



New York State
Office of
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Services

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to the

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Joint Committee Hearing on Child Care
Oversight in New York City

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Chairman DeBlasio, Chairperson Quinn, Chairperson Boyland, and members of the City Council, my name is Suzanne Z. Sennett, and I am the Director of the New York State Office of Children and Family Services' (OCFS) Bureau of Early Childhood Services (BECS).

On behalf of OCFS Commissioner John A. Johnson, I am pleased to have this opportunity to be back before the Council once again to discuss the progress that has been made toward raising the level and quality of oversight of regulated child care throughout New York City (NYC). My comments will also address two other subjects, as requested by Chairperson DeBlasio's staff: (1) The status of the proposed state regulations to enhance oversight of legally-exempt informal child care supported through the child care subsidy program; and (2) payment rates within the child care subsidy program.

Since July 2004, the partnership between OCFS and the New York City Department of Health and Mental Hygiene (NYCDOHMH) regarding the oversight of child care in NYC has been greatly invigorated through intensive oversight, the restructuring of the New York City Bureau of Child Care, the addition of new leadership at the city level, and a new receptivity of NYCDOHMH staff to training and technical assistance.

Although NYCDOHMH certainly faces a multitude of high priority matters, I am pleased to say that from the perspective of the OCFS Bureau of Early Childhood Services, Commissioner Freiden has brought the issue of quality child care for all residents of New York City front and center. He has fully committed himself and his agency's resources to addressing and improving child care oversight throughout the City.

As a result, all the major indicators used to monitor regional progress have begun to show that NYCDOHMH's efforts are starting to yield real, quantifiable results. I have included with my written testimony a table listing our key indicators, and the City's compliance rates for June 2004 and May 2005 (see Table 1 on page 15).

All of New York City's key indicator statistics remain above the norm in comparison to all of the other regions of the state. Let me be clear: We do not intend to remain complacent and accept the current statistics as the best New York City can do. We believe the most recent key indicators reflect the need for continued improvements. However, they are worthy of recognition for work in progress.

I would like to take a moment to provide the Council with a brief synopsis of some of the actions that OCFS has taken to support and complement the work of the NYCDOHMH:

- ❖ OCFS has intensified training support for all NYCDOHMH child care staff. To date, over 400 units of training have been provided across such topics as the basics of the licensing and inspection process, documentation in the Child Care Facilities System (CCFS) computer database, the inspector's role in the

enforcement process, and reviewing data that has been requested by the City Council. OCFS has also instructed NYCDOHMH staff on how to extract key management data that supervisors should be using in general management of licensing and registration.

- ❖ We have upgraded the computer connections such as data lines and routers at the 2 Lafayette Street Office to enhance the speed of the CCFS database.
- ❖ OCFS is working in partnership with NYCDOHMH to pilot the use of handheld devices to expedite entry of inspection data into the CCFS database. While a detailed work plan and implementation schedule is still under development, we expect the pilot to be operational in mid-2006.
- ❖ As we had previously committed, OCFS has upgraded its website so that it now provides access to a full profile report for all providers—other than day care centers operating in the five boroughs—including their inspection history for the previous two years. Staff has also been instructed to require providers to post on-site any profile reports for ALL instances where the inspection reveals a serious regulatory violation. The providers are required to maintain the on-site postings until such time as it has been determined that the violation has been resolved.

By increasing both its presence in the field and its oversight structure within the NYC Bureau of Child Care, NYCDOHMH has been able to work with OCFS to identify clusters of issues that can be jointly addressed. For example, OCFS and NYCDOHMH are now working closely to resolve inconsistencies or lack of clarity in the application of rules and standards. This has necessitated a reexamination of the standards used in approving family day care program secondary egress and evacuation plans. Three groups of providers are being reexamined:

- ❖ Providers where their secondary means of egress would lead to an enclosed backyard or alley with no means of further escape to a public way;
- ❖ Providers whose evacuation plans included escape to the rooftop of the building as a second means of egress; and
- ❖ Providers with first floor apartments proposing to use first floor windows as a second means of egress, but where the window is more than four feet from grade.

We are actively working with the New York City Fire Department (FDNY) and NYCDOHMH to examine all involved providers to ascertain whether there are any alternative egress strategies, which can be employed at these locations. City officials involved in this effort from both the FDNY and NYCDOHMH have been responsive and fully engaged in attempting to resolve these issues. We are hopeful that we will be

able to make final decisions on all these cases within the next month. Our goal is to keep every existing child care provider functioning smoothly, to the extent it is possible and appropriate to do so without compromising the safety of the children in care at these sites.

To institutionalize the level of support OCFS has been providing NYCDOHMH, we will soon have a permanent BECS regional unit in NYC. This unit's sole function will be to provide oversight and support to the NYCDOHMH Day Care Bureau.

I will now turn to the status of our efforts to enhance the oversight of legally-exempt informal child care providers supported through the child care subsidy program. These are providers who ordinarily care for one or two children in either the provider's or the children's home.

Honoring Parental Choice/ Safeguarding Child Safety: Informal Child Care in Settings Legally-Exempt from Licensure or Registration

Making quality child care available and affordable has been an important underpinning of Governor Pataki's successful welfare reform agenda. The level of investment in child care has grown approximately 300% since the initiation of welfare reform. Funding is now available to support over 184,000 children in low-income or public assistance families. The Governor's long-term vision for strengthening the economic stability of families has recognized that parents must be confident that their children are in safe, stable and appropriate settings before they can be productive, conscientious workers. New York State's child care agenda has emphasized fundamental reforms and enhancements to the safety, quality, and availability of child care.

New York State has always honored the primary role and rights of parents and caregivers to decide the most appropriate child care settings for their own children, a requirement also reflected in federal law and regulation. New York's child care subsidy program provides parents and caregivers the right to select from among all forms of legal child care for their children, including legally-exempt informal forms of child care such as care provided by relatives, friends and neighbors. Legally-exempt informal child care providers are not required to be licensed or regulated by OCFS.

As the state's child care subsidy program has grown, over 40 percent of parents have continued to select legally-exempt informal child care, most often provided by family, friends and neighbors. Their likelihood of selecting this type of care is similar to choices made by other families at different income levels. However, given the additional stress often experienced by low-income families, Governor Pataki also set in place a series of additional supports for families seeking to use subsidies on "informal care," including:

- ❖ Creating health and safety standards to which the provider and parent jointly monitor and attest.

- ❖ Creating a \$ 1.7 million statewide program for local social services districts (districts) and Child Care Resource & Referral groups (CCR&Rs) to work jointly with legally-exempt informal providers to improve compliance with health and safety standards. The New York City share of this funding has been approximately \$703,000 annually. I know that this Council is well acquainted with the work of Child Care Inc., the Day Care Council of New York, the Committee for Hispanic Children and Families, and the Child Development Support Corporation. These organizations together form the NYC child care resource and referral consortium funded by OCFS to serve NYC. They form a crucial link in the child care network in NYC, as their colleagues do across the state. These organizations provide resource and referral services to parents seeking care, provide technical assistance to child care providers, and support other specific initiatives such as this program for legally exempt providers and other targeted populations.
- ❖ Developing and disseminating easy-to-read newsletters that provide valuable tips on everything from basic health and safety information, to promoting literacy, to working with children with special needs.
- ❖ Supporting the creation of additional requirements for legally-exempt informal providers in individual counties, to respond to needs that emerge out of each county's planning processes.
- ❖ Becoming one of the first states in the nation to create statewide access to the federal Child and Adult Care Food Program (CACFP) by legally-exempt informal providers serving low-income children.

New York State has continued to assess the adequacy of the protection of health and safety of children in legally-exempt informal settings. In June 2004, Governor George E. Pataki and State Comptroller Alan G. Hevesi announced a new initiative that would make home-based day care settings safer and more closely supervised. This initiative—focusing on legally-exempt informal child care providers—will enhance safety and promote the healthy development of children, while safeguarding the investment of public funds. The reforms take bold new steps in helping to keep children safe and increase the quality of care for children in legally-exempt informal child care settings.

This initiative was a jointly developed response to an audit conducted by the Office of the State Comptroller. This audit found that some children in legally-exempt informal day care across the state had been exposed to hazardous conditions. It also uncovered potential fraud by some providers.

The Legally-Exempt Informal Child Care Initiative contains the following major provisions:

I. Increasing Basic Safeguards for the Health and Safety of Children

Legally-exempt informal providers and household members over age 18 will be checked against criminal data bases, the district's child welfare database, the Statewide Central Register of Child Abuse and Maltreatment, the OCFS Child Care Facilities System (to document whether the legally-exempt informal provider has ever been denied a day care license or had a license revoked), and the Sex Offender Registry. The results of these database checks will be shared with the parents or caregivers. In most instances, the information will be presented to the parents or caregivers so that they may make their choice with full knowledge of the provider's background. However, the district will be prohibited from making payments to providers whose background checks reveal certain crimes or child protection violations that would endanger children.

Portions of this initiative can and will be implemented through regulations currently being promulgated by OCFS. Other components (particularly those concerning full criminal checks against the state Division of Criminal Justice Services database, and data base checks against the Statewide Central Register of Child Abuse and Maltreatment) require legislative change. Earlier this session, the Governor submitted the required legislation as a departmental bill to the Senate and Assembly. As of today, this important legislation still needs sponsors in both houses.

In addition to background checks, the regulations proposed by OCFS require on-site inspections, on an annual basis, of 20% of the active legally-exempt informal providers who are not participating in the Child and Adult Feeding Program (CACFP). CACFP is a federally funded program through the U.S. Department of Agriculture that provides funding for congregate care programs such as day care providers and summer camps and senior citizen programs to offset the cost of providing nutritious meals and snacks. The added benefit of enrolling in the program is that the CACFP sponsors visit the program to review their menus and monitor the adequacy of sanitation and other aspects of program compliance. Higher inspection rates will be required if significant non-compliance is found.

In addition, CCR&R efforts to assist informal providers in improving the safety and developmental appropriateness of their environment will be expanded to reach more legally-exempt informal providers.

II. Promoting the Healthy Development of Children

This initiative would create a two-tier payment structure for legally-exempt informal providers. Higher payment rates would be made to providers that complete ten (10) hours of approved training per year. Training related to being approved to administer medication would serve to meet these criteria.

All legally-exempt informal providers will be automatically referred to CACFP. Districts will be given the option to make enrollment in CACFP a mandatory condition if a legally-exempt informal provider is funded to provide in excess of 30 hours of care per week.

III. Safeguarding the Investment of Public Funds

All districts will be required to establish more extensive formal audit/fraud detection strategies for their child care subsidy programs, both at the point of initial eligibility determinations and on an ongoing basis. OCFS will strengthen the following requirements: (1) those concerning the termination of payment to a provider that is not in compliance with health and safety standards; (2) recoupment of erroneous payments; and (3) refusal to re-enroll legally-exempt informal providers with a history of health and safety violations.

OCFS will continue to work with social services districts to develop automated supports for monitoring, enrollment, vouchering and payment.

We also plan to undertake an updated child care consumer education campaign. Checklists and other tools will be equally as useful for a parent evaluating legally-exempt informal care as they are for a parent considering various forms of regulated care.

Increased coordination strategies with other relevant programs will also be implemented. Such programs include the Early Intervention Program for infants and toddlers with handicapping conditions and Family Visiting Programs.

Again, to stress the point I made a few moments ago, in order for this initiative to be fully implemented, legislative action is required. The State Legislature needs to introduce and pass the Governor's proposed legislation that includes the authority we need to conduct criminal and child abuse background checks on individuals involved in the provision of publicly funded child care that is exempt from licensure.

In the meantime, those components that can be accomplished through regulatory change have already been published for public comment. This comment period has ended and OCFS is currently in the process of analyzing the public comments and determining whether any substantive revisions will be made to the proposed regulations. Please be assured that we remain committed to implementing significant additional safeguards expeditiously.

Child Care Subsidy Payment Rates

Finally, I was asked by the Council to speak about the issue of payment rates. The question was posed in connection to the matter of "pay equity between voucher and contracted providers."

To place this discussion in context, let me first offer a brief overview of the New York State Child Care Block Grant (CCBG) and the associated eligibility rules for child care subsidies.

The child care subsidy program is a benefit program for low-income families to assist in making the child care arrangements—which the FAMILY has selected—more affordable.

Local districts must inform parents applying for child care that they may:

- a) Choose to have care provided by one of the child day care providers with which the local social services district has a contract; or
- b) Request a child care certificate that enables families to select from a wide range of child care arrangements. The allowable child care arrangements include care by licensed day care centers, registered family day care providers, licensed group family day care providers, registered school-age child care programs, family child care, and legally-exempt informal and group child care providers.

Local districts must inform families of the full range of child care options that are eligible for payment, and provide them with information regarding factors to consider when selecting child care. This information is provided verbally or in writing, as appropriate.

Families must be given full discretion in selecting and arranging for the purchase of child care services from eligible providers. When a family elects to use a provider with which the local district has a contract, the child must be enrolled with the provider selected by the family, to the maximum extent practical.

When a family elects to use a child care certificate to self-arrange care, the local district is responsible for providing a certificate directly to the family. A child care certificate is valid for 30 days from the date it is issued. During this period, the family may present the certificate to any eligible provider. If the family is unable to locate care during the 30 days, the family may request another certificate in order to continue to try to self-arrange care, or may ask the local district to arrange care with one of the child day care providers with which it contracts.

It is crucial to emphasize that eligibility for child care subsidy is based on the family's income and the reason the child care is needed. Under no circumstances can the parent's preferred type of child care – or the mechanism for payment of child care (voucher or contract)—in any way be used to determine whether a case will be opened, or result in any kind of preference among eligible families.

Payment rates are established for each district based on a market rate survey that OCFS conducts every two years. Federal and state law require New York State to establish payment rates for child care subsidies that are sufficient to provide equal access for eligible children, comparable to those subsidies provided to children whose parents are

not eligible to receive assistance under any federal or state programs. In addition, market rates must take into account the variations in costs of providing child care in different settings and to children of different age groups, and the additional cost of providing child care for children with special needs. The federal Administration for Children and Families has determined that rates set at the 75th percentile of the market are sufficient to provide subsidized parents equal access to child care providers. Further, state law requires OCFS to establish, in regulation, the applicable market-related payment rate which will set a ceiling for state and federal reimbursement for payments for child care services. In accordance with federal regulatory requirements, OCFS conducts a telephone survey of a sample of regulated providers every two years. OCFS is in the process of conducting that survey right now.

The rate data is analyzed to determine the 75th percentile. The resultant rates are then clustered into five distinct geographic clusters of counties based on similarities in the rates among the districts. NYC comprises its own cluster.

The district is required to pay for the actual cost of care, up to but not to exceed the market rate ceiling for that type of care, for that age child. The actual cost of care is typically defined as the fee that the provider charges other families who are not receiving a subsidy for child care.

Social services districts may negotiate a contract with individual providers. The negotiated payment rates may be the same as, or lower than, the rates charged to non-subsidized families. Even though the negotiated rate may be less than the usual charge to non-subsidized families, the negotiated rate is considered the actual cost of care for those child care services provided under a contractual agreement between the social services district and the provider.

It is our understanding that some family day care providers in NYC voluntarily affiliate with family day care networks and that they ask ACS to remit a portion of their established fee directly to the family day care networks as payment for supports and services that are provided to them by the family day care networks. I must emphasize that, from a claiming perspective, it is OCFS's contention that the payment diverted to a family day care network is, in fact, considered part of the family day care provider's rate. If the provider were not affiliated with the network, it would still need to accomplish the activities that are performed on its behalf by the network. Whether to use a family day care network is the provider's choice.

Let me just take this opportunity to again reemphasize that a district CAN NOT require a provider to enter into a contract or affiliate with a network as a condition of receiving payment under the CCBG.

Thus, the regulations would not support an inequitable rate standard. In summary - the payment rate is driven by the provider's private fee scale unless the provider voluntarily chooses to enter into a contract with the district. Further, the existence of a contract may not in anyway be used to limit or enhance access to subsidy reimbursement.

Finally, any diversion of payment to a family day care network must be a voluntary decision on the part of the provider in exchange for the support services that the provider wishes to receive through affiliation with the network. Any diversion from this construct would result in an audit finding against the locality, and a potential claims disallowance.

I would note that OCFS is also continuing its strong partnership with both ACS and the Human Resources Administration (HRA). We applaud Commissioners Mattingly and Eggleston as they continue to strengthen the child care subsidy program. We are confident that ongoing efforts to streamline work in this area will continue to have positive results.

In closing, I would again commend the leadership across all three of these NYC agencies: ACS, HRA and especially the NYCDOHMH for the invigorated leadership and action across all aspects of the state/city partnership in making child care safe, healthy, and affordable for New York's children and families.

Thank you again for the opportunity to speak to you today. As always, OCFS is eager to continue to serve as a partner with NYC in promoting safe, affordable, quality child care.

TABLE 1:
Key Compliance Indicators

| Key Indicator | June 2004 – NYC | May 2005 - NYC | State Monitoring Standard |
|--|----------------------------|---------------------------|--|
| Applications with processing times exceeding required six-month time frame | 73% | 40.8% | 5% |
| Facilities without all required criminal history checks completed | 496 | 75 | 0 |
| Percent of safety assessments overdue (crimes that are considered presumptive denials—completed within five days; crimes of a discretionary nature—completed within 30 days) | 291% | 72.9% | 0% |
| Facilities not renewed before the end of the previous registration or licensing period (net those where OCFS is seeking to revoke or limit the license or registration) | 35% | 19.4% | 5% |
| Percent of facilities with no record of an inspection in the past two years | 51.2% | 6.3% | 4% |

Source: New York State Office of Children and Family Services, Bureau of Early Childhood Services (June 7, 2005)