



Office of Children and Family Services

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Commissioner

Administrative Directive

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| Transmittal: | 19-OCFS-ADM-14 |
| To: | Social Services District Commissioners |
| Issuing Division/Office: | Division of Child Care Services |
| Date: | September 24, 2019 |
| Subject: | Changes to Legally-Exempt and Child Care Subsidy Regulations and Revised Legally-Exempt Enrollment Forms |
| 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 Sonoma Pelton, OCFS Division of Child Care Services, 518-408-6074 Sonoma.Pelton@ocfs.ny.gov |
| Attachments: | <ul style="list-style-type: none">• OCFS-LDSS-4699, <i>Enrollment Form for Provider of Legally-Exempt In-Home Child Care and Legally-Exempt Family Child Care</i> (Revised 9/2019)• OCFS-LDSS-4699-a, <i>Instructions for Enrollment Form for Provider of Legally-Exempt In-Home Child Care and Legally-Exempt Family Child Care</i>• OCFS-LDSS-4700, <i>Enrollment Form for Legally-Exempt Group Child Care Program</i> (Revised 9/2019)• OCFS-LDSS-4700-a, <i>Instructions for Enrollment Form for Legally-Exempt Group Child Care Program</i> |

Filing References

| Previous ADMs/INFs | Releases Cancelled | NYS Regs. | SSL and Other Legal Ref. | Manual Ref. | Misc. Ref. |
|---------------------------|---------------------------|---|---------------------------------|--------------------|-------------------|
| 17-OCFS-ADM-04 | 18-OCFS-ADM-09 | 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 regulatory changes to Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), Subpart 358-3 and Parts 403, 404, 405, 406, and 415, and corresponding revisions to the forms used to enroll legally-exempt child care providers (LECCP) funded under the New York State Child Care Block Grant (NYSCCBG).

II. Background

The federal Child Care and Development Block Grant Act of 2014 (CCDBG) was passed on November 19, 2014, and required states to implement specific changes to improve the quality and safety of child care programs, including comprehensive background checks, inspection of child care programs, training, and additional health and safety requirements.

When the New York State budget was signed into effect in April of 2019, it included legislative authority for the New York State Office of Children and Family Services (OCFS) to implement the above requirements. To achieve compliance with the provisions of CCDBG and support legislative changes, OCFS filed emergency regulations on September 25, 2019. As a result of the regulatory changes, amendments to processes related to the enrollment of LECCP, and the applicable enrollment forms were necessary. With this ADM, OCFS provides an overview of the regulatory changes and form revisions, and direction that districts must immediately begin providing the revised forms, dated September 2019, to all applicants for, and recipients of, child care subsidy funded under the NYSCCBG who are interested in using an LECCP. This ADM supersedes and replaces 18-OCFS-ADM-09, related to the previous version of the enrollment forms.

III. Program Implications**1. Regulatory Changes****Legally-Exempt Program Types**

The regulatory changes exempt relative-only providers (defined in regulation below as grandparent, great-grandparent, sibling living in a separate residence, aunt or uncle) from comprehensive background checks, annual inspections, and training requirements. As a result, legally-exempt informal child care providers have been defined into the following program types:

In-home child care is defined as child care provided in the child's own home by a person who is at least 18 years of age, and who is chosen and whose services are monitored by the child's caretaker; provided, however, that the child's caretaker must furnish the child care provider with all employment benefits required by New York State and/or federal law, and must pay the child care provider at least the minimum wage, if required.

Relative-only in-home child care is defined as in-home child care provided by a person, who is at least 18 years of age, and who is, by virtue of blood, marriage or court decree, related to all the children in care receiving child care services as a grandparent, great-grandparent, sibling provided that such sibling lives in a separate residence from the child, aunt or uncle.

Family child care is defined as child care provided in a residence in which one or more of the children in care receiving child care services do not reside, by a person who is at least 18 years of age, and who is chosen and whose services are monitored by the child's caretaker.

Relative-only family child care is defined as family child care provided by a person, who is at least 18 years of age, and who is, by virtue of blood, marriage, or court decree, related to all of the children in care receiving child care services as a grandparent, great-grandparent, sibling provided that such sibling lives in a separate residence from the child, aunt or uncle.

Comprehensive Background Checks

All prospective and existing legally-exempt child care providers, employees, volunteers, and family child care household members age 18 or older not related in any way to all children in care, except for individuals at relative-only providers, must complete comprehensive background clearance checks. These checks include the following:

- A New York State criminal history record check with the New York State Division of Criminal Justice Services
- A national criminal record check with the Federal Bureau of Investigation (FBI)
- A search of the New York State Sex Offender Registry
- A database check of the New York Statewide Central Register of Child Abuse and Maltreatment (SCR)
- A search of the national sex offender registry using the National Crime and Information Center. (This check will not be conducted upon initial implementation and will be required in accordance with a schedule developed by OCFS)
- For any individual listed above who lives or lived in any state other than New York in the preceding five years, the following background checks will also be required:
 - A search of the criminal history repository in each state where the individual lives or lived outside of New York in the preceding five years
 - A search of any state sex offender registry or repository in each state where the individual lives or lived outside of New York in the preceding five years
 - A search of state-based child abuse or neglect repository in each state where the individual lives or lived outside of New York in the preceding five years.

When individuals are found to have been convicted of mandatory disqualifying offenses or have engaged in certain uncooperative behaviors associated with the background

check process, such person shall be ineligible to have any role in a child care program, and the associated legally-exempt child care provider may be prohibited from being enrolled by an enrollment agency.

While individuals at relative-only in-home and relative-only family child care providers, as well as those adult family child care household members who are related in any way to all children in care, are exempt from the requirements of the newly implemented comprehensive background checks, such individuals will remain subject to those backgrounds checks that existed in regulation, per 415.13, prior to the enactment of the regulatory changes.

Annual Inspections

In accordance with a schedule and procedures established by OCFS, enrollment agencies must conduct annual, on-site inspections, of all currently enrolled legally-exempt group and informal child care providers, except for relative-only in-home child care providers and relative-only family child care providers.

Annual Training

Every legally-exempt child care provider, director, employee and volunteer, except for at a relative-only in-home child care provider or relative-only family child care provider, is required to obtain a minimum of five hours of training annually addressing topics or subject matters required by state and federal law to maintain enrollment with an enrollment agency and be eligible to receive child care subsidy funds.

Enhanced Health and Safety Requirements

Standards related to health and safety, consistent with those required pursuant to CCDBG, have been incorporated into regulation. Legally-exempt group child care programs that are operating under the auspices of another agency are now required to comply with all health and safety requirements, and to complete the health and safety checklist and submit it to the enrollment agency as part of the enrollment application. Changes to health and safety regulations include those that relate to the following areas:

Allergy Information: Legally-exempt group child care programs are required to discreetly post child-specific food allergy information.

Certificate of Occupancy: Prior to enrollment by an enrollment agency, legally-exempt group child care programs must submit a certificate of occupancy or other documentation from the authority having jurisdiction for such matters that show the facility has been approved for use as a child care program.

Child Abuse and Maltreatment: Legally-exempt providers, directors, employees, and volunteers must make a report to the SCR when there is reasonable cause to suspect abuse or maltreatment of a child in care.

Emergency Plan: All legally-exempt child care providers are required to have a written emergency plan for the safe and timely evacuation of children.

Immunization/Medical Records: Except for children enrolled in kindergarten or a higher grade in a public or private school, legally-exempt group child care

programs may not provide child care to any child without a statement signed by a physician or other authorized individual that the child has received age-appropriate immunizations. In accordance with New York Public Health Law, any child who is missing one or more of the required immunizations may be provided care if immunizations are in process and the caretaker gives the program specific appointment dates for required immunizations, or a physician, licensed to practice medicine in New York State furnishes the program with a signed, completed medical exemption form issued by the New York State Department of Health or New York City Department of Education. The medical exemption must be reissued annually.

Safe Sleep Practices: Sleeping arrangement for infants through 12 months of age require that the infant is placed flat on his or her back to sleep in accordance with the recommendation of the American Academy of Pediatrics.

Cribs, bassinets, and other sleeping areas for infants must not have bumper pads, toys, large stuffed animals, heavy blankets, pillows, wedges or infant positioners. Wedges or infant positioners will be permitted with medical documentation from the child's health care provider.

Supervision of Sleeping Children: Legally-exempt family and in-home child care providers must have a written agreement with caretakers for those children who nap or sleep while in care. This must include where the child will sleep, expectations for supervision, and whether electronic monitors may be used.

Transportation: Requirements have been added relevant to the safe transportation of children enrolled in legally-exempt child care programs.

2. Enrollment Forms

The LECCP enrollment forms (OCFS-LDSS-4699: *Enrollment Form for Provider of Legally-Exempt In-Home Child Care and Legally-Exempt Family Child Care*, OCFS-LDSS 4699-a: *Instructions for Enrollment Form for Provider of Legally-Exempt In-Home Child Care and Legally-Exempt Family Child Care*, OCFS-LDSS-4700: *Enrollment Form for Legally-Exempt Group Child Care Program*, and OCFS-LDSS-4700-a: *Instructions for Enrollment Form for Legally-Exempt Group Child Care Program*), have been revised to reflect the regulatory changes above.¹ Districts must provide the current version of the OCFS-LDSS-4699 or the OCFS-LDSS-4700, as applicable, and the relevant instructions to a child's caretaker who has applied for, or is receiving, child care subsidies under the NYSCCBG, and who is interested in using an LECCP. As such, districts must immediately begin providing the revised forms, dated September 2019 to all such individuals. Likewise, effective immediately, all LECCPs enrolling or re-enrolling to provide subsidized child care services must submit the applicable, revised enrollment form to the enrollment agency, or their enrollment cannot proceed. Districts can no longer distribute, and LECCP can no longer accept, the prior versions, dated May 2018.

¹ The OCFS-LDSS-4699-1, OCFS-LDSS-4699-1A, OCFS-LDSS-4699-2, and OCFS-LDSS-4699-2A are rescinded and can no longer be distributed/accepted.

IV. Required Actions

Effective immediately, districts must distribute the revised legally-exempt enrollment forms, OCFS-LDSS-4699, and OCFS-LDSS-4700, to all applicants for, and recipients of, child care subsidy funded under the NYSCCBG who are interested in using an LECCP.

V. System Implications

Modifications to the Child Care Facility System (CCFS) have been completed to support the use of the updated enrollment forms. OCFS will be conducting training sessions and updating CCFS training materials to reflect these changes.

VI. Additional Information

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 OCFS-LDSS-4699, OCFS-LDSS-4699-a, OCFS-LDSS-4700, and OCFS-LDSS-4700-a can be downloaded from:

<https://ocfs.ny.gov/main/documents/docsChildCare.asp>

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

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

Issued by:

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Deputy Commissioner
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