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| LOCAL COMMISSIONERS MEMORANDUM |
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DSS-4037EL (Rev.10/99)

Transmittal No: 99 OCFS LCM-29

Date: November 23, 1999

Division: Development
and Prevention
Services

TO: Local District Commissioners

SUBJECT: Child Care: Health and Safety Requirements for
Legally-Exempt Family Child Care, Legally-Exempt In-Home and
Legally-Exempt Group Child Care Providers

ATTACHMENTS:

Attachment A - Enrollment of Legally-Exempt Family Child
Care Providers and Legally-Exempt In-Home Providers

Attachment B - Guide to Reviewing Enrollment of Legally-Exempt
Family Child Care Providers and Legally-Exempt In-Home Providers

Attachment C - Enrollment of Legally-Exempt Group Child
Care Program

Attachment D - Guide to Reviewing Enrollment of Legally-
Exempt Group Child Care Program

Attachment E - Evaluating Legally-Exempt Providers with
Criminal Conviction Records

Attachment F - Factors to Consider in Assessing an
Individual's Risk to Children

Attachment G - Parental Responsibilities When Employing
A Legally-Exempt In-Home Child Care Provider

Attachment H - Parental Acknowledgment

Attachment I - Permitted Working Hours for Minors Under
18 Years of Age

Attachment J - Model Cover Letters for Distribution of New
Enrollment Forms

Date November 23, 1999

Trans. No. 99 OCFS LCM-29

Page No. 2

Attachment K - Model Letter and Resource Materials That
Must be Distributed to All Enrolled Providers (Some
documents not available on line)

Attachment L - List of Child and Adult Care Food Program
(CACFP) Sponsors (Not available on-line)

PURPOSE

The purpose of this memorandum is to inform social services districts of changes to child care subsidy regulations which establish basic health and safety standards for legally-exempt child care providers caring for children subsidized under the New York State Child Care Block Grant. This memorandum also details the requirements for social services districts to implement these new standards. It is important to note that social services districts may propose standards in addition to the new State standards, if they so choose, through amendments to their Consolidated Services Plan.

This LCM replaces 95 LCM-44 dated April 24, 1995, 93 LCM-3 dated January 21, 1993, and 92 INF-29, dated April 13, 1992

SUGGESTED DISTRIBUTION

This memorandum and attachments should be sent to the Director of Services, Director of Temporary Assistance, and the Child Care Unit supervisor.

BACKGROUND

The federal Child Care and Development Block Grant Act, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), requires states to establish basic health and safety requirements for all providers of subsidized child care services. The State Welfare Reform Act specifically requires the Office of Children and Family Services to establish minimum health and safety requirements for legally-exempt child care providers caring for subsidized children.

In addition to consulting with its local district work group, the Office held two focus group meetings with representatives of social services districts, child care resource and referral agencies, child care providers and other interested parties to develop the health and safety standards for legally-exempt providers. The Office also contracted with Cornell University to convene consultation groups in five different communities composed of legally-exempt child care providers, child care professionals and parents to evaluate the needs of the providers and the children in their care. The group's comments were used to develop materials and strategies to support legally-exempt child care providers to offer programs that provide safe and developmentally appropriate care. This information also helped to shape the health and safety standards.

PROGRAM IMPLICATIONS

Effective immediately, social services districts must apply the new basic health and safety requirements described in this release as part of the enrollment of providers of legally-exempt family child care, legally-exempt in-home child care and legally-exempt group child care for payment for child care services to families funded under the New York State Child Care Block Grant.

Providers of legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care currently enrolled with a social services district must comply with the basic health and safety requirements by November 29, 1999 in order to maintain their enrollment under the New York State Child Care Block Grant.

DEFINITIONS OF TERMS USED IN THIS RELEASE

"Parent" includes the child's parent, legal guardian, caretaker relative or any other person in loco parentis to the child.

"Person in Loco Parentis" means the child's guardian or caretaker relative or any other person with whom a child lives who has assumed responsibility for the day-to-day care and custody of the child.

"Family Share" means the amount the child's family is required to pay towards the cost of child care. This term was formerly referred to as the "parent fee".

"Legally-exempt Child Care Provider" includes legally-exempt family child care (formerly known as informal care provided outside the child's home), legally-exempt in-home child care and legally-exempt group child care as defined below.

Legally-exempt family child care means:

- 1) child care for one or two children provided outside the child's own home in a residence by a provider 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 New York State Labor Law, and who is chosen and whose services are monitored by the child's parent;
- 2) child care for more than two children provided outside the child's own home in a residence by a provider 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 New York State Labor Law, who provides such care for less than three hours per day and who is chosen and whose services are monitored by the child's parent; or
- 3) child care provided outside the child's own home by a relative within the third degree of consanguinity of the parent(s) or step-parent(s) of the child or children except where such relative is a person legally responsible for, or the parent relative of, such child or children. Relatives within the third degree of consanguinity of the parent(s) or step-parent(s) of the child include: the grandparents of the child; the great-grandparents of the child; the great-great-grandparents of the child; the aunts and uncles of the child, including the spouses of the aunts and uncles; the great-aunts and great-uncles of the child, including the spouses of the great-aunts and great-uncles; the siblings of the child; and the first cousins of the child, including the spouses of the first cousins.

Legally-exempt in-home child care means:

child care furnished in the child's own home by a provider who is chosen and monitored by the child's parent 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 New York State Labor Law; provided, however, that the child's parent must provide the provider with all employment benefits required by State and/or federal law and must pay the provider at least the minimum wage set forth in Article 19 of the New York State Labor Law.

Legally-exempt group child care means:

child care provided by those providers, other than providers of legally-exempt family child care or in-home child care, which are not required to be licensed by or registered with the Office or licensed by the City of New York but which meet all applicable State or local requirements for such child care programs. Providers of legally-exempt group child care include, but are not limited to:

- 1) pre-kindergarten and nursery school programs for children three years of age or older, and programs for school-age children conducted during non-school hours, operated by public school districts or by private schools or academies which provide 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 programs are located on the premises or campus where the elementary or secondary education is provided;
- 2) nursery schools and programs for pre-school-aged children operated by non-profit agencies or organizations or private proprietary agencies which provide services for three or less hours per day;
- 3) summer day camps operated by non-profit agencies or organizations or private proprietary agencies in accordance with Subpart 7-2 of the State Sanitary Code;
- 4) day care centers, family day care homes and other child care programs located on federal property which are operated in compliance with the applicable federal laws and regulations for such child care programs; and
- 5) day care centers, family day care homes and other child care programs located on tribal property which are operated in compliance with the applicable tribal laws and regulations for such child care programs.

District Responsibilities

Each social services district must establish procedures for enrolling for payment purposes, under the New York State Child Care Block Grant subsidy program, providers of legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care. These enrollment procedures must:

- o collect information about the provider that is necessary to make payment and to furnish information to the provider or recipient;
- o facilitate appropriate and prompt payments; and
- o permit the provider to enroll with the district after selection by the recipient.

Before authorizing payment to a provider of legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care, the district must review all information obtained from the provider and determine whether the following criteria are met:

- o the provider is exempt from the State's child care licensing and registration requirements;
- o information regarding criminal convictions does not eliminate the provider from being eligible for payment under the New York State Child Care Block Grant; and
- o all applicable health and safety requirements are met.

If the district determines that the provider meets the above criteria, then the district must enroll the provider with the district for the purpose of providing child care services to eligible families under the New York State Child Care Block Grant. A provider of legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care must be enrolled with the social services district before payment is made for child care services provided by that provider.

If the district determines the provider is not exempt from child care licensing or registration requirements, the district must notify the Regional Office of the Bureau of Early Childhood Services or the appropriate licensing or registration agency in the county.

Enrollment information must be updated and reexamined at recertification and at any time when a change in circumstances warrants a review.

Social services districts must inform parents that they may select a provider who has not yet enrolled with the district. However, they must also be informed that, if during the process of enrollment the district determines that the provider will not be eligible for payment, the parent will be solely responsible for any child care costs incurred with that provider.

Each social services district must maintain a current list of legally-exempt child care providers enrolled within the district. This list must contain the name and address and telephone number (if any) of each provider.

Districts must provide newly enrolled legally-exempt providers with the informational and resource materials provided in Attachment K. Additionally, if enrolled legally-exempt providers indicate either on the enrollment form or in some other manner that they may be interested about the Child and Adult Care Food Program (CACFP), the district must provide the information about the CACFP sponsor included in Attachment L.

BASIC HEALTH AND SAFETY REQUIREMENTS

Criminal Background

At the time of enrollment, the provider, as well as each employee and volunteer associated with the provider (other than the parent of a child in the program) must furnish a sworn statement indicating whether, to the best of his or her knowledge, he or she has been convicted of a misdemeanor or a felony in New York State or any other jurisdiction. This requirement also applies to providers of legally-exempt family child care and each household member age 18 years or older. In the case of legally-exempt group child care providers, the director/operator must furnish a statement which attests to the criminal convictions of the director/operator and all employe and volunteers. When the individual indicates that he or she has been convicted of a crime, that individual must provide the parent and the social services district with true and accurate information, in writing, about the crime to enable the district and family to evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child. Such information must include the nature of the crime, the length of time which has elapsed since the conviction, and the penalties imposed as a result of the conviction.

A person convicted of a felony or misdemeanor against children or a legally-exempt family child care provider whose household includes an individual who is 18 years of age or older and has been convicted of such a crime can not be enrolled by the district as a child care provider. A legally-exempt child care program which employs an individual or has a volunteer convicted of a felony against children or misdemeanor against children can not be enrolled by the district as an eligible child care provider.

The following crimes are considered by the Office of Children and Family Services to involve an unreasonable risk to the safety or welfare of the child(ren). A criminal conviction for any of the crimes identified on the following list creates a strong presumption against enrolling the legally-exempt child care program in question. This presumption could then be overcome only upon showing by the individual involved of some extraordinary circumstance justifying enrollment. These crimes are:

- o homicide and related offenses;
- o sex offenses, including sexual misconduct, rape, sodomy, and sexual abuse;
- o kidnapping and related offenses;
- o criminal possession of a controlled substance as a felony;
- o criminal sale of a controlled substance;

- o criminal sale of marijuana as a felony;
- o promoting prostitution as a felony;
- o obscenity offenses;
- o disseminating indecent material to minors;
- o incest;
- o abandonment of a child;
- o endangering the welfare of a child;
- o promoting sexual performance by a child; and,
- o criminal possession of a weapon as a felony.

The district must determine whether to enroll a provider who or whose employee, volunteer or household member has been convicted of other felony or misdemeanor offenses based on guidelines issued by the Office for evaluating applicants with criminal conviction records. These guidelines are provided in Attachment E: Evaluating Legally-Exempt Providers with Criminal Conviction Records.

For all providers with criminal conviction records that the district determines can be enrolled, the parent who still wishes to use such provider, must sign a statement acknowledging that the parent is fully informed of the criminal convictions record and has made the decision to place their child in the provider's care. A model acknowledgment statement is provided in Attachment H.

If the district discovers subsequent to the enrollment of the provider that the provider or an employee or volunteer or in the case of legally-exempt family child care, household member 18 years or older, provided false or misleading information concerning his or her criminal conviction record, the district must immediately terminate payment for child care services to the provider and may subject the provider to any appropriate legal action. The district, at its discretion, may re-enroll that provider if the true and accurate information about the individual's criminal record does not disqualify the provider from being enrolled and if the parents have indicated their wish to allow their children to remain in the care of that provider by signing the parent acknowledgment form (Attachment H).

Indicated Report of Child Abuse and Maltreatment

At the time of enrollment, legally-exempt providers, as well as each employee and volunteer associated with the provider, must furnish a sworn statement indicating whether, to the best of his or her knowledge, he or she has been the subject of an indicated report of child abuse or maltreatment in New York State or any other jurisdiction. Additionally, for providers of legally-exempt family child care, each household member of the provider's household age 18 years or older must furnish such a sworn statement. In the case of a legally-exempt group child care provider, the director/operator must furnish a statement which attests to any indicated reports where either the director/operator or any of the program's employees or volunteers are named as subjects. If the individual has been the subject of an indicated report of child abuse or maltreatment, that individual must provide true and accurate information, in writing, concerning the indicated incident(s), the date of the indication and any other relevant information to the parent and the district.

If the provider, employee, volunteer or household member acknowledges that he or she has been the subject of an indicated report of child abuse or maltreatment, the social services district must offer the parent the opportunity to select another provider. If the parent does not want to select another provider, the district must require the parent to acknowledge, in writing, that the parent understands the information provided regarding the indication of child abuse or maltreatment and wants that provider to care for their child. Attachment H provides a model form that districts can use for the parent acknowledgment. If the provider meets all other applicable requirements, then the district must enroll the provider. However, if the district determines that the parent's placement of the child with that provider would jeopardize the child's health, safety, or well-being, the district must inform the parent that a report will be made to the State Central Register of Child Abuse and Maltreatment. Factors to consider in assessing the individual's risk to children are provided in Attachment F. The district must then make that report if the parent places the child in the care of that provider.

If the district has direct knowledge that information provided by a provider, employee, volunteer or household member is inaccurate, the district must not enroll the provider and no payment may be made for child care services provided by the provider until such time as accurate information is provided.

If the district discovers subsequent to the enrollment of the provider that the provider or any employee or volunteer (or, in the case of a legally-exempt family child care provider, any household member 18 or older) gave false or misleading information concerning his or her being a subject of an indicated report of child abuse or maltreatment, the district must immediately terminate payment for child care services to the provider and may subject the provider to any appropriate legal action. If the provider provides the parent and the district with true and accurate information, in writing, concerning the indicated incident(s), the district must ask the parent(s) whether they wish to continue to place their children in the care of that provider. If the parents continue to place the children in the care of that provider, the parents must provide an acknowledgment, in writing, that the parent understands the information provided regarding the indication of child abuse or maltreatment and wants that provider to care for their child. A model acknowledgment form is provided as Attachment H. Additionally, the district should determine if the parent's placement of the child with that provider would jeopardize the child's health, safety or well-being. Factors to consider in assessing the individual's risk to children are provided in Attachment F. If the district determines that the child may be at risk, the district must inform the parent that a report will be made to the State Central Register. The district must then make that report if the parent places the child in the care of the provider.

Physical Plant, Health, Safety, and Program Requirements

In order to be enrolled with a social services district to provide child care services under the New York State Child Care Block Grant, the provider of legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care and the parent of the child in need of child care must attest, in writing, that the provider meets and has agreed to continue to meet basic health and safety requirements established by the Office. If the provider of legally-exempt group child care attests and

certifies in writing that the provider is legally operating under the auspices of another Federal, State or local government agency, then the provider does not have to attest that the basic health and safety requirements of the Office are met.

The basic health and safety requirements are listed in the Home Safety Checklist included in the enrollment form in Attachment A and in the Facility Safety Checklist included in the enrollment form in Attachment C. The parent and provider must attest that all items in the Checklist are being met and will continue to be met before the provider can be enrolled. If the district learns that an enrolled provider may not be in compliance with one of the items in the Checklist, the parent and provider must attest that the provider has taken corrective action and is now in compliance. If this attestation is not provided, the provider will not be eligible for payments until such time as the corrective action is taken. The district may, at its discretion, take other steps to verify that the provider is in compliance or that corrective action has been or will be taken. If the provider is not in compliance, the district must suspend or terminate payment until such time as corrective action has taken place. The decision to suspend versus terminate payment should be based on the nature of the non-compliance and the risk to the health and safety of the child in care.

ENROLLMENT FORM

The new basic health and safety requirements and other information needed to enroll a legally-exempt provider are included in Attachment A: Enrollment of Legally Exempt Family Child Care and Legally Exempt In-Home Child Care Form; instructions for districts in Attachment B: Guide to Reviewing Enrollment of Legally-Exempt Family Child Care and In-Home Child Care; and in Attachment C: Enrollment of Legally-Exempt Group Child Care Program and Attachment D: Guide to Reviewing Enrollment of Legally-Exempt Group Child Care Program. The enrollment forms consist of a yes and no formatted list of attestations that the provider and parent must complete. The enrollment form includes a home safety checklist regarding the physical plant of the home (or program) and policies and practices for caring for children. Also included is a certification that all members age 18 years and older in the legally-exempt family child care provider's household must sign. This certification relates to any history of criminal convictions or indications of child abuse or maltreatment.

Parents must co-sign several sections of the enrollment form and complete the home safety checklist with the provider. They must also sign a parent certification which states that they understand their responsibility regarding selection and monitoring of the provider and their agreement to pay any required family share. This provides further reinforcement of the parent's role in the selection and monitoring of these providers. Requiring parents to complete parts of the enrollment form with the provider allows parents to have a larger role in the monitoring of the quality of care being provided to their child.

ADDITIONAL DISTRICT RESPONSIBILITIES WHEN IN-HOME PROVIDERS ARE USED

Social services districts must notify parents of the parent's responsibility to pay minimum wage and benefits to legally-exempt in-home providers. The benefits which must be provided to an in-home child care provider vary. Attachment G: Responsibilities for Parents Who Choose to Employ a Legally-Exempt In-home Child Care Provider was developed in response to requests from districts for a handout summarizing parental responsibilities regarding the payment of minimum wage and the provision of benefits to an in-home child care provider. Districts must distribute this attachment to parents who indicate a desire to employ an in-home child care provider. This attachment replaces 92 INF-29.

When calculating the cost of care for a legally-exempt in-home child care provider, additional costs which the parent will accrue in order to provide benefits required by State and Federal law should be added to the rate charged by the child care provider. Payment should then be made to the parent, allowing the parent to pay the legally-exempt in-home provider the rate charged and to apply the difference, if any, to the cost of applicable benefits. Social services districts must require parents to submit copies of tax report forms and/or insurance benefits when the cost of such benefits has been included in the calculation of cost of care and payment to the parent. When the total cost of care, including such benefits, exceeds the local market rate, it is the responsibility of the parent to pay the difference between the applicable market rate and the cost of care.

Social services districts are not responsible for monitoring whether parents provide applicable benefits to legally-exempt in-home providers. Any determination regarding a provider's status as a legal or an illegal provider must be based on the provider's compliance with the applicable health and safety standards, not whether the parent is complying with Federal and State law or regulations regarding wages and benefits.

CONTACT PERSON

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