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| LOCAL COMMISSIONERS MEMORANDUM |
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DSS-4037EL (Rev. 9/89)

Transmittal No: 90 LCM-190

Date: November 27, 1990

Division: Family & Children
Services

TO: Local District Commissioners

SUBJECT: Registration of Family Day Care Homes and School Age Child
Care Programs

ATTACHMENTS: Attachment A, Chapter 750 of the Laws of 1990, is not
available on-line.

The purpose of this LCM is to inform local social services districts of a bill signed into law on July 22, 1990 by Governor Cuomo which will establish a system of registration for family day care homes and school age child care programs. This law is Chapter 750 of the Laws of 1990.

A copy of the law is attached. Its major provisions related to registration are summarized below.

We plan to work closely with you to implement the new registration system. A work group, including representatives of social services districts, has been formed. Additional information will be provided to you periodically as policy and procedures are developed.

If you have questions about the new law, please contact Barbara Fisher of the Department's Bureau of Child Care at (518) 474-9324.

I. Overview

The new law repeals most of the present Section 390 of the Social Services Law (SSL) and creates a new Section 390 as well as amending Sections 390-b, 410-c, 410-r, and 424-a of the SSL.

The changes made by the new law are as follows:

- o The regulatory structure for family day care is altered by initiating a registration system with a strong emphasis on training and support services to replace the current dual process of licensure (permit) and certification.
- o A registration system for school age child care is made applicable to all school-age child care programs and the definition of school-age child care programs is changed so that all are required to be registered regardless of the hours of operation.
- o A registration system is also applied to day care centers serving 3 to 6 children. (Although few day care centers serve fewer than 7 children, the category was created so that this type of child day care would not be unregulated. Day care centers serving 7 or more children and group family day care homes remain under the present licensure system administered through the regional offices of the Bureau of Child Care of the State Department of Social Services.)

Sections 1 and 2 of Chapter 750, which significantly revise Section 390 of the SSL, will become effective July 22, 1991 throughout the state except for public schools and in New York City. For public schools and in New York City, these sections will become effective January 22, 1992. The balance of the law (Sections 3-9) is effective November 19, 1990. The latter sections contain technical revisions, provision for child day care start-up grants, information services to be provided by Child Care Resource and Referral programs (CCRRs) and required training and instruction for licensed and registered child care programs.

II. Summary of Social Services Law, Section 390

A. Definitions

1. Child Day Care - Care for a child on a regular basis away from the child's residence for less than 24 hours per day by someone other than the parent, step-parent, guardian, or relative within the third degree of relationship to the parents or step-parents of the child (e.g., grandparent, aunt or uncle of the child).

Exclusions

- Day camp.
 - After-school program operated for the purpose of religious education, sports or recreation.
 - Day services under NYSDSS operating certificate.
 - OMH or OMRDD certified day treatment.
 - Public or private school-operated kindergarten, nursery or preschool for children 3 years of age or older or after-school program on premise.
 - Day care centers in New York City (Regulated by the New York City Department of Health).
2. Family Day Care Home - Program in a family home providing child day care for more than 3 hours per day per child for:
- 3 to 6 children at any one time
plus
 - 2 additional children of school age who are permitted when care is primarily during times when they are not required to be in school. Department inspection and approval is required before care may be provided for these additional children.
3. School Age Child Care - Program caring for 7 or more enrolled school age children under 13 years of age (or incapable of caring for themselves) at a permanent site before or after school. Care can also be provided when children are not required to be in school (holidays, vacations, summers).
4. Child Day Care Center - Program or facility providing child day care for more than 3 hours per day per child except those programs operating as a family day care home, a group family day care home or a school age child care program.
5. Group Family Day Care Home- Program in a family home providing child day care for more than 3 hours per day per child for:
- 7 to 10 children of all ages including a maximum of 4 children under 2 years of age
or
 - 7 to 12 children when all are over 2 years;
plus
 - 2 additional children of school age who are permitted during times when they are not required to be in school.
- At least one assistant to the operator must be present when child day care is provided to 7 or more children.
6. Child Day Care Provider - Any individual, association, corporation, partnership, institution or agency whose activities include providing child day care or operating a home or facility where child day care is provided.

The following definitions are derived from the new Section 390 of the SSL and Department Regulations 418.1(d) and 418.5(b):

7. Registration* - Authorization to operate required for family day care homes, school age child care programs, and child day care centers serving 3 to 6 children. Valid initially for 1 year and thereafter for 2 years.
8. License (Permit)* - Authorization to operate required for group family day care homes and for day care centers caring for 7 or more children. Valid for a maximum period of 2 years. A satisfactory inspection is required before a license is issued or renewed.

Registration replaces both certificates for family day care homes and permits for family day care homes, school age child care programs and day care centers serving 3 to 6 children. Neither certificates nor permits will be issued for these programs after registration is implemented.

Registration Requirements and Responsibilities

1. Requirements for provider:
 - a. The home or facility must be operated in compliance with applicable laws and regulations. Provider must make written statement that the home or facility is in compliance with applicable laws and regulations.
 - b. A statement that the provider has completed an orientation program, which includes advantages of, requirements for, and responsibilities of becoming a registered provider, must be submitted.
 - c. Sworn statement or affirmation whether provider has ever been convicted of a misdemeanor or felony must be provided.
 - d. Requirements in regard to provider and staff relative to background reviews (Section 390-a of the SSL) and screening with the Statewide Central Register of Child Abuse and Maltreatment (Section 424-a of the SSL) must be met.
 - e. 15 hours of training must be completed during the first year of registration and biannually thereafter.

*Where a child is cared for by a relative within the 3rd degree of relationship of the parent or guardian of the child (e.g. grandparent, aunt or uncle of the child) and that person simultaneously provides child day care for other children, only the other children shall be considered in determining whether such persons must be registered or licensed, provided the person is not caring for more than a total of 8 children.

2. Department Responsibilities

The Department is required to:

- a. Acknowledge to the provider receipt of each properly completed registration within 60 days of receipt.
- b. Provide orientation (See B.1.b. above) directly or through delegation or purchase of services.
- c. Provide a toll-free statewide telephone number to receive complaints of violations of this statute and Department regulations.
- d. Investigate all complaints that if true would indicate lack of compliance with statutory or regulatory requirements. To the maximum extent possible, an unannounced site inspection must be made within 15 days of receiving the complaint (next day for imminent danger) except for those complaints alleging solely failure to register. The Department may arrange for inspection through purchase of services.
- e. Where inspection reveals violations of statutory or regulatory requirements, advise the provider in writing of the violations within 10 days and require corrective action.
- f. When a complaint has been received that a provider has failed to register, within 10 days notify the alleged unregistered provider of the complaint and provide information about the registration requirements. (Within 30 days providers must register or state why they are not subject to registration).

Failure to register is subject to a maximum fine of \$250 per day.*

- g. Inspect at least 20% of registered providers annually with a priority to family day care homes never licensed or certified prior to initial registration. The Department may provide for such inspections through purchase of services.
- h. Implement on a statewide basis programs of parent education on the selection and use of child day care programs. The Department may provide for implementation through purchase of services.

*Fines also apply to all child day care centers and group family day care homes required to be licensed that operate without a license. (Day care centers operated by or under contract to a Social Services district are no longer excluded.) When investigation or inspection reveals that a child day care center or group family day care home required to be licensed has not done so, the Department must require the provider to notify the parents that the provider is in violation of the licensing requirements.

- i. Implement a statewide campaign to educate the public as to the requirements and benefits of registration. The Department may provide for implementation through purchase of services.
- j. Make support service information available to registered child day care providers directly or through purchase of services (See C4).
- k. Maintain a list of all current registered and licensed child day care programs as well as all programs whose registration or license has been rejected, suspended, revoked or terminated.
- l. Inspect the home or program prior to acknowledging any subsequent registration (or terminate the registration) when a registered provider does not comply with the training requirements of Section 390-a of the SSL, the screening requirements of Section 424-a of the SSL, and/or has been found to have statutory or regulatory violations.
- m. Inspect a family day care home prior to care being provided for one or two additional children who are school age, when a provider wishes to provide such care.

C. Training/Education Programs - Required Content

1. Orientation

The orientation, approved by the Department, which all prospective registrants are required to receive before registering, must describe the following:

- advantages of becoming a registered provider;
- requirements for becoming a registered provider; and
- responsibilities of becoming a registered provider.

2. Parent Education*

The program to educate parents about selection and use of child day care programs is required to include, but is not limited to, the following topics:

- types of child day care programs;
- factors to be considered in selecting and evaluating child day care programs;

* The Department must require that parents of children enrolled in child day care centers or group family day care homes receive appropriate instructional materials which will assist them in evaluating the facilities, program, and staff, including specific guidance concerning factors relating to child abuse and maltreatment as well as available procedures and legal remedies if they suspect that their child has been abused or maltreated.

- regulations of the Department governing the operation of different types of programs;
- rights of parents and guardians in relation to access to children and inspection of programs;
- information concerning availability of subsidies;
- information about registration and licensing requirements;
- prevention of child abuse and maltreatment in child day care programs, including screening of child day care providers and employees; and
- tax information.

3. Public Education Campaign

The Department must implement a public education campaign to provide information as to the legal requirements for registration and the benefits of registration. The campaign must:

- use various types of media;
- include the development of public educational materials for families, family day care providers, employers and community agencies;
- explain the role and functions of CCR&Rs;
- explain the role and functions of the Department in regard to registered programs; and
- publicize the Department's toll-free telephone number for making complaints of violations of child day care requirements related to programs which are required to be registered or licensed.

4. Information for Providers

The Department must provide registered child day care providers information concerning the following:

- liability insurance;
- start-up grants;
- United States Department of Agriculture (USDA) food programs;
- subsidies available for child day care;
- tax information; and
- CCRR support services.

5. Provider Training

The 15 hours of training required for all registrants within the first year after being registered and biannually thereafter must address the following topics:

- principles of early childhood development;
- nutrition and health needs of infants and children;
- child day care program development;
- safety and security procedures;

- business record maintenance and management;
 - child abuse and maltreatment identification and prevention; and
 - statutes and regulations pertaining to child day care and child abuse and maltreatment.
6. CCR&Rs which are funded must provide the following services to prospective and registered family day care providers, child day care centers and school age child care programs:
- assistance in understanding and complying with registration requirements;
 - information concerning start-up grants if such grants are available;
 - information concerning liability insurance programs;
 - coordination and administration of USDA food programs; and
 - assistance in understanding and complying with applicable statutes and regulations.

In addition, CCR&R's must make efforts to recruit new family day care providers, with such efforts being targeted to low income communities.

7. The Department must require that all child day care center program directors, employees and volunteers and all group family day care providers and assistants receive training in at least the following areas:
- child abuse prevention and identification;
 - safety and security procedures in child day care settings;
 - principles of early childhood development; and
 - laws, regulations and procedures governing the protection of children from abuse and maltreatment.
8. The Department must require that children in family day care homes, group family day care homes and day care centers receive instruction, consistent with their age, needs and circumstances as well as the needs and circumstances of the child day care program, in techniques and procedures which will enable them to protect themselves from abuse and maltreatment.

D. Subsidized Care in Registered Facilities

Where a social services district is subsidizing child day care, it may impose additional requirements upon the child day care providers and a plan to monitor compliance with such requirements subject to the approval of the Department.

The Department is not obligated to enforce local district requirements. In order to monitor compliance, the local district may make announced or unannounced inspections. If violations of applicable statutes or regulations or violations of any additional requirements are observed, the social services district must notify the Department immediately; the district must also provide the Department with an inspection report regardless of whether violations are found.

Social services districts may alter their participation in activities related to arranging for, subsidizing, delivering and monitoring the provision of subsidized child day care. However, the level of participation of each district prior to July 22, 1991 (January 22, 1992 for New York City) must be maintained.

E. Parental Access

Unless otherwise limited by law, all parents with legal custody or legal guardians of any child in a child day care program must be provided unlimited and on demand access to their children and also have the right to inspect on demand during its hours of operation any area of a family day care home, school age child care program, child day care center or group family day care home to which their children have access or which could present a hazard to the health and safety of their children.

F. Local Jurisdiction

Local governments are prohibited from imposing standards for sanitation, health, fire safety or building construction for family dwellings where group family day care or family day care is provided which are in addition to applicable standards for family dwellings where such child day care is not provided. Local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code are not prohibited from making appropriate inspections to assure compliance with applicable standards. The Department is required to provide to the Secretary of State on a monthly basis a list of child day care registrants.

G. Start-Up Grants

The Department is given the authority to make start-up grants from any funds available for such purpose to prospective programs that will provide child day care.

H. Provider List

The Department is required to establish and maintain a list of all current registered and licensed child day care programs and a list of all programs whose license or registration has been revoked, rejected, terminated, or suspended. This provider information shall be available to the public through procedures developed by the Department. The Department is required to provide a list of child day care registrants to the Secretary of State on a monthly basis (see F above).

I. Annual Report

The Department is required to provide an annual report to the Governor and the legislature on the implementation of this act. The report must include information on the following:

- the number and types of child care providers registered or licensed;

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- the number and types of orientation sessions offered;
- the number and types of complaints received and a summary of the Department's responses to and resolutions of the complaints; and
- the number of registrants and applicants for licensing awaiting inspection or other administrative action.

We will be contacting you soon in regard to the registration work group. As policies and procedures for the implementation of the registration system and related training are subsequently developed, we will provide additional information.

Joseph Semidei
Deputy Commissioner, Division of
Family and Children Services