



# Office of Children and Family Services

Kathy Hochul  
Governor

52 WASHINGTON STREET  
RENSSELAER, NY 12144

Suzanne Miles-Gustave, Esq.  
Acting Commissioner

## Administrative Directive

<b>Transmittal:</b>	23-OCFS-ADM-18
<b>To:</b>	Local Departments of Social Services Commissioners
<b>Issuing Division/Office:</b>	Division of Child Care Services
<b>Date:</b>	October 6, 2023
<b>Subject:</b>	<b>2023 Changes to Child Care Assistance Regulations: Parts 404 and 415</b>
<b>Suggested Distribution:</b>	Social Services Directors Temporary Assistance Directors Child Care Assistance Supervisors Temporary Assistance Supervisors Child Care Assistance Staff
<b>Contact Person(s):</b>	Merideth Infantino, Bureau of Child Care Assistance, 518-402-3001 <a href="mailto:Merideth.Infantino@ocfs.ny.gov">Merideth.Infantino@ocfs.ny.gov</a> <a href="mailto:ocfs.sm.districtsupport.subsidy@ocfs.ny.gov">ocfs.sm.districtsupport.subsidy@ocfs.ny.gov</a>
<b>Attachments:</b>	<a href="#">OCFS-4773</a> , <i>Child Care Eligibility Redetermination Coming Due</i> <a href="#">OCFS-LDSS-4779</a> , <i>Approval of Your Application for Child Care Benefits</i> <a href="#">OCFS-LDSS-4780</a> , <i>Denial of Your Application for Child Care Benefits</i> <a href="#">OCFS-LDSS-4781</a> , <i>Notice of Intent to Change Child Care Benefits and Family Share Payments</i> <a href="#">OCFS-LDSS-4782</a> , <i>Notice of Intent to Discontinue Child Care Benefits</i> <a href="#">OCFS-LDSS-4784</a> , <i>Approval of Your Redetermination for Child Care Benefits</i> <a href="#">OCFS-LDSS-4785</a> , <i>Approval of Your Transitional Child Care Benefits</i> <a href="#">OCFS-LDSS-4788</a> , <i>Notice of Evaluation of Child Care Benefits – No Change</i>

### Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
22-OCFS-ADM-18 22-OCFS-INF-05		18 NYCRR Parts 404 and 415	SSL § 410-u, 410-w, 410-x and 410-z		

### 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 were made in accordance with the enacted New York State Budget for Fiscal Year 2024, under Chapter 56 of the Laws of 2023, to further combat the child care

crisis throughout New York state. With this ADM, the New York State Office of Children and Family Services (OCFS) is providing an overview of the statutory and regulatory changes. This ADM also provides implementation guidance including directing the use of eight revised client notices that must be used by districts to provide notification to families about actions related to their child care assistance.

## II. Background

The New York State Fiscal Year (SFY) 2024 Enacted Budget provides \$7.6 billion over four years to improve the Child Care Assistance Program (CCAP). In addition, the SFY 2024 budget reappropriated \$376 million of pandemic funding to supplement existing federal, state, and local funding to support the CCAP. The SFY 2024 budget also amended provisions of Social Services Law to expand access and standardize the CCAP across the state.

In accordance with these legislative changes, OCFS filed a Notice of Emergency and Proposed Rulemaking effective October 1, 2023. Districts and stakeholders, including members of the public, have 60 days to comment on the proposed rules after they have been published in the *State Register*. Districts must comply with the emergency regulations effective October 1, 2023.

## III. Program Implications

### State Median Income

For cases funded under the New York State Child Care Block Grant (NYSCCBG) and Title XX of the federal Social Security Act, the family income eligibility level has been established at or below 85% of the state median income (SMI).

18 NYCRR section 415.1(ae) defines SMI as the most recent SMI data published by the United States Census Bureau for a family of the same size. OCFS updates the SMI pursuant to guidance from the Administration for Children and Families (ACF) for the Low-Income Home Energy Assistance Program (LIHEAP).

The SMI and 85% of the SMI levels for each family size, valid June 1, 2023, through May 31, 2024, are shown below.

Family Size	State Median Income (SMI) for New York	85% SMI for New York
1	\$60,717.80	\$51,610.13
2	\$79,400.20	\$67,490.17
3	\$98,082.60	\$83,370.21
4	\$116,765.00	\$99,250.25
5	\$135,447.40	\$115,130.29
6	\$154,129.80	\$131,010.33
7	\$157,632.75	\$133,987.84
8	\$161,135.70	\$136,965.35
9	\$164,638.65	\$139,942.85
10	\$168,141.60	\$142,920.36
11	\$171,644.55	\$145,897.87

12	\$175,147.50	\$148,875.38
13	\$178,650.45	\$151,852.88
14	\$182,153.40	\$154,830.39
15	\$185,656.35	\$157,807.90
16	\$189,159.30	\$160,785.41
17	\$192,662.25	\$163,762.91
18	\$196,165.20	\$166,740.42
19	\$199,668.15	\$169,717.93
20	\$203,171.10	\$172,695.44

### Family Share

In accordance with Social Services Law (SSL) 410-w(8) and 410-x(6), the family share will be set at 1% of income exceeding the federal poverty level (FPL) for all families who are required to pay a family share. Districts will no longer select the percentage a family must pay toward the cost of child care assistance. 18 NYCRR section 415.3(e) has been amended to reflect this change.

### Absences

In accordance with SSL 410-x(9), to standardize the CCAP throughout the state, all districts are required to reimburse up to 80 absences per child, per provider, per state fiscal year, when a child is temporarily absent from child care. Previously, districts were required to pay 24 absences per child, per provider, per state fiscal year, and had the option in their Child and Family Services Plan (CFSP) to increase the number of paid absences. Districts no longer have the option to reimburse up to 80 absences in their CFSP. However, reimbursements for additional absences due to extenuating circumstances may be allowed on a case-by-case basis as determined by OCFS. If extenuating circumstances arise that cause the district to determine that there is a need to pay for more than 80 absences, the district must submit a waiver request to OCFS detailing the extenuating circumstances surrounding the request. 18 NYCRR section 415.6(b) has been amended to reflect this change.

### Families Served When Funds Are Available

SSL 410-w(1)(e) has been amended to eliminate the district option to designate families who are eligible if funds are available in the district's CFSP resulting in only two categories of eligibility, guaranteed and non-guaranteed. Additionally, SSL 410-x(2)(b) and SSL 410-x(2)(c) have been repealed to eliminate district priorities and set-asides. However, families currently in receipt of child care assistance as a local district priority population on September 30, 2023, will continue to be prioritized for assistance upon redetermination. This means that for cases funded under the NYSCCBG, districts can no longer designate the types of families eligible for child care assistance in their CFSP. Additionally, districts cannot elect set-asides for priority populations for cases funded under the NYSCCBG or Title XX of the Federal Social Security Act. 18 NYCRR sections 415.2(a)(2) and 415.2(b) have been repealed and replaced, and 18 NYCRR section 415.2(a)(3) has been repealed to reflect these changes.

SSL 410-x(2)(a) has been amended to authorize OCFS to establish statewide priorities. OCFS has designated the following eligible families as state priorities for cases funded under the NYSCCBG:

- Families with income between 300% of the state income standard (SIS) and up to 85% of the SMI when child care services are needed for the child's caretaker(s) to be engaged in work.
- Families in which the child in need of child care assistance has an open child protective case or a preventive services case with a child protective services component.

- Families in need of child care services for a child who has been placed in foster care and who is residing in the home with a certified or approved foster parent.
- Families with a teenage parent who is in need of child care assistance to attend high school or an equivalency program.
- Families in which the child's caretaker is receiving services for victims of domestic violence or is participating in a screening or assessment to receive services for victims of domestic violence.
- Families in which the child's caretaker is participating in an approved substance abuse treatment program or is participating in a screening or assessment to determine the need for substance abuse treatment.

No regulatory changes have been made for child care assistance provided to families who are guaranteed child care services, as defined in 18 NYCRR section 415.2(a)(1).

#### Waiting Lists

When a district has projected that all available funds for a federal fiscal year (FFY) in which an allocation has been provided are needed for open child care assistance cases, the district may deny services to a family who is not eligible for guaranteed child care assistance, as per 18 NYCRR section 415.2(a)(1). If the district has indicated in its CFSP that it will establish a waiting list, the family must be placed on the waiting list and sent the OCFS-LDSS-4780, *Denial of Your Application for Child Care Benefits*, or if recertifying, the OCFS-LDSS-4782, *Notice of Intent to Discontinue Child Care Benefits*. When funds become available, the district must prioritize case openings in the order specified in 18 NYCRR section 415.2(d)(1).

#### Preliminary Eligibility

Districts can opt in their CFSP to provide child care assistance during the eligibility determination period for families in need of child care services. If the family is found eligible, NYSCCBG funds can be used to pay for child care services provided prior to approval of the application and can be backdated to the date the application was received. If the family is found ineligible, NYSCCBG funds cannot be used for child care services provided during the eligibility determination period, and payment must be made using local funds.

#### Supplemental Security Income

18 NYCRR sections 404.5(b)(5) and 404.5(b)(6) have been amended to exclude Supplemental Security Income (SSI), including state supplemental income, received by any minor children in the child care services unit, regardless of the designated payee. This amendment will allow income eligibility calculations to better align with those of other programs for adjunctive eligibility.

#### Adjunctive Financial Eligibility

18 NYCRR section 404.5(e) has been added to authorize adjunctive financial eligibility, also referred to as fast-track eligibility. A child care services unit is deemed financially eligible for child care assistance for cases funded under the NYSCCBG or Title XX of the Federal Social Security Act if the unit has been determined eligible for the Supplemental Nutrition Assistance Program (SNAP) and/or the Home Energy Assistance Program (HEAP), within six months of the child care assistance application. Districts must presume such child care services units meet the income and resource limits as set forth pursuant to 18 NYCRR section 404.5(d)(1) and 18 NYCRR section 415.2(a), without further investigation or verification. Families must still complete a child care assistance application and provide districts with their monthly gross income in order to determine their family share. The family share determination is based on the monthly gross income provided by the parent or caretaker on the application for child care assistance. Districts may use the gross monthly income provided on the application and must not require further documentation for the purposes of financial eligibility determination. Such families will be deemed

financially eligible for child care assistance provided the family income does not exceed 85% of the SMI. All other eligibility requirements apply to the household as specified in 18 NYCRR section 415.2(a). Families determined eligible for child care assistance under adjunctive eligibility remain responsible for reporting changes and providing required documentation as set forth in 18 NYCRR section 415.3(g). At the time of redetermination both financial and programmatic eligibility must be determined if the family has not been determined eligible for an associated service within the preceding six months.

OCFS will issue further guidance when additional programs become eligible for adjunctive financial eligibility.

#### Program Closures

To ensure equality across the state, districts no longer have the option to elect whether program closures will be paid, or to select the number of program closures paid to eligible providers per year. All districts are required to pay up to 20 program closures per licensed, registered, permitted (in New York City), or legally exempt group program per state fiscal year if the closure is due to an allowable reason as defined in 18 NYCRR section 415.6(c). Regulatory amendments have been made to reflect this change.

#### Provider Payments

Regulatory changes were made to increase program integrity measures. Such amendments were made to ensure that providers who are not in compliance with applicable regulations may not receive payments for child care assistance. A district may disallow payment when a provider is determined ineligible to receive child care assistance payment(s) after an administrative action, as set forth in 18 NYCRR section 415.4(h). Additionally, when a final determination has been made that a provider has submitted false claims, the district may disqualify the provider from receiving payment and/or require a repayment plan to recoup the overpayment.

#### Title XX

A district must indicate in its CFSP if it opts to use Title XX funds to provide child care assistance. For districts that elect to use Title XX funds to provide child care assistance, the income eligibility threshold for all cases funded under Title XX of the Federal Social Security Act will be 85% of the SMI. Districts that opt in their CFSP to use Title XX funds for child care assistance will no longer be able to choose income eligibility levels dependent upon family size. Districts will still have the ability to select eligibility criteria but will no longer have the option to establish priorities or set-asides. Districts that utilize Title XX funds for protective and preventive cases must do so without regard to income.

### **IV. Required Action**

Each district must make any necessary system updates, including to the Welfare Management System (WMS) and the Child Care Time and Attendance (CCTA) system to reflect the changes contained herein.

#### **Changes Implemented as a Result of the Enacted Budget**

##### State Median Income

Districts must open all eligible cases with family income at or below 85% of the SMI, if the district has funds available. OCFS encourages districts to review any cases that were denied due to excess income between April 1, 2023, and October 1, 2023; contact any applicants who may be deemed eligible under the new income eligibility levels; and encourage them to reapply. Each district must project expenditures to verify that there is adequate funding to serve families determined eligible for child care assistance for the entire eligibility period.

### Family Share

All districts must ensure that necessary system updates have been made to set the family share at 1% of the family income above the SIS for those families who are required to pay a family share. After system updates have been completed, districts must send appropriate notices to affected families and providers to notify them of the new family share percentage. Districts must provide adequate notice by sending the OCFS-LDSS-4781, *Notice of Intent to Change Child Care Benefits and Family Share Payments*, or an approved local equivalent.

### Absences

All districts must ensure that system updates have been made to allow payment of up to 80 temporary absences per child, per provider, per state fiscal year. All licensed, registered, permitted (in New York City), and enrolled legally exempt providers are eligible for payment. The child must be enrolled with the provider claiming reimbursement in order for the provider to receive payment. There is no longer the option to limit absences by modality or contract status. If a district allowed 80 absences in the district's CFSP prior to October 1, 2023, and a provider was already reimbursed for 80 absences during the current fiscal year, no additional reimbursement for absences will be allowed for that child until the new state fiscal year begins on April 1, 2024. Reimbursement is not available for a day a child is absent from care if the provider ordinarily charges the caretaker on a daily or part-day basis and the child received child care assistance from a different provider on the same day. Reimbursement is also not available when a child separates from care with a provider.

When a district determines that an extenuating circumstance exists and there is a need for more than 80 absences, the district must submit a waiver request to OCFS as outlined in 18 NYCRR section 415.10. Upon approval, OCFS will work with the district to make necessary system changes to allow for the reimbursement of the additional absences.

Districts must review and amend all provider contracts as necessary to ensure that the contracts reflect the mandatory 80 paid absences. If amendments to provider contracts are necessary, districts must notify providers of the maximum number of allowable paid absences through written notice within 60 days of issuance of this ADM.

### Families Served When Funds Are Available

18 NYCRR section 415.2(a)(3) has been repealed. Families formerly eligible under category three, 18 NYCRR section 415.2(a)(3), are now eligible under category two, as defined in 18 NYCRR section 415.2(a)(2). Districts no longer have the option to elect specific categories of families who will be served. After families who are guaranteed child care assistance, the following families must be served if the district has funds available:

- A family who has applied for or is receiving public assistance when such services are needed for an eligible child aged 13 or older, who has special needs or is under court supervision, for the child's parent(s) or caretaker relative(s) to participate in required activities for TA.
- A family receiving public assistance when such services are needed
  - for a child aged 13 or older, who has special needs or is under court supervision, for the child's parent(s) or caretaker relative(s) to engage in work as defined by the social services district;
  - for a parent or caretaker relative to participate in an approved activity in addition to their required work activity; or
  - for a sanctioned parent or caretaker relative to participate in unsubsidized employment and receives earned wages greater than the minimum amount required under labor law.
- A family receiving public assistance or with income up to 85% of the state median income, when child care services are needed because the child's caretaker is

- receiving services or participating in a screening or assessment to receive services for victims of domestic violence;
- participating in an approved substance abuse treatment program or is participating in a screening or assessment to determine the need for such treatment;
- in an emergency situation, including when the caretaker's absence from the home is necessary because of extenuating circumstances;
- a teenage parent attending high school or an equivalency program;
- physically or mentally incapacitated or has family duties away from home;
- attending a two-year degree granting program at a college leading to an associate degree or certificate of completion;
- attending a four-year college or university program leading to a bachelor's degree; or
- experiencing homelessness, in accordance with section 725 of Subtitle VII-B of the McKinney-Vento Act.
- A family with income up to 85% of the state median income and child care services are needed
  - for the child's caretaker(s) to be engaged in work;
  - for the child's caretaker to actively seek employment for a period of up to six months;
  - for one of the child's caretakers to be engaged in work and the child's other caretaker is physically or mentally incapacitated or has family duties away from home; or
  - for the child's caretaker to attend educational or vocational activities, including
    - a public or private educational facility providing a standard high school curriculum offered by or approved by the local school district;
    - an education program that prepares an individual to obtain a New York State high school equivalency diploma;
    - a program providing basic remedial education in the areas of reading, writing, mathematics, and oral communications for individuals functioning below the ninth month of the eighth grade level in those areas;
    - a program providing literacy training designed to help individuals improve their ability to read and write;
    - an English as a second language (ESL) instructional program for individuals whose native or primary language is other than English;
    - a training program that has a specific occupational goal and is conducted by an institution licensed or approved by the New York State Education Department other than a college or university;
    - a prevocational skills training program;
    - a demonstration project designed for vocational training or other projects approved by the New York State Department of Labor; or
  - for the child's caretaker to attend a program to train workers in an employment field that currently is or is likely to be in demand in the near future.
- A family in need of child care services without regard to income when
  - a child has been placed in foster care and is residing in the home with a certified or approved foster parent; and/or

- a family has an open child protective services case or a preventive services case with a child protective services component.

Districts must continue to open guaranteed child care cases for eligible families as defined in 18 NYCRR section 415.2(a)(1), regardless of whether the district has NYSCCBG funds available to pay for such costs. If funds are available, the district may open cases for eligible families, as provided in 18 NYCRR section 415.2(a)(2). The district must prioritize opening these cases as outlined in regulation. Federally mandated populations listed in 18 NYCRR section 415.2(d)(1)(i) must be opened first, followed by state established priorities as defined in 18 NYCRR section 415.2(d)(1)(ii). Additionally, families currently in receipt of assistance based on their designation as a local district priority as of September 30, 2023, must continue to be prioritized for child care assistance, provided such families continue to meet all other applicable eligibility requirements. If the district has funds remaining after all guaranteed cases, federal and state priorities, and cases previously authorized as local priorities have been opened, cases can then be opened for families who are not considered a priority on a first-come-first-served basis. All cases must remain open for the duration of the authorized eligibility period unless one of the discontinuance criteria is met as defined in 18 NYCRR section 415.2(d)(4).

- Federal Priorities

In an effort to promote equity in eligibility determinations across the state, the federal priorities must be opened in the following order:

1. Families experiencing homelessness.
2. Families with very low income.
3. Families who have a child(ren) with special needs.

Very low income will remain at an income level up to 300% of the SIS, provided that the family income does not exceed 85% of the SMI.

- State Priorities

If the district has funds available after opening guaranteed cases and federal priority populations as listed above, state-mandated priorities must be opened in the following order, subject to any families in receipt of assistance as a local district priority as of September 30, 2023:

1. Families with income between 300% of the SIS and up to 85% of the SMI when child care services are needed for the child's caretaker(s) to be engaged in work.
2. Families in which the child in need of child care assistance has an open child protective case or a preventive services case with a child protective services component.
3. Families in need of child care services for a child who has been placed in foster care and is residing in the home with a certified or approved foster parent.
4. Families with a teenage parent who is in need of child care assistance to attend high school or an equivalency program.
5. Families in which the child's caretaker is receiving services for victims of domestic violence or is participating in a screening or assessment to receive services for victims of domestic violence.
6. Families in which the child's caretaker is participating in an approved substance abuse treatment program or is participating in a screening or assessment to determine the need for substance abuse treatment.

### Waiting Lists

Pursuant to 18 NYCRR section 415.2(d)(3)(i), when a district has projected that it has insufficient funds available to open or recertify child care assistance cases, the district can deny services to a family who is not eligible for a child care guarantee and may also place the family on a waiting list if the district



opted to maintain a waiting list in its CFSP. The district must continue to accept all applications for child care assistance and determine eligibility prior to sending a notice of denial or discontinuance due to lack of funding and, if applicable, placing the family on a waiting list.

If the district has indicated in its CFSP that it will not maintain a waiting list, the district must notify the family that the application has been denied due to insufficient funding for the FFY in which an allocation has been provided by sending the OCFS-LDSS-4780, *Denial of Your Application for Child Care Benefits*, and checking the applicable box on the notice. When funding becomes available, the district is encouraged to inform previously denied families that they may reapply.

If the district has opted in its CFSP to maintain a waiting list, the district must notify the family their application has been denied due to insufficient funding, and that the family has been placed on the waiting list, as applicable. The district must send the OCFS-LDSS-4780, *Denial of Your Application for Child Care Benefits*, for initial determinations, or the OCFS-LDSS-4782, *Notice of Intent to Discontinue Child Care Benefits*, for redeterminations, and check the applicable box on the notice. Districts must issue such notice within 15 days of the eligibility determination.

Separate waiting lists can be maintained for cases funded under the NYSCCBG and those funded under Title XX of the Federal Social Security Act, for districts that opt to use Title XX funds for child care assistance. It is the responsibility of the district to track its waiting list(s). For cases funded under the NYSCCBG, new cases and recertifications must be prioritized and opened in accordance with 18 NYCRR section 415.2(d)(1) when funds become available. After the federal and state priorities, districts must open cases on a first-come-first-served basis. If the eligibility determination was completed over 30 days prior to reaching the family on the waiting list, the district must verify that the information provided on the application is still correct.

The eligibility period begins on the date the family is authorized for child care assistance. A family that has been authorized for child care assistance must continue to receive such services for the duration of the eligibility period regardless of if the district has funds remaining, unless one of the reasons for discontinuance is met as specified in 18 NYCRR section 415.2(d)(4).

#### Preliminary Eligibility

Districts may opt in their CFSP to provide child care assistance during the eligibility determination period for families in need of child care services. Upon approval of the application, NYSCCBG funds can be used to reimburse the amount spent on child care services during the period prior to approval of the application. If the family is found ineligible, NYSCCBG funds cannot be used, and the district must use local funds for the preliminary eligibility period.

The family must complete an application, provide documentation of family income and work schedule, if applicable, and proof of satisfactory immigration status for the child(ren) in need of child care assistance.

Districts that choose to provide preliminary child care assistance must amend their CFSP to elect this option by submitting an amendment request to OCFS.

### **Other Changes to the Child Care Assistance Program**

#### Supplemental Security Income

Districts must no longer include the Supplemental Security Income (SSI), including state supplemental income, received by any minor children in the child care services unit when determining financial eligibility for child care assistance.

#### Adjunctive Financial Eligibility

When a family in receipt of assistance through SNAP and/or HEAP requests child care assistance, the district must not require any documentation to verify financial eligibility if the eligibility determination is completed within six months of the eligibility determination for the associated service(s). Such documentation includes, but is not limited to, paystubs, letters from the applicant's employer, or tax

returns. However, the parent or caretaker must provide their gross annual income in order for the district to determine the family share. Information provided on the application will be considered sufficient to determine that the family is financially eligible and will be used to calculate the family share. In accordance with 18 NYCRR section 404.1(c)(9), the applicants must complete either the OCFS-6025, *Application for Child Care Assistance*, or the LDSS-2921, *New York State Application for Certain Benefits and Services*, to apply for child care assistance. Districts must determine whether all other eligibility criteria are met for all cases, including, but not limited to, verification of the members of the child care services unit, satisfactory immigration status for the child(ren) in need of child care assistance, and the reason for care.

Districts must verify that the family is in receipt of SNAP and/or HEAP prior to approval of the application for child care assistance. Whenever possible, verification of enrollment in the associated program may be obtained electronically from WMS or other department systems. When it is not possible to obtain information from department systems, the applicant may provide the district with documentation that demonstrates approval for such program and must attest that they are still in receipt of the associated service(s).

Districts must verify in WMS that the members of the household match those who comprise the child care services unit. Should WMS case information indicate that the household members included in the associated case do not match the family information provided, the district must request information from the family to determine the members of the child care services unit.

Families remain responsible for reporting changes during the application process and the eligibility period.

If the initial determination for the SNAP and/or HEAP was completed over six months prior to the request for child care assistance, adjunctive eligibility cannot be used, and the family must complete the application process.

#### Program Closures

All districts must ensure that system updates have been made to allow for reimbursement of up to 20 program closures per licensed, registered, permitted (in New York City), or legally exempt group program per year. The program closure must be due to a state, federal, religious or cultural holiday, or due to extenuating circumstances beyond the provider's control, such as a disaster, severe weather, or an emergency, provided that the closure is not a result of a regulatory violation. Each district is responsible to determine what constitutes a cultural holiday or an emergency, and must determine if the program closure is reimbursable, depending upon the circumstances surrounding the closure. Reimbursement for program closures can only be made for children who are scheduled to be present on the day of the closure. Reimbursement is not available for a day the program is closed if the provider ordinarily charges the caretaker on a daily or part-time basis and the child for whom reimbursement is requested receives child care assistance from a different provider on the same day. Reimbursement is also not available when a child separates from care with a provider.

Districts must review and amend all provider contracts as necessary to ensure that the contracts reflect allowance for reimbursement of up to 20 program closure days. If amendments to provider contracts are necessary, districts must notify providers of the maximum number of allowable closures through written notice within 60 days of issuance of this ADM.

#### Title XX

For cases funded under Title XX of the federal Social Security Act, the income threshold has been set at 85% of the SMI. Any district that elected to use Title XX funds for child care assistance must review cases that were authorized under the previous eligibility levels to determine that the family income is at or below 85% of the SMI. Cases with family income in excess of 85% of the SMI must be closed because the family will no longer be financially eligible for child care assistance.

Each district must review their CFSP election to use Title XX funds for child care assistance. If a district decides to change its position on the use of such funds, the district must submit an amendment request in writing to OCFS.

A child care assistance case determined eligible for protective or preventive reasons must be authorized without regard to income; therefore, the income eligibility threshold does not apply to such cases. Districts that only use Title XX funds for protective and/or preventive cases are not required to amend their CFSP.

### **Redetermination of Eligibility**

Districts must redetermine a recipient's continued eligibility only at recertification; when case factors indicate that a redetermination could be beneficial to the family by increasing the amount of child care assistance; when case factors indicate that a change has occurred which might bring the family income over the 85% of the SMI eligibility threshold; or for cases funded under the NYSCCBG, be considered a non-temporary break in work, education or training activity.

For cases funded under the NYSCCBG, districts must not reduce the eligibility period when redeterminations are made during the authorized period unless one of the reasons for discontinuance is met. Districts must continue any increase in the amount of child care assistance through the remainder of the current 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 85% of the SMI, 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 the SMI, the district must close the case because the family is no longer eligible to receive child care assistance funded under the NYSCCBG.

### **Child and Family Services Plan**

To expedite CFSP amendment submission and approval, OCFS has streamlined the amendment process. A blanket notice of amendment will be posted on the OCFS website to cover the eligibility increase to 85% of the SMI for cases funded under the NYSCCBG; the establishment of a statewide family share of 1%; payment of up to 80 absences per child, per provider, per state fiscal year across the state; statewide payment of up to 20 program closures per provider per state fiscal year; the removal of district options to elect types of eligible families; removal of all district-imposed limitations for child care assistance provided under the New York State Child Care Block Grant Program (NYSCCBGP); and removal of local priorities and set-asides. The notice of amendment will state the removal of these options in the CFSP.

OCFS will post the notice of the amendment on its website at:

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

For cases funded under Title XX of the federal Social Security Act, districts that currently opt to use Title XX funds to provide child care assistance must submit an amendment request to OCFS. The amendment request must include the new income eligibility threshold of 85% of the SMI in addition to outlining any additional requested changes to the currently approved child care plan. This amendment request must be submitted to OCFS no later than October 31, 2023. Amendments to *Part Two: Title XX Child Care* of currently approved plans will be effective October 1, 2023.

In addition, each district may 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, if any. Written requests must be submitted to OCFS at:

[ocfs.sm.districtsupport.subsidy@ocfs.ny.gov](mailto:ocfs.sm.districtsupport.subsidy@ocfs.ny.gov)

## V. Client Notices

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

- OCFS-4773, *Child Care Eligibility Redetermination Coming Due* (Rev. 10/2023)
- OCFS-LDSS-4779, *Approval of Your Application for Child Care Benefits* (Rev. 10/2023)
- OCFS-LDSS-4780, *Denial of Your Application for Child Care Benefits* (Rev. 10/2023)
- OCFS-LDSS-4781, *Notice of Intent to Change Child Care Benefits and Family Share Payments* (Rev. 10/2023)
- OCFS-LDSS-4782, *Notice of Intent to Discontinue Child Care Benefits* (Rev. 10/2023)
- OCFS-LDSS-4784, *Approval of Your Redetermination for Child Care Benefits* (Rev. 10/2023)
- OCFS-LDSS-4785, *Approval of Your Transitional Child Care Benefits* (Rev. 10/2023)
- OCFS-LDSS-4788, *Notice of Evaluation of Child Care Benefits – No Change* (Rev. 10/2023)

Districts must begin using all revised client notices immediately.

## VI. Systems Implications

### Welfare Management System

WMS has been updated to reflect the eligibility levels for child care services effective October 1, 2023. For cases funded under the NYSCCBG, when determining initial eligibility and at redetermination, income must be at or below 85% of the SMI. During case update transactions used to process changes during the eligibility period, WMS will compare the income to 85% of the SMI.

Districts that previously had a family share percentage greater than 1% must update the WMS matrix to reflect the new 1% family share for all applicable families effective October 1, 2023. After updating the family share percentage in WMS, districts must submit the change for state review through the WMS system.

OCFS issued a General Information System (GIS) message, #23-005, *Daycare Income Eligibility Update & Family Share Changes*, on September 26, 2023, to provide guidance and instructions to districts related to updating the family share in the WMS matrix.

### Child Care Time and Attendance

For districts that use CCTA to process child care assistance payments, some modifications to CCTA have been made to support these regulatory changes. In other instances, guidance is provided for using the system as is to process cases with the required regulatory changes. Additional guidance will be made available after the release of this ADM through emails with CCTA district users and by contacting the KinderSystems Support Desk.

Updated SMI levels for eligibility determinations during the eligibility period have been added to the system. Further, when opening a family's record in CCTA and navigating to the Family Eligibility page, the chart will show the calculation of 85% of the SMI for the family size of that case.

Absences have been set at 80 per child, per provider, per state fiscal year for all districts. Districts will no longer have the ability to limit absences in the system based on modality or contract status and should not attempt to do so. Upon approval, district requests for waivers for additional paid absences due to extenuating circumstances will be handled on a case-by-case basis.

Program closures will be set at 20 per eligible provider per state fiscal year for all districts. Districts will be unable to adjust the number of closures in CCTA and should not attempt to do so.

When a provider receives a weekly rate for a child, if the child is absent from care or the program is closed, absences or program closures will be reimbursed up to the weekly rate. However, if a child is scheduled to attend the program and is absent, the absence will be counted against the allowable 80 absences even if the child has attended the program the required number of hours to reach the weekly rate. For example, if a child is scheduled to attend the program full-time Monday through Friday and is absent on Friday but has attended more than 30 hours by Thursday, the provider will be paid a weekly rate. The absence on Friday will count as an absence against the 80 allowable absences, but the provider will not receive an additional daily rate for the absence since the child had been in attendance enough hours to meet the weekly rate.

CCTA has been updated to reflect the changes made to the OCFS-4773, *Child Care Eligibility Redetermination Coming Due*; the OCFS-LDSS-4779, *Approval of Your Application for Child Care Benefits*; the OCFS-LDSS-4781, *Notice of Intent to Change Child Care Benefits and Family Share Payments*; the OCFS-LDSS-4784, *Approval of Your Redetermination for Child Care Benefits*; the OCFS-LDSS-4785, *Approval of Your Transitional Child Care Benefits*; and the OCFS-LDSS-4788, *Notice of Evaluation of Child Care Benefits – No Change*.

Additional CCTA system changes are in progress for the OCFS-LDSS-4780, *Denial of Your Application for Child Care Benefits*, and the OCFS-LDSS-4782, *Notice of Intent to Discontinue Child Care Benefits*, to reflect the changes to eligibility and to provide notice to families who are placed on the waiting list. Districts will be notified when the forms are available in CCTA. Until system changes have been implemented, these revised forms can be found on the OCFS website.

## VII. Additional Information

The notice of emergency and proposed rulemaking went into effect on October 1, 2023. The public comment period will be open for 60 days after the proposed rules have been published in the *State Register*. 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](mailto: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 (OCFS-4773, OCFS-LDSS-4779, OCFS-LDSS-4780, OCFS-LDSS-4781, OCFS-LDSS-4782, OCFS-LDSS-4784, OCFS-LDSS-4785, and OCFS-LDSS-4788) 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 beginning October 1, 2023.

***/s/ Nora K. Yates***

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**Issued by:**

Name: Nora K. Yates

Title: Deputy Commissioner

Division/Office: Division of Child Care Services