OCFS Division of Child Care Services
Regulations for Legally Exempt Child Care Programs

Subpart 358-3 and Parts 403, 404, 405, 406 and 415 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), are hereby amended to read as follows, effective February 7, 2020:

Subparagraph (iv) of paragraph (1) of subdivision (a) of section 358-3.3 is amended to read as follows:
(iv) make changes in the manner or amount of payment for your child care services and such change results in the discontinuance, suspension, reduction or termination of benefits or forces you to make changes in child care arrangements; or

Subparagraph (v) of paragraph (2) of subdivision (a) of section 358-3.3 is amended to read as follows:
(v) changes the manner or amount of payment for your child care services except as provided in subparagraph (1)(iv) of this subdivision; or

Subparagraph (v) of paragraph (2) of subdivision (a) of section 358-3.6 is amended to read as follows:
(v) public assistance, medical assistance or services when the social services official determines to discontinue your benefits because you are receiving concurrent benefits as described in section 351.9 of this Title in the same social services district or in another social services district within the State[.]; or

Subparagraph (vi) of paragraph (2) of subdivision (a) of section 358-3.6 is added to read as follows:
(vi) child care assistance provided pursuant to section 415.2(a)(1)(i) of this Title before the eligibility determination and you have subsequently been determined ineligible for child care assistance pursuant to section 415.2(a)(1)(ii) of this Title.

Subdivision (d) of section 403.1 is amended to read as follows:
(d) The New York State Social Services Law requires social services districts to select and provide, in accordance with stated limitations, if any, the following services:
(1) Services required to be selected and provided without regard to the availability of State or Federal funds:
(i) protective services for children, as defined in the [comprehensive annual social services program plan] Child and Family Services Plan;
(ii) information and referral services to all persons without regard to financial eligibility criteria; and
(iii) child care services to a family guaranteed child care assistance in accordance with paragraph 415.2(a)(1) of this Title [which 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 the social
services official including orientation, assessment or work activities as defined in Part 385 of this Title;
(iv) child care services to a family who has applied for and would otherwise be eligible for public assistance benefits or was receiving public assistance and voluntarily closed their public assistance case while still eligible for 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 in section 415.1(o)(1) of this Title for at least the number of hours that would be required if the family were in receipt of public assistance, and the family is eligible for public assistance but chooses to receive child care services in lieu of public assistance;
(v) 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;
(vi) child care services for a family for a period of up to 12 consecutive months after the month in which the family's public assistance case closed, or for those families which 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 due to:
(1) increased income from either employment or child support; or
(2) the family voluntarily ended 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 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 Title; and
(d) the family has income at or below 200 percent of the applicable State income standard.
(2) Services required to be selected and provided so long as State or Federal reimbursement is available for those purposes:
(i) child care services for a family that meets one or more of the criteria in section 415.2(a)(2) of this Title; [which has applied for or is 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 custodial parent or caretaker relative to participate in activities required by the social services district including orientation, assessment or work activities as defined in Part 385 of this Title;
(ii) child care services for a family which is receiving public assistance when such services are needed for a child aged 13 or older and who has special needs or is under court supervision in order to enable the child's custodial parent or caretaker relative to engage in work as defined by the social services district;
(iii) child care services for a family receiving public assistance when such services are necessary:
(a) to enable a teenage parent to attend high school or an equivalency program; or
(b) because a parent or caretaker relative is physically or mentally incapacitated or has
family duties away from home necessitating his or her absence; and
(iv) child care services for a family which has income up to 200 percent of the State
income standard and which is at risk of becoming dependent upon public assistance
when such services are needed:
(a) for the child's caretaker to engage in work as defined in section 415.1(o)(1) of this
Title; or
(b) to enable a teenage parent to attend high school or an equivalency program;]
[(v)](ii) family planning services for persons eligible for ADC, HR and SSI;
[(vi)](iii) foster care services for children to meet the goal of protection;
[(vii)](iv) health related services for persons eligible for SSI;
[(viii)](v) home management, homemaker, housekeeper/chore, and housing improvement
services for persons eligible for SSI;
[(ix)(vi) residential placement services for adults;
[(x)](vii) protective services for adults; and
[(xi)](viii) unmarried parents service.

(3) Services that may be selected and provided to families if funds are available and the
social services district has listed such families as eligible in the district's Child and Family
Services Plan shall include child care services to a family that meets one or more of the
criteria in section 415.2(a)(3) of this Title.

Subparagraph (i) of paragraph (1) of subdivision (d) of section 404.1 is amended to read
as follows:
(i) A determination of programmatic and/or financial eligibility must be completed for all
applications or reapplications for services within 30 days of the date of application, except
for protective services for adults as set forth in Part 457 of this Title. The date of
application for child care assistance is the date that the social services district receives
the application. Eligibility for protective services for adults must be determined at the time
the protective services for adults assessment services plan is completed in accordance
with section 457.2(b)(4) of this Title.

Subparagraphs (ii) and (iii) of paragraph (5) of subdivision (b) of section 404.5 are
amended to read as follows:
(ii) Net income for non-farm self-employment, i.e., gross receipts minus expenses from
one's own business, professional enterprise, or partnership. Gross receipts include the
value of all goods sold and services rendered. Expenses include costs of goods
purchased, rent, heat, light, power, [depreciation charges,] wages and salaries paid,
business taxes (not personal income taxes) and similar costs. Depreciation, personal
business and entertainment expenses, personal transportation, purchase of capital
equipment, and payments on the principal of loans for capital assets or durable goods are
not counted as expenses for the purpose of determining net income for self-employment
for child care assistance. The value of salable merchandise consumed by the proprietors
of retail stores is not included as part of net income.

(iii) Net income for[m] farm self-employment, i.e., gross receipts minus operating expenses from the operation of a [firm] farm by a person on his own account, as owner, renter or sharecropper. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, the incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm hands, [depreciation charges,] cash rent, interest on farm building repairs, farm taxes (not State and Federal income taxes) and similar expenses. Depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods are not counted as operating expenses for the purpose of determining net income for self-employment for child care assistance. The value of fuel, food, or other farm products used for family living is not included as part of net income.

Subparagraph (xx) of paragraph (6) of subdivision (b) of section 404.5 is repealed and a new subparagraph (xx) is added to read as follows:

(xx) disaster relief payments other than unemployment compensation.

Subdivision (d) of section 404.5 is amended to read as follows:

(d) Resources. Financial eligibility for services contained in the district component of the [comprehensive annual social services program plan] Child and Family Services Plan shall be based only on the monthly gross income of the family as defined in this section.

(1) No exploration of resources shall be made in the determination of eligibility for services, except for child care assistance funded under the New York State Child Care Block Grant Program for which resources are considered in accordance with Part 415 of this Title.

(2) No lien or incumbrance of any kind shall be required from or be imposed against the property of any individual in connection with services rendered or to be rendered.

(3) No adjustment or recovery of the cost of services rendered shall be made, except for child care assistance in accordance with section 415.4 of this Title.

Paragraph (5) of subdivision (d) of section 404.7 is amended to read as follows:

5) period of authorization for the services to be provided which may be up to 12 months except as otherwise specified in sections 372.6, [415.6] 415.4, and 457.1 of this Title;

 Paragraphs (16) and (17) of subdivision (g) of section 405.3 are amended to read as follows:

(16) include the requirement that any disclosure of confidential HIV-related information
must be accompanied by a written statement as follows:
“This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure.”; [and]

(17) specify the information concerning casework contacts to be furnished by providers of specialized rehabilitative services, supportive services and probation services as defined in section 423.2(f), (g) and (h) of this Title and the actions required by such rehabilitative providers, supportive service providers and probation service providers participating in case planning activities[.];

Paragraphs (18) and (19) of subdivision (g) of section 405.3 are added to read as follows:
(18) include a statement that a contract with the social services district is not required for an eligible child care provider to provide child care services to a child receiving child care assistance funded under the New York State Child Care Block Grant Program; and

(19) specify that overpayments, occurring due to an error in the calculation of the payment amount by the social services district for child care assistance funded under the New York State Child Care Block Grant Program, may be recovered from the child care provider if the overpayment occurred during the twelve months preceding the date the error was discovered.

Subparagraphs (v) and (vi) of paragraph (2) of subdivision (a) of section 406.2 are amended to read as follows:
(v) provider agency for each service; [and]
(vi) such other data as the department may from time to time require[.]; and

Subparagraph (vii) of paragraph (2) of subdivision (a) of section 406.2 is added to read as follows:
(vii) documentation of having met the criteria for eligibility.

Subdivision (a) of section (1) of Part 415 is amended to read as follows:
(a) *Child care services* means care for an eligible child provided on a regular basis either in or away from the child's residence for less than 24 hours per day which is provided by an eligible provider as defined in subdivision (g) of this section. Child care services may occur for [exceed] 24 consecutive hours or more when such services are provided on a short-term emergency basis or in other cases where the caretaker's approved activity necessitates care for 24 hours or more on a limited basis, if the district has indicated in its [consolidated services plan or integrated county plan] Child and Family Services Plan that it will provide for such care. Child care services does not refer to programs providing care for children operated solely for the purpose of religious education, sports, recreation,
classes, or lessons.

Subdivision (c) of section (1) Part 415 is amended to read as follows:

(c) Child with special needs means a child who is incapable of caring for himself or herself and who has been diagnosed by a physician, licensed or certified psychologist or other professional with the appropriate credentials to make such a diagnosis, as having one or more of the following conditions to such a degree that [it adversely affects the child's ability to function normally] special education or related services are required, in accordance with section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401), part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794):

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

[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.]

Subdivision (g) of section 415.1 is amended to read as follows:

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

(1) …
(2) …
(3) a public school district operating a child care program which meets State and Federal requirements and is enrolled by an enrollment agency; or
(4) …
(5) …
(6) a [caregiver] provider of informal child care as defined in subdivision (h) of this section who is enrolled with [the social services district] an enrollment agency in accordance with [section 415.4(f) of this Part: provided[, however,] that such a [caregiver] provider is not an eligible provider for child care services provided under title XX of the Federal Social Security Act or provided as child protective services or preventive services that are
funded other than under the New York State Child Care Block Grant Program; or

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

(8) a child care provider who is licensed, registered, or otherwise permitted to operate a child care program by another Child Care and Development Fund grantee; or

(9) a child care provider certified to operate by the United States Department of Defense.

Subdivision (h) of section 415.1 is repealed and a new subdivision (h) is added to read as follows:

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

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

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

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

(i) Relative-only Family Child Care means Family Child Care provided by a person, who is at least 18 years of age, and who is, by virtue of blood, marriage or court decree, related to all of the children in care receiving child care services as a grandparent, great-grandparent, sibling provided that such sibling lives in a separate residence from the child, aunt, or uncle.
Subdivision (i) of section 415.1 is amended to read as follows:

(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] a program in a facility, other than a residence, in which child care is provided on a regular basis and is not required to be licensed by or registered with the [department] Office or licensed by the City of New York but which meets all applicable State or local requirements for such child care programs. [Caregivers of legally] **Legally-exempt group** child care includes, but is [are] not limited to:

(1) ...
(2) ...
(3) ...
(4) [day care centers, family day care homes and other] **Center-based** child care programs located on Federal property which are not certified to operate by the United States Department of Defense when such programs are operated in compliance with the applicable Federal laws and regulations for such child care programs; [and]

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

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

Subdivision (m) of section 415.1 is amended to read as follows:

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

Paragraph (1) of subdivision (o) of section 415.1 is amended to read as follows:

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

(i) is **working, on average, at least 20 hours per week**, provided there is no physical or mental incapacity that limits the person to working less than 20 hours per week, and earning wages at a level equal to or greater than the minimum amount required under
Federal and State Labor Law for the type of employment; or

(ii) is self-employed and is able to demonstrate that the hours worked are, on average, at least 20 hours per week and such self-employment produces personal income equal to or greater than the minimum wage or has the potential for growth in earnings to produce such an income within [a reasonable period of time] one year.

Paragraph (2) of subdivision (o) of section 415.1 is amended to read as follows:

(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] Office of Temporary and Disability Assistance.

Paragraph (3) is added to subdivision (o) of section 415.1 to read as follows:

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

Subdivision (q) of section 415.1 is repealed and a new subdivision (q) is added to read as follows:

(q) Family resources means the value of:
(1) cash on hand;
(2) money in checking and savings accounts;
(3) stocks, bonds, mutual funds, mortgages (held), mortgage certificates, and other securities;
(4) lump sum payments;
(5) individual retirement accounts and deferred compensation accounts and plans, including but not limited to IRAs, 401(k) and 457(b) plans, life insurance policies, trust funds, and annuities; and
(6) real and personal property including licensed and unlicensed vehicles, homes, buildings, land, recreational properties, other real estate property, non-essential household furnishings, art, and jewelry.

Subdivision (s) of section 415.1 is amended to read as follows:

(s) The Enrollment agency, also known as the Legally-exempt caregiver enrollment agency means the agency under contract with the [office] Office to enroll [caregivers of] legally-exempt child care providers, including informal child care and legally-exempt group child care to provide subsidized child care services funded under the New York State Child Care Block Grant Program. For each social services district in New York State except for the City of New York, the [legally-exempt caregiver] enrollment agency will be the applicable child care resource and referral agency under contract with the [office]
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] Office in consultation with the New York City Human Resources Administration and the New York City Administration for Children's Services.

Subdivisions (t)-(ac) of section 415.1 are added to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

Section 415.2 is amended to read as follows:

*Eligibility.* The following families are eligible for child care [services] **assistance** under the specified child care programs when [such care is not otherwise available from a] the legally responsible [relative] persons or caretakers of the child in need of child care services are not available to provide care, such child care services are in the best interest of the child and caretaker, and [the] child care services [is] are 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] **may** be eligible for child care [services] **assistance** under the New York State Child Care Block Grant Program[,] if the resources of the family do not exceed one million dollars and the family meets one or more of the following criteria:

(1).,

(i).,

(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] **assistance** in lieu of public assistance benefits, for such period of time as the recipient continues to be eligible for public assistance. For the purposes of this section, an eligible applicant for, or recipient of, public assistance benefits and who is employed, includes a person whose gross earnings equal, or are greater than, the required number of work [houses] hours times the State minimum wage. Recipients of child care [subsidies] **assistance** under this section who are no longer eligible for public assistance benefits, shall be eligible for transitional
child care described in subparagraph (iv) of this paragraph as if they had been recipients of public assistance.

(iii)...
(iv)...
(a)...
(1)...
(2)...

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

(c) ...
(d) ...

Subparagraph (viii) of paragraph (3) of subdivision (a) of section 415.2 is added to read as follows:

(viii) 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 one of the child's caretakers is engaged in work as defined in section 415.1(o)(1) of this Part and the child's other caretaker is physically or mentally incapacitated or has family duties away from home necessitating his or her absence.

Subdivision (a) of section 415.3 is amended to read as follows:
(a) An applicant for child care [and development block grant services] assistance must apply, in writing, on forms and in a manner prescribed by the social services district in accordance with Part 404 of this Title. The social services district must permit the applicant to submit an application by mail. The caretaker with whom an eligible child or children [reside(s)] lives is the applicant for such services.

Paragraph (1) of subdivision (e) of section 415.3 is amended to read as follows:
(1) Each family receiving child care [services] assistance, except for a family where the parent(s) or caretaker relative(s) is receiving public assistance, [or] a family experiencing homelessness, or when such assistance is provided to a child in foster care, must contribute toward the costs of [such] child care 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.

Subdivision (g) of section 415.3 is added to read as follows:
(g) The child's caretaker is responsible for responding to and providing documentation requested for an investigation, audit, or program review by a social services district, the Office, or other authorized agency to verify the accuracy and completeness of information
on the application including, but not limited to, household circumstances, need for child care, and compliance with the caretaker's responsibilities under this section. The caretaker's failure to respond to or comply with requests for documentation constitutes an appropriate basis for the social services district to deny an application for child care assistance or to close the child care assistance case.

Subparagraph (ii) of paragraph (1) of subdivision (a) of section 415.4 is amended to read as follows:
(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] assistance can be made, for reporting immediately to the social services district any changes to such facts after the application has been submitted but before eligibility has been determined, and for providing the documents or other information which the applicant must submit to verify such facts;

Paragraph (2) of subdivision (a) of section 415.4 is amended to read as follows:

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

Paragraph (3) of subdivision (a) of section 415.4 is amended to read as follows:

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

Paragraph (4) of subdivision (a) of section 415.4 is amended to read as follows:

(4) If an application for child care [services] assistance is approved, the social services district must:
(i) send written notice to the applicant [of the determination of eligibility] for child care services[], in accordance with section 404.1(f) of this Title. The notice must include: the determination of eligibility for child care services; the family share to be paid by the applicant, if required[]; the effective date(s) of such family share [is due] and the family share payment procedures which must be followed; the period for which child care assistance is authorized; the name of the worker or unit responsible for case management and the telephone number; a statement regarding the continuing
responsibility of the applicant or recipient to report any change in his or her status; the right of the recipient to accept or reject the service; and the applicant's right to a fair hearing in accordance with Part 358 and section 404.1(f) of this Title; and

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

Paragraph (7) of subdivision (c) of section 415.4 is amended to read as follows:

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

Paragraph (9) of subdivision (c) of section 415.4 is amended to add a heading to read as follows:

(9) The social services district must take action on a claim for reimbursement for child care services submitted by an eligible provider as follows:
(i)...

Paragraphs (7), (8), and (9) of subdivision (e) of section 415.4 are added to read as follows:

(7) The social services district that proposes an amendment to its Child and Family Services Plan that reduces eligibility or increases the family share percentage for child care services must:

(i) no later than the first day the public notice appears in a newspaper pursuant to section 34-a of the Social Services Law or the regulations of the Office, as applicable, prominently post on the district’s website a notice of the proposed amendment describing the categories of families whose cases will be impacted; and

(ii) at the time the public notice is submitted to the newspaper for publication, provide a copy of such notice to the Office.

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

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

(ii) increase the family share percentage, or

(iii) implement the process for closing child care cases for families other than those
guaranteed child care assistance in accordance with 415.2(a)(1) of this Title, when the district has committed all available funds, whether through set asides approved in its Child and Family Services Plan and/or because all of the available funds are projected to be needed for open child care cases.

(9) When a social services district implements the process for closing child care cases for families other than those guaranteed child care services in accordance with 415.2(a)(1) of this Title because the district has committed all available funds, whether through set asides approved in its Child and Family Services Plan and/or because all of the available funds are projected to be needed for open child care cases, the district must:

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

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

Subdivision (f) of section 415.4 is repealed and a new subdivision (f) is added to read as follows:

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

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

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

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

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

(3) A social services district may only make payments for child care services provided by a legally-exempt child care provider if the child care provider has been enrolled, either on a temporary or final basis, by an enrollment agency in accordance with this Part.
(4) A social services district may suspend the enrollment or deny the application for enrollment of a child care provider, which is not required to be licensed or registered under section 390 of the Social Services Law, if that provider is a subject of a report of child abuse or maltreatment under investigation by child protective services.

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

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

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

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

Subdivision (g) of section 415.4 is amended to read as follows:

(g) Additional local standards for subsidized child care.

(1) Where a social services district is subsidizing child care services pursuant to any of the provisions of this Part, the district may submit to the [office] 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] Child and Adult Care Food Program a condition of enrollment for each [caregiver] provider of [informal] Family Child Care or relative-only family child care who will be providing an average in excess of 30 hours of care per week to one or more subsidized children provided the district sets forth this requirement in the district's [consolidated services plan or integrated county plan] Child and Family Services Plan. No such additional requirements or monitoring may be imposed without the written approval of the [office] Office.

(2) To the extent that a social services district has established any additional standards for [caregivers] providers of legally-exempt child care, the district is responsible for notifying applicants for and recipients of child care assistance and child care providers of the district 's requirements. The district's monitoring process must include procedures for
notifying the applicable [legally-exempt caregiver] enrollment agency if the district determines that such a [caregiver] child care provider is not in compliance with an additional standard. Any such procedures established by the social services district shall not cause a delay which prevents the enrollment agency from completing the review of the enrollment package [may not extend the timeframes set forth in subdivision (f) of this section for legally-exempt caregiver enrollment agency to review an enrollment package].

Subdivision (h) of section 415.4 is amended to add a heading to read as follows:
(h) Administrative actions related to child care providers.

Paragraph (1) of subdivision (h) of section 415.4 is amended to read as follows:
(1) In accordance with guidelines established by the Office, a [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] Office, or any approved additional requirements of the social services district, to provide subsidized child care services to a child.

Paragraph (2) of subdivision (h) of section 415.4 is amended to add a heading to read as follows:
(2) Disqualifications and administrative reviews.

Clause (e) of subparagraph (i) of paragraph (2) of subdivision (h) of section 415.4 is amended to read as follows:
(e) has failed to comply with the terms of a repayment plan with the social services district; [or]

Subparagraph (ii) of paragraph (2) of subdivision (i) of section 415.4 is amended to read as follows:
(ii) [by recovery through] a reduction in the amount of the payment to the child's caretaker or child care provider until the full amount of the overpayment is collected; provided, however, that no recovery of overpayments may be made from a child care provider where a contract for such child care services obligates the social services district to make full payment. When no recovery may be made from a child care provider because a contract requires full payment, and repayment is not made from the child's [parent or] caretaker, Federal financial participation (FFP) and State reimbursement cannot be claimed for such overpayment.

Paragraph (13) of subdivision (i) of section 415.4 is amended to read as follows:
(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] assistance who has been convicted of, or has voluntarily admitted to, fraudulently receiving child care [services] assistance must have [their] his or her child care [services] assistance, if any, suspended or terminated and will not be eligible for subsequent child care [services] assistance 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] in
subparagraph (i) of this paragraph. If such recipient or former recipient is a recipient of [temporary] public assistance and needs child care in order to participate in an activity required by the social services district, the disqualification of eligibility for child care [services] assistance based on the former fraud conviction or voluntary admission will be suspended during the recipient’s or former recipient’s participation in the required activity. However, the disqualification period will begin or resume once the recipient or former recipient is no longer participating in a required activity.

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

(a) for 12 months for a first offense;

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

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

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

Paragraph (14) of subdivision (i) of section 415.4 is amended to read as follows:

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

Paragraph (1) of subdivision (j) of section 415.4 is amended to read as follows:

(1) Written notice of the determination of eligibility, the family share to be paid by the applicant, or ineligibility for child care [services] assistance, as well as any modifications thereto, must be sent to the applicant or recipient in accordance with section 404.1[4][4][4][l][f] of this Title. Recipients of child care [services] assistance must receive timely and adequate notice of any change in child care [services] assistance, except that changes in the manner or amount of payment for child care [services] assistance by a social services
district may be made with only adequate notice pursuant to section 358-3.3 of this Title, unless those changes result in a discontinuation, suspension, reduction or termination of such benefits, or force a change in child care arrangements.

Subdivision (l) of section 415.4 is repealed and subdivision (m) is renumbered as subdivision (l).

Paragraph (3) of the renumbered subdivision (l) of section 415.4 is amended to read as follows:

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

Subparagraphs (i) and (ii) of paragraph (1) of subdivision (a) of section 415.5 are amended to read as follows:

(i) by advance cash payments, cash reimbursements or vouchers to the child's caretaker, or by direct deposit or debit card, and administered electronically, and in accordance with such guidelines as may be set forth by the Office, for care provided by an eligible provider and supported by a bill signed by both the child's caretaker and the provider;[ 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].

Paragraph (3) of subdivision (a) of section 415.5 is amended to read as follows:

(3) A social services district must establish at least one method of payment by which payment for child care services arranged by the child's caretaker can be made. A social services district must not establish administrative requirements for payment that impose unnecessary barriers on the caretaker's choice of an eligible child care provider. Additionally, a child care provider cannot be required to enter into a contract with a social services district in order to provide child care services for a family receiving a child care subsidy.
Paragraph (4) of subdivision (a) of section 415.5 is added to read as follows:

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

Paragraph (1) of subdivision (b) section 415.6 is amended to read as follows:

(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 must have [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] providers of informal child care. The social services district must specify in its [consolidated services plan or integrated county plan] Child and Family Services Plan whether it opts to make such payments and, if applicable, for which providers such payments will be made.

Subdivision (c) section 415.6 is amended to read as follows:

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

(1) The social services district has opted to make such payments. If a social services district opts to make such payments, it may choose to make such payments either to those child care providers with which the social services district has a contract or letter of intent or to all providers of subsidized child care services except for [caregivers] providers of informal child care. The social services district must specify in its [consolidated services plan or integrated county plan] Child and Family Services Plan whether or not it opts to make such payments and, if applicable, for which providers such payments will be made.

(2) …
(i) …
(ii) …
(iii) …
(3) …
(4) …
(5) …
(6) …

Paragraphs (2), (3) and (4) of subdivision (e) of section 415.6 are amended to read as
follows:

(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. Income-based fee structures that are applied to the general public by child care providers must be applied to child care subsidy recipients and considered as the actual cost of care. Scholarships or discounts offered by the child care provider to the general public cannot exclude child care subsidy recipients if the family otherwise meets the criteria specified for that scholarship or discount.

(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 member of the child's or the caretaker's public assistance unit, the child's caretaker, the spouse of the child's caretaker, or a[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].

Paragraph (4) of subdivision (a) section 415.7 is amended to read as follows:

(4) inspection, review and supervision of child care [placements] providers, including monitoring compliance with any additional local child care requirements imposed pursuant to section415.4[(f)] of this Part;

Subdivision (f) of section 415.8 is amended to read as follows:

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

(1) …
(2) …

Subdivision (h) of section 415.8 is repealed and a new subdivision (h) is added to read as follows:

(h) If the parent or caretaker relative has a demonstrated inability, as determined by the social services district, to locate child care needed for the applicable child(ren) despite referrals, the social services district must offer the parent or caretaker relative two choices of eligible child care providers, at least one of which must be a licensed or registered provider. If the parent or caretaker relative is unwilling to accept child care services from either of these providers; is unable to demonstrate, as determined by the social services
district, that such child care is not appropriate, accessible, suitable, affordable or a reasonable distance from the person’s home or work site; and the person fails to comply with the applicable work requirements, then the social services district may reduce or terminate public assistance to such parent or caretaker relative and/or that person’s family in accordance with applicable statutory or regulatory provisions.

Subdivision (k) of section 415.8 is repealed and a new subdivision (k) is added to read as follows:

(k) A parent or caretaker relative who has been excused from the applicable work requirements due to a demonstrated inability to locate needed child care for his or her applicable child(ren) will be excused from the work requirements only for so long as that demonstrated inability continues to exist. The parent or caretaker relative must document to the social services district, through the submission of new attestations in accordance with section 415.8(i) on a periodic basis as set forth by the social services district, that the parent or caretaker relative is continuing to attempt to locate the needed child care, including following up on all new referrals from the social services district, child care resource and referral agency, and/or any other child care agency, as applicable, and by responding to all offers of child care from the social services district. New attestations must be submitted in accordance with a schedule developed by the district based on the parent’s or the caretaker relative’s employment plan.

Subdivision (h) of section 415.9 is amended to add a heading to read as follows:

(h) Differential payment rates for child care services.

Paragraph (1) of subdivision (i) of section 415.9 is amended to read as follows:

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

Clause (a) of subparagraph (i) of paragraph (2) of subdivision (i) of section 415.9 is amended to read as follows:

(a) the program prepares a health care plan that meets the specifications of paragraph (2) of subdivision (c) of section [418-1.11]415.13 of this [Title]Part; and

Clauses (a) and (b) of subparagraph (ii) of paragraph (2) of subdivision (i) of section 415.9 are amended to read as follows:

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

(b) each employee with a caregiving role at the legally-exempt group child care program completes a minimum of five hours of training annually in the areas approved by the [office] Office, in addition to the training required by section 415.13 of this Part[subdivision (f) of section 415.4 of this part].

Subparagraph (ii) of paragraph (4) of subdivision (i) of section 415.9 is amended to read as follows:

(ii) all applicable health and safety requirements [set forth] in [subdivision (f) of section 415.4 of] this [p]Part.

Subparagraph (2) of subdivision (j) of section 415.9 is amended to read as follows:

(2) There are two market rates for informal child care, a standard market rate and an enhanced market rate. The standard market rate for informal child care will be 65 percent of the applicable registered family day care market rate. The enhanced market rate for informal child care will be 70 percent of the applicable registered family day care market rate. The enhanced market rate will apply to those informal child care providers who have provided notice to, and have been verified by, the applicable [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. This 10 or more hours of training must be in addition to the training requirements in section 415.13 of this Part. A social services district has the option, if it so chooses in the child care portion of its Child and Family Services Plan, to increase the enhanced market rate for informal child care providers to up to 75 percent of the applicable registered family day care market rate.

Paragraph (2) of subdivision (a) of section 415.12 is amended to read as follows:

(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.] daily attendance records. Such records must be kept current and accurate, be filled out when a child arrives and departs, and include:
(i) the date of attendance,
(ii) arrival and departure times,
(iii) notation of full day absences.

Paragraph (5) of subdivision (a) of section 415.12 is added to read as follows:
(5) A child care provider or an employee, volunteer, visitor, or household member of the provider must admit inspectors and other representatives of the enrollment agency, social services district and the Office onto the grounds and premises at any time during the hours child care services are provided. Such inspectors and representatives must be given free access to the building or buildings used by the program, staff, employees, volunteers and children in care and any records pertaining to the program.

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

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

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

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

Section 415.13 is added to read as follows:

(13) Requirements for legally-exempt child care enrollment applicants and providers to be enrolled, maintain enrollment, and be re-enrolled to provide child care services.

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

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

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

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

(2) An enrollment applicant must attest and certify in writing whether, to the best of his or her knowledge, he or she has ever been denied a license or registration to operate a school-age child care program, day care center, family day care home, or group family day care home, or had such a license or registration revoked, limited or suspended.

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

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

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

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

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

(a) Prior to furnishing the child's caretaker and the enrollment agency with such information, the enrollment applicant shall inquire of each such employee, volunteer and household member regarding whether that person has ever been convicted of a misdemeanor or any felony in New York State or any other jurisdiction.
(b) When an enrollment applicant indicates that he or she or such an employee, volunteer or family child care household member age 18 or older has been convicted of a crime, the enrollment applicant must give the child's caretaker and the enrollment agency true and accurate information about the crime which will enable the caretaker and the enrollment agency to evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child. Such information must include, but is not limited to, the nature of the crime, the penalties imposed as a result of the conviction, and the length of time which has elapsed since the conviction.

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

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

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

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

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

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

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

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

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

(b) The enrollment applicant must furnish the child's caretaker with information regarding any such indicated report including a description of the incident, the date of the indication, and any other relevant information.

(v) The enrollment applicant must provide such information required so as to allow the enrollment agency to conduct a check of each relative-only in-home child care provider and each relative-only family child care provider, any employee, volunteer, and each family child care household member age 18 or older against the New York State Sex Offender Registry maintained by the New York State Division of Criminal Justice Services, via the Registry's toll-free telephone number to determine if such person is listed on the New York State Sex Offender Registry. When such person is listed on the New York State Sex Offender Registry, the enrollment agency must not enroll the child care provider.

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

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

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

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

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

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

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

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

(b) The enrollment applicant must furnish the child’s caretaker with information regarding any such indicated report including a description of the incident, the date of the indication, and any other relevant information.

(iii) The enrollment applicant must provide such information required so as to allow the enrollment agency to conduct a check of each family child care household member age 18 or older related in any way to all children in care against the New York State Sex Offender Registry maintained by the New York State Division of Criminal Justice Services, via the Registry’s toll-free telephone number to determine if such person is listed on the New York State Sex Offender Registry. When such person is listed on the New York State Sex Offender Registry, the enrollment agency must not enroll the child care provider.

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

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

2. Building and equipment
   (i) There must be two separate and remote ways to escape in an emergency.
   (ii) Rooms for children must be well-lighted and well-ventilated. Heat, ventilating and lighting equipment must be adequate for the protection of the health of the children.
   (iii) Adequate and safe water supply and sewage facilities must be provided and comply with State and local laws. Hot and cold running water must be available and accessible at all times.
   (iv) Paint and plaster must be in good repair and there must be no danger of children putting paint or plaster chips in their mouths or of it getting into their food.
(v) Stairs, railings, porches, decks, and balconies must be in good repair.
(vi) Buildings, systems, and equipment must be kept in good repair and operate as designed.

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

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

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

(4) Supervision
(i) Children must never be left unsupervised or in the care of persons who are not authorized to supervise the children.
(ii) For informal child care, the enrolled provider is the sole person authorized to supervise the children.
(iii) For legally-exempt group child care, a director or person who is knowledgeable about the program’s operation and policies and designated to act on behalf of the director must be present on-site at all times during the program's hours of operation.
(iv) Electronic monitoring devices may not be used as a substitute for supervision of children who are awake.
(v) Electronic monitoring devices may be used to transmit images of children in common rooms, hallways, and play areas only.
(vi) Bathrooms and changing areas must remain private and free of electronic monitoring devices.
(vii) The child’s caretaker and each employee and volunteer of the provider must be informed if electronic monitoring devices are used.
(viii) For informal child care providers, sleeping and napping arrangements must be made in writing between the parent and the program. Such arrangements shall include: where the child will nap or sleep; whether the child will nap or sleep on a cot, mat, bed or a crib; and how the child will be supervised, including whether electronic monitors can be used, and how often the provider is required to check on the child.

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

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

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

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

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

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

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

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

(vii) There must be either a working telephone or immediate access to one. Emergency telephone numbers for the fire department, local or State Police or sheriff's department, poison control center, and ambulance service must be posted conspicuously or are readily accessible.

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

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

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

(xi) Exposure or access to any materials that are developmentally inappropriate for the age of the children in care is prohibited. Such materials include, but are not limited to, sexually and illicitly graphic materials, drug paraphernalia, and other printed or digital materials or content.
(xii) Sleeping arrangements for infants through 12 months of age require that the infant be placed flat on his or her back to sleep, unless medical information from the child's health care provider is presented to the program by the caretaker that shows that arrangement is inappropriate for that child.

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

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

(6) Transportation

(i) A child must never be left unattended in any motor vehicle or other form of transportation.
(ii) Each child must board or leave a vehicle from the curb side of the street.
(iii) All children must be secured in child safety seats properly installed per manufacturer’s recommendations, or with safety belts, as appropriate for the age of the child in accordance with the requirements of the New York State Vehicle and Traffic Law.
(iv) Drivers transporting children must be 18 years of age or older and hold a current valid license to drive the class of vehicle they are operating.
(v) Any motor vehicle, other than a public form of transportation, used to transport children must have a valid registration and inspection sticker.

(vi) Children in care may not be transported in a vehicle built to hold more than 10 passengers, including the driver, unless the vehicle: meets the National Highway Traffic Safety Administration definition of a school bus or a multifunction school activity bus; complies with the National Highway Traffic Safety Administration Federal Motor Vehicle Safety Standards applicable to a school bus or multifunction school activity bus; and is inspected per New York State Department of Transportation rules and regulations.

(7) Behavior management

(i) Safe, suitable care to children that is supportive of the children’s physical, intellectual, emotional, and social well-being must be provided.

(ii) Acceptable techniques and approaches must be used to discipline children and to manage children’s behavior.

(a) The use of corporal punishment is prohibited. The term corporal punishment means punishment inflicted directly on the body including, but not limited to, physical restraint,
spanking, biting, shaking, slapping, twisting or squeezing; demanding excessive physical
exercise, prolonged lack of movement or motion, or strenuous or bizarre postures; and
compelling a child to eat or have in the child’s mouth soap, hot spices, irritants or the like.

(b) Methods of discipline, interaction, or toilet training that frighten, demean, or humiliate
children are prohibited.

(8) Health and infection control

(i) The following health requirements must be met.

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

(b) An informal child care provider, director of a legally-exempt group child care program,
employees and volunteers, and each family child care household member must be free of
any communicable disease unless the applicable person’s health care provider has
indicated that the presence of a communicable disease does not pose a risk to the health
and safety of the children in care.

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

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

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

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

(iii) A portable first aid kit must be accessible for emergency treatment. The first aid kit must be stocked to treat a broad range of injuries and situations and restocked as necessary. The first aid kit and any other first aid supplies must be kept in a clean container or cabinet not accessible to children.

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

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

(9) Nutrition

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

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

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

(10) Management and administration

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

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

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

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

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

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

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

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

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

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

(11) Emergency Preparedness

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

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

(a) how children and adults will be made aware of an emergency;
(b) a designation of primary and secondary evacuation routes;
(c) methods of evacuation, including where children and adults will meet after evacuating
the building, and how attendance will be taken;

d) a plan for the safe evacuation of children from the premises for each shift of care provided (day, evening, night);

e) the designation of primary and secondary emergency relocation sites to be used in the case of an emergency that prohibits re-entry to the child care site, and how the health, safety and emotional needs of children will be met in the event it becomes necessary to evacuate to another location;

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

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

h) roles of providers, employees and volunteers during an emergency; (i) procedures related to the reunification of children and caretakers.

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

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

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

(c) Administration of Medication

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

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

(a) All providers that choose to administer medications other than epinephrine auto injectors, Diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers, topical ointments, lotions, creams and sprays to children must have a health care consultant of record and must address the administration of medications in the health care plan in accordance with the requirements of this subdivision.
(b) The provider must confer with a health care consultant regarding the policies and procedures related to the administration of medications. This consultation must include a review of the documentation that all staff authorized to administer medications have the necessary professional license or have completed the necessary training.

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

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

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

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

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

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

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

(iv) A legally-exempt child care provider and staff may administer prescription and non-prescription (over-the-counter) medications for eyes or ears, oral medications, topical ointments, creams, lotions, sprays and medication patches and inhaled medications in accordance with this subdivision.
(v) A legally-exempt child care provider and staff may not administer medications by injection, vaginally or rectally except as follows:

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

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

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

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

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

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

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

(c) For children 18 months of age and older, prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays, can be administered by the provider for one day only, with the oral approval of the caretaker. If prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays are to be administered on a subsequent day or an ongoing basis, written permission from the caretaker and written instructions from the health care provider must have been provided to the provider prior to such administration.
(d) Provider and staff cannot administer medication to any child in care, if the caretaker’s instructions differ from the instructions on the medication’s packaging, until the provider receives permission from a health care provider or licensed authorized prescriber on how to administer the medication.
(e) The provider must immediately notify the caretaker if the provider will not administer medication due to differing instructions related to the administration of medication.

(viii) A legally-exempt child care provider and staff who are authorized to administer medications must administer medication as follows:
(a) to the right child,
(b) at the right dose,
(c) at the right time,
(d) with the right medication, and
(e) through the right route.

(ix) Documentation of Medication Administration
(a) At the time of administration, the staff must document the dosages and time that the medications are given to the child.
(b) All observable side effects must be documented and communicated to the caretaker, and when appropriate, the child’s health care provider.
(c) Documentation must be made if the medication was not given and the reason for such a decision.

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

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

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

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

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

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

(xvi) Prescription medication labels must include the following information or be available through the licensed authorized prescriber on the form provided by the Office or equivalent form:
(a) Child's first and last name;
(b) Licensed authorized prescriber's name, telephone number, and signature; (c) Date authorized;
(d) Name of medication and dosage;
(e) Frequency the medication is to be administered; (f) Method of administration;
(g) Reason for medication (unless this information must remain confidential pursuant to law);
(h) Most common side effects or reactions; and
(i) Special instructions or considerations, including but not limited to possible interactions with other medications the child is receiving, or concerns regarding the use of the medication as it relates to a child's age, allergies, or any pre-existing conditions.

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

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

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

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

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

(i) Any legally-exempt child care provider who elects to administer medications must prepare a health care plan on forms furnished by the Office. Such plan must protect and promote the health of children. The health care plan must be on site, followed by all staff and available upon demand by a caretaker or the Office. The health care plan must also be approved by the provider's health care consultant unless the only medications to be administered are:
(a) over-the-counter topical ointments, lotions and creams, sprays, including sunscreen products and topically applied insect repellant; and/or
(b) epinephrine auto injectors, Diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers.

(ii) The health care plan must describe the following:
(a) how a daily health check of each child for any indication of illness, injury, abuse or maltreatment will be conducted and documented;
(b) how a record of each child's illnesses, injuries and signs of suspected abuse or maltreatment will be maintained;
(c) how professional assistance will be obtained in emergencies;
(d) the advance arrangements for the care of any child who has or develops symptoms of illness or is injured, including notifying the child's caretaker;
(e) which designated staff will be administering medication; The plan must state that only a trained, designated staff person may administer medications to children, except when the only administration of medications offered will be the administration of over-the-counter topical ointments, lotions, creams, and sprays including sunscreen products and topically applied insect repellant.
(f) the contents of the first aid kit;
(g) that the trained designated staff may only administer medications to children if the designated staff is:
(1) at least 18 years of age,
(2) possesses a current certification in first aid and cardio-pulmonary resuscitation (CPR) appropriate to the ages of the children in care, and
(3) has completed the Medication Administration Training (MAT) pursuant to paragraph (4) of this subdivision or in the case of administering epinephrine auto injectors, Diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers has received training on its use from the caretaker, health care provider or a health care consultant;
(h) the designation of the health care consultant of record for programs, as indicated in subparagraph (i) of this paragraph; and
(i) when a health care consultant is required to approve a health care plan, the schedule of visits by a health care consultant to providers administering medications must occur at least once every two years and must include a review of the health care policies and procedures and a review of the documentation.
(3) Health Care Consultant.

(i) Legally-exempt child care providers must demonstrate to the health care consultant how medications are administered in the program. A provider is not required to schedule a visit with a health care consultant or include a schedule of visits by a health care consultant in the health care plan when:
(a) only over-the-counter topical ointments, lotions, creams and sprays, including sunscreen products and topically applied insect repellant are administered; and/or
(b) epinephrine auto injectors, Diphenhydramine in combination with the auto injector, and asthma inhalers and nebulizers are the only medications administered in the program.

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

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

(iv) A legally-exempt child care provider, whose health care consultant terminates his or her relationship with the provider, will be granted a 60-day grace period to hire another health care consultant, obtain approval of a health care plan from the new health care consultant and submit the plan to the enrollment agency without the provider losing the ability to administer medications as long as:
(a) the former health care consultant did not revoke his or her approval prior to terminating the relationship with the provider;
(b) staff who have been trained in medication administration are available to continue administration of medications as per the health care plan;
(c) the provider follows the approved health care plan, as currently written, for the 60-day period;
(d) the provider notifies the enrollment agency, within 24 hours, of the termination of the relationship with the health care consultant; and
(e) the provider has the newly hired health care consultant review and approve the health care plan and sends the signed approved health care plan to the enrollment agency before the sixty-day window expires.
(v) Once the sixty-day period has expired if no health care plan approval is issued, the legally-exempt child care program will no longer able to administer medications other than over-the-counter topical medications and emergency medications.

(4) Training for the Administration of Medications.

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

(ii) Legally-exempt child care providers and staff who will be responsible for administering medications must receive training in the methods of administering medications prior to administering any medications in a child care setting. Upon completion of the training, the staff must receive a written certificate from the trainer that indicates that the trainee has successfully completed this training, as required, and demonstrated competency in the administration of medications in a child care setting.
(a) In order to be trained in the administration of medications in a child care setting, providers and staff must be literate in the language or languages in which health care instructions from caretakers and health care providers will be received.
(b) Persons who receive training in the administration of medications in child care settings pursuant to this subdivision may not otherwise administer medications or represent themselves as being able to administer medications except to the extent such persons may be able to do so in accordance with the relevant provisions of the Education Law.

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

(iv) The training must be documented and must include, but need not be limited to the following:
(a) training objectives;
(b) a description of the methods of administration including principles and techniques of application and dispensation of oral, topical, medication patches and inhalant medication, including the use of nebulizers, and the use of epinephrine auto injector devices when necessary to prevent anaphylaxis in emergency situations with respect to the various age groups of children;
(c) administering medication to an uncooperative child;
(d) an evaluation of whether the trainee demonstrates competency in:
(1) understanding orders from the health care professional or licensed authorized prescriber;
(2) the ability to correctly carry out the orders given by the health care provider or licensed authorized prescriber;
(3) recognition of common side effects of medications and ability to follow written directions regarding appropriate follow-up action;
(4) avoidance of medication errors and what action to take if an error occurs;
(5) understanding relevant commonly used abbreviations;
(6) maintaining required documentation including the caretaker’s permission, written orders from health care professionals and licensed authorized prescribers, and the record of administration of medications;
(7) safe handling of medications, including receiving medications from a caretaker;
(8) proper storage of medications, including controlled substances; and
(9) safe disposal of medications.

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

(5) Stocking medications.

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

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

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

(iv) Stock medications must be kept in the original container and have the following information on the label or in the package insert:
(a) Name of the medication,
(b) Reasons for use,
(c) Directions for use, including route of administration,
(d) Dosage instructions,
(e) Possible side effects and/or adverse reactions,
(f) Warnings or conditions under which it is inadvisable to administer the medication, and
(g) Expiration date.

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

(vi) Unless otherwise permitted by law, prescription medication cannot be kept as stock medication.

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

(i) When a legally-exempt child care provider has not been authorized to administer medications in a child care setting in accordance with the requirements of this subdivision, a designated staff person may administer emergency care through the use of epinephrine auto injector devices, Diphenhydramine, when prescribed in combination with the auto injector, asthma inhaler and asthma nebulizer when necessary to prevent anaphylaxis or breathing difficulty for a child but only when the caretaker and the child's health care provider have indicated such treatment is appropriate. In addition:
(a) A written Individual Health Care Plan must be developed for the child;
(b) The child’s health care provider must issue a standing order and prescription for the medication;
(c) The caretaker must approve, in writing, the administration of the medication as prescribed by the health care provider and keep medications current;
(d) Providers or staff administering an emergency medication pursuant to this paragraph, must be instructed on its use, and the instruction must be provided by the caretaker, the child’s health care provider or a health care consultant;
(e) The provider or a staff who has been instructed on the use of the auto injector, Diphenhydramine, inhaler or nebulizer must be present during all hours the child with the potential emergency condition is in care;
(f) The provider or staff administering the auto injector, Diphenhydramine, asthma medication or nebulizer must be at least 18 years old;
(g) The provider or staff must immediately contact 911 after administration of epinephrine;
(h) If an inhaler or nebulizer for asthma is administered, the provider or staff must call 911
if the child’s breathing does not return to its normal functioning after its use; and
(i) Storage, documentation of the administration of medication and labeling of the auto
injector, asthma inhaler and asthma nebulizer must be in compliance with this
subdivision.
(ii) When a legally-exempt child care provider is approved to administer an inhaler to a
child with asthma or other diagnosed respiratory condition, or an epinephrine auto injector
for anaphylaxis, a school-aged child may carry and use these devices during child care
hours if the provider secures written permission of such use of a duly authorized health
care provider, consent from the caretaker, and completes a written Individual Health Care
Plan for the child.
(iii) The written Individual Health Care Plan, consent from the caretaker and health care
provider consent documenting permission for a school-age child to carry an inhaler or
auto injector must be maintained on file by the legally-exempt child care provider.

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

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

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

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

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

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

(g) Capacity limitations for legally-exempt family child care

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

(2) No more than two children may be in care for more than three hours simultaneously
per day, except when the provider is a relative within the third degree of consanguinity of
the parents or step-parents of all children in care. Relatives within the third degree of consanguinity of the parent(s) or step-parent(s) of the child include: the grandparents of the child; the great-grandparents of the child; the great-great grandparents of the child; the aunts and uncles of the child, including spouses of the aunts and uncles; the great aunts and great-uncles of the child, including the spouses of the great-aunts and great uncles; the siblings of the child; and the first cousins of the child, including spouses of the first cousins.

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

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

(i) for three-year-old children:
(a) there must be one employee with a caregiving role for every 20 children when engaged in activities where children will be seated while working on a particular activity or skill;
(b) there must be one employee with a caregiving role for every 10 children when children are not engaged in seated activities or skills; and
(c) the maximum group size is 30 children.

(ii) for four-year-old children:
(a) there must be one employee with a caregiving role for every 20 children when engaged in activities where children will be seated while working on a particular activity or skill;
(b) there must be one employee with a caregiving role for every 12 children when children are not engaged in seated activities or skills; and
(c) the maximum group size is 36 children.

(iii) for children ages five through 12 years of age:
(a) there must be one employee with a caregiving role for every 25 children; and
(b) the maximum group size is 50 children.

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

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

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

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

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

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

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

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

(ii) documentation from the authority having jurisdiction for determining compliance with the New York State Uniform Fire Prevention and Building Code or other applicable fire prevention and building codes when the Uniform Code of New York State is not applicable, that shows the facility has been inspected and found to be in compliance with the applicable codes within the past 12 months. (a) The building and premises must remain in compliance with the New York State Uniform Fire Prevention and Building Code or other applicable fire prevention and building codes when the Uniform Code of New York State is not applicable. Updated documentation of compliance may be required when an event or condition reasonably calls into question whether the provider is in compliance with these requirements.

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

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

(7) Individual children’s food allergies must be posted in a discreet location visible only to directors, employees and volunteers.
Section 415.14 is added to read as follows:

(14) Enrollment agency responsibilities.

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

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

(i) collect only such information about the provider as determined by the Office;

(ii) assist social services districts to facilitate appropriate and prompt payments;

(iii) permit the provider to apply for enrollment with the enrollment agency after selection by a recipient of child care assistance; and

(iv) maintain the confidentiality of information related to a family receiving child care assistance and of the personal history of a provider and a provider's employee, volunteer, or household member. Such information cannot be disclosed without the written permission of such person to any person or organization other than the Office, a social services district, the designees of the Office or social services district, or other persons authorized by law.

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

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

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

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

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

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

(4) If the child care provider is exempt from the licensing and registration requirements and the child care provider otherwise meets the enrollment requirements, then the enrollment agency must enroll the child care provider for the purpose of providing child care services to eligible families under the New York State Child Care Block Grant Program, unless the applicable social services district, or its designee, informs the enrollment agency that the child care provider does not meet a locally-defined additional requirement set forth in the social services district's Child and Family Services Plan in accordance with section 415.4(g) of this Part.

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

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

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

(i) When the check of the Office's designated system of record reveals that the informal child care provider or legally-exempt group child care director has been denied a child day care license or registration or had a child day care license or registration revoked, limited or suspended, the provider or director must provide the child's caretaker and the enrollment agency true and accurate information regarding any such denial, revocation, limitation, or suspension, including a description of the reason for denial, revocation, limitation or suspension, the date of the denial, revocation, limitation, or suspension, and any other relevant information, if such information has not already been provided to the child's caretaker and the enrollment agency.

(ii) The enrollment agency must verify with the Office the truth and accuracy of the information disclosed by the provider or director for the purpose of conducting the assessment of risk to children in care.
(iii) An informal child care provider or director of a legally-exempt group child care program that has a day care license or registration and is currently subject to enforcement action for denial, revocation, limitation, or suspension may not be considered for enrollment until the day care enforcement process has been finalized.

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

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

(i) termination of parental rights under section 384-b of the Social Services Law;
(ii) removal of a child by court order under article 10 of the Family Court Act;
(iii) conviction of a misdemeanor or a felony in New York State or any other jurisdiction; and
(iv) being the subject of an indicated report of child abuse or maltreatment in New York State or any other jurisdiction.

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

(4) The enrollment agency must check each relative-only in-home child care provider and each relative-only family child care provider, any employee, volunteer, and each family child care household member age 18 or older against the New York State Sex Offender Registry maintained by the New York State Division of Criminal Justice Services, via the Registry's toll-free telephone number to determine if such person is listed on the New York State Sex Offender Registry. When such person is listed on the New York State Sex Offender Registry, the enrollment agency must not enroll the child care provider.

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

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

(f) Inspection requirements for enrollment agencies.

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

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

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

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

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

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

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

(5) The enrollment agency must record the results of inspections in the Office’s designated system of record within seven days of the inspection date.
Section 415.15 is added to read as follows:

(15) Criminal History Review and Background Clearances

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

(b) In-Home Child Care

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

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

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

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

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

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

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

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

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

(c) Legally-Exempt Family Child Care

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

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

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

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

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

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

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

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

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

(d) Legally-Exempt Group Child Care

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

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

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

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

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

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

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

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

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

(e) Process

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

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

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

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

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

(6) For informal child care programs a prospective provider cannot be enrolled, and a prospective employee, volunteer or family child care household member age 18 or older not related in any way to all children in care cannot work, volunteer, or live in an enrolled legally-exempt child care program until the Office notifies the provider that every required person has completed all clearance requirements in this section.

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

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

(i) refuses to consent to such clearances;

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

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

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

(a) murder, as described in section 1111 of title 18, United States Code;
(b) child abuse or neglect;
(c) a crime against children, including child pornography;
(d) spousal abuse;
(e) a crime involving rape or sexual assault;
(f) kidnapping;
(g) arson;
(h) physical assault or battery; or

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

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

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

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

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

(1) Conviction for a mandatory disqualifying offense

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

(2) Conviction for crime other than a mandatory disqualifier

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

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

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

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

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

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

(b) direct that such person be terminated, consistent with Article 23-A of the Correction Law; (c) take any other appropriate steps to protect the health and safety of the children in care.

(3) Pending criminal charge

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

(ii) When a clearance conducted pursuant to this section reveals that an existing legally-exempt provider, director, employee, volunteer or family child care household member age 18 or older has been charged with a crime, the Office shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in care. The Office may terminate such program’s enrollment based on such a charge when necessary to protect the health and safety of children in care.
(h) Safety Assessment. A safety assessment performed in accordance with this section shall include, but not be limited to:

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

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

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

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

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

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

(l) A legally-exempt child care provider must inform the Office or its designee when:
(1) any applicant who is subject to criminal history record review in accordance with this section has withdrawn the application or is no longer being considered for the position for which the person applied;

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

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

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

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

Section 415.16 is added to read as follows:

(16) Child Abuse and Maltreatment

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

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

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

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

(3) No provider, director, employee or volunteer shall have unsupervised contact with children who receive subsidized care prior to obtaining the result of the inquiries required by this section.
(i) Any informal child care provider, director of a legally-exempt group child care program, employee, or volunteer must report or cause such a report to be made to the Statewide Central Register of Child Abuse and Maltreatment when there is reasonable cause to suspect that a child has been abused or maltreated. In the case that a child is in immediate danger, any informal child care provider, director of a legally-exempt group child care program, or employee must call 911 or the local emergency number.

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