



Office of Children and Family Services

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Administrative Directive

Transmittal:	19-OCFS-ADM-19
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Child Care Services
Date:	October 30, 2019
Subject:	Changes to Child Care Subsidy Regulations 2019
Suggested Distribution:	Directors of Services Directors of Temporary Assistance Supervisors of Day Care Supervisors of Temporary Assistance Child Care Assistance Staff
Contact Person(s):	Maryellen DeCicco, OCFS Division of Child Care Services, 518-408-3395 MaryellenDeCicco@ocfs.ny.gov
Attachments:	<ul style="list-style-type: none"> • OCFS-LDSS-4779, Approval of Your Application for Child Care Benefits (Rev. 10/2019) • OCFS-LDSS-4781, Notice of Intent to Change Child Care Benefits and Family Share Payments (Rev. 10/2019) • OCFS-LDSS-4784, Approval of Your Redetermination for Child Care Benefits (Rev. 10/2019) • OCFS-LDSS-4785, Approval of Your Transitional Child Care Benefits (Rev. 10/2019) • OCFS-LDSS-7010, Notice of Fraud Determination, Disqualification for Child Care Benefits and Repayment Plan (Rev. 10/2019)

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR Subpart 358-3, and Parts 403, 404, 405, 406, and 415			

I. Purpose

The purpose of this Administrative Directive (ADM) is to inform 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) Subpart 358-3 and Parts 403, 404, 405, 406, and 415, 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 regulatory changes that are anticipated to impact districts directly are outlined herein. This ADM also informs districts of several revised client notices that must be used by districts to provide notifications to families about actions related to their child care subsidy benefit as required by Sections 34-a(9) and 410-w(8) of the SSL and 18 NYCRR parts 358, 404, and 415.

II. Background

The federal Child Care and Development Block Grant Act of 2014 (CCDBG) and changes to federal Child Care and Development Fund regulations include provisions to improve the quality and safety of child care programs. The New York State budget, signed into effect on April 1, 2019, included legislative authority for the New York State Office of Children and Family Services (OCFS) to implement federal requirements. To achieve compliance with CCDBG and support legislative changes, OCFS filed emergency regulations that became effective on September 25, 2019. With this ADM, OCFS is providing an overview of the regulatory changes that will specifically impact districts.

III. Program Implications

Regulatory changes specifically applicable to districts were made in the following areas:

District Child Welfare Database Check

As outlined in 19-OCFS-ADM-14, *Changes to Legally-Exempt and Child Care Subsidy Regulations and Revised Legally-Exempt Enrollment Forms*, the regulations require OCFS to conduct comprehensive background checks for non-relative legally-exempt providers, which include a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR). As a result, districts are no longer required to conduct a local child welfare database check to determine whether a non-relative legally-exempt provider has had his or her parental rights terminated or a child removed from his or her care. However, because relative-only in-home providers and relative-only family child care providers are exempt from comprehensive background checks, districts must continue to conduct the local child welfare database checks for such relative-only providers. Districts must then provide the enrollment agency with the results of this check within 15 days of receiving the request and, when applicable, conduct a review of extenuating circumstances and provide the enrollment agency with the results. The process of receiving CCFS E-notices and communicating the results to enrollment agencies has not changed for relative-only legally-exempt child care providers.

Additional Local Standards

Districts currently have the option to enact additional local standards for legally-exempt child care providers in their Child and Family Service Plan (CFSP), including local criminal background checks and verification that the provider has provided true and accurate information to the parent of any report of child abuse or maltreatment where the provider is named as the indicated subject. The new regulations for legally-exempt in-home and family child care providers apply different requirements to relative-only and non-relative providers. Districts may choose to amend their Child and Family Service Plan (CFSP) to specify any additional local standards for relative-only providers as they are the only legally-exempt providers that are not subject to the comprehensive background checks. The CFSP online application template will be updated for the 2020 Annual Plan Update (APU) to allow districts to specify any additional local standards that apply to relative-only providers. Prior to the 2020 APU, districts may amend their CFSP by sending a letter requesting such change to OCFS's Division of Child Care Services (DCCS).

Eligible Provider

The definition of "eligible provider" in 18 NYCRR 415.1(g) is changed to specify that members of the child's child care services unit are not eligible to provide subsidized child care to that child. There is no longer an exception for siblings who are in the child care services unit. When siblings live in the household with the child, such siblings may only apply for enrollment as legally-exempt child care providers if they are not included in the child care services unit. Districts must specify in their CFSP whether to always include, never include, or include if it is to the benefit of the family, 18-, 19- and/or 20-year-old siblings in the child care services unit.

Date of Application

For purposes of determining eligibility, 18 NYCRR 404.1(d)(1)(i) clarifies that the date of the application for child care assistance is the date that the district receives the application.

Engaged in Work

The definition of "engaged in work" in 18 NYCRR 415.1(o) is changed to require an individual who is not receiving public assistance and must be engaged in work to be programmatically eligible for child care assistance to work an average of at least 20 hours per week, provided there is no physical or mental incapacity that limits the person to working less than 20 hours per week. Additionally, self-employment must produce personal income greater than or equal to the minimum wage or have the potential for growth in earnings to produce such an income within one year. Districts must use the same weeks of wage information as are used to calculate gross income to determine whether the average work hours meet the threshold of 20 hours per week.

Financial Resources

An exploration of resources in the determination of eligibility for child care assistance funded under NYSCCBG is added to 18 NYCRR 404.5(d)(1). In addition, 18 NYCRR 415.2(a) is amended to add an eligibility requirement for child care assistance that the family's resources do not exceed one million dollars. The term "family resources" is defined to mean the value of cash on hand, money in checking and savings accounts, lump sum payments, stocks, bonds, mutual funds, mortgages (held), mortgage certificates, and other securities; individual retirement accounts and deferred compensation accounts and plans, including but not limited to, IRAs, 401(k) and 457(b) plans, life insurance policies, trust funds, and annuities; and real and personal property, including licensed and unlicensed vehicles, homes, buildings, land, recreational properties, other real estate property, non-essential household furnishings, art, and jewelry.

Excludable Income

"Disaster relief payments," other than unemployment compensation, are added to the list of items excluded from the calculation of monthly gross income at 18 NYCRR 404.5(b)(6)(xx).

Special Needs

The definition of a "child with special needs" in 18 NYCRR 415.1(c) is revised to reflect changes to section 658P(3) of the CCDBG Act of 2014, federal regulation 45 CFR 98.2, and New York State Education Department regulations regarding children with handicapping conditions in 8 NYCRR §200.1(zz). The revised definition now includes the following diagnoses: visual impairment, deafness or other hearing impairment, orthopedic impairment, emotional disturbance, intellectual disability, learning disability, speech or language impairment, health impairment, autism, multiple disabilities, or traumatic brain injury. The definition continues to require that the child's diagnosis must have been made by a physician, licensed or certified psychologist, or other professional with the appropriate credentials to make such diagnosis. Further, the regulatory changes also specify that a child must have one of the qualifying conditions to such a degree that special education or related services are required, in accordance with section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401), part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

Family Share

In order to support foster parents in providing stability to children in foster care, 18 NYCRR 415.3(e)(1) is amended to exempt families in receipt of child care assistance for a child in foster care from the requirement to pay a family share.

District Payment Policies for Child Care Assistance

18 NYCRR 415.5(a)(4) requires districts to establish in written policy time frames for bill submittal by providers and/or recipients, and payment processing by the district. Districts must notify child care providers of such billing and payment policies, or if paying the child's caretaker directly, then the district must notify the caretaker.

Methods of Payment

18 NYCRR 415.5(a)(1)(i) is amended to add payments administered electronically by direct deposit or debit card to the list of acceptable methods of payment for care. Other forms of payment prior to the enactment of the regulatory changes continue to be acceptable.

Disqualifications Due to Fraud

The disqualification period for a recipient or former recipient of child care assistance who has been convicted of, or has voluntarily admitted to, fraudulently receiving child care assistance has been amended. Unless a court of appropriate jurisdiction specifies a different disqualification period, the following disqualification periods apply:

- 12 months for a first offense.
- 24 months for a second offense or an offense that results in the wrongful receipt of child care assistance in an amount specified by OCFS. At this time, OCFS has determined that this amount will be \$10,000 - \$24,999.
- Permanently for a third offense or an offense that results in the wrongful receipt of child care assistance in an amount as specified by OCFS. At this time, OCFS has determined that this amount will be \$25,000 or greater.

IV. Revised Client Notices

Districts were previously notified in 16-OCFS-LCM-03, dated February 26, 2016, of the availability of revised client notices for applicants for child care subsidy benefits funded under the NYSCCBG and Title XX. This ADM does not change the requirements for districts to send timely and adequate notice to applicants and recipients of child care assistance as described in 16-OCFS-LCM-03. This ADM includes revised versions of five client notices that reflect the regulatory changes to the fraud disqualification periods and the waiver of the family share requirement for families receiving child care subsidies for foster children:

- [OCFS-LDSS-4779, Approval of Your Application for Child Care Benefits \(Rev. 10/2019\)](#)
- [OCFS-LDSS-4781, Notice of Intent to Change Child Care Benefits and Family Share Payments \(Rev. 10/2019\)](#)
- [OCFS-LDSS-4784, Approval of Your Redetermination for Child Care Benefits \(Rev. 10/2019\)](#)
- [OCFS-LDSS-4785, Approval of Your Transitional Child Care Benefits \(Rev. 10/2019\)](#)
- [OCFS-LDSS-7010, Notice of Fraud Determination, Disqualification for Child Care Benefits and Repayment Plan \(Rev. 10/2019\)](#)

If a district wishes to use local equivalents of the required client notice forms listed in this ADM, such forms must be approved by DCCS prior to their use by the district. Any previously approved local equivalents of the client notices must be revised and resubmitted for approval to DCCS prior to their continued use by the district.

V. Required Actions

Recipients or former recipients who are disqualified due to fraud on or after September 25, 2019, are subject to the new disqualification periods and must be sent a revised *Notice of Fraud Determination, Disqualification for Child Care Benefits and Repayment Plan* (OCFS-LDSS-7010, Rev. 10/2019).

Districts must review all currently authorized cases in receipt of child care assistance to determine any impact the new regulations have on child care eligibility and the family share calculation. Reviews must take place as soon as possible, but no later than the next case action. Whenever the amount of child care benefits changes, districts must provide recipients with adequate notice as required by 18 NYCRR 358-2.2(a).

For families receiving child care subsidies for foster children, districts must provide recipients with adequate notice and calculate payments to accurately reflect the family share exemption. For districts that use the Child Care Time and Attendance (CCTA) system to process child care subsidy payments, CCTA has not yet been modified to automatically apply this family share exemption. Until such time that CCTA can be modified, districts that use CCTA have two options for issuing accurate payments:

- Districts may manually adjust the payment amount to reflect the family share of \$0, or
- Districts may generate a new client notice that does not have a family share fee assigned to any of the authorizations/children. Essentially, no family share will be attached to the case in CCTA. When payments are subsequently calculated, CCTA will not deduct a family share from the payment amount.

Districts must distribute the enrollment forms to all applicants for, and recipients of, child care subsidy funded under the NYSCCBG who are interested in using a legally-exempt child care provider.

VI. Systems Implications

The Welfare Management System (WMS) and the *Services Coding Guide* will be updated to reflect the changes in disqualification periods due to fraud. At this time, districts must discontinue using closing codes C80 and C84 because recipients or former recipients are now permanently ineligible to receive child care services after their third offense. Districts must continue using C77, C78, C79, C81, C82, and C83 for first, second, and third offenses, but must apply the new disqualification time periods to these existing codes.

At this time, neither WMS nor CCTA have been changed to reflect the foster child family share exemption. If and when the family share calculations are changed in CCTA and/or WMS, districts will be notified of such change.

VII. Additional Information (Optional)

A full version of 18 NYCRR 415 can be found on the OCFS website.

https://ocfs.ny.gov/main/childcare/daycare_regulations.asp

The revised client notices (OCFS-LDSS-4779, OCFS-LDSS-4781, OCFS-LDSS-4784, OCFS-LDSS-4785, OCFS-LDSS-7010) are available in English and Spanish on the OCFS intranet and internet websites at the following links:

- <http://ocfs.state.nyenet/admin/forms/BECS/>
- <https://ocfs.ny.gov/main/documents/docsChildCare.asp>

The notices will soon be made available in Bengali, Chinese, Haitian Creole, Korean, and Russian.

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:

- Complete form [OCFS-4627, Request for Forms and Publications](#), which can be found at the same website.

Once completed, mail the OCFS-4627 form to the following address:

New York State Office of Children and Family Services
Forms and Publications Unit
52 Washington Street, Room 134 North Bldg.
Rensselaer, NY 12144-2834

OR

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

VIII. Effective Date

The effective date of this release is September 25, 2019. Districts must begin using the revised client notices immediately.

/s/ Janice M. Molnar, Ph.D.

Issued by:

Janice M. Molnar, Ph.D.
Deputy Commissioner
Division of Child Care Services