

**HEALTH AND SAFETY REGULATORY REQUIRMENTS  
FOR LEGALLY-EXEMPT PROVIDERS**

18 NYCRR 415.1

- (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.

18 NYCRR 415.4

- (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 ten 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, 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 subparagraph (iv) and (v) of this paragraph.
- (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 will not give 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; 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.
- (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 twenty 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 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 thirty 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 a legally-exempt caregiver enrollment agency to review an enrollment package.