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

Transmittal No: 92 LCM-143

Date: September 17, 1992

Division: Family and Children  
Services

TO: Local District Commissioners

SUBJECT: Child Care: Eligible Providers and Enrollment of Caregivers  
of Informal Child Care and Caregivers of Legally Exempt Group  
Child Care

ATTACHMENTS: Attachment 1 - List of Attachments (Available on-line)

The purpose of this LCM is to notify social services districts of the expansion of the definition of eligible providers for JOBS-related, Employment-related, Transitional Child Care (TCC), At Risk Low Income Child Care (ARLICC) and Child Care and Development Block Grant (CCDBG) services. In addition, this LCM provides revised forms to be used to determine whether an individual is providing care which is legally exempt from regulation and is therefore eligible to receive payment from a social services district. This LCM does not alter significantly the existing procedures which social services districts employ in making such determinations.

ELIGIBLE PROVIDERS

Currently, child day care providers and caregivers of informal child care are eligible providers for JOBS-related, Employment-related and TCC services. Child day care providers and relative caregivers are eligible providers for the ARLICC program. In compliance with federal requirements and consistent with efforts to achieve seamless funding of child care programs, all caregivers of informal child care will become eligible providers for ARLICC and CCDBG services effective October 1, 1992.

The Child Care and Development Block Grant Act of 1990 provides for payment of a broad range of child care providers, including group programs which are exempt from State regulation. In addition, since the implementation of the

Family Support Act of 1988, social services districts have identified a variety of legally exempt group programs in which parents would like to place their children but which currently are not included in the definition of eligible provider. In order to achieve compliance with CCDBG requirements and to meet the expressed needs of social services districts and clients, the category of caregiver of legally exempt group child care has been developed. Effective October 1, 1992, such caregivers will become eligible providers for all child care programs except Low Income Day Care (LIDC) and Title XX Child Care. Consistent with efforts to achieve seamless funding of child care services, the Department is requesting amendments to Section 410 of Social Services Law which will permit payment of such caregivers for LIDC and Title XX services sometime in the future.

Caregivers of legally exempt group child care include:

- o a pre-kindergarten or nursery school program for children three years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such pre-kindergarten, nursery school or school-age program is located on the premises or campus where the elementary or secondary education is provided;
- o a nursery school or program for preschool-age children which provides services for three or less hours per day; and
- o a summer day camp for children under thirteen years of age operated in accordance with Subpart 7-2 of the State Sanitary Code.
- o a day care center, family day care home or other child care program located on federal property and operated in compliance with federal laws and regulations for such child care services.

Consistent with federal requirements, parents, caretaker relatives and persons standing in loco parentis who are eligible to receive JOBS-related, Employment-related, TCC, ARLICC or CCDBG services must be given full discretion in selecting or arranging for the purchase of child care services from any eligible provider. The social services district must allow recipients to select, and must have a method to pay, any and all providers with whom it does not contract. A contract may not be made a condition of receiving payment for JOBS-related, Employment-related, TCC, ARLICC or CCDBG services.

Attachment A provides a list and definitions of all the categories of child care providers eligible to receive payment for the various child care programs. In order to inform applicants of the full range of child care options which are eligible for payment, social services districts may wish to distribute this attachment to all applicants for child care services.

ENROLLMENT FORMS

As prescribed by 90 ADM-31, social services districts must determine that an unregulated child care provider is not subject to State regulation before authorizing child care payments. Social services districts already have established procedures for reviewing "Approval of Informal Child Care Provider" forms and making such determinations for JOBS-related, Employment-related and Transitional Child Care. Social services districts should employ the same procedures to determine whether a provider is a caregiver of legally exempt group child care. Attachment B, Enrollment of Caregiver of Legally Exempt Group Child Care, has been developed to assist social services districts in determining whether an individual, agency or organization which provides a group program for children is a caregiver of legally exempt group child care.

In response to suggestions from social services districts, as well as changes to State Law and other rules, the Department has revised the two existing forms used to determine whether an individual purporting to be a caregiver of informal child care is exempt from State registration requirements. Attachment C, Enrollment of Caregiver of Informal Child Care (in Child's Home), is a modified form which replaces Attachment 12 of 90 ADM-27 and Attachment F of 90 ADM-31. Attachment D, Enrollment of Caregiver of Informal Child Care (in Caregiver's Home), is a modified form which replaces Attachment 13 of 90 ADM-27 and Attachment G of 90 ADM-31.

The following changes represent the most significant modifications:

- o At the suggestion of social services districts, changes were made in the document format and the wording of some questions.
- o The list of relatives who are exempt from regulation has been expanded to include relatives within the third degree of consanguinity to the parent(s) or step-parent(s) as required by amendments to Section 390 of Social Services Law.
- o The questions for providers under age 18 have been modified to reflect changes in Department of Labor rules for working minors.
- o Since the Department does not have authority to deny payment regardless of the provider's response, the disclosures regarding child abuse and maltreatment and criminal conviction have been removed. These factors have been added to the model parent letter (Attachment G) as information that caretaker relatives may wish to consider when selecting their child care arrangements.
- o At the suggestion of social services districts, the wording of the "District Use" section has been changed to eliminate the use of the word "approval" in order to avoid any inference that the district is endorsing the provider or the quality of care which children may receive.

Attachment B must be completed by a caregiver of legally exempt group child care. Attachment C must be completed by a caregiver of informal child care

when the care is in the child's home. Attachment D must be completed by a caregiver of informal child care when the care is in the provider's home.

Due to changes in Department of Labor standards and other areas of the forms, previously approved local equivalent forms are no longer valid. Social services districts must obtain written approval of local equivalent forms prior to their use. Department approval may be obtained by submitting such forms to:

Ms. Dee Woolley  
New York State Department of Social Services  
Bureau of Early Childhood Services  
40 North Pearl Street - 11B  
Albany, New York 12243

Attachment E, Guide to Reviewing Enrollment Forms, and Attachment F, Permitted Working Hours for Minors Under 18 Years of Age, are provided to assist social services districts in reviewing enrollment forms and determining whether applicant providers are exempt from State regulation.

Social services districts must provide applicants for child care services with information to assist them in making an informed choice of child care arrangements. The Department has prepared two documents to assist social services districts in providing such information. Social services districts are encouraged to distribute Attachment G, Parent Letter, and Attachment H, Client Rights and Responsibilities, to all applicants for child care services.

If you have questions regarding this LCM, please call Dee Woolley, Bureau of Early Childhood Services at 1-800-342-3715, extension 4-9324 or dial direct (518) 474-9324. Ms. Woolley also may be contacted on-line, Userid #89A800.

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James Purcell  
Associate Commissioner  
Division of Family and  
Children Services

Attachment 1

LIST OF ATTACHMENTS

- Attachment A: Eligible Providers (Available on-line)
- Attachment B: Enrollment of Caregiver of Legally Exempt Group Child Care (Available on-line)
- Attachment C: Enrollment of Caregiver of Informal Child Care (in Child's Home) (Available on-line)
- Attachment D: Enrollment of Caregiver of Informal Child Care (in Caregiver's Home) (Available on-line)
- Attachment E: Guide to Reviewing Enrollment Forms (Available on-line)
- Attachment F: Permitted Working Hours for Minors Under 18 Years of Age (Not available on-line)
- Attachment G: Parent Letter (Available on-line)
- Attachment H: Client Rights and Responsibilities (Available on-line)

ELIGIBLE PROVIDERS

Effective October 1, 1992, for purposes of JOBS-related, Employment-related, Transitional, At Risk Low Income and Child Care and Development Block Grant services, the following providers are eligible to receive payment for child care services:

Child day care providers - This category includes:

- a. a day care center with a valid license to operate or properly registered to operate;
- b. a family day care home properly registered to operate;
- c. a group family day care home with a valid license to operate;
- d. a public school providing care to preschool-age children or as part of a before-school or after-school program for children in accordance with a contract entered into between a public school district and a social services district; and
- e. a school-age child care program properly registered to operate.

Caregivers of informal child care - This category includes:

- a. care for one or two children provided outside the child's home in the residence of a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for employment of minors as set forth in Article 4 of the State Labor Law;
- b. care for more than two children for less than three hours per day provided outside the child's home in the residence of a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for employment of minors as set forth in Article 4 of the State Labor Law;
- c. care provided by a relative within the third degree of consanguinity to the parent(s) or step-parent(s), specifically:
  - o grandparents of the child;
  - o great grandparents of the child;
  - o aunts and uncles of the child, including spouses of the aunts or uncles;
  - o brothers and sisters of the child;
  - o great-aunts and great uncles of the child, including spouses of the great-aunts or great-uncles;
  - o first cousins of the child, including spouses of the first cousins; and
  - o great-great grandparents of the child; and

- d. child care furnished in the child's own home by a caregiver who is chosen and monitored by the child's caretaker relative and who is at least 18 years of age or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in Article 4 of the State Labor Law; provided, however that the caretaker relative must provide the caregiver with all employment benefits required by State and/or federal law and if such a caregiver furnishes in-home child care for more than four hours a day and more than four days a week, the caretaker relative must pay the caregiver at least the minimum wage set forth in Article 19 of the State Labor Law.

Caregivers of legally exempt group child care - This category includes:

- a. a pre-kindergarten or nursery school program for children three years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such pre-kindergarten, nursery school or school-age program is located on the premises or campus where the elementary or secondary education is provided;
- b. a nursery school or program for preschool-age children operated by a nonprofit agency or organization or a private proprietary agency which provides services for three or less hours per day;
- c. a summer day camp for children under thirteen years of age operated by a nonprofit agency or organization or a private proprietary agency in accordance with Subpart 7-2 of the State Sanitary Code; and
- d. a day care center, family day care home or other child care program located on federal property and operated in compliance with federal laws and regulations for such child care services.

For purposes of Title XX Child Care, including preventive and protective services, and Low Income Day Care, the eligible providers remain unchanged. Providers eligible for payment for these two programs are limited to child day care providers as defined on the previous page.