



Office of Children and Family Services

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Administrative Directive

Transmittal:	22-OCFS-ADM-13
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Child Care Services
Date:	June 8, 2022
Subject:	Market Rate Revisions, Removal of Work Requirement in Limited Situations, and Other Changes to Child Care Assistance Program Regulations 2022
Suggested Distribution:	Directors of Social 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.
91-ADM-34 05-OCFS-ADM-03 22-OCFS-LCM-14	91-ADM-34	18 NYCRR 415	§ 410-w, 410-x		

I. Purpose

The purpose of this Administrative Directive (ADM) is to inform local social services districts (districts) of regulatory changes to the Child Care Assistance Program that were made in accordance with the enacted New York State Budget for Fiscal Year 2023. Further, this ADM advises districts of amended provisions of child care assistance funded under the New York State Child Care Block Grant (NYSCCBG) and Title XX of the federal Social Security Act as it relates to the rate of payment for a child determined to have special needs. This ADM replaces 91-ADM-34, *Child Care: Reimbursement of Payments for Children with Special Needs*.

II. Background

On April 9, 2022, the New York State Budget for State Fiscal Year 2022-2023 was enacted. Under the State Budget for SFY 2022-2023, social services districts will receive allocations totaling \$894.6 million in federal and state funds under the NYSCCBG. These allocations are in addition to \$548.8 million in available rollover of unspent funds from SFY 2020-21 and \$609 million in federal pandemic funding, which will support subsidy expansion in both SFY 2022-23 and SFY 2023-24.

As required by the State Budget, effective June 1, 2022, market rates will be set at the 80th percentile of the prices reported by providers on the most recent market rate survey to ensure that these rates provide equal access for eligible children to comparable child care services in the state. Further guidance and information on the market rate changes can be found in 22-OCFS-LCM-14, *Child Care Assistance Program Market Rates 2022*.

Federal law and regulation require that payment practices for child care assistance reflect generally accepted payment practices, including paying on a part-time/full-time basis, rather than paying for hours of service or smaller increments of time such as per hour [45 CFR 98.45(l)(3)(i)]. Therefore, effective June 1, 2022, hourly rates for child care assistance will no longer be permitted.

Further, with the enactment of the State Budget, the New York State Social Services Law was revised, removing the requirement that a parent or caretaker attending a post-secondary education program must also work a minimum of 17.5 hours per week to be eligible for child care assistance.

Finally, the federal Family Support Act of 1988 recognized the need for making higher child care payments for children who have special needs and allowed states to establish separate statewide limits for the care of such children. In November 2014, Congress passed the Child Care and Development Block Grant (CCDBG) Act of 2014 (Public Law (Pub.L.) 113-186 into law. In September 2016, the Office of Child Care (OCC) within the Department of Health and Human Services' Administration for Children and Families (ACF) published a Child Care and Development Fund (CCDF) final rule (81 F.R. 67438) to provide clarity to states, territories, and tribes on how to implement the CCDBG Act. The CCDBG Act stresses the importance of prioritizing services for specific vulnerable populations. The priority for service categories includes children with special needs. One means to fulfill priority requirements is to establish higher payment rates for providers caring for a child with special needs. To comply with CCDBG and prioritize children with special needs, the New York State Office of Children and Family Services (OCFS) is revising the payment rate for children with special needs, effective June 1, 2022.

III. Program Implications

Regulatory changes have been made in the following areas:

Removal of Hourly Rate

18 NYCRR 415.9 has been amended to remove the hourly rate for child care assistance payments. The definition of part-day rate has been amended to apply when child care assistance is provided for less than six hours per day. Districts must now apply a weekly, daily, or part-day rate in accordance with regulation.

Special Needs

No changes have been made to the definition of "child with special needs." 18 NYCRR 415.1(c) defines "child with special needs" as a child who is incapable of caring for themselves and who has been diagnosed by a physician, licensed or certified psychologist, or other professional with the appropriate credentials to make such a diagnosis, as having one or more of the conditions listed below 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).

The following are qualifying 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
- Traumatic brain injury
- Deaf-blindness
- Other health impairment

For the purposes of the Child Care Assistance Program, “other health impairment” means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to chronic or acute health problems, including but not limited to, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell, anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, Tourette syndrome, or HIV or AIDs. Diagnosis of the child’s condition must be made by a pediatrician, physician, or other medical specialist.

Part C of the Individuals with Disabilities Education Act (IDEA) defines “infant or toddler with a disability” as an individual under 3 years of age who needs early intervention services because the individual is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. 20 U.S.C. 1431-1445 section 1432(4) of the IDEA defines early intervention services as developmental services that are designed to meet the developmental needs of an infant or toddler with a disability. This involves the child’s physical, cognitive, communication, social or emotional, and/or adaptive development.

In order to meet the criteria for the payment rate for a child with special needs, the child must be diagnosed by a physician, licensed or certified psychologist, or other professional with the appropriate credentials to make such a diagnosis, as having one or more of the conditions 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), and require child care services beyond the type or amount that is generally required by a child of a similar age.

The payment rate for a child with special needs care is established when the parent or caretaker provides documentation to the district of qualifying diagnoses by a physician, licensed or certified psychologist, or other professional with the appropriate credentials to make such diagnosis as well as

documentation that the child requires child care services beyond that which is generally required by children of similar age within the child care setting. Examples of acceptable documentation include, but are not limited to, documents from appropriate professionals, such as documentation from early intervention as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delays. An Individualized Education Plan (IEP) from the child's school may provide acceptable documentation of special needs when it is based on the opinions of appropriate professionals. The caretaker may work in conjunction with the provider to obtain documentation to support that their child requires more intensive child care services.

Regulatory changes have been made to amend the rate of payment and the criteria in applying the special needs market rate. The availability of reliable and affordable child care impacts the ability of many individuals to obtain and maintain steady employment and self-support. It is crucial that parents have access to the type of care necessary for them to pursue training, educational activities, and employment and for their children to be in a safe and enriching environment. The importance of the availability of quality child care increases when a child has one or more disabilities. Children with disabilities often require services beyond those offered by most child care providers. When such services are identified, their cost generally exceeds the cost of other forms of child care in the area.

18 NYCRR 415.9 has been amended as it relates to the rate of payment for child care assistance provided to a child determined to have special needs. The market rate for a child determined to have special needs is a percentage specified by OCFS applied to the rates set under 415.9(h)(3). At this time, OCFS has determined that this amount will be 15% above the market rate that would otherwise apply to such a child based on the child's age, location of care, type of care, and rate type. The parent or caretaker must demonstrate that the special needs of the child result in additional child care-related services beyond that which is generally required by children of a similar age. The special needs market rate is not a differential payment and does not count toward the payment rules for providers qualifying for more than one differential payment rate.

Removal of the 17.5-Hour Work Requirement

18 NYCRR 415.2(a)(3) has been amended to remove the requirement that a parent or caretaker work at least 17.5 hours per week to be eligible for child care assistance while attending a two-year college other than one with a specific vocational sequence or a four-year college program that leads to a degree or a certificate of completion. The requirement that a parent or caretaker can demonstrate the ability to successfully complete the course of study and the requirement that the program is reasonably expected to increase the earning capacity of a caretaker remain in effect.

Market Rates Set at 80th Percentile of the Most Recent Market Rate Survey

18 NYCRR 415.9(h)(3) has been amended to establish market rates at the 80th percentile of the prices reported by providers on the most recent market rate survey. These rates will provide equal access for eligible children to comparable child care services in the state. Further guidance and information on the market rate changes can be found in 22-OCFS-LCM-14, *Child Care Assistance Program Market Rates 2022*.

IV. Required Action

Social services districts will need to review cases and make necessary adjustments to comply with applicable market rate adjustments. Payment adjustments will have to be made, as appropriate.

Removal of Hourly Rate

Social services districts will need to review cases to identify and adjust cases that were previously paid on an hourly basis to reflect the applicable market rates. For child care assistance payments where hourly rates were previously utilized when a child attended care for less than three hours per day and less than 30 hours per week, the part-day rate will apply. The part-day rate will also apply in situations where the hourly rate was previously applied for the excess hours of care provided for more than 12 hours in a 24-hour period. For example, if a child is in receipt of child care assistance for 14 hours in one day, the provider would receive a daily rate plus a part-day rate for this payment.

Special Needs

Districts must review all currently authorized cases in receipt of the special needs market rate. All payments for services provided on or after June 1, 2022, must apply the special needs market rate if the child is determined to meet the eligibility criteria for this rate. Reviews must take place as soon as possible, but no later than the next redetermination. For a child with special needs who qualifies to receive the special needs rate and is receiving child care services located in another state, the district must apply the additional percentage as defined by OCFS to the payment rates that apply to the location of care, i.e., the other state's child care subsidy payment rates for that location. Whenever the amount of child care benefits changes, districts must provide recipients with the OCFS-LDSS-4781, *Notice of Intent to Change Child Care Benefits and Family Share Payments*.

Districts must evaluate new applications and determine whether a child meets the requirements to be eligible for the special needs market rate. Due to the complexity and wide range of services that may be necessary, districts must determine on a case-by-case basis if a child meets the criteria for the special needs market rate. When a child is determined eligible for the special needs market rate, they remain eligible throughout their 12-month eligibility period. Documentation of the qualifying diagnosis and the need for a higher level of child care is required at recertification at the end of the 12-month eligibility period in order to receive the special needs market rate for the next 12-month eligibility period. Reimbursement for child care payments in excess of the applicable market rate will not be permitted to cover special education or other therapeutic services not directly related to the provision of appropriate child care.

For children deemed eligible for the special needs market rate, districts must pay an eligible child care provider the special needs market rate. Districts must apply the special needs market rate for a qualifying child with special needs to all eligible licensed, registered, and legally exempt child care providers and cannot restrict the payment rate to certain types of child care providers.

Removal of the 17.5-Hour Work Requirement

Districts that elect to provide child care assistance for a caretaker who is in receipt of temporary assistance or has income up to 200% of the state income standard to participate in a two-year program other than one with a specific vocational sequence or four-year college program that leads to a degree must review and, if necessary, amend their Child and Family Services Plan to reflect the removal of the 17.5-hour work requirement. Parents and caretakers who are no longer subject to the 17.5-hour work requirement must be notified of this change.

Market Rates Set at 80th Percentile of the Most Recent Market Rate Survey

As stated in 22-OCFS-LCM-14, districts are required to use the updated market rates when determining the payment amounts for all cases that are opened on or after June 1, 2022. Districts must review all currently authorized cases to determine that payment is authorized for the actual cost of care up to the

applicable market rate. Reviews must take place as soon as possible, but no later than the next case action or redetermination, whichever comes first. Districts were previously notified in 22-OCFS-LCM-14, *Child Care Assistance Program Market Rates 2022*, of the requirement to update provider rates in cases where the providers are only caring for children in receipt of child care assistance and the provider can demonstrate that their actual cost of care has increased by completing LDSS-6060, *Child Care Provider Attestation of Cost Form*. If such providers have completed and submitted this form, districts must pay the applicable market rate effective June 1, 2022.

V. Systems Implications

For districts that use the Child Care Time and Attendance (CCTA) system to process child care assistance payments, some modifications to CCTA have been made to support these regulatory changes. The hourly rates have been removed from CCTA effective June 1, 2022. The payment calculator will be changed to accommodate this going forward without affecting payments for care provided prior to June 1, 2022. System changes regarding the special needs rate are under development. Once such changes have been deployed, districts outside of New York City will be notified about the changes and instructions for any required actions when processing cases and payments. In some instances, districts may need to update individual provider and/or case records. Additional guidance will be made available after the release of this ADM through emails with CCTA district users and by contacting the Kinder Systems Support Desk.

The Child and Family Services Plan template for 2022 has been updated to remove the 17.5-hour work requirement.

VI. Effective Date

This release is effective June 1, 2022.

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

Issued by:

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Title: Deputy Commissioner

Division/Office: Division of Child Care Services