent, sibling (if living in a separate residence), aunt, or uncle providing care pursuant to 415.1(h), must complete Office-approved training that complies with the federal minimum health and safety pre-service training requirements.

(a) For informal child care programs enrolled at the time this regulation becomes effective, the required individuals must complete the Office-approved training by September 30, 2017.

(b) For applicants seeking to be enrolled as an informal child caregiver after this regulation becomes effective, the required individuals must complete the Office-approved training pre-service or by September 30, 2017, whichever is later.

(c) For legally-exempt group child care programs enrolled at the time this regulation becomes effective, the required individuals must complete the Office-approved training by September 30, 2017. Any individual who does not complete the training by September 30, 2017 must not be left unsupervised with children in care until such time as the training has been completed. The person supervising the individual must have completed the Office-approved training that complies with the federal minimum health and safety pre-service training requirements.

(d) For applicants seeking to be enrolled as a legally-exempt group child care program after this regulation becomes effective, the required individuals must complete the Office-approved training pre-service or by September 30, 2017, whichever is later. Any required individual who has not completed the training by September 30, 2017 must not be left unsupervised with children in care until such time as the training has been completed. The person supervising the individual must have completed the Office-approved training that complies with the federal minimum health and safety pre-service training requirements.

(8) Additional health and safety requirements for caregivers of informal child care.

(i) A legally-exempt caregiver enrollment agency must refer a caregiver of informal child care to the child and adult care food program (42 USC 1758, 1759[a], 1762[a], 1765, and 1766) at initial enrollment of any caregiver not currently enrolled, or at the annual re-enrollment of any currently enrolled caregiver. If the caregiver is or becomes a participant in the child and adult care food program, the caregiver must provide the legally-exempt caregiver enrollment agency with a copy of documentation of



participation in the program. A legally-exempt caregiver enrollment agency must verify the caregiver's documentation to determine whether the caregiver is a participant in the child and adult care food program.

(ii) Upon applying for enrollment, and as part of the annual re-enrollment process, a legally-exempt caregiver enrollment agency must verify the information in the attestation of each caregiver of informal child care to determine if the caregiver's parental rights have been terminated, or if a child(ren) was removed from his or her care by court order under article 10 of the Family Court Act.

(a) The legally-exempt caregiver enrollment agency will request that the applicable social services district conduct a child welfare database check of the caregiver and provide the applicable social services district with such available information about the caregiver as is necessary to complete the database check to determine whether the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under article 10 of the Family Court Act. The district must provide the legally-exempt caregiver enrollment agency with the results of the child welfare database check within 15 days of receiving the request.

(1) When the check of the district's child welfare data base reveals that the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under article 10 of the Family Court Act, the district shall provide the specific office mandated information on the foster care and/or court records concerning the caregiver's termination of parental rights and the removal of the child from the caregiver's home to the legally-exempt caregiver enrollment agency for the purposes of determining whether to enroll the caregiver.

(2) When the check of the district's child welfare data base reveals that the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under article 10 of the Family Court Act, the caregiver must provide the caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding the reasons underlying the loss of parental or custodial rights, if such information has not already been provided to the caretaker and the legally-exempt caregiver enrollment agency. A legally-exempt caregiver enrollment agency must determine, based on guidelines issued by the office, whether to enroll a caregiver who has had such a loss of parental or custodial rights.

(iii) Upon applying for enrollment, and as part of the annual re-enrollment process, a legally exempt caregiver enrollment agency will:

(a) Check each caregiver against the office's child care facility system to determine whether the caregiver has ever been denied a child day care license or registration or had a child day care license or registration suspended or revoked. When the check of the office's child care facility system reveals that the caregiver has been denied a child day care license or registration or had a child day care license or registration revoked or suspended, the caregiver must provide the caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding any such denial, revocation or suspension, including a description of the reason for denial, revocation or suspension, the date of the denial, revocation or suspension, and any other relevant information, if such information has not already been provided to the caretaker and the legally-exempt caregiver enrollment agency. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked based on guidelines issued by the office.

(b) Check each caregiver of informal child care, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and for caregivers of legally-exempt family child care, each household member age 18 or older against the New York State Sex Offender Registry maintained by the New York State Division of Criminal Justice Services, via the Registry's toll free telephone number to determine if such caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and for caregivers of legally-exempt family child care, each household member age 18 or older is listed on the New York State Sex Offender Registry. When the New York State Sex Offender Registry reveals that a caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, or for caregivers of legally-exempt family child care, a household member is listed on the Sex Offender Registry for committing a sex offense, the legally-exempt caregiver enrollment agency may not enroll such a caregiver.

(iv) On an annual basis, the applicable legally-exempt caregiver enrollment agency must conduct on-site inspections including reviewing the immunization records of at least 20 percent of the currently enrolled legally-exempt family child care caregivers, as defined in this Part, in the applicable district who do not participate in the child and adult care food program to determine whether such caregivers are in compliance with the health and safety standards set forth in this section.

(a) The office will provide by January 31st of each year to the legally-exempt caregiver enrollment agency instructions for compiling a list of the caregivers that must be inspected and a minimum unduplicated number of providers that must be inspected. The legally-exempt caregiver enrollment agency must

complete the inspections and report the results of the inspections in a manner and format as specified by the office by December 31st of each year.

(b) If the legally-exempt caregiver enrollment agency finds that a caregiver is non-compliant with any requirements of this section, the legally-exempt caregiver enrollment agency will assist the caregiver in working towards compliance, in the manner and according to the timeframes established by the office. If the caregiver does not come into compliance with the requirements within the required timeframes, the legally-exempt caregiver enrollment agency will terminate the enrollment of the caregiver and notify the appropriate district of that the caregiver's enrollment has been terminated.

(g)

(1) Where a social services district is subsidizing child care services pursuant to any of the provisions of this Part, the district may submit to the office justification for a need to impose additional requirements on child care providers providing subsidized child care services and a plan to monitor compliance with such additional requirements. A social services district may make participation in the child and adult care food program a condition of enrollment for each caregiver of informal child care who will be providing an average in excess of 30 hours of care per week to one or more subsidized children provided the district sets forth this requirement in the district's consolidated services plan or integrated county plan. No such additional requirements or monitoring may be imposed without the written approval of the office.

(2) To the extent that a social services district has established any additional standards for caregivers of legally-exempt child care, the district's monitoring process must include procedures for notifying the applicable legally-exempt caregiver enrollment agency if the district determines that such a caregiver is not in compliance with an additional standard. Any such procedures established by the social services district may not extend the timeframes set forth in subdivision (f) of this section for legally-exempt caregiver enrollment agency to review an enrollment package.

(h)

(1) A social services district may refuse to allow a child care provider that is not in compliance with this section and regulations promulgated by the office, or any approved additional requirements of the social services district, to provide subsidized child care services to a child.

(2)

(i) A social services district may disqualify a provider from receiving payment for child care services provided under the child care subsidy program if a provider:

(a) is criminally convicted of fraud;

(b) is found to be civilly liable for fraud;

(c) has voluntarily admitted to filing a false claim for reimbursement for child care services;

(d) has been disqualified from the Child and Adult Care Food Program, by the New York State Department of Health and/or its sponsoring agency, for submission of false information on the application, submission of a false claim for reimbursement or failure to keep required records;

(e) has failed to comply with the terms of a repayment plan with the social services district; or

(f) has a conviction of any activity that occurred in the past seven years that indicated a lack of business integrity; or

(g) has been found by a social services district, after the social services district has conducted an administrative review in accordance with subparagraph (ii) of this paragraph, to have submitted a false claim(s) to a social services district for reimbursement.

(ii) An administrative review by a social services district must include the following:

(a) A review of the claims submitted to the social services district and any other information or documentation obtained by the social services district to determine the accuracy of the information contained in the claims; and if a social services district determines after such a review that a provider submitted inaccurate information in the claims, then a preliminary review report must be prepared by a social services district and sent to the child care provider that is the subject of the review for a response.

(b) A child care provider must be given 20 days, from the date the district sent the preliminary review report to respond to the report. A child care provider may respond in writing presenting evidence and arguments that the provider believes refute the findings of the preliminary review report, or may request a formal review by a social services district, which allows a provider, in person, to present evidence and arguments in support of his/her position.

(c) If no response from a provider is received by a social services district within 20 days from the date of the postmark of the preliminary review report, the report may be finalized by a social services district. A final report, issued under this subclause, may be the basis for a social services district to disqualify a provider from providing subsidized child care.

(d) If a response from a provider is received by a social services district within 20 days from the date of the postmark of the preliminary report, the social services district must review and evaluate the response and may make appropriate changes based on the response from the provider, before issuing a final review report. Upon completion of the review, the social services district shall issue a final review report, such report must be sent to the child care provider that is the subject of the review.

(e) A child care provider, upon receipt of a final review report, must be given 10 days from the date of the postmark of the final review report to respond, and to request a formal review by the social services district. A final review report issued under this subclause, where a provider does not request a formal review within the 10-day specified timeframe, or does not provide a response that disproves the findings of said report, may be the basis for a social services district to disqualify a provider from providing subsidized child care.

(f) A social services district, upon receipt of a request for a formal review by a provider found in a final review report to have submitted inaccurate claims, must conduct such a review within 30 days of receipt of the request.

(g) A social services district at a formal review must allow a provider, in person, to present evidence and arguments in support of the provider's position.

(h) A social services district, after a formal review and after reviewing the evidence and arguments supplied by a provider at a formal review must make a final determination of whether a provider submitted false claims. A final determination that a provider submitted false claims may be the basis for a social services district to disqualify a provider from providing subsidized child care.

(iii) A provider who has been disqualified from receiving payment for child care services provided under the child care subsidy program by a social services district under subparagraph (i) of this paragraph is ineligible to receive such payments through any social services district for five years from the date of the disqualification, if such a provider made full restitution of any and all falsely obtained funds to the social services district. If such a provider did not make full restitution to a social services district, then the provider will remain ineligible to provide subsidized child care.

(iv) A social services district that disqualifies a provider from receiving a payment for child care services provided under the child care subsidy program must provide appropriate information concerning the disqualification to the appropriate regional office of the office's division of child care services if the provider is a licensed or registered day care provider, or to the appropriate legally-exempt caregiver enrollment agency if the provider is a legally-exempt child care provider.

(3) In accordance with a plan approved by the office, a social services district will have the right to make announced or unannounced inspections of the records and premises of any provider that provides care for subsidized children, including the right to make inspections prior to subsidized children receiving care in a home where the inspection is for the purpose of determining whether the child care provider is in compliance with applicable laws and regulations and any additional requirements imposed on such a provider by the social services district. A social services district must notify the office immediately of any violations of regulations and must provide the office with an inspection report documenting the results of such inspection.

(4) Nothing contained in this Part will diminish the authority of the local social services district from referring a matter to the appropriate district attorney or law enforcement agency.

(i) *Overpayments.*

(1) The social services district must take all reasonable steps to correct promptly any overpayments for child care services to a child's caretaker or a child care provider.

(2) Overpayments must be recovered through:

(i) repayment by the child's caretaker or child care provider; or

(ii) by recovery through a reduction in the amount of the payment to the child's caretaker or child care provider; provided, however, that no recovery of overpayments may be made from a child care provider where a contract for such child care services obligates the social services district to make full payment. When no recovery may be made from a child care provider because a contract requires full payment, and repayment is not made from the child's parent or caretaker, Federal financial participation (FFP) and State reimbursement cannot be claimed for such overpayment.

(3) In recovering overpayments for child care services from child care recipients, social services districts must ensure that the child care recipients retain, for any month, a reasonable amount of funds.

(4) Recoupment of such overpayment can be made only from child care benefits unless the child care recipient voluntarily requests that such recovery be made from his or her available income.

(5) Overpayments must be recovered from the caretaker(s) on whose behalf the payments were made or the provider(s) who received payment for such services, so long as caretaker(s) or provider(s) are deemed responsible for such overpayments whether by acts of omission or commission.

(6) Overpayments to child care providers or former recipients of child care services who refuse to repay may be recovered in accordance with the legal remedies available under State law.

(7) When an overpayment occurs as a result of a district's failure to act promptly on information provided by a parent or caretaker regarding circumstances affecting child care benefits, no recovery shall be made from the party who provided such information. When a recovery cannot be made under this subdivision, Federal financial participation (FFP) and State reimbursement cannot be claimed for such overpayment.

(8) Underpayments and overpayments may be offset against each other.

(9) In all cases involving current child care services recipients, in all cases of fraud, and in all cases where the overpayment would equal or exceed the cost of recovery of the overpayment, the recovery of an overpayment must be attempted.

(10) Each social services district must collect and maintain information on the collection of overpayments and make appropriate adjustments when claiming FFP and State reimbursement, and when satisfying the district's maintenance of effort requirement under the New York State Child Care Block Grant Program as set forth in section 415.7 of this Part.

(11) An applicant for child care services who has not repaid past overpayments for previous child care services that resulted from:

(i) the failure of the applicant, or member(s) of the applicant's family unit, to promptly notify the social services district of a change in circumstances; or

(ii) from child care services fraud by the applicant or member(s) of the applicant's family unit must agree to, and comply with, a plan to make full payment of such overpayments as a condition of being eligible for the new child care services.

(12) With the exception of child care services authorized as a child protective or preventive service, a recipient of child care services who fails to agree to a reasonable plan for repayment or recovery of an overpayment, or who fails to comply with an agreed upon plan, must have their child care benefits suspended or terminated until such time as the recipient comes into compliance with such a plan.

(13) With the exception of child care services authorized as a child protective or preventive service, a recipient or former recipient of child care services who has been convicted of, or has voluntarily admitted to, fraudulently receiving child care services must have their child care services, if any, suspended or terminated and will not be eligible for subsequent child care services for a period of time determined in accordance with the time periods established for intentional program violations set forth in section 359.9(a) of this Title. If such recipient or former recipient is a recipient of temporary assistance and needs child care in order to participate in an activity required by the social services district, the disqualification of eligibility for child care services based on the former fraud conviction or voluntary admission will be suspended during the recipient's or former recipient's participation in the required activity.

However, the disqualification period will begin or resume once the recipient or former recipient is no longer participating in a required activity.

(14) Overpayments for child care services made as a result of payment for aid continuing for a caretaker who loses a fair hearing must be recovered as prescribed in this subdivision.

(j) *Due process requirements.*

(1) Written notice of the determination of eligibility, the family share to be paid by the applicant, or ineligibility for child care services, as well as any modifications thereto, must be sent to the applicant or recipient in accordance with section 404.1(f) of this Title. Recipients of child care services must receive timely and adequate notice of any change in child care services, except that changes in the manner of payment for child care services by a social services district may be made with only adequate notice pursuant to section 358-3.3 of this Title, unless those changes result in a discontinuation, suspension, reduction or termination of such benefits, or force a change in child care arrangements.

(2) An applicant for or recipient of child care services must be notified of the right to a fair hearing in accordance with Part 358 of this Title whenever there is a determination affecting his or her family's eligibility for child care services.

(k) Nothing contained in this Part will diminish the authority of the office to conduct inspections of licensed or registered child care providers or to provide for such inspections through purchase of services in accordance with section 390 of the Social Services Law. Nothing contained in this subdivision will obligate the office to take any action to enforce any additional requirements imposed by a social services district on child care providers providing care to children receiving child care subsidies.

(l) Social services districts must describe how they will examine and verify the accuracy of information contained in the enrollment forms completed by legally-exempt providers. This information must be described in the district's consolidated services plan or integrated county plan.

(m) Each social services district must establish comprehensive fraud and abuse control activities for the district's child care subsidy program. A social services district must provide details on its comprehensive fraud and abuse control activities in the district's consolidated services plan or integrated county plan, which must include, but not be limited to:

(1) identification of the criteria the social services district will use to determine which child care subsidy applications suggest a higher than acceptable risk for fraudulent or erroneous child care subsidy payments and procedures for referring such applications to the district's front end detection system;

(2) a sampling methodology to determine which cases the social services district will seek verification of an applicant or recipient's continued need for child care including, as applicable, verification of participation in employment, education or other required activities; and



(3) a sampling methodology to determine which caregivers of subsidized child care services the social services district will review for the purpose of comparing the caregiver's attendance forms for children receiving subsidized child care services and any child and adult care food program inspection forms to verify that child care was actually provided on the days listed on the attendance forms.

#### **Section 415.5. Methods of making payment for child care services**

(a) Each social services district may provide child care services directly or may pay for such services in accordance with the provisions of this section applicable to the particular child care services program.

(1) For child care services provided under the New York State Child Care Block Grant Program, payment may be made by one or more of the following methods:

(i) by advance cash payments, cash reimbursements or vouchers to the child's caretaker for care provided by an eligible provider and supported by a bill signed by both the child's caretaker and the provider; provided, however, that a caregiver of informal child care or of legally-exempt group child care must be enrolled with the social services district pursuant to section 415.4 of this Part before payment may be made for such services; or

(ii) by a purchase of services contract or letter of intent in accordance with section 405.3 of this Title, or by advance cash payments, cash reimbursements or vouchers to an eligible provider; provided, however, that a caregiver of informal child care or of legally-exempt group child care must be enrolled with the social services district pursuant to section 415.4 of this Part before payment may be made for such services.

(2) The provisions in section 159 of the Social Services Law precluding the payment of cash assistance for certain families in receipt of safety net assistance do not apply to the payment of child care services for such families.

(3) A social services district must establish at least one method of payment by which payment for child care services arranged by the child's caretaker can be made.

(b) *[Reserved]*

(c) For child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services funded other than under the New York State Child Care Block Grant Program, payment must be made by a purchase of services contract or letter of intent in accordance with section 405.3 of this Title.

(d) Attendance and payment records must be monitored for all providers receiving payment for child care services regardless of the method of payment.

#### **Section 415.6. State reimbursement**

(a) A change in the rate of payment based on a change in the age of a child is effective in the first full month following the date in which the child becomes 1 1/2 years of age or the date of the child's birthday, whichever is applicable.

(b) Reimbursement for payment on behalf of children who are temporarily absent from child care is allowable subject to the following conditions:

(1) The provider rendering the child care services must be duly licensed, registered or enrolled to provide child care services and the social services district has opted to make such payments. If a social services district opts to make such payments, it may choose to make such payments either to those child care providers with which the social services district has a contract or letter of intent only, or to all providers of subsidized child care services except for caregivers of informal child care. The social services district must specify in its consolidated services plan or integrated county plan whether it opts to make such payments and, if applicable, for which providers such payments will be made.

(2) The social services district has specified in its contract or written agreement with the provider or through written notice to the provider that payment is allowable in cases of temporary absences from child care.

(3) Except in cases of extenuating circumstances defined below, temporary absences from child care are allowed up to 12 days in any one calendar month; provided, further, that such absences may total no more than 12 days in any three-month period if the social services district selects a three-month period for determining maximum temporary absences, or 24 days in any six-month period if the social services district selects a six-month period for determining maximum temporary absences.

(4) *Extenuating circumstance* means a situation or occurrence verified by the social services district, and noted in the child's services plan, in which a child is temporarily absent from child care for one or more of the following reasons:

(i) the social services district determines that the child is unable to attend child care because it is necessary for the child or the child's caretaker to appear in court or to keep other appointments related to the provision of preventive, foster care, adoption, or child protective services, or other needs as set forth in the child's services plan;

(ii) the child is ill, has a handicapping or other condition which requires medical care and/or treatment, or the child requires routine medical care and/or treatment;

(iii) the child's family is homeless, and the homelessness necessitates the child's absence from child care; or

(iv) the child's caretaker is participating in an approved education or training program and the child's absences coincide with a temporary suspension of such program for purposes including, but not limited to, holidays, school conferences and snow days.

(5) Where it is determined that an extenuating circumstance or circumstances exists, reimbursement for temporary absences due to such circumstance or circumstances will be permitted for an additional three days in any one calendar month; provided, further, that all absences may total no more than 20 days in any three-month period if the social services district selects a three-month period for determining maximum temporary absences, or 40 days in any six-month period if the social services district selects a six-month period for determining maximum temporary absences.

(6) Under no circumstances will reimbursement for temporary absences be permitted in excess of the limits set forth in paragraph (5) of this subdivision unless the office and social services district expressly consent to such reimbursement.

(7) A social services district must select one of the alternative periods in paragraph (3) of this subdivision as the basis on which it will maintain records and seek reimbursement. No combination of methodologies is permitted within a district. Once a methodology is selected, no change may be made until the end of the annual program year as defined in the Comprehensive Annual Social Services Program Plan.

(8) For purposes of this section, a social services district may establish the three-month or the six-month periods used in determining maximum temporary absences on either of the following bases:

(i) beginning on the date of a child's admission to child care and ending three or six months later depending on the period selected; or

(ii) beginning on a fixed calendar date for all children entering child care and ending three or six months later depending on the period selected. If this basis is chosen, a child entering child care during a quarterly or semiannual cycle may, during that initial cycle, receive a prorated number of days of absence beginning on the date of entry and ending on the last day of the quarterly or semiannual cycle. All temporary absences thereafter will be computed using the normal quarterly or semiannual cycle.

(9) Reimbursement is not available for a day a child is absent from care if the provider ordinarily charges the caretaker on a daily or part-time basis and the child for whom reimbursement is requested is otherwise in need of and receives subsidized child care from a different provider on the same day.

(c) Reimbursement for payments to licensed or registered or legally-exempt group programs during program closures also is allowable subject to the following conditions:

(1) The social services district has opted to make such payments. If a social services district opts to make such payments, it may choose to make such payments either to those child care providers with which the social services district has a contract or letter of intent or to all providers of subsidized child care services except for caregivers of informal child care. The social

services district must specify in its consolidated services plan or integrated county plan whether or not it opts to make such payments and, if applicable, for which providers such payments will be made.

(2) The program closure is due to a State, Federal or nationally recognized holiday or due to extenuating circumstances beyond the provider's control including but not limited to:

(i) natural disaster;

(ii) severe weather; or

(iii) other emergency closings that are due to circumstances other than a substantiated regulatory violation.

(3) Reimbursement is available only for children in receipt of a child care subsidy who would otherwise be present at the child care program.

(4) Reimbursement is not available for a day the program is closed if the provider ordinarily charges the caretaker on a daily or part-time basis and the child for whom reimbursement is requested is otherwise in need of and receives subsidized child care services from a different provider on the same day.

(5) The maximum number of days allowable under this section is five per annum.

(6) The district must maintain a record of the payments made under this provision for each provider in order to receive reimbursement.

(d) Special reimbursement requirements specific to the title XX Social Services Block Grant Program.

(1) State reimbursement for child care services provided under title XX of the Federal Social Security Act will be available for 100 percent of allowable costs up to the amount of the social services district's annual title XX Social Services Block Grant allocation, or as otherwise provided by State law.

(2) When a client is determined to be eligible for child care services under the title XX Social Services Block Grant, payment must be claimed for reimbursement in accordance with the State instructions relating to such title.

(e) Payments by a social services district for child day care, informal child care and legally-exempt group child care are subject to reimbursement only when the following requirements are met:

(1) Payments do not exceed the actual cost of care. For purposes of this Part, the actual cost of care is:

(i) for care provided pursuant to a contract between the social services district and the provider, the payment rate set forth in the contract;

(ii) for care provided other than pursuant to a contract between the social services district and the provider, the amount charged to the general public for equal care in the providing facility or home; provided, however, if the facility or home cares only for subsidized children, then the actual cost of care is the amount the provider currently is receiving from the social services district for such children unless the provider can demonstrate to the social services district that the actual cost of providing care to such children is higher than that amount.

(2) Payments for child day-care or child care services for eligible families/children do not exceed the amount charged to the general public for equal care in the providing facility or home.

(3) Payments per child for child day care in a day care center (DCC), a family day care home (FDC), a group family day care home (GFDC), a school-age child care program (SACC) and for informal child care and legally-exempt group child care do not exceed the applicable rates for the type of child care provider used and the age of the child set forth in section 415.9 of this Part.

(4) Payments cannot be made when such care is provided by a child's parent, stepparent, legal guardian, caretaker relative, person in *loco parentis* to the child, or another member of the child care services unit other than the child's sibling.

(5) Payments cannot be made when such care is provided by a member of the public assistance unit including essential persons as referred to in section 369.3(c) of this Title.

#### **Section 415.7. Additional requirements for the New York State Child Care Block Grant Program**

(a) For child care services provided under the New York State Child Care Block Grant Program. State reimbursement to a social services district will be available, up to the social services district's annual block grant allocation for 75 percent of allowable costs for child care services provided to families in receipt of public assistance and for 100 percent of allowable costs for child care services provided to all other eligible families. Allowable program costs include the following costs of providing child care services:

(1) eligibility determinations and re-determinations;

(2) participation in adjudicatory and judicial hearings;

(3) child care placements including transportation to such placements;

(4) inspection, review and supervision of child care placements including monitoring compliance with any additional local child care requirements imposed pursuant to section 415.4(f) of this Part;

(5) training of social services district staff; and

(6) the establishment of computerized child care information systems.

(b) A social services district must expend its allocation from the New York State Child Care Block Grant in a manner that provides for equitable access to child care services funds to eligible families.

(c) A social services district may spend no more than five percent of its annual block grant allocation for administrative activities. The term *administrative activities* does not include the costs of providing child care services set forth in subdivision (a) of this section. Administrative activities include, but are not limited to the following:

- (1) providing local officials and the public with information about the program;
- (2) conducting public hearings;
- (3) monitoring program activities for compliance with program requirements;
- (4) maintaining substantiated complaint files;
- (5) coordinating the resolution of audit and monitoring findings;
- (6) evaluating program results;
- (7) managing or supervising persons with responsibilities set forth in paragraphs (1) through (6) of this subdivision;
- (8) travel costs incurred for official business in carrying out the program; and
- (9) other costs for goods and services required for the administration of the program including rental or purchase of equipment, utilities, and office supplies.

(d) Any claims for child care services made by a social services district for expenditures during a particular Federal fiscal year, other than claims made under title XX of the Federal Social Security Act, will be counted against the social services district's New York State Child Care Block Grant for that Federal fiscal year. A social services district's New York State Child Care Block Grant allocation for a particular Federal fiscal year is available only for child care services expenditures made during that Federal fiscal year that are claimed in the form and manner and at such times required by the office. Any portion of a social services district's New York State Child Care Block Grant allocation for a particular Federal fiscal year that is not claimed by the time required by the office will be available to the district for New York State Child Care Block Grant expenditures for the next Federal fiscal year.

(e) Each social services district must maintain the amount of local funds spent for child care assistance under the New York State Child Care Block Grant Program at a level equal to or greater than the amount the district spent for child care assistance during Federal fiscal year 1995 under title IV-A of the Federal Social Security Act, the Federal Child Care and Development Block Grant Program and the State Low Income Child Care Program. Each social services district's claims submitted under the New York State Child Care Block Grant will be processed in a manner that maximizes the availability of Federal funds and ensures that the district meets its maintenance of effort requirement in each applicable Federal fiscal year.

(f) When offering child care services under the New York State Child Care Block Grant Program to a family eligible to receive such services, a participating social services district must offer the child's caretaker the choice either:

- (1) to enroll the child with an eligible child day care provider which has a contract with the social services district for the provision of such services; or
- (2) to receive a child care certificate, as defined in section 415.1(n) of this Part, which permits the child's caretaker to arrange child care services with any eligible provider.

(g) When a child's caretaker elects to use a child day care provider which has a contract with the social services district for the provision of child care services, the child must be enrolled with the provider selected by such caretaker to the maximum extent practical.

(h) When a child's caretaker elects to use a child care certificate to arrange child care services, the social services district must issue such certificate directly to the caretaker.

#### **Section 415.8. Special provisions relating to public assistance recipients**

(a) A social services district must guarantee child care services to a family who has applied for or is in receipt of public assistance when such services are needed for a child under 13 years of age in order to enable the child's custodial parent or caretaker relative to participate in activities required by a social services official pursuant to title 9-B of article 5 of the Social Services Law.

(b) A social services district may not reduce or terminate public assistance to an individual or an individual and the family of such individual based on a refusal of the individual to comply with applicable work requirements if the individual is a custodial parent or caretaker relative of a child under 13 years of age and the individual has a demonstrated inability, as determined by the social services district, to obtain child care needed to comply with such work requirements due to the following reasons:

- (1) unavailability of appropriate and accessible child care within a reasonable distance from the individual's home or work site;
- (2) unavailability or unsuitability of informal child care by a relative or under other arrangements; and
- (3) unavailability of appropriate and affordable formal child care arrangements.

(c) The social services district must inform the family:

- (1) about the exception to the penalties associated with the work requirement if the family is unable to locate child care needed to comply with applicable work requirements including the procedures used to demonstrate an inability to obtain child care and the definitions of the terms "appropriate," "accessible," "reasonable distance," "unsuitability of informal child care" and "affordable"; and

(2) that any family assistance received during the time the parent or caretaker relative receives an exception from the work requirements under this section will count toward the family's 60-month limit on receiving such benefits.

(d) It is the responsibility of the parent or caretaker relative to locate child care for the applicable child(ren) needed to comply with such work requirements.

(e) If such parent or caretaker relative cannot locate the needed child care on his or her own, the parent or caretaker relative must inform the social services district of his or her efforts to locate such care and request additional assistance in locating care.

(f) When a parent caretaker relative requests assistance from the social services district in locating child care due to an inability to locate the needed child care on his or her own, the social services district must:

(1) assist the family by referring the parent or caretaker relative to the child care resource and referral agency funded under title five-B of article six of the Social Services Law that is responsible for the areas in which the parent or caretaker relative lives and/or would be expected to work or to another appropriate child care referral agency; and/or

(2) provide the parent or caretaker relative with a list of names, addresses and telephone numbers of eligible providers.

(g) The parent or caretaker relative must follow-up on all referrals from the social services district, child care resource and referral agency and/or other child care referral agency, as applicable, and must report his or her success or failure to the social services district. In order to be excused from complying with the applicable work requirements, the parent or caretaker relative must have a demonstrated inability, as determined by the social services district, to locate the needed child care for the applicable child(ren) despite the referrals from the social services district, the child care resource and referral agency and/or any other child care referral agency, as applicable.

(h)

(1) If the parent or caretaker relative has a demonstrated inability, as determined by the social services district, to locate the child care needed for the applicable child(ren) despite such referrals, the social services district must offer the parent or caretaker relative two choices of eligible child care providers at least one of which must be a licensed or registered provider.

(2) If the parent or caretaker relative is unwilling to accept child care services from either of these providers; is unable to demonstrate, as determined by the social services district, that such child care is not appropriate, accessible, suitable, affordable or a reasonable distance from the individual's home or work site; and the individual fails to comply with the applicable work requirements, then the social services district may reduce or terminate public assistance to such parent or caretaker relative and/or that individual's family in accordance with applicable statutory or regulatory provisions.



(i) A social services district must determine that a parent or caretaker relative has a demonstrated inability to locate needed child care if all of the following conditions are met:

(1) the parent or caretaker relative has provided an attestation that he or she has contacted those accessible and suitable friends, neighbors and relatives who are within a reasonable distance of the individual's home or work site and who have the potential to act as informal child care providers for the applicable child(ren) but those individuals are not appropriate or affordable. The attestation must include a list of the friends, neighbors and relatives the parent or caretaker relative contacted; and

(2) the parent or caretaker relative has provided an attestation that he or she has contacted all of the child care providers to which the parent or caretaker relative was referred by the social services district, a child care resource and referral agency and/or any other child care agency, as applicable. The attestation must specify each potential provider contacted and the reasons why that provider is not appropriate, accessible, suitable, affordable or a reasonable distance from the individual's home or work site.

(j) The social services district must review and verify the attestations provided by the parent or caretaker relative. If the attestations validly document the unavailability of appropriate, accessible, suitable, affordable child care within a reasonable distance from the individual's home or work site, the district must excuse the parent or caretaker relative from the applicable work requirements.

(k)

(1) A parent or caretaker relative who has been excused from the applicable work requirements due to a demonstrated inability to locate needed child care for his or her applicable child(ren) will be excused from the work requirements only for so long as that demonstrated inability continues to exist.

(2) The parent or caretaker relative must document to the social services district, through the submission of new attestations in accordance with section 415.8(i) on a periodic basis as set forth by the social services district, that the parent or caretaker relative is continuing to attempt to locate the needed child care including following up on all new referrals from the social services district, child care resource and referral agency, and/or any other child care agency, as applicable, and by responding to all offers of child care from the social services district. New attestations must be submitted in accordance with a schedule developed by the district based on the parent's or the caretaker relative's employment plan.

(l) For the purposes of this section, the following definitions apply:

(1) *Applicable child(ren)* means the child(ren) under 13 years of age who are residing with a custodial parent or caretaker relative and who need child care in order for the parent or caretaker relative to comply with the applicable work requirements.

(2) *Appropriate* means the child care provider(s) is open for the hours and days the parent or caretaker relative would need child care in order to comply with the applicable work requirements and the provider(s) is able and willing to provide child care services to the applicable child(ren) including addressing any special needs of the applicable child(ren).

(3) *Accessible* means the parent or caretaker relative is able, by available public or private transportation, to get the applicable child(ren) to and from the child care provider(s) taking into consideration the age and any special needs of the child(ren).

(4) *Reasonable distance* means the child care provider(s) is located within a reasonable distance from the parent or caretaker relative's home and work activity, based on locally accepted community standards, as defined by the social services district in the district's consolidated services plan.

(5) *Unsuitability of informal child care* means the physical condition of the home in which care would be provided, or the physical or mental condition of the informal provider, would be detrimental to the health, welfare and/or safety of the applicable child(ren).

(6) *Affordable* means the parent or caretaker relative would have sufficient income to pay the family share for the child care services determined in accordance with section 415.3(e) of this Part, if required, and/or to pay the cost of care above market rate, if applicable. If the potential provider is a provider of informal child care who would be providing care in the child(ren)'s home, *affordable* also means that the parent or caretaker relative would have sufficient income to pay the provider at least minimum wage, if required by State and/or Federal law, and to provide such provider with all employment benefits required by State and Federal law.

#### **Section 415.9. Rates**

A social services district has the option to apply the weekly or daily rate, except as provided below, when care is provided for 30 or more hours per week on five or less days. When care is provided for less than 30 hours per week, the daily, part-day or hourly rates must be applied, as applicable.

(a) Weekly rates must be applied when care is provided for 30 or more hours for five or less days per week. Weekly rates also must be applied when child care services are provided for 30 or more hours per week by a child care provider who routinely charges nonsubsidized parents on a weekly basis and who has not signed a purchase of service contract or other written agreement for payment on a different basis.

(b) Daily rates must be applied if care is provided for at least six but less than twelve hours per day, and care is provided for less than 30 hours per week. When child care services are provided for 30 or more hours per week by a child care provider who routinely charges nonsubsidized parents on a daily basis and who has not signed a purchase of service contract or other written agreement for payment on a different basis, the weekly rates divided by five must be applied.

(c) Part-day rates must be applied when the child care services are provided for at least three but less than six hours per day. Part-day rates also must be applied for children who are attending pre-kindergarten, kindergarten or higher grade and who are provided care before and/or after school for less than three hours per day by day care centers or school-age child care programs that do not charge on an hourly basis.

(d) With the exception noted in subdivision (c) of this section, the hourly rates in this section must be applied when child care services are provided for less than three hours per day.

(e) Where child care services provided by a single provider exceed one weekly or daily period as set forth in this section, payment for the additional child care services will be based on the actual cost of care up to the applicable rate for the type of child care provider used, the age of the child and the amount of time the child care services are provided.

(f) Where child care services are provided by multiple providers, reimbursement will be made for the actual cost of such services up to the applicable rate for each child care provider used. However, if the combined reimbursement to the multiple providers would exceed one weekly market rate, in order to receive such reimbursement the parent or caretaker must demonstrate that the schedule of employment of the parent or caretaker or the special needs of the child necessitates that child care services be arranged with multiple providers. If the social services district determines that the parent or caretaker has not demonstrated that there is a necessity to use multiple providers, reimbursement is limited to one weekly market rate that is applicable for the type of provider who provides care for the highest number of hours. The social services district will determine how to distribute the reimbursement for the multiple providers.

(g) The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

(h)

(1) A social services district may establish a differential payment rate for child care services provided by licensed or registered child care providers that have been accredited by a nationally recognized child care organization. Legally-exempt child care providers are not eligible for a differential payment rate under this paragraph. If the social services district chooses to provide a differential rate, the differential rate must be at least five percent higher than the actual cost of care or the applicable market rate, whichever is less. The differential rate may not exceed 15 percent of the actual cost of care or the applicable market rate, whichever rate is less.

(2) A social services district must establish differential payment rates for any eligible child care provider as defined in section 415.1(g) of this Part for child care services provided during nontraditional hours (evening, night or weekend hours). The differential rate must be at least five percent higher than the actual cost of care or the applicable market rate, whichever is less.

The differential rate may not exceed 15 percent of the actual cost of care or the applicable market rate, whichever is less.

(3) A social services district must establish differential payment rates for licensed and registered child care providers for child care services provided to a child experiencing homelessness. A social services district may establish differential payment rates for legally-exempt child care providers for a child experiencing homelessness. The differential rate for licensed and registered child care providers must be at least five percent higher than the actual cost of care or the applicable market rate, whichever is less. There is no minimum differential rate for legally-exempt child care providers. The differential rate may not exceed 15 percent of the actual cost of care or the applicable market rate, whichever is less.

(4) The differential payment rates the district sets may be different for each category established in this subdivision. The social services district must indicate in the district's consolidated services plan or integrated county plan the percentage that it will provide for each category. The social services district must indicate the rate that it will provide for child care providers that qualify for multiple differential payment rates, pursuant to this section. The total percentage must not exceed 25 percent of the applicable market rate or the actual cost of care. A social services district may request a waiver from the Office to establish a payment rate that is in excess of 25 percent above the applicable market rate upon a showing that the 25 percent maximum is insufficient to provide access within the district to such child care providers or services, as applicable.

(i) The rate of payment for caregivers of legally exempt group child care is the actual cost of care up to 75 percent of the applicable market rate for day care center providers as set forth in this section.

(j)

(1) Effective June 1, 2016, the following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.

(2) Upon the effective date of these regulations, there will be two market rates for the legally-exempt family child care and in-home child care categories, a standard market rate and an enhanced market rate. The standard market rate for legally-exempt family child care and in-home child care categories will be 65 percent of the applicable registered family day care market rate. The enhanced market rate for legally-exempt family child care and in-home child care categories will be 70 percent of the applicable registered family day care market rate. The enhanced market rate will apply to those caregivers of legally-exempt family child care and in-home child care who have provided notice to, and have been verified by, the applicable legally-exempt caregiver enrollment agency or by the district for those portions of the district that are not covered by a legally-exempt caregiver enrollment agency, as having completed 10 or more hours of training annually in the areas set forth in section 390-a(3)(b) of the Social Services Law. A social services district has the option, if it so chooses in the child care portion of its child and

family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate:

(i) for all such providers;

(ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or

(iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the 10 hour annual training requirement. The standard market rate will apply to all other caregivers of legally-exempt family child care and in-home child care.

(3) The market rates are established for each of five groupings of social services districts. The rates established for a group apply to all districts in the designated group. The district groupings are as follows\*:

**\*See current market rates LCM for this information**

(k) When a social services district pays for child care services provided by an eligible provider located in another district, the applicable market rate is the rate for the district in which the child care provider is located.

**Section 415.10. Waivers**

A social services district may request a waiver of any non-statutory provision of this Part. The waiver must be described in the social services district's consolidated services plan or integrated county plan and must be approved by the office prior to implementation.

**Section 415.11. Effective date—Repealed**

**Section 415.12. Eligible 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.

(2) An eligible provider, on a daily basis, must maintain current and accurate attendance records for each child showing the date of attendance with the time of arrival and departure. Full day absences must also be noted.

(3) An eligible provider must certify that all documentation and information provided to a social services district is accurate and true. Any false or fraudulent claims for payments by a provider may result in the deferral or disallowance of payment for such claims with a social services district, a referral to the office for the revocation of a provider's registration or license, and/or referral for criminal prosecution.

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