



Office of Children and Family Services

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Administrative Directive

Transmittal:	23-OCFS-ADM-05
To:	Local Departments of Social Services Commissioners
Issuing Division/Office:	Division of Child Care Services
Date:	April 26, 2023
Subject:	Implementation of 24-Month Eligibility and Other Regulatory Changes
Suggested Distribution:	Social Services Directors Temporary Assistance Directors Child Care Assistance Supervisors Temporary Assistance Supervisors Child Care Assistance Staff
Contact Person(s):	Sonoma Pelton, OCFS Bureau of Child Care Assistance, 518-408-6074 Sonoma.Pelton@ocfs.ny.gov ocfs.sm.districtsupport.subsidy@ocfs.ny.gov
Attachments:	OCFS-LDSS-4782 , <i>Notice of Intent to Discontinue Child Care Benefits</i> OCFS-LDSS-7009 , <i>Notice of Child Care Assistance Overpayment and Repayment Requirements</i>

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
21-OCFS-ADM-30		18 NYCRR Parts 404 and 415	SSL § 410-u, 410-w, 410-x		

I. Purpose

The purpose of this Administrative Directive (ADM) is to inform local social services districts (districts) of changes to Title 18 of the official compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR) Parts 404 and 415, that are effective on an emergency basis due to an amendment to the Social Services Law (SSL) section 410-w. This rule filing also includes a Notice of Proposed Rulemaking with the opportunity for public comment. With this ADM, the New York State Office of Children and Family Services (OCFS) is providing an overview of the statutory and regulatory changes and guidance for the implementation of such. This ADM also informs districts of two revised client notices, *Notice of Intent to Discontinue Child Care Benefits* (OCFS-LDSS-4782), and *Notice of Child Care Assistance Overpayment and Repayment Requirements* (OCFS-LDSS-7009), that must be used by districts to provide notification to families about actions related to their child care assistance.

II. Background

SSL section 410-w was revised to allow districts the ability to increase the eligibility period to 24 months for child care services funded under the New York State Child Care Block Grant (NYSCCBG), provided the family income does not exceed 85% of the state median income (SMI). In accordance with this legislative change, regulatory changes will give districts the opportunity to choose this option. In addition, regulatory revisions expand eligibility, shorten the time frame within which districts must process claims, implement additional program integrity measures, and revise time frames to align with the implementation of 24-month eligibility. These revisions will continue to stabilize the child care assistance program by giving providers and families continuity of care.

III. Program Implications

24-Month Eligibility

Districts may request to amend their Child and Family Services Plan (CFSP) to authorize child care services under the NYSCCBG for a 24-month eligibility period for an eligible child(ren). Under the NYSCCBG, unless a child has special needs or is under court supervision, an eligible child is a child who is under 13 years of age at the time of eligibility determination. A child who turns 13 years of age during the eligibility period remains eligible for assistance through the end of the eligibility period. However, a child who turns 14 years of age during the 24-month eligibility period is no longer an eligible child, and such child care services must end for that child unless the child is otherwise eligible as a special needs child or under court supervision.

A child who turns 18 years of age during the eligibility period and is a child with special needs or under court supervision remains eligible for assistance through the end of the eligibility period. However, a child who turns 19 years of age during the 24-month eligibility period and is a child with special needs or under court supervision is no longer an eligible child and child care services must end for that child unless the child is otherwise eligible by virtue of being a full-time student as indicated below.

A child who turns 19 years of age during the eligibility period and is a child with special needs or under court supervision, and is a full-time student in a secondary school or in an equivalent level of vocational or technical training, remains eligible for assistance through the end of the eligibility period. However, a child who turns 20 years of age during the 24-month eligibility period and is a child with special needs or under court supervision, and is a full-time student in a secondary school or in an equivalent level of vocational or technical training, is no longer an eligible child, and child care services must end for that child.

In an instance where an individual child is no longer eligible due to age, child care assistance will continue for the duration of the authorized eligibility period for any other eligible children in the family.

The eligibility period selected applies to all cases funded under the NYSCCBG, including guaranteed and non-guaranteed public assistance (PA) cases, child care in lieu of PA cases, transitional child care (TCC) cases, and low-income cases. Districts must continue to provide child care assistance for the entirety of the authorization period when the family's eligibility for other benefits or services ends and the associated case is closed.

The option to authorize child care assistance for a 24-month eligibility period only applies to cases funded under the NYSCCBG. Cases funded under Title XX of the Federal Social Security Act can only be authorized for a 12-month period. For child care services provided under Title XX, the case must be closed when the child turns 13 years of age, except that a child who turns 13 years of age during a school year may continue to receive child care services through the end of that school year.

Other Changes to Part 415

Public Assistance Applicants

18 NYCRR section 415.2(a)(1) has been amended to clarify that a family who has applied for public assistance is only eligible to receive child care services during the application period unless the application for public assistance is approved. If denied for public assistance, the case must be closed regardless of the eligibility period; NYSCCBG funds cannot be used for child care assistance provided during the application determination period unless the family is determined to be eligible for child care assistance. If the application is approved, the child(ren) will receive child care assistance for the duration of the authorized eligibility period unless discontinuance criteria is met as per 18 NYCRR section 415.2(d).

Emergency Situation

18 NYCRR section 415.2(a)(3) has been amended to no longer limit an emergency situation to a short duration. Families are eligible for the entirety of the authorized eligibility period, regardless of the duration of the emergency situation. Such situations include, but are not limited to, cases in which the caretaker is absent from the home for a substantial part of the day due to extenuating circumstances such as a fire, being dispossessed from the home, seeking living quarters, or providing chore/housekeeper services for an elderly or disabled relative. Districts that elect this option in their CFSP will continue to have the discretion to explain what situations constitute an emergency in the CFSP.

Educational Programs

The allowable amount of time to complete an educational or vocational program has been extended from 30 consecutive calendar months to 48 consecutive calendar months. Further, 18 NYCRR section 415.2(a)(3) has been amended to no longer differentiate between an associate degree with a specific vocational goal and one without a specific vocational goal for child care assistance provided to a parent or caretaker who is pursuing an associate degree.

Renewal of enrollment in educational or vocational training programs must not exceed 48 consecutive calendar months, with the exception of a family in which the caretaker is attending a four-year college or university program leading to a bachelor's degree as defined in 18 NYCRR section 415.2(a)(3)(iv).

Jurisdiction

18 NYCRR section 415.4 has been amended to state that the district that authorizes child care services under the NYSCCBG will remain the district with financial responsibility for the duration of the approved eligibility period. This change applies to public assistance, child care in lieu of public assistance, transitional, and low-income child care assistance cases.

For cases funded under Title XX of the Federal Social Security Act, the district in which the family resides will be responsible for payment of child care services.

Reasons for Discontinuance of Child Care Services Prior to the End of the Eligibility Period

18 NYCRR section 415.2(d)(4) has been amended to include additional reasons for discontinuance of child care services prior to the end of the eligibility period under the NYSCCBG. This includes cases in which the family was denied public assistance and child care services were authorized pending a public assistance application determination. Additionally, child care assistance must be discontinued for a child who no longer meets the definition of an eligible child as specified in 18 NYCRR section 415.1(b).

For child care services funded under the NYSCCBG, a district must provide services to recipients for the duration of the authorized eligibility period with the following exceptions:

- The recipient's income exceeds 85% of SMI.
- The recipient's family has experienced a non-temporary cessation in work or attendance at a training or education program.

- The recipient failed to agree to a reasonable plan for repayment or recovery of an overpayment or failed to comply with an agreed-upon plan for repayment or recovery of an overpayment.
- The recipient has been convicted of or has admitted voluntarily to fraudulently receiving child care assistance.
- The recipient certified and attested to false information on the application for child care assistance and/or enrollment form or any attachment thereto.
- The child care assistance is provided pursuant to 415.2(a)(1)(i) during the public assistance application determination period and such application has been denied unless the family is found otherwise eligible.
- A child who was determined eligible under 415.1(b)(1) reaches 14 years of age.
- A child who was determined eligible under 415.1(b)(2) reaches 19 years of age.
- A child who was determined eligible under 415.1(b)(3) reaches 20 years of age.

Cases can be closed for failure to respond to requests for documentation that is necessary in connection with an investigation, audit, or program review.

Provider Payment Time Frame

18 NYCRR section 415.4(c)(9)(i) has been amended to change the time frame within which districts must allow, disallow, or defer a claim for reimbursement by a provider. Regulation previously stated that districts have 30 days within which to process a claim after the claim is submitted to the district by an eligible provider. The amount of time allowed for the district to process such claims has been changed to 21 calendar days, in accordance with the federal prompt payment requirements.

Fraud

18 NYCRR section 415.4 has been amended to add that a provider who has failed to comply with the terms of a repayment plan for grant programs administered by OCFS may be disqualified from receiving payment for child care services authorized under the child care assistance program.

A provider who has been disqualified from receiving payment for child care assistance services by a district or OCFS is ineligible to receive such payments for five years from the date of the disqualification if the provider made full restitution of all falsely obtained funds. If the provider did not make full restitution, the provider will remain ineligible to receive child care assistance payments and future grant opportunities offered by OCFS.

Additionally, this section has been amended to state that an applicant for child care services who has not repaid past overpayments for previous child care services must agree to, and comply with, a plan to make full repayment of such overpayments as a condition of being eligible for new child care services if such overpayments resulted from child care services fraud by the applicant or member(s) of the applicant's family unit who was a parent or caretaker and responsible for such fraudulent activity. This removes responsibility from members of the child care services unit who were not responsible for the overpayment, including children and siblings.

Waivers

As specified in 18 NYCRR section 415.10(a), a district may request a waiver of any non-statutory provision of Part 415. The district must submit a waiver request in writing to OCFS. Such request must state the specific regulation(s) for which the waiver(s) is sought, the reason for the waiver request, and how the intended purpose of the regulation(s) will be maintained if the waiver is granted. OCFS will review the written waiver request and respond in writing to the district if the waiver has been approved.

Third Degree of Consanguinity

To align the definition of third degree of consanguinity with other instances in regulation and Social Services Law, 18 NYCRR section 415.13(g)(2) has been amended to remove the definition of a relative within the third degree of consanguinity. There will be no fundamental change in the application of the regulation due to this change.

IV. Required Action

24-Month Eligibility

A district that opts to extend the eligibility period to 24 months must request to amend its CFSP to reflect such change. To amend the currently approved CFSP, the district must submit an amendment request on official letterhead to OCFS.

The same eligibility period must apply to all families served under the NYSCCBG. Once the case has been approved, the child care assistance application can be backdated as far as the date the application was received, including when the family is using an enrolled legally exempt provider. There cannot be a change in the eligibility period unless one of the reasons for discontinuance listed in 18 NYCRR section 415.2(d)(4) is met.

Prior to case opening for all cases funded under the NYSCCBG, districts must assess that funding is available for the entirety of the eligibility period. If the district does not have sufficient funding to authorize child care assistance for the entire eligibility period, the case may be denied at initial eligibility determination for families who are not guaranteed child care services. Once authorized, a case cannot be closed due to a lack of funding prior to the end of the eligibility period. Further, when a district opts to extend the eligibility period to 24 months, the district of origin is responsible for any cases authorized under the NYSCCBG for the entire authorization period, including, but not limited to, situations in which the authorized family moves to another jurisdiction within the state during that time frame.

For child care assistance cases authorized prior to implementation of the 24-month eligibility period, the current 12-month authorization period will still apply. When a family reports a change in circumstances and a redetermination is necessary, the district must apply the new eligibility period.

Cases funded under Title XX of the Federal Social Security Act can only be authorized for a 12-month period. Districts can close child care assistance cases funded under Title XX of the Federal Social Security Act if there are insufficient funds available.

Other Changes to Part 415

Emergency Situation

A district that chooses to make changes related to emergency situations must request to amend its CFSP to reflect such change. To amend the currently approved CFSP, the district must submit an amendment request on official letterhead to OCFS.

Educational Programs

Districts must provide child care services to a family eligible under 18 NYCRR section 415.2(a)(2)(v)(c) to the extent that the district continues to have funds available under the NYSCCBG, subject to any established priorities and set asides. When a family is experiencing homelessness in accordance with section 725 of Subtitle VII-B of the McKinney-Vento Act, the district must authorize child care assistance for a parent(s) or caretaker(s) to attend educational or vocational activities for new applications and redeterminations for a total of up to 48 consecutive calendar months.

Districts that opt in their CFSPs to provide child care assistance for families in which the parent or caretaker is enrolled in an educational or vocational training program, as defined in 18 NYCRR section 415.2(a)(3), are required to authorize child care assistance for new applications and redeterminations for a total period of up to 48 consecutive calendar months. Renewal of enrollment in educational or

vocational training programs must not exceed 48 consecutive calendar months, except as defined in 18 NYCRR section 415.2(a)(3)(iv). A district that chooses to make changes related to educational programs must request to amend its CFSP. To amend the currently approved CFSP, the district must submit an amendment request on official letterhead to OCFS.

Jurisdiction

When a family moves from one jurisdiction to another within the state during the authorized eligibility period, the district of origin shall remain responsible for child care assistance throughout the authorized eligibility period for cases funded under the NYSCCBG, unless one of the criteria for discontinuance in 18 NYCRR section 415.2(d)(4) is met. This includes, but is not limited to, cases determined eligible when a child(ren) resides in another district due to Article 10 or foster care placement or for protective reasons.

At the time of redetermination, the family must apply for child care assistance in the district in which they currently reside unless such care is needed for a child(ren) placed in foster care in a district other than the district that placed the child(ren). In such cases, the financial responsibility for the child care assistance remains with the district that placed the child(ren) for the duration of the placement.

Communication between the districts and the family is essential to ensure that the child(ren) has access to child care assistance in the new jurisdiction. If necessary, districts should contact other districts or local child care resource and referral agencies (CCRRs) to assist families in need of new child care providers.

For cases funded under Title XX of the Federal Social Security Act, the social services district in which the family resides will be responsible for child care services.

Reasons for Discontinuance of Child Care Services Prior to the End of the Eligibility Period

18 NYCRR section 415.2(d)(4) has been amended to include additional reasons for discontinuance of authorized child care assistance under the NYSCCBG. Unless the family is found otherwise eligible, the case must be closed when the child care assistance is provided pursuant to 18 NYCRR section 415.2(a)(1)(i) during the public assistance application determination period and such application has been denied. Additionally, child care assistance must be discontinued when (1) a child who was determined eligible under 18 NYCRR section 415.1(b)(1) turns 14 years of age, (2) when a child who was determined eligible under 18 NYCRR section 415.1(b)(2) turns 19 years of age, or (3) when a child who was determined eligible under 18 NYCRR section 415.1(b)(3) turns 20 years of age. In such cases, child care assistance must continue for any other eligible children in the case for the duration of the eligibility period.

For Title XX funds, the case must be closed when the child turns 13 years of age, except that a child who turns 13 years of age during a school year may continue to receive child care services through the end of that school year.

A recipient of child care services can choose to voluntarily close their case at any time during the authorized eligibility period.

Provider Payment Time Frame

Effective immediately, provider claims for reimbursement must be allowed, disallowed, or deferred by the district within 21 calendar days of receipt. Additionally, provider contracts must be reviewed to ensure that payment time frames are in compliance with regulation. Districts are required to amend their written provider payment policies to comply with this change in regulation, and must notify providers of such changes within 60 days of the issuance of this ADM.

Waivers

Districts may request a waiver of any non-statutory provision of 18 NYCRR Part 415. The waiver must be described in the district's CFSP and must be approved by OCFS prior to implementation. A district must submit a waiver request to OCFS in writing. The written request must include the specific regulation

for which a waiver is sought, the reason the waiver is necessary, and a description of how the purpose of the regulation will be maintained. OCFS will respond to the waiver request in writing. If the waiver is approved, the district must complete an amendment in its CFSP. Any waivers in the district's currently approved CFSP will remain in effect.

Redetermination of Eligibility

Districts must redetermine a recipient's continued eligibility only when case factors indicate that a redetermination could be beneficial to the family by reducing the family share or increasing the amount of child care assistance, when case factors indicate that a change has occurred which might bring the family over the applicable income eligibility threshold, due to a non-temporary break in work, education or training activity, and at redetermination.

Districts must continue any decrease in family share or increase in the amount of child care assistance through the remainder of the current authorized eligibility period. Districts must complete a full redetermination when a child is born or otherwise joins the family's child care services unit if a redetermination could be beneficial to the family by increasing the amount of child care assistance. If a district determines that a family's income does not exceed income eligibility levels, the district must give the family a new authorized eligibility period because the new child is programmatically eligible for a full eligibility period. If the family income is above 85% of SMI, the district must close the case because the family is no longer eligible to receive child care services.

Child and Family Services Plan

Each district must review its CFSP to determine if it will revise district options in accordance with regulatory changes and submit a letter to OCFS outlining its requested amended district options. Written requests must be submitted to OCFS at: ocfs.sm.districtsupport.subsidy@ocfs.ny.gov.

V. Client Notices

This ADM includes revised versions of two client notices that reflect the regulatory changes:

- OCFS-LDSS-4782, *Notice of Intent to Discontinue Child Care Benefits* (Rev. 04/2023). Revised to capture the option for a 24-month eligibility period.
- OCFS-LDSS-7009, *Notice of Child Care Assistance Overpayment and Repayment Requirements* (Rev. 04/2023). Revised to capture that overpayments will not be assessed due to fraud by a member of the child care services unit who is not the parent/caretaker.

VI. Systems Implications

Welfare Management System (WMS)

Modifications are being made to WMS to reflect both 12-month and 24-month eligibility periods. District staff are responsible for selecting the correct eligibility period for new cases or redeterminations. A General Information System (GIS) message will be issued to assist districts with necessary updates related to the implementation of the 24-month eligibility period.

Child Care Time and Attendance (CCTA)

For districts that use CCTA to process child care assistance payments, some modifications to CCTA are being made to support these regulatory changes. Additional guidance will be made available after the release of this ADM through emails with CCTA district users and by contacting the Kinder Systems Support Desk.

CCTA will be updated to reflect both 12-month and 24-month eligibility periods. When system updates have been completed, it will be the responsibility of district staff to apply the correct eligibility period upon case opening or redetermination.

Additionally, CCTA will be updated to reflect the changes made to the following client notices: OCFS-LDSS-4782, *Notice of Intent to Discontinue Child Care Benefits* (Rev. 04/2023), and OCFS-LDSS-7009, *Notice of Child Care Assistance Overpayment and Repayment Requirements* (Rev. 04/2023).

VII. Additional Information

The notice of emergency and proposed rulemaking went into effect on March 31, 2023. It will be published in the *New York State Register* on April 19, 2023. The public comment period will be open through June 20, 2023. Public comments can be submitted to:

New York State Office of Children and Family Services
52 Washington Street, Rensselaer, NY 12144
Fax: 518-486-6378
Email: regcomments@ocfs.ny.gov

Full versions of 18 NYCRR Parts 404 and 415 can be found on the OCFS website:

<https://ocfs.ny.gov/programs/childcare/regulations/>

The revised client notices, *Notice of Intent to Discontinue Child Care Benefits* (OCFS-LDSS-4782), and *Notice of Child Care Assistance Overpayment and Repayment Requirements* (OCFS-LDSS-7009), are available in English on the OCFS intranet and internet websites:

<https://ocfs.state.nyenet/admin/forms/BECS/>

<https://ocfs.ny.gov/main/documents/docsChildCare.asp>

The revised notices will soon be made available in Arabic, Bengali, Chinese (traditional), French, Haitian Creole, Italian, Korean, Polish, Russian, Spanish, Urdu, and Yiddish. Hard copies of the client notices in English and Spanish will be available for order 30 days from the release of this ADM.

To request hard copies of the English and Spanish forms, complete form [OCFS-4627](#), *Request for Forms and Publications*, which can be found on the OCFS internet website:

<https://ocfs.ny.gov/search/docs.php>

- Once completed, mail the form to the following address:

New York State Office of Children and Family Services
Forms and Publications Unit
52 Washington Street, Room 116 South Bldg.
Rensselaer, NY 12144-2834

OR

- Call the OCFS Forms Hotline: (518) 473-0971

The revised client notices will soon be made available for use in CCTA and the Office of Temporary and Disability Assistance Imaging Electronic Document Retrieval Intelligent Autofill System. Districts can print the revised notices in English on the OCFS intranet and internet websites listed above.

VIII. Effective Date

Districts must come into compliance with the requirements of the regulations immediately, and notify providers of the amended written provider payment policy within 60 days of issuance of this ADM.

/s/ Nora K. Yates

Issued by:

Name: Nora K. Yates

Title: Deputy Commissioner

Division/Office: Division of Child Care Services