



Office of Children and Family Services

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Local Commissioners Memorandum

Transmittal:	17-OCFS-LCM-05
To:	Local District Commissioners Director of Services Child Care Unit Supervisors Temporary Assistance Unit Supervisors
Issuing Division/Office:	Division of Child Care Services
Date:	April 28, 2017
Subject:	Child Care Services for Families Experiencing Homelessness and Differential Payment Rates
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Attachments:	None

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to inform social services districts of changes to Title 18 of the official compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR) Part 415, pursuant to the federal *Child Care and Development Block Grant Act of 2014* (42 U.S.C. 9858 et. seq.), regarding the provision of child care services funded under the New York State Child Care Block Grant (NYSCCBG) and Title XX of the federal *Social Security Act*. The changes to 18 NYCRR Part 415 include: adding families experiencing homelessness as a priority population; adding certain families experiencing homelessness to the category of eligible families when districts have funds available; exempting families experiencing homelessness from contributing to the cost of care; providing an allowable grace period for children to attend child care programs, in accordance with New York State Public Health Law; establishing a differential payment rate for child care services provided to a child experiencing homelessness; and amendments to the provisions for differential payment rates to child care providers who are accredited by a nationally recognized child care organization and/or provide

care during nontraditional hours. Additionally, this LCM informs districts about reporting requirements, effective March 1, 2017.

II. Background

The federal *Child Care and Development Block Grant Act of 2014* and recent changes to federal regulations in 45 CFR Part 98 (Child Care and Development Fund) include provisions to improve access to quality child care for children experiencing homelessness and to require reporting of the homelessness status of children receiving child care services. The federal Administration for Children and Families believes that supporting children's learning and development in safe, stable and nurturing child care environments can buffer children and families from the challenges and risks associated with homelessness.

III. Program Implications

Provision of Child Care Services to Homeless Families

18 NYCRR §415.2(a)(2)(v) is added to expand the category of families for which a social services district must provide child care services, to the extent that the district continues to have funds available under either the district's allocation from the NYSCCBG program or any local funds appropriated for such program subject to any priorities and set asides. This category now includes a family experiencing homelessness with income up to 200 percent of the State Income Standard when child care services are needed for the child's caretaker(s) to seek housing and to:

- seek employment as defined in 18 NYCRR §415.1(p);
- be engaged in work as defined in 18 NYCRR §415.1(o);
- attend educational or vocational activities as defined in 18 NYCRR §415.2(a)(3)(vii)(b) or 18 NYCRR §415.2(a)(3)(iv). Notwithstanding the potential for some of these educational or vocational training programs to allow for the eventual attainment of a bachelor's degree or like certificate of completion for a four-year college program, this regulation does not permit the renewal of such educational or vocational training program enrollment for any additional period in excess of 30 consecutive calendar months except as authorized under 18 NYCRR §415.2(a)(3)(iv), nor does it permit enrollment in more than one such program; or
- access or participate in counseling services programs.

Social services districts now have the option, when funds are available and if indicated in their Child and Family Services Plans in Appendix P for Title XX, to provide the revised provisions as outlined under 18 NYCRR §415.2(a)(2)(v) for families experiencing homelessness with incomes up to the levels established in Appendix P. Further, districts continue to have the option, to provide child care services to families experiencing homelessness under 18 NYCRR §415.2(a)(3)(iii)(b), and to families experiencing homelessness in an emergency situation of short duration under 18 NYCRR §415.2(a)(3)(iii)(c), when funds are available and if indicated in their Child and Family Services Plan in Appendix L for the NYSCCBG for families experiencing homelessness with incomes up to 200 percent of the State Income Standard and/or in Appendix P Title XX for families with incomes up to the levels established in Appendix P.

The Administration for Children and Families defines the term ‘child experiencing homelessness’ as a child who is homeless as defined in section 725 of Subtitle VII–B of the *McKinney-Vento Act* (42 U.S.C. 11434a). The *McKinney-Vento Act*, as amended by the *Every Student Succeeds Act*, defines homeless children and youths as individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of Section 103(a)(1) of the *McKinney-Vento Act* (42 U.S.C. 11302(a)(1)), and includes children and youths who are:

- sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; living in emergency or transitional shelters; or abandoned in hospitals;
- living in a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of Section 103(a)(2) of the *McKinney-Vento Act* (42 U.S.C. 11302(a)(2));
- living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- migratory children (as such term is defined in section 1309 of the *Elementary and Secondary Education Act of 1965*, 20 U.S.C. 6399) who qualify as homeless because the children are living in circumstances described above.

The category of families to which social services districts must give priority is expanded by 18 NYCRR §415.2(d)(1)(i)(c) to include families experiencing homelessness. Each district must indicate in its Child and Family Services Plan how it will prioritize child care services funded under the NYSCCBG for families experiencing homelessness along with the federally mandated priorities of families with very low income and families with children who have special needs. The term “family experiencing homelessness” applies to the caretaker of the child experiencing homelessness.

18 NYCRR §415.3(e)(1) is amended to provide that families experiencing homelessness must not be required to pay a family share for child care services. Social services districts must identify if a family in its current child care caseload is experiencing homelessness and discontinue applying a family share for that case by no later than the next case action.

A family experiencing homelessness may not have access to all documentation needed to determine eligibility for child care services and, may have an immediate need for child care services. Districts must establish procedures to permit an interim eligibility period for child care services while a family experiencing homelessness obtains all required documentation. Districts have the discretion to establish the circumstances under which a family experiencing homelessness can qualify for an interim eligibility and the duration of the interim eligibility period, consistent with the parameters of this LCM, applicable regulations and statutes. However, the interim eligibility period may not exceed three months. If upon the full determination of eligibility, it is determined that the family is ineligible, the child care provider must receive payment for child care services rendered during the interim eligibility period. Claims for such district expenditures are reimbursable up to the district’s NYSCCBG or Title XX allocation. Payments made during the interim period of eligibility for families experiencing homelessness will not be considered errors or improper payments for the purpose of federal or state audits. Further, the district must not seek recoupment from the family for payments made during the interim period of eligibility, unless fraud is involved.

Tier II shelters are reimbursed under Temporary Assistance for Needy Families (TANF) funds for the provision of child care services to homeless families. Districts must have procedures in place to preclude duplicate billing under TANF and NYSCCBG.

While a social services district has internal and local resources to determine whether an applicant for services is experiencing homelessness, additional materials developed for New York Head Start programs by NYS-TEACHS may be useful. NYS-TEACHS is an agency funded by the New York State Education Department to provide technical assistance on the *McKinney-Vento Act*. These materials can be accessed at www.nysteachs.org.

Grace Period for Immunization Records

New York State Public Health Law (PHL) allows children, including homeless children and children in foster care, to be temporarily enrolled in a child care program while a family obtains documentation of immunizations. A child care provider must not unduly delay temporary enrollment of a child experiencing homelessness or a child in foster care due to a lack of immunization records. According to PHL, once attending the child care program, the parent or caretaker has a grace period of no more than 14 calendar days from the date the program began to provide care for the child to submit the required documentation of immunizations. The grace period can be extended by the child care program to 30 calendar days from the date the child care provider began to provide care to the child in cases where the child is from out-of-state or from another country and the parent or caretaker has shown a good faith effort to get the necessary documentation of the immunizations. This grace period applies to licensed, registered and enrolled legally-exempt child care programs.

Differential Payment Rates

18 NYCRR §415.9(h) was revised to include a new differential payment rate for families experiencing homelessness and to set new requirements for the differential payment rates for nontraditional hours and accredited programs. Differential payment rates apply to the actual cost of care or the applicable market rate, whichever is less. For more information on market rates, consult the most recent market rate LCM (16-OCFS-LCM-18).

Homelessness Differential Payment Rates

Social services districts must pay a licensed or registered child care provider a differential payment rate of at least 5 percent above the actual cost of care or the applicable market rate, whichever is less, for child care provided to a child experiencing homelessness. A district may establish a differential payment rate for care provided to a child experiencing homelessness by a licensed or registered child care provider that is greater than 5 percent, but that rate must not be more than 15 percent above the actual cost of care or the applicable market rate, whichever is less. The district must indicate in its Child and Family Services Plan if it will pay a differential rate that exceeds 5 percent, and include the applicable rate. Districts must apply the differential payment rate for care provided to a child experiencing homelessness to all eligible licensed or registered providers and cannot restrict the differential payment rate only to certain types of licensed or registered providers. For instance, a district cannot apply the differential payment rate only to day care centers.

A district may establish a differential payment rate for child care services provided to a child experiencing homelessness by legally-exempt child care providers as long as the rate does not exceed 15 percent above the actual cost of care or the applicable market rate, whichever is less.

There is no minimum differential payment rate percentage for legally-exempt child care providers. The district must indicate in its Child and Family Services Plan if it will pay a differential rate, and include the applicable rate. If the district chooses to set a differential payment rate for legally-exempt child care providers, then that rate must be applied to all eligible legally-exempt providers and cannot be limited only to certain types of legally-exempt providers. For instance, a district cannot set a differential payment rate that applies only to legally-exempt group providers.

Accredited Program Differential Payment Rates

A social services district may establish a differential payment rate for child care services provided by a licensed or registered child care provider that has been accredited by a nationally recognized child care organization. The district must indicate in its Child and Family Services Plan if it will pay a differential rate, and include the applicable rate. Legally-exempt child care providers are not eligible for a differential payment rate for accreditation. If the district chooses to set a differential payment rate for licensed or registered child care providers for accreditation, then that rate must be at least 5 percent above the actual cost of care or the applicable market rate, whichever is less. The differential payment rate must not exceed 15 percent of the actual cost of care or the applicable market rate, whichever is less.

Nontraditional Hours Differential Payment Rates

Social services districts must pay an eligible child care provider a differential payment rate of at least 5 percent above the actual cost of care or the applicable market rate, whichever is less, for child care provided during nontraditional hours. A district may choose to set a differential payment rate that is greater than 5 percent, but that rate must not exceed 15 percent of the actual cost of care or the applicable market rate, whichever is less. The district must indicate in its Child and Family Services Plan if it will pay a differential rate that exceeds 5 percent, and include the applicable rate. Districts must apply the differential payment rate for nontraditional hours to all eligible licensed, registered, and legally-exempt child care providers, and cannot restrict the differential payment rate only to certain types of child care providers. For instance, a district cannot apply the differential payment rate only to day care centers.

For the purpose of applying the differential payment rate, nontraditional hours are defined as child care provided before 6 a.m. or after 7 p.m. during Monday through Friday as well as any hour during Saturday and Sunday and the following federal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Payment Rules for the Nontraditional Hours Differential Payment Rates

The payment amount for child care providers for child care services during nontraditional hours must be calculated based on the rate that applies to the hours during which the nontraditional hours of care occurred. This means that the differential payment rate should be applied in accordance with the following rules:

- If care is provided during nontraditional hours then the required 5 percent differential payment rate, or the higher differential payment rate that the district has selected up to 15 percent, is applied to the actual cost of care or the applicable market rate, whichever is less.
- The differential payment rate would be applied to the Weekly, Daily, Part-Day or Hourly rate that applies to the time period during which the nontraditional hours of care

occurred. If payment is calculated based on a weekly rate, then the differential would be applied to the weekly rate.

Example #1: The district has not set a differential payment rate higher than the required 5 percent differential payment rate. The actual cost of care is \$200 per week (which is less than the applicable market rate in this example), and care is provided for a total of 40 hours during the week. The weekly market rate applies as child care services are provided for 30 or more hours over the course of five or fewer days in a single week. The required 5 percent differential payment rate is applied to the \$200 actual cost of care. The total amount due to the provider is \$210 (\$200 actual cost of care plus \$10 differential payment).

Example #2: The district has not set a differential payment rate higher than the required 5 percent differential payment rate. The daily market rate applies as care is provided for less than 30 hours over the course of five or fewer days in a single week and for at least six but fewer than 12 hours per day. The actual cost of care is \$50 per day (which is less than the applicable market rate in this example), and care is provided for a total of three days during the week, of which there are nontraditional hours on two days of the care. The required 5 percent differential payment rate is applied to the \$50 actual cost of care on the days when nontraditional hours of care were provided, but not on the day when they were not. The total amount due to the provider is \$155 (\$150 actual cost of care plus \$5 differential payment).

Example #3: The district has chosen to set a higher differential payment rate of 10 percent for nontraditional hours. The actual cost of care is \$300 per week (which is more than the applicable market rate of \$240 per week in this example), and care is provided for a total of 40 hours during the week, five hours of which occur during nontraditional hours. The higher differential payment rate of 10 percent set by the district is applied against the actual cost of care up to the applicable market rate of \$240. The total amount due to the provider is \$264 (\$240 market rate plus \$24 differential payment).

Payment Rules for Providers Qualifying for More Than One Differential Payment Rate

A child care provider may qualify for multiple differential payment rates: for care provided to a child experiencing homelessness, child care provided during nontraditional hours, and/or a program being accredited by a nationally recognized child care organization. To calculate the payment, all differential payment rates for which the provider qualifies are added to calculate a total differential payment rate that must not exceed 25 percent of the actual cost of care or the applicable market rate.

Example #1: The district has not set a differential payment rate higher than the required 5 percent for care provided during nontraditional hours or for care provided to a child experiencing homelessness. The actual cost of care is \$200 per week (which is less than the applicable market rate in this example); care is provided for a total of 40 hours during the week, of which 20 hours are nontraditional hours; and the family is experiencing homelessness. The required 5 percent differential payment rate for nontraditional hours is added to the required 5 percent differential payment rate for homelessness. The sum of the two qualifying differential payment rates is 10 percent. This is applied to the \$200 actual cost of care. The total amount due to the provider is \$220 (\$200 actual cost of care plus \$20 for the total differential for nontraditional hours and homelessness).

Example #2: The district has chosen to set a 15 percent differential payment rate for families experiencing homelessness and a 15 percent differential payment rate for accredited programs.

The actual cost of care is \$200 per week (which is less than the applicable market rate in this example); care is provided for a total of 40 hours during the week for a family experiencing homelessness; and the program is accredited. The sum of the two qualifying differential payment rates is 30 percent. However, the maximum differential payment rate is capped at 25 percent, which is applied to the actual cost of care. The total amount due to the provider is \$250 (\$200 cost of care plus \$50 maximum differential payment).

Upon demonstrating that the 25 percent maximum is insufficient to provide access within the district to such child care providers or services, social services districts may request a waiver from the New York State Office of Children and Family Services (OCFS) to establish a differential payment rate in excess of 25 percent above the actual cost of care, or the applicable market rate.

Child and Family Services Plan Amendment Requirements

To comply with changes to 18 NYCRR Part 415, each social services district must review and revise, as necessary, the following sections of the 2017 Annual Plan Update to the Child and Family Services Plan: the “Federal and Local Priorities” section in Appendix M #1, the “Case Closing and Openings” section in Appendix M #2, and the “Differential Payment Rate” section in Appendix T. Each district must specify provisions for serving homeless families and for required differential payment rates for homeless families, and for care provided during nontraditional hours effective March 1, 2017.

Each district must indicate in the “Federal and Local Priorities” section in Appendix M #1 how the case opening and closing process reflects the district’s prioritization of the provision of child care services to families experiencing homelessness in instances where the district does not have sufficient funds to serve all eligible families, in consideration of the other federally mandated priorities for families. Additionally, each district must indicate in the “Case Closing and Openings” section in Appendix M #2 how other categories of families are prioritized in the case opening and closing process in the event the district does not have sufficient funds to serve all eligible families.

Each district must indicate in the “Differential Payment Rate” section in Appendix T whether:

- the district will provide differential payment rates higher than the required 5 percent differential payment rates for child care services provided by a licensed or registered child care provider to a child experiencing homelessness (and, if so, the percentage);
- the district will provide differential payment rates higher than the required 5 percent differential payment rates for child care services provided by a licensed, registered or legally-exempt child care provider during nontraditional hours (and, if so, the percentage);
- the district opts to set a differential payment rate for licensed and registered child care providers that have been accredited by a nationally recognized child care organization (and, if so, the percentage); and whether
- the district opts to set a differential payment rate for legally-exempt child care providers that provide care to a child experiencing homelessness (and, if so, the percentage).

Reporting Requirements

The *Child Care and Development Block Grant Act of 2014* requires the state to report whether children receiving child care services funded under the NYSCCBG program are children

experiencing homelessness. When child care cases are selected by OCFS as part of the federal reporting sample, social services districts must indicate on form ACF-801, *Child Care Quarterly Case Record*, whether the child selected is experiencing homelessness.

Automated Systems

The Child Care Time and Attendance (CCTA) system has been modified to calculate both the required 5 percent differential payment rate to a licensed or registered child care provider serving a child experiencing homelessness and the required 5 percent differential payment rate to a licensed, registered, or a legally-exempt child care provider for services provided during nontraditional hours, effective for dates of service on or after March 1, 2017. Districts must enter the homelessness status for families in CCTA so that appropriate payments can be calculated by CCTA. Also, CCTA provides payment calculation for districts that opt to set: a differential payment rate that is higher than the required 5 percent, a differential payment rate for licensed and registered child care providers that have been accredited by a nationally recognized child care organization, and a differential payment rate for a legally-exempt provider serving children experiencing homelessness.

Further, CCTA has been revised to calculate the payment amount for child care providers that qualify for multiple differential payment rates. For questions concerning CCTA, please contact the CCTA Support Center at telephone number (877) 369-6106, option 9, or at fax (315) 752-0034.

If a payment for child care services is not processed through CCTA, the district must establish procedures to calculate the required differential payment rates accurately and appropriately effective for dates of service on or after March 1, 2017.

The OCFS-6025, *Application for Child Care Assistance*, and the LDSS-2921, *New York State Application for Certain Benefits and Services*, include a question to identify families experiencing homelessness. In addition, the Welfare Management System (WMS) – Services section has been modified to add a homelessness indicator as a required data entry field for families receiving child care services funded under the NYSCCBG.

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