



Office of Children and Family Services

Andrew M. Cuomo
Governor

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Sheila J. Poole
Commissioner

Administrative Directive

Transmittal:	20-OCFS-ADM-09
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Child Care Services
Date:	August 24, 2020 Revised
Subject:	Child Care Assistance for Services Provided When the Parent/Caretaker Sleeps
Suggested Distribution:	Directors of Services Directors of Temporary Assistance Supervisors of Day Care Supervisors of Temporary Assistance Child Care Assistance Staff
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Attachments:	None

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
05-OCFS-ADM-03		18 NYCRR Part 415.4(c)(3) and 415.4(e)(7)	§ 410-w(9) § 34-a(9)		

I. Purpose

The purpose of this Administrative Directive (ADM) is to advise social services districts (districts) that on April 1, 2020, an amendment to the Social Services Law (SSL) went into effect regarding the authorization of child care assistance in order to allow parents or caretakers who work non-traditional hours to sleep. These changes are reflected in revisions to Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR) 415.4(c)(3). This ADM also provides districts with guidance on evaluating the need for child care services to allow a parent or caretaker to sleep.

II. Background

On October 4, 2019, Governor Andrew M. Cuomo signed Chapter 344 of the Laws of 2019, which amended SSL 410-w to add a new subdivision (9) to require districts to authorize up to eight hours of child care assistance, as needed, to allow parents or caretakers who work non-traditional hours to sleep, if they are eligible for and provided with child care assistance, and have a child who is under the age of 6 and not in school for a full day. This amendment took effect on April 1, 2020.

Previously, 18 NYCRR Section 415.4(c)(3) allowed districts the option to choose whether to provide up to eight hours of child care services for a parent or caretaker who works a second or third shift to sleep by indicating such in the district's Child and Family Services Plan (CFSP). Revised sleep regulations were filed on an emergency basis on July 17, 2020, to reflect the change in SSL410-w(9). Section 415.4(c)(3) of 18 NYCRR requires child care services to be provided, if needed, to enable an employed caretaker who works non-traditional hours to obtain up to eight hours of sleep if they have a child who is under the age of 6 and not in school for a full day. Additionally, districts have the option to provide child care services, if needed, to enable other employed caretakers who work non-traditional hours to obtain up to eight hours of sleep if the district so indicates in its CFSP. The regulatory filing also included a notice of proposed rulemaking. Districts as well as the public will have the opportunity to participate in the rulemaking process by providing comments on the proposed rule once it is published in the *New York State Register*. on August 5, 2020. Comments can be submitted to ocfs.sm.regcomments@ocfs.ny.gov. This ADM replaces the previous guidance on the authorization of child care services for sleep time in 05-OCFS-ADM-03, *Child Care Subsidy Program*.

III. Program Implications

Effective April 1, 2020, all districts must provide child care assistance, if needed, to enable an employed parent or caretaker who is eligible for and in receipt of such assistance, and works non-traditional hours, to obtain up to eight hours of sleep, if the person has a child who is under the age of 6 and not in school for a full day. Each district has the option in its CFSP to extend this assistance to families with children over the age of 6 who work non-traditional hours.

The hours allowed for sleep are in addition to the hours approved for work and travel time, as needed. This additional child care assistance can only be provided to families who are otherwise eligible for, and provided with, child care assistance in accordance with 18 NYCRR Part 415. The authorization for this additional child care assistance must be based on the inability of the parent or caretaker to obtain up to eight hours of sleep due to the needs of the child. For the purpose of authorization of hours for sleep, working non-traditional hours is defined as working during the hours of 7 p.m. and 6 a.m.

Districts must evaluate the need for additional child care assistance for parental sleep time on a case-by-case basis, including, but not limited to, consideration of the following factors:

- Household composition
- Availability of another parent or caretaker to provide care for the child
- Location of care

- Hours worked
- Days of the week worked
- Age of the child(ren)
- If parental sleep time would occur during the child's normal waking or sleeping hours
- Individual needs of the child
- Ability of the parent to obtain up to eight hours of sleep

The need for additional child care assistance related to sleep time is determined at the family level, not the child level. However, there must be a child under the age of 6 and not in school for a full day for the parent/caretaker to qualify, unless otherwise specified in the district's CFSP. If, however, there is more than one child in the family in receipt of child care services, and the district has determined that child care assistance will be authorized for sleep time, the district must pay for all children who will be in need of child care services while the parent or caretaker is sleeping. If a family only needs additional child care services for certain eligible children, the district must limit the payment to those children. For example, if a single parent or caretaker works from 4 p.m. to 12 a.m., and receives child care services for three children, aged 6 months, 3 years, and 9 years, but only needs care for the two younger children while the parent or caretaker sleeps, the district must authorize child care assistance for sleep time for the two younger children only. However, if the parent or caretaker needs child care assistance for all three children and the district determines that there is a need for additional child care assistance for sleep, child care assistance must be authorized for sleep time for all three children.

In the examples that follow, a parent or caretaker is in receipt of child care assistance, works during non-traditional hours, and has a child under 6 who is not in school for a full day; therefore, the district must evaluate the need to authorize additional child care assistance to allow the parent or caretaker to sleep. These examples are not exhaustive. Rather they are illustrative of the factors that districts must consider when determining if additional child care assistance should be authorized to allow a parent or caretaker to sleep.

- In a two-parent household in which both parents work non-traditional hours, care must be authorized for both parents to work, travel, and sleep, as needed, if their hours overlap such that each parent is not available to care for the child while the other is working, traveling, and/or sleeping.
- In a two-parent household, in which one parent works from 12 a.m. to 7 a.m., and the other parent works from 7:30 a.m. to 3:30 p.m., care must be authorized for the child to allow the parent who works non-traditional hours to sleep up to eight hours while the other parent is working or traveling. For a child who is 6 or older, child care assistance would only be authorized for the time that the child is not in school and the caretaker who works traditional hours is unavailable to provide care due to work and travel time.
- In a single-parent household, in which the parent works from 11 p.m. to 7 a.m., up to eight hours of sleep time must be authorized in addition to the hours authorized for employment and travel time.

Approved sleep hours could range from as little as one quarter hour on school days to eight hours when school is not in session. Districts must maintain appropriate documentation to support the determination to approve or disapprove additional hours of child care assistance for a parent or caretaker to sleep.

Each district must review its CFSP to determine if an update is needed as a result of these regulatory changes. Districts that choose to provide child care assistance for a parent or caretaker who works non-traditional hours to sleep when such family does not have a child under the age of 6 who is not in school for a full day must specify in its CFSP the details and any limitations associated with what is being proposed. Additionally, for districts that previously provided optional sleep subsidy, if the proposed amendment will be reducing eligibility for child care services, publication of a notice describing the categories of families whose cases will be impacted will be required, pursuant to SSL 34-a(9) and 415.4(e)(7). Districts may contact the Division of Child Care Services with questions regarding the submission or amendment of the CFSP 2020 Annual Plan Update.

IV. Systems Implications

The Child Care Time and Attendance system will be updated in the future to reflect this change. Districts will be notified when system changes are in place.

V. Effective Date

The effective date of this release is April 1, 2020.

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

Issued by:

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