

## Chapter 7: Investigations in foster homes and child day care programs

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# Chapter 7: Investigations in foster homes and child day care programs

## A. Overview

Child protective services (CPS) addresses two types of reports that allege abuse or maltreatment in out-of-home settings. They are coded differently than reports regarding family settings: “foster care” (FC) and “day care” (DC). These reports allege the abuse or maltreatment of a child perpetrated by someone who cares for children in a setting that is not the child’s familial home and that requires state or local government approval and is subject to state laws, regulations, and oversight.

When an SCR report involves a foster boarding home or a child day care program, the CPS in the LDSS where the foster family boarding home or day care program is located has primary responsibility for conducting the CPS investigation. The legal requirements for conducting CPS investigations in out-of-home settings are the same as the requirements for conducting CPS investigations in familial settings. When CPS investigates an FC report, however, it must also coordinate and cooperate with OCFS, the LDSS or VA that certified or approved the foster boarding home, and the custodial LDSS.<sup>1</sup>

When CPS investigates a DC report, it must also coordinate and cooperate with OCFS and, if applicable, any agency with which OCFS contracts to oversee that program.<sup>2</sup> These agencies also have responsibility for the safety of children in the foster boarding home or day care setting in which the alleged abuse or maltreatment occurred.

Specifically, reports “out of a child’s familial home” allege abuse or maltreatment in one of the following settings:

### 1. Foster care

A child in foster care is alleged to have been abused or maltreated while residing in a foster boarding home that is certified or approved by a local department of social services (LDSS) or voluntary agency (VA) [SSL §424-b].

### 2. Child day care

A child is alleged to have been abused or maltreated while attending one of the following types of child care programs:<sup>3</sup>

Child care programs licensed or registered by the New York State Office of Children and Family Services (OCFS), and which are:

- Child day care centers located outside of New York City

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<sup>1</sup> “Requirements Relating to CPS Reports Involving Foster Parents” [16-OCFS-ADM-13](#)

<sup>2</sup> “Sharing of Investigation Information by Child Protective Services and the Office of Children and Family Services, Division of Child Care Services” ([15-OCFS-ADM-10](#))

<sup>3</sup> For definitions of the various types of day care programs, see [SSL §390\(1\)](#) and [18 NYCRR 413.2\(b\)](#). For the regulatory standards governing day care programs licensed or registered by OCFS, see [18 NYCRR Parts 414, 416, 417, 418-1 and 418-2](#).

- Group family day care homes
- Family day care homes
- School-age child care programs
- Small day care centers

Day care centers in New York City that are licensed by the New York City Department of Health and Mental Hygiene (DOHMH)

Any child day care program that is not licensed or registered, but by law is required to be

The provisions for conducting investigations of child day care programs, as described in this chapter, do not pertain to New York City day care centers, or “group day centers” that are licensed by the New York City Department of Health and Mental Hygiene.

The activities described in this chapter do apply to family day care programs, group family day care programs, and school-age child care programs in New York City that are *supervised* by DOHMH under contract with OCFS and receive licenses and registrations from OCFS.

### ***Reports related to congregate care facilities***

Prior to June 30, 2013, the SCR registered reports alleging the abuse or maltreatment of children residing in certain congregate care facilities operated, licensed or supervised by OCFS or certain other state agencies, and OCFS and the former Commission on Quality of Care and Advocacy for Persons with Disabilities were responsible for investigating those reports. Since June 30, 2013, the Justice Center for the Protection of People with Special Needs has been responsible for investigating reports alleging abuse or neglect of children in congregate care settings.

## B. CPS investigations in foster boarding homes

### 1. Intake of reports

When the SCR receives a call reporting suspected child abuse or maltreatment, the staff person at the SCR is required to ask the reporter, “Are any adults in the home foster parents?” If the reporter states that there are foster parents or children in foster care in the home, the SCR should code the report as follows:

When a report alleges that a foster parent abused or maltreated a child in foster care, the SCR codes the report as **FC** and lists the child(ren) in foster care as the abused or maltreated child(ren).

When a report alleges that a foster parent abused or maltreated his or her biological or adopted child (or other child(ren) for whom he/she is legally responsible), the SCR codes the report as **Familial** and lists the biological/adopted child, or other child(ren) for whom the foster parent is legally responsible, as abused or maltreated. The information regarding the subject’s status as a foster parent is recorded in the intake checklist.

When there are allegations that a foster parent abused or maltreated both his/her biological or adopted child (or other child(ren) for whom he or she is legally responsible) *and* a child in foster care, the SCR registers two reports, one coded **FC** and the other coded **Familial**. The information regarding the companion reports is documented in the miscellaneous section of each report. **FC** and **Familial** reports *cannot* be consolidated.

The appropriate tasks associated with a **FC** report type are assigned within the CONNECTIONS (CONNX) system, including the notification to agencies<sup>4</sup> that have an interest in the case. An alert is sent to the workload of a caseworker involved with the child’s FSS stage or the foster parent’s FAD stage in CONNX.

### 2. Entering information in CONNX

The SCR Specialist who registers an **FC** report performs a Facility Search and completes the Facility Window in CONNX. Completing the Facility Window and properly relating principals to an existing person ID or to a Foster and Adoptive Home Development (FAD) stage prompts CONNX to send an alert to all caseworkers, case managers, and home finders who have an assigned a role in CONNX for either the child in foster care or the foster parent.

#### a. Intake checklist window

The intake checklist window is part of the CPS Intake window used by the SCR. The checklist contains a series of questions that must be answered for most CPS Intakes. One of the questions is, “Are any adults in the home foster parents?” After the CPS Intake is saved and assigned, the questions and responses are available for viewing and printing as part of the existing Intake Report.

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<sup>4</sup> “Agencies,” as used here, refers to the LDSS with legal custody of the child(ren) in foster care named in the CPS report and, if different, the LDSS or VA that certified or approved the foster home.

### **b. Foster home identification window**

The Foster Home Identification window can be accessed by any CPS INV or FAR worker assigned to the case, and allows workers to confirm, update, or correct the entry regarding the presence of foster parents in the home.

### **c. Foster care notification window**

The Foster Care Notification window displays information about children in foster care who have been placed in the home of a person involved in a CPS Intake or INV stage. The window also provides information about foster parents who have been named in a CPS report at the Intake or INV stage that involves either children who have been placed in their home, their biological or adopted children, or other children for whom he or she is legally responsible. This window permits LDSSs, VAs, and OCFS Regional Offices to go to one location for a complete list of foster parents and children in foster care who are currently listed in a report at the CPS Intake or INV stage.

For full and accurate information to display on this window, the CPS Intake or INV stage must be correctly linked to the foster parent's Resource ID and the placement information in the CONNX Activities Window must be correct. The window is accessed from the Search/Maintain dropdown menu and is available only to users with the Foster Care Notification business function.

**Daily checking**  
It is recommended that LDSS, VA, and Regional Office staff check the Foster Care Notification Window on a daily basis

## **3. Jurisdictional assignments**

The SCR assigns a role to the appropriate LDSSs, as follows:

- Primary jurisdiction is assigned to the CPS in the LDSS where the foster home is located.
- Secondary jurisdiction is assigned to all of the following that apply, if known:
  - The LDSS that has care and custody or custody and guardianship of any child(ren) in foster care in the home who has been named as an allegedly abused or maltreated child, if it is a different LDSS than the primary LDSS
  - The LDSS where a subject or child named in the report is currently located, if different than the primary LDSS
  - The OCFS Regional Office that oversees the primary LDSS

## **4. Changing/updating reports received from SCR**

### **a. Coding changes**

If the CPS determines that the coding is incorrect *before* beginning the investigation, the CPS should contact the SCR. Only the staff at the SCR can withdraw the report that is coded incorrectly and re-enter the report with the correct coding.

If CPS does not determine that the report was coded incorrectly until *after* beginning its investigation, the CPS should call in a new report to be coded correctly and then close the first report by completing all required tasks and fields and entering a determination. The CPS should state the circumstances of the closing in the progress notes.

### **b. *Need for a companion report***

If the CPS receives a **FC** report and determines that a **Familial** report needs to be registered because the allegations apply both to child(ren) in foster care and the foster parents' biological and/or adopted child(ren) (or other child for whom he/she is legally responsible), the CPS must make a report to the SCR with an explanation that a **FC** report was already registered, but that a companion **Familial** report also needs to be registered.

The same is true if a **Familial** report is received and a companion **FC** report needs to be registered. **FC** and **Familial** reports *cannot* be consolidated.

### **c. *Updates by the LDSS conducting the investigation***

After receiving a report involving a foster boarding home, the CPS with primary jurisdiction is responsible for:

- Checking that all appropriate entities have been assigned jurisdiction and that all appropriate entities have been notified, and making any additional assignments for secondary jurisdiction that may be required;
- Checking, correcting, and/or adding demographic information in CONNX for persons named in the report, as appropriate, if it finds that information reported to the SCR was incomplete or contained inaccuracies or misspellings;
- Adding the names of any additional children in foster care in the home and the names of other adults in the home who were not identified in the report from the SCR;
- Adding the names and demographic information of the birth parents of children in foster care named in the report so that they can be notified about the report;
- Conducting person searches in CONNX, as necessitated by any new or revised information, and merging person IDs, where necessary; and
- Checking resource IDs for the foster home and any LDSSs or VAs that were entered by the SCR, correcting inaccuracies found, and entering any relevant resource IDs that were not entered during intake.

## **5. Notifications**

### **a. *Other agencies***

When a certified or approved foster parent is the subject of a report of suspected child abuse or maltreatment of a child in foster care, several agencies have an interest in the report and the safety of the child(ren) in the foster home. These agencies include:

- The LDSS that is conducting the CPS investigation
- The LDSS with legal custody of the child in foster care named in the CPS report
- The LDSS or VA that certified or approved the foster home

These may be the same for all LDSS, but often there will be more than one interested agency. In such cases, the notification, coordination, and cooperation standards addressed in this chapter are vitally important in meeting the safety needs of the child(ren) in the foster home.<sup>5</sup>

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<sup>5</sup> "Requirements Relating to CPS Reports Involving Foster Parents" [16-OCFS-ADM-13](#)

When a child in foster care has been placed outside the county of the LDSS that has custody of the child, the LDSS responsible for conducting the investigation must notify the commissioner of that district that the child has been named in a report of abuse or maltreatment.

The LDSS with primary jurisdiction is responsible for notifying the following agencies when a certified or approved foster parent is the subject of a report of suspected child abuse or maltreatment involving a child in foster care:

- The LDSS with legal custody of the child in foster care named in the CPS report
- The LDSS or VA that certified or approved the foster home [SSL §424(6)(b)].

In some cases, they all may be the same LDSS. However, often there will be more than one interested agency. In such cases, the notification, coordination and cooperation standards are vitally important in meeting the safety needs of the child(ren) in the foster home. This information will inform the LDSS or VA that certified or approved the home of any current or potential issues regarding foster parent(s) with whom they have placed children and/or may place additional children in the future.

The CPS with primary jurisdiction must notify the LDSS having care and custody of the child(ren) and notify the agency having supervision over the placement if different from the custodial agency. A model notification form letter to the LDSS with legal custody is in **Chapter 14, Appendices**. This letter can also be adapted to send to the LDSS or VA that certified or approved the foster home. The LDSS with primary jurisdiction must keep a copy of any such letter that it sends in the CPS case record, and document when it was sent in the investigation progress notes in CONNX.

This means that the CPS with primary jurisdiction must provide notification of a report of suspected child abuse or maltreatment involving the child in foster care placed in a foster home to the LDSS with legal custody of the child in foster care and, if different, the LDSS or VA that certified or approved the foster home. The CPS with primary jurisdiction would be able to identify the applicable LDSS or VA through CONNX.

The LDSS with primary jurisdiction for investigating the report also must notify the above referenced agencies of the results of the investigation (whether the report was indicated or unfounded) at its conclusion [SSL §424(6)(b)].

The investigating CPS must check that any LDSS with legal custody of a child(ren) in foster care named in the CPS report has been given secondary jurisdiction for the report. These assignments should be made automatically when the SCR registers a **FC** report, but if additional children are later added to the report, or if the appropriate jurisdictional assignments were not made when the report was registered, the investigating CPS must assign the secondary jurisdiction as soon as possible.

### **b. Parents, guardians, and PLRs**

CPS must provide Notice of Existence letters, generated in CONNX, to the subject and other persons named in the report. This letter notifies the subject of the report of the existence of the report and provides information regarding the subject's right to appeal. When a report is coded as **FC**, the notifications used are specific to foster care.

In addition, when a report is coded as **FC**, the parents or guardians of a child in foster care alleged to be abused or maltreated in a foster home must be added to the report as "other

persons” and CPS must provide these parents/guardians with a Notice of Existence letter regarding the report and their rights to request a copy of the report.

**c. *Voluntary authorized agency (VA) responsibility***

When a VA becomes aware of a CPS report regarding a foster home that it has certified or approved, or a CPS report regarding a child in foster care whom it has placed in the foster home, the VA *must* notify the custodial LDSS of *any* child it has placed in the home who is named in the report.<sup>6</sup>

## **6. Requirements for investigations in foster boarding homes**

Each agency (the LDSS conducting the CPS investigation, the LDSS with legal custody of the child in foster care, or the LDSS or VA that certified or approved the foster home) has its own legal duties and responsibilities to address and support the safety and well-being of the child(ren) in the foster home. Each agency must execute those duties and responsibilities as set forth in applicable statutes, regulations, and policies.

The legal requirements for conducting investigations of reports involving a foster boarding home are the same as for any in-home setting. Accordingly, procedures for foster care investigations are much the same as those used for **Familial** reports [18 NYCRR 432.2(b)(3)]. (See **Chapter 6, *Child Protective Services Investigations***.)

The regulatory requirements for conducting all investigations, including those for foster boarding homes include, but are not limited to:

- initiating the investigation within 24 hours after receipt of the initial oral report by the local CPS;
- assessing immediate danger of serious harm to the child(ren), which may require a protective intervention;
- within one business day, reviewing all previous SCR records, including unfounded legally sealed reports, involving a subject of the report, child named in the report, or siblings of a child named in the report;
- within one business day, requesting relevant portions of any prior records maintained by another LDSS;
- within five business days, reviewing the LDSS’ own records that apply to any prior report;
- reporting deaths to the district attorney and medical examiner or coroner;
- interviewing the subject and the alleged victim;
- delivering or sending the notification letters to the parent(s) or guardian(s) of any child alleged to be abused or maltreated and to any subject of the report, informing them of the existence of the report;
- completing the Initial (7 day) Safety Assessment and a final safety assessment before closing the case; and
- completing the Risk Assessment Profile (RAP).

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<sup>6</sup> “Revised Model Contract for Purchase of Foster Care Services” (15-OCFS-ADM-14), p.33.

In addition to these requirements, when investigating a report involving a foster boarding home, CPS must contact and interview, as applicable:

- LDSS staff members responsible for care and custody of the child, including staff of any out-of-state agency that is responsible for the care and custody of a child;
- LDSS or VA staff members responsible for certifying or approving the foster boarding home;
- LDSS or VA staff with case planning responsibility for the child;
- other children in the home;
- other household members; and
- staff of social services agencies that provide services to the child named in the report or to other children in the home.

When there is a **Familial** report involving a foster boarding home, CPS should contact the LDSS or VA that certified or approved the foster home and the LDSS with legal custody of child(ren) in foster care in the home.

The following actions are particularly important for **FC** reports:

- obtain a description of the alleged incident and written statements, if possible, from household members of the foster home
- obtain medical documentation, if the child was examined;
- make a separate report to the agency supervising (certifying/approving) the home describing any problems identified or observed in the foster boarding home

The CPS worker must assess the safety of *all* children who reside in the foster boarding home. If the CPS worker investigating an **FC** report has reasonable cause to suspect that a familial child for whom the alleged subject is legally responsible is also being abused or maltreated or is at risk of abuse or maltreatment, then the CPS worker must fulfill his/her responsibility as a mandated reporter and call in a report to the SCR that will be coded **Familial**.

### ***Collaborative home visit***

A staff person from the authorized agency that certified or approved the foster boarding home should, if possible, conduct a home visit with the CPS worker investigating the report. During the home visit, the representative from the authorized agency should assess whether the foster boarding home is complying with foster care regulations.

## **7. Sharing of information**

The LDSS conducting the CPS investigation is permitted by law to share CPS report information with the LDSS that has legal custody of the child(ren) in foster care named in the CPS report and, if different, the LDSS or VA that has supervision over the placement [SSL §422(4)(A)(c)]. Accordingly, the investigating CPS may inform such LDSS and/or VA of the allegations.

It is consistent with applicable foster care confidentiality standards for the LDSS with legal custody of child(ren) in foster care named in the report and, if applicable, the LDSS or VA that certified or approved the foster boarding home, to share with the LDSS conducting the CPS investigation any information it has that is relevant to the investigation [SSL §425(1)].

If a CPS worker observes or suspects that a foster parent is not adhering to regulatory standards for foster care, the CPS worker should inform the certifying/approving agency for the foster boarding home about his or her concerns and observations so that the certifying/approving agency can explore those concerns and take any actions that may be necessary to protect children.

The CPS investigating a report involving a foster boarding home also is responsible for informing an LDSS with legal custody of the child(ren) in foster care if there is a removal of a child from the home. They should also share information during the investigation about concerns that could affect the safety of children in the foster boarding home.

While the CPS investigation is pending, the custodial LDSS and, if different, the LDSS or VA that certified or approved the foster home must continue to carry out their statutory, regulatory, and OCFS-established responsibilities. These include, but are not limited to:

- Maintaining appropriate casework contacts
- Case planning
- Assessing the appropriateness of the placement (including assessing the safety of the child(ren))
- Monitoring compliance by the foster parent with applicable foster home certification or approval standards

## 8. Determination of an investigation in a foster boarding home

The primary objective for any investigation of child abuse or maltreatment is protecting the safety of the child named in the report and any other children in the home. All necessary steps should be taken to achieve this result. An Article 10 Family Court petition cannot be brought against a foster parent for the abuse or neglect of a child in foster care. However, if it appears that a crime may have been committed and it is in the best interests of a child in foster care, CPS should make a referral to the appropriate district attorney.

As with all CPS reports, the CPS must determine within 60 days of the receipt of the report whether the report is indicated or unfounded [SSL §424(7)]. CPS must determine whether to indicate or unfound a report involving a foster boarding home by using the same criteria as is used for all other reports, i.e., whether there is **some credible evidence to support the allegations of abuse or maltreatment in cases accepted by the SCR before January 1, 2022, or a fair preponderance of evidence to support the allegations of abuse or maltreatment in cases accepted by the SCR on or after January 1, 2022**<sup>7</sup> [SSL §412(6) & (7)].

A foster care provider must adhere to state foster care regulations; those regulations are the standards of compliance used by foster care oversight agencies. CPS does not use these standards to determine whether there was abuse or maltreatment of children in the home. The decision of whether to indicate the report must be based on an application of the definitions of child abuse and maltreatment. (See **Chapter 6**, *Child Protective Services Investigations*.)

This determination process for a CPS report includes:

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<sup>7</sup> [https://ocfs.ny.gov/main/policies/external/ocfs\\_2021/ADM/21-OCFS-ADM-26.pdf](https://ocfs.ny.gov/main/policies/external/ocfs_2021/ADM/21-OCFS-ADM-26.pdf)

- Determining whether some credible evidence to support the allegations of abuse or maltreatment in cases accepted by the SCR before January 1, 2022, or a fair preponderance of evidence to support the allegations of abuse or maltreatment in cases accepted by the SCR on or after January 1, 2022<sup>8</sup> (See **Appendices**, Section E, *Definitions of child abuse and maltreatment.*)
- If the report is indicated, developing a plan that provides for the continued safety and protection of the child(ren)
- Notifying the subject(s) of the report of the determination of the report and of his/her rights (See **Chapter 12**, *Notifications.*)
- Notifying all other adult person(s) named in the report, including the parent(s) or guardian(s) of any foster child named in the report) of the determination of the report

The CPS with primary jurisdiction for investigating the report must notify the LDSS with legal custody of the child(ren) in foster care named in the CPS report, the LDSS or VA that certified or approved the foster home, and the applicable OCFS Regional Office of the determination, whether the report was indicated or unfounded [SSL §424(6)(b)].<sup>9</sup> The individual agencies involved in the case, based on their respective roles and responsibilities, should determine what, if any, action must be taken in regard to the placement of children in the home and the certification or approval of the foster home.

## 9. Post-determination actions

Based on the facts of the case, it may be appropriate to keep the child in foster care in the foster home. In all such cases, the decision and its basis must be sufficiently documented in CONNX.

If the decision is made to remove the child(ren) in foster care from the foster home, the standards set forth in 18 NYCRR 443.5 must be followed [SSL §400]. A child in foster care may be removed from the foster boarding home without notice if the child's health and safety are at risk [18 NYCRR 443.5(a)(1)].

Concerns about whether foster parents should maintain their certification or approval following the indication of a CPS report must be addressed by the LDSS or VA that is responsible for certifying or approving the foster boarding home. Actions that constitute abuse or maltreatment generally are also in violation of certification or approval requirements. If the decision is made to decertify or revoke approval of the foster home, the standards set forth in 18 NYCRR 443.11 apply.

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<sup>8</sup> [https://ocfs.ny.gov/main/policies/external/ocfs\\_2021/ADM/21-OCFS-ADM-26.pdf](https://ocfs.ny.gov/main/policies/external/ocfs_2021/ADM/21-OCFS-ADM-26.pdf)

<sup>9</sup> 16-OCFS-ADM-13, "Requirements Relating to CPS Reports Involving Foster Parents"; SSL §424(6)(b)

## C. CPS investigations in child day care programs

The legal requirements for conducting and determining investigations in child day care settings are the same as those that apply to investigations in familial settings. Accordingly, the procedures CPS uses are largely the same as for investigations of reports coded **Familial** or **FC**. (See **Chapter 6, Child Protective Services Investigations**.) However, reports that involve the provision of child day care require some additional considerations and actions.<sup>10</sup> These include:

CPS may need to assess whether the report has been properly coded, i.e., whether the report should be coded as **DC** (Day Care), **Familial**, or **FC** (Foster Care), or whether the allegations require that there be separate, differently coded reports.

CPS must coordinate with staff from the OCFS Division of Child Care Services (DCCS) and, if applicable, from any other agency with which OCFS has contracted to oversee the child day care program.

The tools for safety assessments and the Risk Assessment Profile (RAP) are not available in CONNX for day care cases. The assessment of family dynamics that is central to the application of these tools is not relevant for assessing the safety of or future risk to children in a non-familial setting. CPS must still assess safety and risk, but without the use of these tools.

When a report alleging the abuse or maltreatment of a child involves a child day care program, the responsibility for conducting the child protective investigation lies with the LDSS in which the day care program is located.

Agencies charged with licensing, registering, and monitoring child day care programs also have a vital interest in the safety of the children in those settings. These agencies also have their own investigative responsibilities, which are focused on the compliance of the child day care program with child day care statutes and regulations that include prohibitions on the abuse or maltreatment of children. Because of the intersection of interests of CPS and child day care oversight agencies, CPS and those agencies should coordinate and collaborate on their investigations.

### 1. Types of child day care in New York State

Child day care is defined as care for a child on a regular basis that is provided away from the child's residence for less than 24 hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child [SSL §390(1)(a); 18 NYCRR 413.2(a)].<sup>11</sup>

New York State authorizes the licensing and registration of the following types of child day care programs [SSL §390(1)(c)-(f) and 18 NYCRR 413.2(b)]:

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<sup>8</sup> See the OCFS policy, [15-OCFS-ADM-10](#), "Sharing of Investigation Information by Child Protective Services and the Office of Children and Family Services, Division of Child Care Services."

<sup>11</sup> As per [18 NYCRR 413.2\(a\)\(1\)](#), 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.

- Family day care homes, which are in-home programs serving more than two children who are not the provider's children in a residence, with a maximum capacity of eight children at one time
- Group family day care homes, which are in-home programs serving seven to 16 children at one time
- Child day care centers outside of New York City, which are operated out-of-home and serve more than six children, with the maximum number of children limited only by space and staffing
- School-age child care programs, which are out-of-home programs that serve seven or more children who are younger than 13 years of age and who attend school, during hours when they are not in school, with the maximum number of children dependent on the availability of space and staff
- Small day care centers, which are out-of-home programs that serve three to six children.

## 2. Oversight responsibility for child day care programs

The OCFS Division of Child Care Services (DCCS) is responsible for licensing, registering, and monitoring all child day care programs in New York State, except for child day care centers in New York City (also known as group day care centers), which are the responsibility of the New York City Department of Health and Mental Hygiene (DOHMH) [SSL§390(2) & (13)]. DCCS and DOHMH responsibilities include investigating complaints of alleged violations of child day care statutory and regulatory requirements.

In some counties outside of New York City, DCCS contracts with Child Care Resource and Referral (CCR&R) programs and LDSSs to perform the activities necessary to regulate child day care programs. In New York City, DCCS contracts with the New York City Department of Health and Mental Hygiene (DOHMH) to perform licensing/registration functions, including monitoring of child day care programs, except for group day care centers, for which DOHMH has sole responsibility.

When the SCR registers a report that it codes as "Day Care" (DC), secondary jurisdiction is given to DCCS and a report is automatically uploaded to the child day care electronic system of record, the Child Care Facility System (CCFS). This system is available to the staff at DCCS offices and to contract agencies responsible for monitoring child day care programs and investigating complaints regarding them. The uploading process notifies DCCS regional offices, DOHMH, and CCR&R programs, as applicable, about CPS reports involving child day care programs. The applicable agency completes a day care complaint report related to the CPS allegations, and a staff person of that agency conducts a day care complaint investigation.

The SCR report is simultaneously transmitted to the LDSS where the child day care program is located, to be investigated by its CPS. In New York City, the Office of Special Investigations (OSI) of the New York City Administration for Children's Services investigates CPS reports involving child day care programs.

The child day care oversight agency's investigation should:

- Determine if there are current safety concerns for children in the day care program, including whether there is a need for the temporary suspension of the program or an interim safety plan

- Determine if there have been or continue to be violations of child day care regulatory standards, which include that there be no abuse or maltreatment of children by day care providers or of any children living in a home where day care is provided
- Determine whether any violations of child day care regulations require corrective actions, fines, limitations, or the closing of the child day care program
- Arrange for the provision of technical assistance to the child day care program, as appropriate, to resolve issues that have created or could create regulatory violations

Child day care regulations prohibit the abuse or maltreatment of a child in a child day care program by an employee, volunteer, or any other person. Regulations for home-based child day care programs also prohibit the abuse or maltreatment of any child who resides in the family or group family day care home, including the child day care provider's children or foster children, regardless of whether the abuse or maltreatment occurred during the provision of child day care [18 NYCRR 414.10(a), 416.10(a), 417.10(a), 418-1.10(a), & 418-2.10(a)].

### 3. Intake of reports involving day care programs

A report should be coded as **DC** if it alleges that a child has been abused or maltreated while attending a child day care program.

The SCR staff person receiving a call reporting alleged abuse or maltreatment will attempt to determine whether the report should be coded **DC**. This is a simple matter if the abuse or maltreatment is alleged to have occurred in an out-of-home day care setting. When abuse or maltreatment is alleged to have occurred in a home, however, the reporter may not know that there is a child day care program operating in the home. Or, if the reporter states that there is a day care program in the home, the SCR staff person may code the report as **DC**, when in fact the situation is familial and did not occur during the provision of child day care.

Some child day care programs are in homes, while other child day care programs are operated out-of-home. With in-home programs, the provider's own children may live there, and may or may not be part of the day care program. In out-of-home programs, there are no ongoing familial relationships between providers and children. There sometimes is confusion about a report to the SCR should be coded as **Familial** or **DC**, or whether there should be two reports, one with each designation.

#### a. *Criteria for determining appropriate coding*

##### **Day care**

A report should be coded as **DC** if the report alleges the abuse or maltreatment of a child *while that child is receiving child day care services in a:*

- Licensed or registered child day care program
- Program that is not a licensed or registered child day care program, but is required by law to be licensed or registered. A program must be licensed or registered if it provides child day care:
  - For three or more children at one time, who are not relatives of the day care provider;
  - Away from the home of the children; and
  - For more than three total hours per day but less than 24 hours per day.

Where child care is provided on an informal basis or in a legally-exempt day care program, the report should not be coded as **DC**. A “legally exempt” day care program is a program providing day care but which is not required to be licensed or registered. For example, a home where day care is provided for only two children, or a program where day care is provided for no more than three hours per day would be “legally exempt”.

### ***Familial***

A report should be coded as **Familial** if the child of a day care provider or other child living in the home of a day care provider is allegedly abused or maltreated outside the provision of child day care.

### ***Foster Care***

A report should be coded as **FC** if a foster care child is allegedly abused or maltreated in a home where day care is provided and which is also a foster boarding home.

When a CPS receives a report coded as **Familial** or **FC**, but the child lives in a home where child day care services are provided, CPS should inform the appropriate DCCS Regional Office about the report, provide DCCS with secondary jurisdiction so it can track the status of the investigation, and inform DCCS of the outcome of the investigation. This does not apply to reports that are assigned to the Family Assessment Response (FAR) track. With these reports, CPSs should inform people outside the family about the report only with the permission of the family receiving FAR.

### ***Day Care and Familial (two reports)***

If the subject of a report allegedly abuses or maltreats children while providing day care services in a home-based day care program, then the report must be coded in CONNX as **DC**. However, if at least one but not all those children is the subject’s child or lives in the home where the day care services are provided, it may be necessary to register a second report to be coded as **Familial**. If a CPS worker investigating a **DC** report has reasonable cause to suspect child abuse or maltreatment of a day care provider’s own child, the worker must call the report into the SCR, and the SCR will determine whether to also register a **Familial** report. Similarly, if the day care home is also found to be a foster boarding home, the CPS worker must call in another report, to be coded **FC**. Whenever there are two or more reports that are coded differently, the reports cannot be consolidated because each code generates and disables specific functions in CONNX.

#### ***b. Effects of coding a report as day care***

When a report is coded as **DC**, CONNX disables the availability of safety assessments and the Risk Assessment Profile (RAP), which are not designed to assess safety or risk in a day care program.

The designation of **DC** triggers the use of system-generated notification letters to the subject and other persons named in the report that are specific to and reference day care.

When the SCR codes a report as **DC**, an interface between CONNX and the DCCS child day care electronic system of record automatically enters a report regarding the child day care program into the child day care system of record. In addition, DCCS is assigned a secondary role in the investigation. The assignment of secondary jurisdiction to OCFS is strictly for informational purposes; DCCS does not enter information into CONNX regarding Day Care reports.

The coding of a report as **DC** alerts CPS that it must coordinate with DCCS and/or any other agency that is charged with oversight of the day care program. When a report is designated as **DC**, the CPS and the child day care oversight agency may share information, conduct joint interviews, and coordinate actions.

### ***c. Correcting coding of a report***

Sometimes, after beginning a CPS investigation that was coded by the SCR as **Familial** or **FC**, CPS determines that the alleged abuse or maltreatment involved a child receiving child day care services, and therefore the report should have been coded as **DC**. In other situations, the CPS may realize that a child who was allegedly abused or maltreated in a report that was coded **DC** is the day care provider's biological, adopted (or other child(ren) for whom he or she is legally responsible) or the child(ren) is in foster care, that the incident was unrelated to the provision of day care, and therefore the report should be coded as **Familial** or **FC**. Sometimes, more than one situation may apply, and it may be necessary to register more than one report, each coded differently.

#### ***Coding of the report does not match the report circumstances.***

If CPS receives a report that involves a child day care program and finds, either initially or after beginning an investigation, that the report is not coded properly, the coding must be corrected so CPS can use the appropriate tools in CONNX and share information about the report with those who should have access to that information. For example, if CPS determines that there should be both a **DC** report and a **Familial** report, parents of children in the day care, who will be named as "other persons" in the **DC** report, will have the right to access information in the *Day Care* report but not in the associated **Familial** report. DCCS or its agent will coordinate its investigation activities with CPS for a **DC** report but not a **Familial** report. Appropriate coding enables DCCS to determine its role in the investigation and appropriately track the progress of the investigation.

If the CPS recognizes a coding error *before* beginning its investigation, the CPS should reject the report, provide the SCR with an explanation of the problem, and request that the report be withdrawn and re-registered with the correct coding.

If the CPS recognizes a coding error *after* beginning its investigation, it should call in a new report to the SCR and fully explain the situation so SCR can determine the best method for handling the situation. In most instances, it will be necessary to register a new report. The CPS should then close the first report by completing all required tasks and fields and entering a determination. The CPS worker should also state the circumstances of the closing in the progress notes and provide the Call ID of the new report. If the report was coded as **DC**, CPS would *not* have to complete a RAP or safety assessments to close the report. However, if the report was coded as **Familial** or **FC**, CPS would have to complete a RAP and safety assessments to close the report. The CPS worker should also document the circumstances in the new report and reference the Call ID of the closed report.

#### ***More than one code is needed to match case circumstances.***

In other instances, it would be appropriate to have two reports or more reports - one coded **DC**, alleging the abuse or maltreatment of one or more children who were receiving day care services, and a second (and a third, if warranted) coded **Familial** or **FC**, alleging the abuse or maltreatment of the provider's child or foster child. CPS should maintain the original report and call in a second report. When CPS adds a second report with a different coding and one of the

reports is coded **DC**, the worker must inform the appropriate DCCS regional office about the new report as soon as possible and assign DCCS (upstate daycare) a secondary role.

**d. *Unregistered/unlicensed child day care programs***

If CPS determines during an investigation of a report coded as **Familial** or **FC** that child day care is being provided in the home, CPS must inform DCCS about the report, even if it does not appear to be a licensed or registered child day care program. New York State law requires a child day care program to be licensed or registered if it provides child day care for three or more children at one time (who are not relatives of the child day care provider) away from the home of the children for more than three hours per day, but less than 24 hours per day. Notifying DCCS that a child day care program may be operating in the home allows DCCS to determine whether the child care being provided requires a license or a registration. DCCS can then take action to cause a provider who does not have the required license or registration to comply with the law, including requiring the day care operator to cease and desist providing child day care services. If DCCS finds that the program does not need to be licensed or registered, DCCS will cease further involvement in the investigation.

#### **4. Requirements for investigations in child day care settings**

The legal requirements for conducting CPS investigations in child day care settings are the same as the requirements for conducting all CPS investigations. (See **Chapter 6**, *Child Protective Services Investigations*.) The following are additional actions that are applicable to investigations involving child day care programs.

**a. *Concurrent and collaborative investigations***

The local CPS should assign a secondary role to DCCS, if it has not already been assigned by the SCR. The assignment is to “Upstate, Day Care.” CPS should contact the appropriate DCCS regional office as soon as possible to begin the process of coordinating the investigations by CPS and DCCS or the agent with which OCFS has contracted for child day care program oversight.

If CPS receives a Day Care report during a time when DCCS staff is not available, such as in the evening or on a weekend or holiday, CPS must still initiate its investigation within 24 hours of the receipt of the report. It should then contact DCCS as soon as possible thereafter to initiate coordination.

If a **Familial** report involves a home where there is a day care program, but no child attending day care is alleged to be abused or maltreated, the CPS must assign secondary jurisdiction to DCCS and should collaborate with DCCS in the investigation.

If a **DC** report will be addressed by a multi-disciplinary team (MDT), CPS must inform DCCS of this and, if feasible, facilitate the participation of staff from DCCS or its agent. Use of a Child Advocacy Center is guided by local protocols.

To the extent possible, CPS and the licensor from DCCS or its agent should coordinate interviews when they will be interviewing the same persons. This can reduce trauma for children and subjects and reduce the likelihood of one interview affecting the responses in another interview. CPS and staff of DCCS or its agent maintain their own case notes, but should share them when requested.

It is recommended that, whenever possible, the CPS interview children named in a **DC** report out of the presence of the alleged subject of the report.

**b. Providing updates**

CPS should keep DCCS or its agent up to date with important findings and developments in the case, especially regarding concerns related to the provision of child day care. DCCS or its agent should do the same with CPS. CPS information may be shared either verbally or in writing.

Investigators from both agencies may be able to provide useful information to the other regarding past and current observations of the subject and/or the child day care program. However, CPS cannot share information about previous unfounded reports or reports addressed through a Family Assessment Response, except to the extent that information from such reports has been incorporated into the record of the current CPS investigation.<sup>12</sup>

The investigator from DCCS or its agent can advise CPS about obtaining information about the child day care program. During the CPS investigation, CPS should obtain, if possible:

- A description of the alleged incident and written statements from day care providers and/or staff
- Copies of any pertinent incident reports from the day care director or provider
- Any other relevant information regarding the allegation

**c. Safety plans**

Depending on the circumstances of the case, DCCS or its agent may create a safety plan or limitation for the child day care program to follow until the investigation is resolved, and then monitor adherence to the safety plan; it may suspend the child day care program's license or registration until a determination is made by CPS; or it may not impose additional requirements.

**5. Notifications for a day care report**

CPS must provide a Notice of Existence regarding the CPS report to all subjects and other persons named in the CPS report, except children under 18 years of age [18 NYCRR 432.2(b)(3)(ii)(f)].

While it is generally necessary to verbally inform the director of a day care program that there is a report regarding an employee or volunteer in that program, CPS does not provide a Notice of Existence to the director of a child day care program unless that person is named in the report as a subject or other person. The director should not be added as a subject of a report unless there is reasonable cause to suspect that the director has abused or maltreated a child.

When a report alleges the abuse or maltreatment of a child or children attending a child day care program, CPS must provide a Notice of Existence to the parents of any such child originally listed on or later added to the report. In most instances, the SCR will not have the contact information for parents of children in a day care program. CPS should obtain this information, when needed, from the child day care program.

If an investigation reveals that a child or children attending the child day care program, other than the child or children named in the report to the SCR, has been abused or maltreated, that child or those children should be added to the report. This decision may be made through talking

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<sup>12</sup> "Sharing of Investigation Information by Child Protective Services and the Office of Children and Family Services, Division of Child Care Service" (15-OCFS-ADM-10)

to the source, interviewing the subject or alleged victim(s), speaking with other staff, having conversations with other children, and/or observation. Children should not be added to the report just because they are in the same child day care program. CPS should add to the report only children who are found to be victims of abuse or maltreatment.

## 6. Interviewing collateral contacts

When investigating a report involving a child day care program, CPS should obtain information from most of the usual sources. (See **Chapter 6**, *Child Protective Services Investigations*, for more information on required contacts during a CPS investigation.) However, some of the usual collateral contacts may not be relevant for a day care investigation, especially when the abuse or maltreatment is alleged to have occurred in an out-of-home day care setting.

For example, it may not advance the investigation to contact a child's neighbors, as these persons may have no contact with the subject. Similarly, speaking to the child's doctor about whether the child receives adequate medical care would not be relevant when the subject of the report is not responsible for that care. CPS must assess which collateral contacts will contribute to an understanding of the situation and proceed accordingly.

On the other hand, it may be important for CPS to make certain contacts in a day care related investigation that may not apply in a **Familial** or **FC** case. These may include:

- Other children attending the child day care program
- Persons who currently or previously worked or volunteered in the child day care program (including any provider or staff on duty at the time of the alleged incident)
- Parents of other children who attend the child day care program
- Licensors or registrars of DCCS or its contract agency, who have monitored and observed the child day care program
- Other persons, such as physical or speech therapists, food service personnel, etc., who may have information relevant to the allegations in the report and to the safety of the children in the day care program.

## 7. Safety and risk assessments

The use of OCFS-developed instruments for safety and risk assessments are not required for *DC* reports and are not enabled in CONNX for such reports. These tools depend on the assessment of actions by parents/guardians/PLRs in order to determine current danger or future risk to children. Many of these actions are not the responsibility of a child day care provider or applicable to the relationship between a day care provider and a child in day care.

*CPS is nevertheless responsible for assessing both safety and risk as part of its investigation for reports coded as DC.* The lack of safety assessment or risk assessment tools in CONNX does not remove the CPS's responsibility for making these assessments. Although CPS need not assign a number to the level of current danger for children or future risk to their safety, the worker must address these issues and must document his/her assessments in progress notes.

Because safety and risk assessment tools are not available for reports coded as **DC**, if CPS determines that allegations in a Day Care report also apply to a day care provider's own biological, adopted or foster child, the CPS must call the SCR to register a second report (or even a third report, where warranted) regarding any such children, to be coded as **Familial** or **FC**.

## 8. Sharing information

A child protective service may share most CPS information with DCCS and with child care resource and referral agencies in certain circumstances.

When there is a CPS report alleging abuse or maltreatment in a child day care program, DCCS and/or its contracted agent is responsible for conducting both immediate and ongoing assessments of the safety of children in the child day care program in accordance with regulations and for resolving its own complaint. To do this, DCCS or its agent needs details of the CPS investigation, which may include, but are not limited to:

- Specific allegations in the report from the SCR
- Specific evidence, such as statements, results of interviews, pictures, or videos
- Case notes, which would include relevant prior CPS history
- The determination as to whether the subject is indicated

CPS should not share information from prior unfounded reports and from reports addressed through the Family Assessment Response, except to the extent that records from such reports have been incorporated into the record of the current CPS report.

DCCS can obtain some, but not all, information regarding the investigation from CONNX. Direct communication between the CPS and DCCS or its agent can facilitate the timely and thorough sharing of information, as appropriate.

## 9. Determination of the day care investigation

CPS must determine whether to indicate or unfound a report involving a child day care program by using the same criteria as is used for all other reports, i.e., whether there **some credible evidence to support the allegations of abuse or maltreatment in cases accepted by the SCR before January 1, 2022, or a fair preponderance of evidence to support the allegations of abuse or maltreatment in cases accepted by the SCR on or after January 1, 2022**<sup>13</sup> [SSL §412(6) & (7)]. Although a child day care provider must adhere to numerous State child day care regulations, those regulations are the standards of compliance to be used by child day care oversight agencies. They are *not* the standards by which CPS should determine whether there was abuse or maltreatment. The decision of whether to indicate must, as for all reports, be based on an application of the definitions of child abuse and child maltreatment (see **Chapter 6, *Child Protective Services Investigations***), and not on the day care provider's compliance with child day care regulations.

Nevertheless, if a CPS worker observes or suspects that a child day care provider is not adhering to regulatory standards for the provision of child day care, the CPS worker is advised to immediately inform the DCCS about his or her concerns and observations so that DCCS can investigate those concerns and take any actions that may be necessary to protect children.

### ***a. Informing DCCS or child care oversight agency of the determination***

CPS must inform DCCS or its agent as soon as possible when the CPS has made a determination for a report that is coded as **DC**, or for a report that is coded as **Familial** or **FC** where the subject of the report lives in a home where child day care is provided. The

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<sup>13</sup> [https://ocfs.ny.gov/main/policies/external/ocfs\\_2021/ADM/21-OCFS-ADM-26.pdf](https://ocfs.ny.gov/main/policies/external/ocfs_2021/ADM/21-OCFS-ADM-26.pdf)

child day care program's license or registration cannot be renewed until all complaints associated with the program are resolved.

Once the CPS and DCCS investigations are resolved, DCCS will determine whether it is necessary to take any additional measures to keep children attending the child day care program safe, such as by developing, extending, or revising a safety plan, or by closing the program.

## **10. Other actions**

The primary objective for an investigation of child abuse or maltreatment is protecting the safety of the child(ren) named in the report, and any other children in the same environment as the child(ren) named in the report. All necessary steps should be taken to achieve this result.

### **a. *Court actions***

An Article 10 Family Court petition cannot be filed against a day care provider for abuse or maltreatment of a day care child. An Article 10 petition is an option for a day care provider who is the parent, guardian, custodian or other person legally responsible for an abused or maltreated child.

Notwithstanding the above, if it appears that a crime may have been committed and the best interests of a day care child require Criminal Court action, CPS should make a referral to the appropriate district attorney.

### **b. *Unlicensed/unregistered programs (illegal child care)***

When CPS finds a child day care program that the worker suspects is not licensed or registered but should be, the worker should contact DCCS or its agent to enable them to determine whether the child day care program is operating in compliance with the law.