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Administrative Directive

Transmittal:	05-OCFS-ADM-03
To:	District Commissioners
Issuing Division/Office:	Division of Development and Prevention Services
Date:	May 20, 2005
Subject:	Child Care Subsidy Program
Suggested Distribution:	Directors of Services, Child Support and Temporary Assistance; Supervisors of Services, Child Support and Temporary Assistance; Child Care Assistance Staff; Accounting; WMS Coordinators; Domestic Violence Liaisons
Contact Person(s):	<p>Questions pertaining to this ADM should be directed to the Office of Children and Family Services, Bureau of Early Childhood Services: Anne Ball, (518) 474-3775 or E-mail: Anne.Ball@ocfs.state.ny.us</p> <p>Questions pertaining to claiming should be directed to the Office of Temporary and Disability Assistance, Bureau of Financial Services: Regions I-IV: Virginia Scala, (518) 474-7549 or Email: virginia.scala@otda.state.ny.us Region V: Michael Borenstein, (631) 854-9704 or Email: michael.borenstein@otda.state.ny.us Region VI: Marian Borenstein, (212) 961-8250 or Email: marian.borenstein@otda.state.ny.us</p>
Attachments:	<p>A: Guidelines For Review of Enrollment Forms for Provider of Legally-Exempt Care: History of Article 10 Removal; Termination of Parental Rights; and Denial, Revocation and/or Suspension of a Child Day Care License or Registration</p> <p>B: OCFS-LDSS-4699, Enrollment Form for Provider of Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care</p> <p>C: OCFS-LDSS-4700, Enrollment Form for Provider of Legally-Exempt Group Child Care</p> <p>D: OCFS-LDSS-7009, Notice of Child Care Assistance Overpayment and Repayment Requirements</p> <p>E: OCFS-LDSS-7010, Notice of Fraud Determination, Disqualification for Child Care Benefits and Repayment Plan</p> <p>F: OCFS-LDSS-7013, Child Support Requirements Notification Letter</p> <p>G: OCFS-LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause</p>

Claim
H: OCFS-LDSS-7012, Notice of Good Cause Determination

Attachments Available On-Line:



Filing References

Previous ADMs/INFs		Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
05 OCFS ADM-01, 05 OCFS INF-02, 04 OCFS ADM-01, 04 OCFS LCM-09, 04 OCFS LCM-07, 03 OCFS LCM-19, 03 OCFS LCM-17, 03 OCFS INF-07	02 OCFS INF-05, 02 OCFS INF-01; 01 OCFS LCM-11, 01 OCFS LCM-08, 01 OCFS INF-8, 99 LCM-19, 92 LCM-138, 91 ADM-34	92 ADM-08	403, 404, 405, 415, 358-2, 358- 3, 628.3	SSL§ 332-a, 334, 335, 410		

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I. Purpose

The purpose of this Administrative Directive (ADM) is to inform social services districts (districts) of the changes in the requirements for child care subsidies funded through the New York State Child Care Block Grant (NYSCCBG) and Title XX of the federal Social Security Act. Additionally, this ADM includes requirements of the child care subsidy program not issued previously in an ADM or Local Commissioners Memorandum (LCM).

The OCFS forms provided as Attachments D, E, F, G and H of this ADM will be available shortly on the OCFS Intranet website under the Forms Section. The format of these forms, but not the content, may change when they are finalized and posted to the website. The five forms, that are Attachments D – H, can be printed directly from this ADM and used on an interim basis to support the requirements under the child care subsidy program. OCFS will issue a notice once the five respective forms are finalized, and available for downloading from the OCFS Intranet.

II. Background

Changes to the regulations regarding the child care subsidy program, Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) Parts 358 and 415 and Sections 403.1, 404.1, 404.5, 404.6, 404.8, 405.1, 405.2, 405.3, and 628.3, were adopted effective May 15, 2004. These regulations fully implement the provision of child care services under the Title XX Social Services Block Grant and the NYSCCBG program; and the federal statutory and regulatory requirements that govern the federal funds included in the NYSCCBG. NYSCCBG funds child care subsidies to families receiving Temporary Assistance¹ (TA) and to other low income families.

This ADM details those changes to regulatory requirements as well as other requirements of the child care subsidy program that have not been addressed in previous releases by the Office of Children and Family Services (the Office).

This ADM is not an all-inclusive guide to the requirements of the child care subsidy program. Districts should refer to the following list for additional guidance.

- 05 OCFS ADM-01 Administration of Medication by Legally-Exempt Child Care Providers: Revised Health and Safety Requirements for Legally-Exempt Family, In-Home and Group Child Care
- 05 OCFS INF-02 Consolidated Services Plan-2005 Income Eligibility Standards
- 04 OCFS ADM-01 Guaranteed Child Care in Lieu of Temporary Assistance; Payment During Breaks in Activities; Eligibility for Families in Post Secondary Education; No Application for Transitional Child Care
- 04 OCFS LCM-07 Child Care Market Rates
- 03 OCFS LCM-19 Guidelines and Instructions for Preparing County Service Plans
- 03 OCFS LCM-17 Legally-Exempt In-Home Child Care Providers as Employees

¹ The term “public assistance” has been replaced by the term “temporary assistance.” Temporary Assistance encompasses Family Assistance, Safety Net Assistance and Veteran’s Assistance.

- 03 OCFS INF-07 Application for Child Care Assistance
- 02 OCFS INF-05 Child Care Case Referrals to FEDS and EVR
- 02 OCFS INF-01 Former Child Assistance Families Eligible for Transitional Child Care Guarantee
- 01 OCFS LCM-11 Child Care: Revised Health and Safety Requirements for Legally-Exempt Child Care Providers
- 01 OCFS LCM-08 Revised Client Notification Forms for Child Care Subsidy
- 01 OCFS INF-08 Former Child Assistance Program (CAP) Families Eligible for Transitional Child Care Guarantee or/and Transitional Medicaid/CAP MA Guarantee
- 99 LCM-19 Notice LDSS-4647: Important Information About Child Care
- 92 LCM-138 Child Care Certificate Program
- 91 ADM-34 Child Care: Reimbursement for Children with Special Needs

III. Program Implications

Districts must operate child care subsidy programs in compliance with State statutes, regulations and policies. The following are highlights of significant changes to the child care subsidy program based on regulatory amendments:

- To be eligible for a child care subsidy, the child's parents/caretakers must demonstrate they have a child support order in place, be actively pursuing a child support order or have good cause not to pursue a child support order.
- New State health and safety requirements apply to informal and legally-exempt group child care providers.
- Amendments to 18 NYCRR 358-2 and 358-3 expand fair hearing rights to include all families that apply for or receive child care services.
- “Aid continuing” for child care services is available to all families in receipt of child care subsidies.
- Districts are no longer required to have a contract with a provider to pay for absences and now have the option to pay for days on which the program is closed.
- The Child Care Services Unit replaces the Services Family Unit in determining which family and household members’ needs and income are taken into account when determining child care eligibility and the amount of the family share.
- New definitions of “engaged in work” and “seeking employment” clarify circumstances under which certain families are eligible for child care services.
- Families in which a member has voluntarily admitted to or was convicted of child care fraud are subject to disqualification penalties similar to those applied in the Temporary Assistance program.

A. DEFINITIONS

1. THE OFFICE

“The Office” means the New York State (NYS) Office of Children and Family Services.

2. CHILD CARE SERVICES

Child care services mean care for an eligible child provided on a regular basis either in or away from the child’s residence for less than 24 hours per day, which is provided by an eligible provider. Child care services may exceed 24 consecutive hours when such services are provided on a short-term emergency basis or in other cases where the caretaker’s approved activity necessitates care for 24 hours or more on a limited basis, if the district has indicated in its Consolidated Services Plan (CSP) or Integrated County Plan (ICP) that it will provide for such care.

3. ELIGIBLE CHILD

Eligible child means a child who resides with a parent/caretaker that meets the program and financial eligibility requirements for the particular type of child care services and who:

- is under 13 years of age. For child care services provided under Title XX of the federal Social Security Act or provided as a child protective service or a preventive service funded other than under the NYSCCBG program, a child who turns 13 years of age during a school year may continue to receive child care services through the end of that school year; or
- is under 18 years of age and is either a child with special needs or is under court supervision; or,
- is under 19 years of age, is a full-time student in a secondary school, or in an equivalent level of vocational or technical training, and is either a child with special needs, or is under court supervision.

4. CARETAKER

Caretaker means the child’s parent, legal guardian or caretaker relative, or any other person in loco parentis who lives with a child.

5. CARETAKER RELATIVE

Caretaker relative means any person who is a custodial parent or other adult relative as set forth in 18 NYCRR section 369.1(b), who exercises responsibility for the day-to-day care of and who lives with a child.

The term custodial parent or other adult caretaker relative shall include the following, as applicable:

- (a) the child's father, mother, brother, sister, grandfather, great-grandfather, great-great-grandfather, grandmother, great-grandmother, great-great-grandmother, uncle, great-uncle,

- great-great-uncle, aunt, great-aunt, great-great-aunt, of whole or half blood;
- (b) the child's first cousin, nephew and niece, of whole or half blood;
- (c) the child's step father, step mother, step brother, step sister, but no other step relative;
- (d) in the case of a child who has been surrendered to an authorized agency or who has been adopted:
 - (i) any of the blood or step relatives included in the preceding paragraphs of this subdivision; and
 - (ii) the child's adoptive parents and:
 - (a) the other children of the adoptive parents and the children of such children;
 - (b) the parents, grandparents and great-grandparents of the adoptive parents;
 - (c) the brothers and sisters of the adoptive parents and the children of such brothers and sisters; and
 - (d) the aunts, uncles, great-aunts and great-uncles of adoptive parents;
- (e) the spouse of any person described in the preceding paragraphs of this subdivision, even though the marriage may have been terminated by death, divorce or annulment; and
- (f) in the case of a child born out of wedlock, any relative in the maternal line included in the preceding paragraphs of this subdivision and, if paternity has been adjudicated or acknowledged in writing, any relative in the maternal and paternal lines included in the preceding paragraphs of this subdivision.

6. INFORMAL CHILD CARE

Informal child care includes legally-exempt family child care and legally-exempt in-home child care. Members of the child's or the caretaker's temporary assistance unit and other adult members of the child care service unit, except the child's siblings, are not eligible to provide subsidized child care.

Legally-exempt family child care means:

1. Child care for one or two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets requirements for the employment of minors as set forth in Article 4 of the NYS Labor Law, and who is chosen and whose services are monitored by the child's parent/caretaker; or
2. Child care for more than two children provided outside the child's own home in a residence by a caregiver who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in Article 4 of the NYS Labor Law, who provides such care for less than three hours per day and who is chosen and whose services are monitored by the child's parent/caretaker; or
3. Child care provided by a relative within the third degree of consanguinity of the parent or step-parent of the child except where such relative is a person legally responsible for, or the caretaker relative of, such child. Relatives within the third degree of consanguinity of the parents or step-parents of the child include:

- siblings of the child;
- grandparents of the child;
- great-grandparents of the child;
- great-great grandparents of the child;
- aunts and uncles of the child, including their spouses;
- great-aunts and great-uncles of the child, including their spouses; and
- first cousins of the child, including their spouses.

Legally-exempt in-home care means:

Child care furnished in the child's home by a caregiver who is chosen and monitored by the child's parent/caretaker and who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for the employment of minors as set forth in Article 4 of the NYS Labor Law. In addition, the child's parent/caretaker must pay the caregiver at least the minimum wage as set forth in Article 19 of the NYS Labor Law and provide the caregiver with all employment benefits required by State and/or federal law, including but not limited to Social Security and Workers' Compensation coverage.

7. LEGALLY-EXEMPT GROUP CHILD CARE

Legally-exempt group child care refers to care provided by those caregivers, other than caregivers of informal child care, which are not required to be licensed by or registered with the NYS Office of Children and Family Services (the Office) or licensed by the City of New York but which meet all applicable State or local requirements for such child care programs.

Caregivers of legally-exempt group child care include, but are not limited to:

- (1) pre-kindergarten and nursery school programs for children three years of age or older, and programs for school-age children conducted during non-school hours, operated by public school districts or by private schools or academies which provide elementary or secondary education or both in accordance with the compulsory education requirements of the NYS Education Law, provided that such pre-kindergarten, nursery school or school-age programs are located on the premises or campus where the elementary or secondary education is provided;
- (2) nursery schools and programs for pre-school age children operated by non-profit agencies or organizations or private proprietary agencies which provide services for three or less hours per day;
- (3) summer day camps operated by non-profit agencies or organizations or private proprietary agencies in accordance with Subpart 7-2 of the State Sanitary Code;
- (4) day care centers, family day care homes and other child care programs located on federal property which are operated in compliance with the applicable federal laws and regulations for such child care programs;
- (5) day care centers, family day care homes and other child care programs located on tribal property which are operated in compliance with the applicable tribal laws and regulations for

- such child care programs; and,
- (6) school-age programs caring for not more than six children.

8. ELIGIBLE CHILD CARE PROVIDER

To be an eligible child care provider, the provider must be included in the following list:

- (1) For eligibility under the NYSCCBG:
- a) a validly licensed or properly registered child day care center or properly registered school-age child care program operated by a voluntary non-profit corporation or association or an authorized child care agency; or
 - b) a validly licensed or properly registered child day care center or properly registered school-age child care program operated by either a private, proprietary corporation or organization or by an individual; or
 - c) a public school district operating a child care program which meets State and federal requirements; or
 - d) a family day care home properly registered with the Office to provide child care services to children; or
 - e) a group family day care home issued a valid license by the Office to provide child care services to children; or
 - f) a caregiver of informal child care who is enrolled with the district; or
 - g) a caregiver of legally-exempt group child care that is enrolled with the district.
- (2) For eligibility under Title XX of the Social Security Act:
- a) a validly licensed or properly registered child day care center or properly registered school-age child care program operated by a voluntary non-profit corporation or association or an authorized child care agency; or
 - b) a validly licensed or properly registered child day care center or properly registered school-age child care program operated by a private proprietary corporation or organization or by an individual; provided, however, that such a provider will be an eligible provider only with the prior approval of the commissioner of the Office upon the demonstration by the district that conveniently accessible non-profit facilities are unavailable or unable to provide the required care; or
 - c) a public school district operating a child care program which meets State and federal requirements; or
 - d) a family day care home properly registered with the Office to provide child care services to children; or
 - e) a group family day care home issued a valid license by the Office to provide child care services to children.

9. CHILD CARE SERVICES UNIT

The Child Care Services Unit (CCSU) replaces the Services Family Unit (SFU) in determining eligibility for child care. CCSU refers to the adults and/or children residing in the same household who will be considered for the purposes of determining a family's eligibility and the family share for child care services. Adult means any person 18 years of age or older unless the individual meets the definition of a child with special needs. The district may elect to include 18, 19, or 20 year old individuals in the same CCSU as their parent by indicating such option in its CSP/ICP. Districts have the option to include all 18, 19, or 20 year olds in the CCSU or to include only those 18, 19 or 20 year olds whose inclusion in the CCSU would benefit the family. The district's approved CSP/ICP must specify the criteria it will use to determine whether or not an 18, 19, or 20 year old is included in the CCSU.

- (1) For families where the child's parent or caretaker relative is receiving TA, the CCSU will be comprised of the parent or caretaker relative, his or her children and any other member of the TA unit.
- (2) For families that are receiving "child care in lieu of TA," the CCSU will be comprised of those household members that would be included in the TA filing unit, if the family were in receipt of TA, and those legally responsible non-filing unit members in the household whose income or resources would be considered in determining eligibility for TA.
- (3) For families where no adult family member is in receipt of TA, the CCSU will be comprised as follows:
 - (a) When adults, other than spouses, reside together and do not have a child in common, each adult along with his or her child will be considered a separate CCSU.
 - (b) When adults, other than spouses, reside together and have at least one child in common, the CCSU will be comprised of the adults who have child(ren) in common, the child(ren) those adults have in common and the other child(ren) of each such adult.

When a custodial parent who is under the age of 21 years is residing with his or her parent(s), or has established his or her own household, or resides with an individual other than his or her parent(s), the CCSU is comprised of the custodial parent who is under 21 years of age, his or her child(ren) and any other individual in the household with legal responsibility for the custodial parent's child(ren).

When eligible children reside only with individuals who are not the children's parent, step-parent, adoptive parent or legal guardian with financial responsibility for the children, the CCSU will be comprised of the eligible child only. For example, a child placed in foster care and residing with a foster family is considered a family of one. As another example, a child residing with a relative who does not have legal guardianship, but may or may not have legal custody, is considered a family of one. The awarding of legal custody to a non-parental caretaker *does not* remove financial responsibility for the child from the parent and assign it to the custodial party. For example, when a child is removed from his or her parent and placed in the custody of the district commissioner, the parent still remains financially responsible for the child.

Individuals who would otherwise be included in the CCSU, but who are temporarily absent from a household, who meet the following criteria will be considered part of the CCSU:

- (1) Individuals whose needs are partially or fully being met by members of the household, such as children or minors attending school away from home; provided, however, that a child away from home due to a foster care placement will not be considered part of the CCSU; and
- (2) Individuals who are contributing or are required to contribute to the needs of the household, such as individuals who are serving in the military.

10. FAMILY SHARE

Family share means the weekly amount paid by the child’s parent/caretaker toward the costs of the child care services.

11. ENGAGED IN WORK

For an individual who is not receiving TA, “engaged in work” means:

- (1) Is earning wages at a level equal to or greater than the minimum amount required under federal and NYS Labor Law for the type of employment; or
- (2) Is self-employed and is able to demonstrate that such self-employment produces personal income equal to or greater than the minimum wage or has the potential for growth in earnings to produce such an income within a reasonable period of time.

For an individual receiving TA, “engaged in work” means the individual is engaged in work as defined by the district in the district’s approved employment plan.

12. SEEKING EMPLOYMENT

For an individual who is not receiving TA, “seeking employment” means making in-person job applications, going on job interviews, registering with a NYS Department of Labor Division of Employment Services Office to obtain job listings, and participating in such other job seeking activities as are approved by the district.

13. CHILD WITH SPECIAL NEEDS

Child with special needs means a child who is incapable of caring for himself or herself and who has been diagnosed as having one or more of the following conditions derived from the NYS Education Law, Title 8 NYCRR 200.1(zz), to such a degree that it adversely affects the child’s ability to function normally:

- | | | |
|-------------------------|-----------------------|---------------------------------------|
| Autism | Health impairment | Orthopedic impairment |
| Deafness | Learning disability | Speech or language impairment |
| Deaf-blindness | Mental retardation | Traumatic brain injury |
| Emotional disturbance | Multiple disabilities | Visual impairment including blindness |
| Other health impairment | | |

14. PERSON IN LOCO PARENTIS TO A CHILD

Person in loco parentis to a child means the child's guardian, caretaker relative or any other person with whom a child lives who has assumed responsibility for the day-to-day care of the child.

15. CHILD CARE CERTIFICATE

Child care certificate means a certificate issued to a child's parent/caretaker that verifies the parent/caretaker is eligible for subsidized child care services. The parent/caretaker uses the certificate to assist in arranging for care from a child care provider.

16. STATE INCOME STANDARD (SIS)

State Income Standard (SIS) means the most recent official federal income poverty level (as defined by the federal Office of Management and Budget) as updated by the Office.

B. ELIGIBILITY DETERMINATION AND REDETERMINATION

1. APPLICATION FOR CHILD CARE

Applicants for child care services must apply in writing on the Common Application LDSS-2921, or local equivalent approved by the Office. The district must permit applicants to submit their applications by mail. The parent/caretaker with whom an eligible child resides is the applicant for child care services. The applicant is responsible for providing accurate, complete and current information regarding the family's circumstances including the family's income, composition and child care arrangements. The applicant must notify the district immediately of any change in this information.

Recipients of TA and "child care in lieu of TA" *must not be required* to complete a new application for transitional child care assistance, although districts may contact the family to update the case information. The district must determine whether a family is eligible for transitional child care *prior* to closing a TA case or a "child care in lieu of TA" case. Districts may use the family's existing TA application with updated information to determine eligibility and benefits for transitional child care. A separate Administrative Directive, 04 OCFS ADM-01, has been issued to detail requirements for "child care in lieu of TA."

Except where required by federal law or regulation, no person who applies for a social service must be required to disclose the Social Security Number of any person for whom the service is requested as a condition of eligibility for the service. For child care assistance, the provision of a Social Security Number is voluntary and child care benefits must not be denied or withheld for the failure to furnish a Social Security Number. No federal statute requires families who are receiving child care assistance through Title XX or NYSCCBG to disclose Social Security Numbers for the receipt of child care assistance.

However, this does not restrict the ability of a district to request that the applicant disclose the Social Security Number of the person who will receive the service. If such a request is made, the applicant must be informed that the disclosure is voluntary, by what statutory or other authority such number is

solicited and the uses which will be made of the Social Security Number.

Additionally, when a district obtains a Social Security Number voluntarily disclosed by an applicant for child care benefits, the district must provide the collected Social Security Number as requested by the Office to meet federal reporting requirements.

For additional information on application requirements, refer to *section III.E.1, Application* of this ADM.

2. DETERMINATION OF ELIGIBILITY

The district is solely responsible for the determination of eligibility for child care benefits. An initial determination of programmatic and/or financial eligibility must be completed for all applications or reapplications for child care services within 30 days of the date of application. Initial eligibility for child day care, informal child care and legally-exempt group child care services must be determined pursuant to the requirements of Title 18 NYCRR Parts 404 and 415; the district's options designated in an approved CSP/ICP; and, where applicable, 12 NYCRR Part 1300. Additionally, the required documentation is a necessary prerequisite to the determination of eligibility and must be retained in the case folder.

In determining whether a family is eligible for child care, the following conditions must be established:

(1) Programmatic Eligibility

There is a programmatic need for child care and child care services are a necessary part of a plan of self-support, self-sufficiency, or protection for the child developed by the district.

The child care is not otherwise available from a legally responsible relative. If there is a legally responsible relative outside of the household, the availability of that person to provide child care must be assessed, taking into account any court ordered or court sanctioned custody agreements. In two-parent households, both parents must meet the eligibility criteria.

In the case where a non-custodial parent exists, districts must make an assessment of the availability of the non-custodial parent when determining whether child care is needed. If the non-custodial parent resides in close proximity to the custodial parent and the non-custodial parent's work or activity schedule indicates availability, and there are no other circumstances that would make care by the non-custodial parent inappropriate, the non-custodial parent is considered to be available to provide child supervision during periods when the custodial parent is engaged in an approved activity. Availability of the non-custodial parent may be limited by any number of factors including but not limited to custody orders, visitation agreements, incarceration, disability or domestic violence situations.

The district can require the non-custodial parent to provide child supervision provided that it does not violate the provisions of any child custody order or other court order or infringe on the non-custodial parent's ability to work or participate in an activity that would be approved by the district. The district cannot request that the non-custodial parent offer child supervision on the custodial parent's days of custody, as specified by a court order. For example, Mary and Bill are divorced and share custody of their child. Bill has custody on Saturday, Sunday and Monday and Mary has custody the rest of the week. Bill lives across the street from their child's school and does not work the same hours as Mary. He is willing to supervise the child after school but Mary insisted that their

child not be with Bill on her days of custody, even though she was working during the hours that their child could be with Bill. The district cannot insist that Bill provide care and deny child care assistance on the days that he does not have custody but is available to provide care. As another example, John is a divorced father who lives two blocks from his ex-wife, Sara. John has joint custody of his daughter and is not prohibited by any provision in the custody order from providing child care. He works the night-shift at a local factory and Sara is a school teacher. The district cannot require John to provide child care during the day when Sara is teaching because John must have adequate time to sleep before his shift begins at the factory.

A district cannot require a non-custodial parent to provide child supervision if he/she has no visitation privileges, or if other circumstances exist indicating it would not be in the best interests of the child or the custodial parent.

In child protective cases, there must be a determination that child care is needed to address a child protective need.

(2) Family Eligibility

The family must be included in one or more of the categories of eligible families for the funding source.

- For NYSCCBG, eligible families include: families that are guaranteed child care, families that are eligible when funds are available, and families that are eligible if funds are available and if the district has listed such families as eligible in the district's CSP/ICP.
- For Title XX, eligible families include: families that are receiving child care services as part of a preventive or protective services case or identified as an eligible family in the district's approved CSP/ICP. For more information, refer to *section III.C.2.a, Categories of Eligible Families Under Title XX* of this ADM.

(3) Child Eligibility

The child meets the definition of an eligible child.

(4) Financial Eligibility

The family (Child Care Services Unit) is financially eligible to receive child care subsidy.

For NYSCCBG funds, the family income must be at or below 200% of the State Income Standard.

For Title XX funds, the family income must be at or below the upper income levels established by the district within its CSP/ICP.

For child protective cases, eligibility for child care is established without regard to financial circumstances only when it is determined that such child care is needed to protect the child.

(5) Child Support

In all households in which a parent is continuously absent, the custodial parent/caretaker seeking a child care subsidy must demonstrate that: he or she is actively pursuing child support, or he or she has good cause not to pursue child support. Refer to *section III.G, Child Support Requirements* of this ADM for more information.

3. DOCUMENTATION OF DECISION

No determination of eligibility may be made based solely on the application. Documentation, meaning collection, verification and recording of the criteria and conditions necessary for eligibility, is part of the determination process. The district must maintain a record that contains information that supports all aspects of the eligibility determination for each applicant or recipient, including, but not limited to programmatic, financial, family composition, and family and child eligibility. Family size need not be documented beyond the information provided on the application unless there is reason to believe the information provided is incorrect.

Additional factors that determine eligibility must be cited in the case record with supporting documentation. These include but are not limited to:

- (1) The hours the child care is needed, including the work or education/training schedule of the parent/caretaker, if applicable;
- (2) The reason child care is needed;
- (3) The goal to be achieved by provision of child care assistance;
- (4) Evaluation at subsequent redetermination periods of whether the goal is being achieved;
- (5) The non-custodial parent's or other legally responsible relative's availability to provide care;
- (6) Ages of children needing care and documentation of any special needs to support the determination that a child has special needs;
- (7) Active pursuit of child support or good cause exception;
- (8) For a licensed or registered provider, the provider's name;
- (9) For an informal or legally-exempt group provider, enrollment forms which have been approved by the district and are completed annually or as required;
- (10) Where applicable, for families who are eligible when funds are available, how the availability of funding has impacted the eligibility decision; and,
- (11) If the application is filed by the applicant's authorized representative or someone acting responsibly for him or her, the relationship of the authorized representative or responsible person to the applicant and the reasons for such representative filing must be recorded.

4. INCOME

Individuals, other than those receiving TA, must be financially eligible for services on the basis of income eligibility status. Individuals are eligible for NYSCCBG if the monthly gross income of the family is equal to or less than to 200 percent of the State Income Standard or, for services funded under Title XX, the appropriate income eligibility level contained in the district's effective CSP/ICP.

The determination of family monthly gross income must be based on the average monthly income for a period of not less than one month nor in excess of three months prior to application, adjusted for any changes in income known or expected to occur during the period of authorization.

If income fluctuates significantly, the average monthly amount must be computed based on income received during a period of not less than three nor more than six months. Refer to other information on the treatment of lump sum payments and or other payments received for child support arrears in *section III.G.6.j, Fluctuating Child Support Income and Lump Sum Child Support Payments* of this ADM.

Computation of monthly gross income must be based on a factor of 4 1/3 of the weekly income.

a) MONTHLY GROSS INCOME

Monthly gross income means the monthly sum of income received from the following sources:

- Monthly wages or salary, i.e., total money earnings received for work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece-rate payments, and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues and similar purposes;
- Net income for non-farm self-employment, i.e., gross receipts minus expenses from one's own business, professional enterprise, or partnership. Gross receipts include the value of all goods sold and services rendered. Expenses include costs of goods purchased, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes) and similar costs. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income;
- Net income from farm self-employment, i.e., gross receipts minus operating expenses from the operation of a farm by a person on his or her own account, as owner, renter or sharecropper. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, the incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm hands, depreciation charges, cash rent, interest on farm building repairs, farm taxes (not State and federal income taxes) and similar expenses. The value of fuel, food or other farm products used for family living is not included as part of net income;
- Social Security benefits including Social Security pensions and survivor benefits, and permanent disability insurance payments made by the Social Security Administration prior to deductions for medical insurance, and railroad retirement checks from the U.S. government;
- Dividends; interest income from estates or trusts; net rental income or royalties, including dividends from stockholdings or membership in associations, interest on savings or bonds, periodic receipts from estates or trust funds, net income from rental of a house, store or other property to others, receipts from boarders or lodgers, and net royalties;
- Temporary assistance or welfare payments include Safety Net, Veterans Assistance, and Family Assistance payments;
- Pensions and annuities include pensions or retirement benefits paid to a retired person or his or her survivors by a former employer or by a union, either directly or through an insurance company, and periodic receipts from annuities or insurance;
- Unemployment compensation means compensation received from government unemployment insurance agencies or private companies during periods of unemployment and any strike benefits

received from union funds;

- Workers' compensation means compensation received periodically from private or public insurance companies for injuries incurred at work. The cost of this insurance must have been paid by the employer and not by the individual;
- Alimony;
- Child support; and
- Veterans' pensions means money paid periodically by the Veterans' Administration to disabled members of the Armed Forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training, as well as so-called "refunds" paid to ex-servicemen as GI insurance premiums.

b) EXCLUSIONS FROM MONTHLY GROSS INCOME

Excluded from computation of monthly gross income are the following:

- per capita payments to, or funds held in trust for, any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;
- money received from sale of property, such as stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such property in which case the net proceeds would be counted as income from self-employment);
- withdrawals of bank deposits;
- money borrowed;
- tax refunds;
- gifts;
- lump sum inheritances or insurance payments;
- capital gains;
- the value of coupon allotments under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons;
- the value of USDA donated foods;
- the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act;
- any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- earnings of a child under 14 years of age (no inquiry must be made);
- loans and grants such as scholarships obtained and used under conditions that preclude their use for current living costs;
- any grant or loan to any undergraduate student for educational purposes made or insured under the Higher Education Act;

- home produce utilized for household consumption;
- payments made for child care services or the value of child care services provided to a recipient of TA or the NYSCCBG subsidy program who is applying for or receiving any other services funded under any federal or federally assisted program that bases eligibility for such services upon need or the amount of benefits upon need; and,
- Veterans Administration (VA) payments provided under Public Law 104-204 to Vietnam veterans' natural adult or minor children for any disability resulting from spina bifida suffered by such children and VA payments to covered birth defects to or on behalf of the adult or minor biological children of female Vietnam veterans.

5. DATE OF ELIGIBILITY

Eligibility for all child care services, except for transitional child care, begins on the date that an application is submitted. Potential eligibility for the transitional child care guarantee begins on the date that the TA case or the "child care in lieu of TA" case closes and continues for a period of 12 consecutive months following the month of closing. A parent or caretaker relative may apply for transitional child care benefits at any point during the 12-month eligibility period.

6. REDETERMINATION OF ELIGIBILITY

Continuing eligibility must be redetermined as often as factors indicate, but no less than every 12 months, provided, however, that a district may not require the submission of a new application merely because the applicant is no longer eligible for TA. Refer to 04 OCFS ADM-01 for information on the requirements for families transitioning from TA.

Periodic redeterminations must not occur earlier than 30 days prior to the end of the previous eligibility period. When a new person is added to the case or there is another indicator of a change in a recipient's circumstances, which may render him/her ineligible or which may change the degree of need for services, redeterminations of both financial and/or programmatic eligibility must be made within 30 days of the change.

The district must establish procedures to enable families to keep their child care services without interruption as long as the families remain eligible for such services including procedures to transfer families from one unit of the district to another. This requirement does not apply to a family that has moved out of the district that was issuing the TA or the guaranteed child care assistance.

All factors concerning need and eligibility for child care services must be reconsidered, re-evaluated and verified during redeterminations. Current documentation of family size, categorical relationship, income, and continuing need for services must be obtained as appropriate. The periodic redeterminations conducted by the district do not eliminate the responsibility of the recipient of child care services to report to the district any change in financial circumstances, living arrangements, child care arrangements, employment, household composition, or other circumstances that affect the family's need or eligibility for child care services.

If a family is using a legally-exempt child care provider, the provider enrollment form must be updated or replaced with a newly completed enrollment form at least every 12 months.

C. ELIGIBLE FAMILIES

For two-parent or two-caretaker families, *each* parent/caretaker must meet the eligibility criteria.

For parents living separately and sharing joint custody of a child, both parents may be eligible for child care services. Each parent must engage separately in the normal eligibility determination process to establish his/her subsidy level. The district must include the child's custody schedule within the case record for verification purposes.

1. CATEGORIES OF ELIGIBLE FAMILIES UNDER THE NEW YORK STATE CHILD CARE BLOCK GRANT

The NYSCCBG provides funding for child care subsidies to recipients of TA, low-income families transitioning off TA, families that are eligible for TA who have opted to receive “child care in lieu of TA” after applying for TA, and non-TA low income families.

Some families are *guaranteed* child care assistance, regardless of whether the district has any State or federal funds available under the NYSCCBG to pay for any or all of such costs, if they meet specific eligibility requirements described in this section. A second group of families may be considered to be eligible *only* when there are funds available within the district and they meet programmatic and financial criteria. A third group of families is considered to be eligible when the district has funds available to serve them, *and* the district has included them as eligible families in its CSP/ICP *and* they meet the programmatic and financial criteria.

The three categories of families listed below are eligible for child care services under the NYSCCBG provided that child care is not otherwise available from a legally responsible relative or caretaker of the child in need of services, and the care is a necessary part of a plan of self support or protection for the child developed by the district.

a) FAMILIES THAT ARE GUARANTEED CHILD CARE

A district must guarantee child care services (regardless of whether the district has any State or federal funds available under the NYSCCBG to pay for such costs) to the following families. The guarantee applies to all of the eligible children under 13 years of age of the parent or caretaker relative regardless of the child’s status as part of the TA filing unit.

- (1) Families that have applied for or are in receipt of TA when child care is needed for a child under 13 years of age in order to enable the child’s parent or caretaker relative to participate in activities required by the district including orientation, assessment or work activities as defined in 12 NYCRR Part 1300.
- (2) Families that are receiving TA when child care is needed for a child under 13 years of age in order to enable the child’s parent or caretaker relative to engage in work as defined by the district;
- (3) Families which have applied for and would otherwise be eligible for TA benefits and choose to receive “child care in lieu of TA”, or were receiving TA and voluntarily closed their TA case while still eligible for TA **and** when child care is needed for a child under 13 years of age in order to enable the child’s parent or caretaker relative to work for at least the following number of hours.

(a) For a single parent:

- with a child under the age of six years: 20 hours per week; or
- with children who are all six years or older: 30 hours per week.

(b) For two-parent families:

- the parents must be working a combined total of 55 hours per week with at least one parent working 30 or more hours per week.

This guarantee continues as long as the family meets these requirements.

- (4) Families transitioning from TA whose TA cases have been closed or who voluntarily close their TA cases; and who are no longer financially eligible for TA due to an increase in income or child support. The family must have received TA in three of the six months prior to case closing, or, for a family that chose “child care in lieu of TA”, was eligible for assistance in at least three of the six months immediately preceding their ineligibility for TA. The family must include an eligible child under the age of 13 who needs child care in order for the parent(s) to be engaged in work, and the family's gross income must be at or below 200% of the State Income Standard. For transitional child care, the eligibility period begins with the first month in which a family becomes ineligible for TA or “child care in lieu of TA”, and is limited to 12 months in duration.

b) FAMILIES THAT ARE ELIGIBLE WHEN FUNDS ARE AVAILABLE

Families in this category may receive subsidized child care to the extent that the district continues to have funds available under either its allocation from the NYSCCBG or any local funds appropriated for this program, subject to any service priorities and set-asides established by the district. Districts may establish priorities, in addition to the federal priorities of very low income families and special needs children, by identification of such categories in the CSP/ICP, subject to approval from the Office. Funds may be set aside for such priority families when described in the CSP/ICP and approved by the Office.

A district must provide child care assistance to the following families when funds are available:

- (1) Families that have applied for or are receiving TA, when child care is needed for an eligible child 13 years of age or older who has special needs or is under court supervision, to enable the child's parent or caretaker relative to engage in work or participate in activities required by the district including orientation, assessment or work activities defined in 12 NYCRR Part 1300.
- (2) Families that are receiving TA, when child care is needed for an eligible child 13 years of age or older who has special needs or is under court supervision, to enable the child's parent or caretaker relative to engage in work as defined by the district.
- (3) Families that are receiving TA when child care is needed to enable a teenage parent to attend high school or an equivalency program; or for the child to be protected because the child's parent or caretaker relative is unable to care for their children due to a physical or mental incapacity or has family duties away from home necessitating his or her absence.
- (4) Families with income at or below 200% of the State Income Standard when the family is at risk of becoming dependent on TA and child care services are needed to permit the child's parent/caretaker to be engaged in work; or to enable a teenage parent to attend high school or

an equivalency program.

c) FAMILIES THAT ARE ELIGIBLE WHEN FUNDS ARE AVAILABLE AND THE CATEGORY OF FAMILY IS IDENTIFIED IN THE DISTRICT'S CSP/ICP

Families in this category may receive subsidized child care to the extent that the district continues to have funds available under either its allocation from the NYSCCBG or any local funds appropriated for this program, **and** the category of family is designated as an eligible family by the district in its CSP/ICP. Availability of funds is subject to the service priorities and set-asides established by each district in its CSP/ICP and approved by the Office.

The district may select categories from the following list or the district may opt to refine any of the optional categories, by specifying any limitations to the programmatic eligibility criteria, so that a more specific population is selected. The identified families must be listed as eligible in the district's CSP/ICP and approved by the Office.

- (1) Families receiving TA when child care services are necessary for the parent or caretaker relative to participate in an approved activity in addition to being engaged in work as required by the district or in a required work activity (e.g.: A parent or caretaker relative with a minimum wage position requesting additional child care during the hours he or she is not at work to enable him or her to seek a better job).
- (2) Families receiving TA when child care services are necessary for a sanctioned parent or caretaker relative to participate in unsubsidized employment when the parent or caretaker relative receives earned wages greater than or equal to the minimum amount required under federal and State labor law.
- (3) Families receiving TA or families with incomes up to 200% of the State Income Standard when child care services are needed for the child to be protected because the parent/caretaker is:
 - (a) participating in an approved substance abuse treatment program, screening or assessment (If the applicant is classified as exempt from work activities because of his or her substance abuse, child care can be offered under this category. However, if the district *requires* that the applicant receive substance abuse treatment and he or she is working or participating in a required work activity, child care is *guaranteed*.);
 - (b) homeless, or receiving services for victims of domestic violence, and is in need of child care to participate in an approved activity, screening or assessment for domestic violence; or,
 - (c) in an emergency situation of short duration including, but not limited to, cases where the parent/caretaker must be away from the home for a substantial period of the day due to extenuating circumstances such as a fire, being dispossessed from the home, seeking living quarters or providing chore/housekeeping services for an elderly or disabled relative.
- (4) Families receiving TA or with incomes up to 200% of the State Income Standard when child care services are needed for the child's parent/caretaker to attend a two year program other than one with a specific vocational sequence leading to an associates degree or a certificate of completion, or at a four year college or university program leading to a bachelor's degree

provided:

- (a) that it is reasonably expected to improve the earning capacity of the parent/caretaker;
 - (b) the parent/caretaker is participating in and continues to participate in non-subsidized employment whereby the parent/caretaker works at least 17 1/2 hours per week and earns wages at a level equal or greater than the minimum amount required under federal and State labor law while pursuing the course of study; and
 - (c) the parent/caretaker is and remains engaged in work while pursuing the course of study and can demonstrate his or her ability to successfully complete the course of study.
- (5) Families with an open child protective case, irrespective of income, only when it is determined that such child care is needed to protect the child.
- (6) Families with income up to 200% of the State Income Standard when child care services are needed for the child to be protected because the parent/caretaker is physically or mentally incapacitated or has family duties away from the home.
- (7) Families with incomes up to 200% of the State Income Standard when child care services are needed for the child's parent/caretaker to participate in one of the following approved activities provided the activity is identified in the district's CSP/ICP as an allowable activity, the district determines it is a necessary part of a plan for the family's self support, and provided that the parent/caretaker can demonstrate that he or she is participating in the approved activity:
- (a) Actively seeking employment for a period no greater than six months, and if the parent/caretaker is registered with the NYS Department of Labor, Division of Employment; or
 - (b) Educational or vocational activities, including attendance in one of the following secondary or post-secondary programs:
 - (i) A public or private educational facility providing standard high school curriculum offered by, or approved by, the local school district;
 - (ii) An education program that prepares the parent/caretaker to obtain a NYS high school equivalency diploma;
 - (iii) A program providing basic remedial education in the areas of reading, writing, mathematics and oral communications for individuals functioning below the ninth month of the eighth grade level in those areas;
 - (iv) A program providing literacy training designed to help individuals improve their ability to read and write;
 - (v) An English as second language instructional program designed to develop skills in listening, speaking, reading and writing the English language for individuals whose native or primary language is other than English;
 - (vi) A two year full-time degree granting program at a community college, a two year college, or an undergraduate college with a specific vocational goal leading to an associate degree or certificate of completion within a determined time frame which must not exceed 30 consecutive months;

- (vii) A training program which has a specific occupational goal and is conducted by an institution licensed or approved by the State Education Department other than a college or university;
- (viii) A pre-vocational skills training program such as a basic education and literacy training program; or
- (ix) A demonstration project designed for vocational training or other project approved by the Department of Labor.

Notwithstanding the potential for some of these educational or vocational training programs to allow for the eventual attainment of a bachelor’s degree or like certificate of completion for a four–year college program, Office regulations do not permit the renewal of such educational or vocational training program enrollment for any additional period in excess of 30 consecutive calendar months, except for families as authorized under paragraph (4) in this section (*to attend a two year program other than one with a specific vocational sequence leading to an associates degree or a certificate of completion, or at a four year college or university program leading to a bachelor’s degree*), nor does it permit enrollment in more than one such program.

2. TITLE XX OF THE FEDERAL SOCIAL SECURITY ACT

a) CATEGORIES OF ELIGIBLE FAMILIES UNDER TITLE XX

To the degree that the district has chosen to make Title XX funds available for low income child care services, a family is eligible for child care services funded under Title XX if the family meets any of the programmatic eligibility criteria for the NYSCCBG, or if the child is in need of child care as a preventive service, subject to any applicable priorities and set asides established in the district’s most recently approved CSP/ICP. To exercise this option, the district must identify the programmatically eligible families it chooses to include as eligible families in the district’s CSP/ICP and receive approval from the Office. The district may opt to refine any of the optional categories so that a more specific population is selected by specifying any limitations to the programmatic eligibility criteria in its CSP/ICP.

b) UPPER INCOME LEVELS FOR TITLE XX

For Title XX funds, a district is permitted to establish within its CSP/ICP upper income levels that exceed 200% of the State Income Standard (SIS) for families receiving child care services, up to the maximum income levels shown below.

FAMILY SIZE	MAXIMUM INCOME LEVEL ALLOWED
1 to 2	275% SIS
3	255% SIS
4 or more	225% SIS

3. CHILD CARE SERVICES DURING BREAKS IN PARENT/CARETAKER RELATIVE'S ACTIVITIES

a) FAMILIES RECEIVING TA

Districts must provide NYSCCBG services to families receiving TA during breaks in activities, for a period up to two weeks. Such child care services may be authorized for up to one month when child care arrangements would otherwise be lost and the program or employment is expected to begin within that one month period, and when the parent or caretaker relative is:

- engaged in work;
- participating in work activities;
- performing community service per SSL Article 5, Title 9-B;
- a teen parent attending high school or equivalent training; or,
- physically or mentally incapacitated, or absent from home due to family duties.

For example, the employer of parent or caretaker relative who is on TA and receiving child care in order to attend work, closed his business for a one week period. The provider requires payment whether or not the child attends the program during that week. The district must provide a child care subsidy.

b) LOW INCOME FAMILIES

For all other families who are eligible under the NYSCCBG or Title XX, including families who are receiving transitional child care or “child care in lieu of TA”, a district may provide child care services while the parent/caretaker is waiting to enter an approved activity/employment, or on a break between activities for a period up to two weeks or for a period up to one month, where child care arrangements would otherwise be lost and the subsequent activity is expected to begin within that period. If the district elects to provide this service to low income families, it must be indicated in its CSP/ICP and approved by the Office. For example, a teenage parent is attending high school and has one week off for school vacation. The parent will lose the child care arrangements if subsidy is not provided. If the district has chosen to provide this service to this low income category of family in its CSP/ICP that has been approved by the Office and there are funds available, subsidy for child care during the school vacation must be paid.

4. PRIORITY POPULATIONS, FUNDING SET ASIDES, WAITING LISTS, AND CASE CLOSINGS

a) PRIORITY POPULATIONS

Federal regulations require that two specific populations of families be prioritized for child care services funded under the NYSCCBG program: *families with very low income* and *families with children who have special needs*. Districts define “families with very low income” by establishing the upper income level for these families in their CSP/ICP. This income level must be set at or below 200% of the State Income Standard (SIS).

In addition to the federally mandated priority populations, each district has the option of establishing *local priorities* for child care services funded under the NYSCCBG and/or under Title XX of the federal Social Security Act. The district may identify categories of families as local priority populations, in order to “set-aside” funds for that population’s estimated 12-month needs. The district must provide eligible families within a priority group equitable access to child care assistance funds, to the extent that these funds are available. Local priorities must be identified in the district’s CSP/ICP and approved by the Office prior to being implemented. Local priorities may refine but cannot replace the federally mandated priorities. Local priorities may be based on one or a combination of factors, including, but not limited to, household composition, reason for child care, and income level. Local priorities may not have the effect of limiting a parent/caretaker’s choice of any eligible child care provider or be based on a parent/caretaker’s choice of a child care certificate. Families with a child care guarantee must be provided child care services even if a district has insufficient funds. However, there may be times of the year when a district has insufficient funds to cover other families that do not have a child care guarantee.

Identification of a category of family as a “priority” and the definition of “very low income” *does not* change the income eligibility standards for the NYSCCBG, which are set in the Social Services Law at 200% of the State Income Standard (SIS). However, priorities and the district’s definition of “very low income” assist in determining how intake may be limited or cases closed when a district has insufficient funds to provide child care to all families who meet the State income and programmatic eligibility criteria but do not fall under a guarantee of child care.

A district may decide, for example, that it only has sufficient funds to cover families with incomes below 160% of the SIS. In this case, a family with income of 175% is financially eligible for child care but is ineligible to receive a subsidy *at the current time* due to insufficient funds. If a district is limiting intake to a particular income level when there are insufficient funds, the district must be prepared to support its decision by documenting spending levels.

When circumstances require that a district must limit the number of cases that will be opened, the provision of assistance to families identified as priorities will dictate which cases are opened first and which cases may be denied due to insufficient funds and/or put on a waiting list. When circumstances dictate that some cases be closed due to insufficient funding, families who do not meet the definition of a priority population will be closed first.

b) FUNDING SET ASIDES

Each district may set aside a portion of the district’s NYSCCBG allocation and/or its Title XX allocation to serve one or more of the federal and/or local priority populations. Families eligible for child care guarantees may have set asides. The method of disbursement of funds to priority groups must be such that eligible families within a priority group will receive equitable access to child care assistance funds to the extent that such funds are available.

Each funding set aside amount must be based on the projected need for the population for a 12-month period. The amount of the set aside, and the rationale, must be described in the district’s CSP/ICP. The amount of the set aside, for each particular priority population for a given 12-month period, may be adjusted up or down by 10 percent without the prior written approval of the Office. Such adjustment to a set aside amount must be reported to the Office within 30 days of the adjustment. Any adjustment of the set aside amount for a priority population that exceeds 10% of the amount originally set in the CSP/ICP requires the prior approval of the Office.

c) WAITING LISTS AND DENIAL OF SERVICES

If a district has set aside funds to service one or more priority populations and all of the available funds that *are not set aside* are projected to be needed for open cases, the district may deny services to a family that is not eligible for a child care guarantee and that does not fall within the priority population for the set asides, or the district may place the family on a waiting list for subsidies.

A district that has not established set asides must open a new case for an eligible family if the district has sufficient funding available to provide child care services to that family at the time the family is determined to be eligible. If the district does not have sufficient funding available because all of the available funds are projected to be needed for open child care cases, the district may deny services to a family that is not eligible for a child care guarantee, or place the family on a waiting list for subsidies.

d) CASE CLOSINGS

Once a district has committed all available funds, either through set asides, as approved in its CSP/ICP, and/or projections based on open child care cases, the district may discontinue funding to families that have lower priorities and who are not eligible for a child care guarantee in order to serve those families with higher priorities. A district must rank in its CSP/ICP its identified priority families for the purposes of case closing and case openings for use in the event that funds are insufficient to serve all eligible families. If no priorities are established beyond the federally-mandated priorities and all funds are committed, case closing for families that are not eligible under a child care guarantee and are not a federally-mandated priority must be based on the length of time in receipt of services. The district must choose to close cases based either on the shortest or longest time receiving child care services, but the decision must be specified in its CSP/ICP and be applied consistently for all families.

D. RESPONSIBILITIES OF PARENT/CARETAKER

1. APPLICATION FOR CHILD CARE

Applicants for child care services must apply, in writing, on forms and in a manner prescribed by the district. The parent/caretaker with whom an eligible child resides is the applicant for such services. The applicant is responsible for providing accurate, complete and current information regarding family income and composition, child care arrangements, and any other circumstances related to the family's eligibility for child care services. Any change in this information must be reported immediately to the district. The parent/caretaker is informed of this requirement in the LDSS-2921 Application and the LDSS-4148A: "What You Should Know About Your Rights and Responsibilities."

2. ACTIVE PURSUIT OF CHILD SUPPORT

The child's parent/caretaker must demonstrate that he or she is actively pursuing child support from the non-custodial parent through the district's Child Support Enforcement Unit (CSEU) or by private legal means or must show good cause for why the family should be excused from this requirement. For more information on determining good cause, refer to *section III.G.5, Good Cause* of this ADM.

3. CHOOSING A CHILD CARE PROVIDER

The child's parent/caretaker is responsible for locating a child care provider that meets the need of his or her child. A parent/caretaker that is unable to locate a child care provider may ask the district for assistance. The district must provide a copy of a list of licensed or registered providers to applicants when the list is requested. The district may also refer the parent/caretaker to the child care resource and referral agency for assistance in arranging child care. Refer to *section III.F, Special Provisions Relating to Temporary Assistance Recipients* of this ADM for a district's responsibility when a TA parent cannot find care.

Parents/caretakers are responsible for paying those providers that do not have a contract with the district any differential between the maximum allowable child care market rate and the actual cost of child care. Parents/caretakers who are unwilling or unable to increase their out-of-pocket expenses should be instructed to search for another provider whose costs are closer to the market rate.

A family that chooses to have a provider providing child care services in the child's own home must provide such provider with all employment benefits required by State and/or federal law, and must pay the provider at least the minimum wage, if required. Families may be referred to the NYS Department of Labor for information on specific requirements.

4. FAMILY SHARE

Each low income family receiving child care services must contribute toward the costs of the child care by paying a family share based on the income of the CCSU. The family is responsible for paying the family share in the manner determined by the district. The district may require the family to pay the family share to the district or to one or more child care providers used by the family. A family share may also be required of any family to recover an *overpayment* for child care services regardless of whether any member of the family is receiving TA.

The parent/caretaker has the right to request a fair hearing if he or she disagrees with an action taken or decision made by the district. If a fair hearing is requested, the parent/caretaker is not required to repay any overpayments until after the district prevails at the fair hearing.

The failure of a family receiving child care services to pay the family share established by the district, or to cooperate with the district to develop an arrangement satisfactory to the district to make full payment of all delinquent family shares constitutes an appropriate basis for suspending or terminating such child care services. However, the failure of a recipient to pay his or her family share is not to be used as a basis for the denial or discontinuance of services as part of a plan of protective services for an adult or a child or for preventing the placement of a child in foster care.

For more information on the family share, please refer to the *section III.E.5, Family Share* of this ADM.

5. CHILD CARE NEEDED FOR PARTICIPATION IN APPROVED TRAINING

A parent/caretaker seeking child care services in order to participate in an approved training program must provide documentation that includes, but is not limited to, the following:

- the name of the institution offering or conducting the training program;

- the course of study to be pursued or in which the person is participating;
- the specific vocational or rehabilitative goal;
- the duration of the training (hours per day) including no more than a total of three hour per day to commute (from home) to and from the training location; and
- progress reports (marks, transcripts, letters, and like documents) that indicate that the parent/caretaker is progressing satisfactorily towards attaining the established vocational or rehabilitative goal.

6. IMMEDIATE NOTIFICATION WHEN A CHANGE OCCURS

A recipient is responsible for notifying the district immediately of any change in financial circumstances, living arrangements, employment, household composition, child care provider or other circumstances that affect the family’s need or eligibility for child care services. Such changes may have an immediate impact on issuance of subsidy payment, and may result in a child care overpayment if the recipient does not immediately notify the district.

E. RESPONSIBILITIES OF THE SOCIAL SERVICES DISTRICT

1. APPLICATION

Each individual wishing to apply for social services must be allowed the opportunity to do so without delay. The district must allow the applicant to submit an application by mail.

Districts are required to inform applicants of their rights and responsibilities. This is accomplished through the following documents:

- LDSS-4148A: “What You Should Know About Your Rights and Responsibilities”
- LDSS-4148B: “What You Should Know About Social Services Programs”
- LDSS-4148C: “What You Should Know If You Have an Emergency”

2. INITIAL ELIGIBILITY

Initial eligibility for child day care, informal child care and legally-exempt group child care services must be determined pursuant to the requirements of 18 NYCRR Parts 404 and 415, the district’s options designated in its approved CSP/ICP, and, where applicable, 12 NYCRR Part 1300. Additionally, the required documentation is a necessary prerequisite to the determination of eligibility and must be retained in the case folder.

All applications must be processed promptly. A determination of programmatic and/or financial eligibility must be completed for all applications within 30 days of the date of the application.

Except for the provision of child care services to families transitioning from TA eligible for the child care guarantee, reimbursement for services provided prior to the date of actual determination of programmatic and/or financial eligibility will be allowed only if:

- the eligibility determination was made within 30 days of the date of application, and
- the applicant was determined to have been programmatically and/or financially eligible when services were initiated.

The date of eligibility for services may not precede the date of application except in the case of transitional child care benefits.

Upon the approval of a child care services application, the district must provide an authorization for child care services and send written notice, OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, within 15 calendar days after the determination has been made to the applicant regarding:

- the eligibility determination,
- the amount of the family share, if required,
- the dates the family share is due to be paid by the applicant,
- the family share payment procedures, and
- the applicant's right to a fair hearing.

If the child care services application is denied, the district must send written notice, OCFS/LDSS-4780, Denial of Your Application for Child Care Benefits, within 15 calendar days after the determination has been made to inform the applicant of the reason for the determination of ineligibility and of the applicant's right to a fair hearing.

Notification must be made using the forms specified above unless the district has requested and been granted approval from the Office for use of local equivalents to replace any of these forms.

3. CONTINUING ELIGIBILITY

Continuing eligibility for child care services must be redetermined no less frequently than every 12 months. In redetermining eligibility, all eligibility factors must be reevaluated.

If a recipient is found to be eligible at redetermination, the district must send to the recipient the required notice, OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, within 15 calendar days after the determination has been made.

Districts must send the required notice, OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits, at least ten days before the proposed action when a change involves an increase or decrease in the amount of benefits or there is a change in the manner of payment that forces the recipient to change child care arrangements.

For those changes that result in a suspension or termination of such benefits, a district must provide notice, using OCFS/LDSS-4782, Notice of Intent to Discontinue Benefits, at least ten days before the suspension or termination of benefits.

4. CHILD CARE SERVICE REQUIREMENTS

a) PARENTAL CHOICE

A recipient must have the option to choose among eligible child care providers. A district may disapprove a child care provider chosen by the recipient in a child preventive case funded under Title XX or a child protective case if the district has reason to believe that it would be contrary to the health, safety or welfare of the child to receive child care services from that provider.

When offering NYSCCBG to a family eligible to receive such services, the district must offer the child's parent/caretaker the choice to either:

- enroll the child with an eligible child care provider which has a contract with the district for the provision of such services; or
- receive a child care certificate that permits the child's parent/caretaker to arrange child care services with any eligible provider.

A child care provider must be validly licensed, properly registered or enrolled, as appropriate. When the license or registration of a provider is suspended, the provider is not validly licensed or registered and cannot operate for the term of the suspension.

b) CHILD CARE SERVICES MUST FIT THE HOURS OF THE APPROVED ACTIVITY

The child care services must be reasonably related to the hours of employment, education or training of a child's parent/caretaker, as applicable, and permit time for pick up and delivery for the child. Additionally, up to eight hours of child care services may be provided, if needed, to enable an employed parent/caretaker who works a second or third shift to sleep if the district indicates in its CSP/ICP that it will provide such services.

c) MOVING OF A CHILD FROM AN ELIGIBLE PROVIDER

No child may be moved by a district from an eligible provider unless the recipient consents to such move; provided, however, that a district may require that a child receiving child care services as part of a preventive case funded under Title XX, or as a child protective services case, be moved from an existing placement with an eligible provider if the district has reason to believe that it may be contrary to the child's health, safety or welfare to continue receiving services from that provider.

d) ASSIST IN ARRANGING CHILD CARE

A parent/caretaker that is unable to locate a child care provider may ask the district for assistance. The district must provide a list of licensed or registered child care providers located in the district or refer the parent/caretaker to the child care resource and referral agency for assistance in arranging child care. Refer to *section III.F, Special Provisions Relating to Temporary Assistance Recipients* of this ADM for a district's responsibility when a TA parent cannot find care.

Districts may use the Child Care Facilities System (CCFS) to obtain a list of providers and update such list against providers on the hold list provided to the district by the Bureau of Early Childhood Services Regional Office.

5. FAMILY SHARE

a) *INCOME-BASED PORTION OF THE FAMILY SHARE*

Each family receiving child care services, other than those receiving child care services under TA, must contribute toward the costs of the child care by paying a family share based on the income of the CCSU. This *income-based* portion of the family share for child care services must be determined by the district in accordance with a sliding fee scale. Each district must select a percentage, from 10% to 35%, that it will use to calculate the family share for all families receiving child care services that are required to pay an income-based portion of a family share. The district must use the same percentage for all families. Once the percentage is recorded in the district's CSP/ICP and approved by the Office, it becomes the basis for the district's sliding fee scale.

The family share is calculated as follows:

- Determine the annual gross income for the eligible family.
- Subtract the State Income Standard (SIS) for the specific family size of the CCSU from the annual gross income of the CCSU to obtain the difference.
- Multiply the difference by the district's selected percentage, designated in the CSP/ICP, to get the annual family share.
- Divide the annual family share by 52 to get the weekly family share.

A minimum weekly family share of one dollar must be charged to each family receiving child care services that is required to pay an income-based portion of a family share. Each family receiving child care services is responsible for paying only one income-based family share regardless of the number of children in the family who are receiving child care services.

b) *OVERPAYMENT PORTION OF FAMILY SHARE*

A family share may also be required of any family to recover an *overpayment* for child care services regardless of whether any member of the family is receiving TA. The child care overpayment portion of the family share, if any, must be reflected separately from any income-based portion of the family share. Refer to *section III.E.13, Child Care Overpayments* of this ADM for detailed information on the calculation and collection of overpayments.

c) *METHOD OF PAYMENT OF THE FAMILY SHARE*

The family is responsible for paying the family share in the manner determined by the district. The district may require the family to pay the family share to the district or to one or more child care providers used by the family.

d) *RECALCULATION OF FAMILY SHARE*

The family share will be recalculated by the district whenever there is a change in income, household circumstances or child care provider that would affect the amount of the family share, or when an overpayment for child care services has occurred and the recovery of such overpayment will be made through the family share, but no less frequently than each recertification.

e) FAILURE TO PAY FAMILY SHARE AND TERMINATION OF SERVICES

The failure of a family receiving child care services to pay the family share established by the district, or to cooperate with the district to develop an arrangement satisfactory to the district to make full payment of all delinquent family shares, constitutes an appropriate basis for suspending or terminating such child care services. However, the failure of a recipient to pay his or her family share is not to be used as a basis for the denial or discontinuance of child care services as part of a plan of protective services for a child or adult or for preventing the placement of a child in foster care.

f) WHEN FAMILY SHARE EXCEEDS COST OF CARE

If the family share exceeds the cost of care, the family is ineligible for child care payments. However, there may be situations when the family share exceeds the cost of care during certain times of the year and the cost of care exceeds the family share at other times of the year. This happens with school age children who need only part-time child care while school is in session and full-time child care during school vacations and summer break. In this circumstance, when the family share exceeds the cost of care, the family pays the full cost of care. When the cost of care exceeds the family share, the family pays the family share and the district covers the balance.

g) INFORMING THE APPLICANT

At the time of initial eligibility determination, redetermination, and each recalculation of the family share, the district must inform the parent/caretaker, using the OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, or the OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits, of the amount of the required family share and when the family share is due to be paid. A provider that is being paid directly by the district must be notified if the provider is required to collect a family share from the recipient. The notification to the provider must include the amount of the family share to be collected and when it is due.

6. ENROLLMENT OF LEGALLY-EXEMPT PROVIDERS

New health and safety standards require that a legally-exempt child care provider attest to his or her history, if any, in regards to the removal of a child from his or her care through an Article 10 court order; termination of his or her parental rights; and/or denial, revocation and/or suspension of a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home. Districts should refer to 01 OCFS LCM-11, Revised Health and Safety Requirements for Legally-Exempt Providers, and 03 OCFS LCM-17, Legally-Exempt In-Home Child Care Providers as Employees, and 05 OCFS ADM-01, Administration of Medication by Legally-Exempt Child Care Providers, for all other health and safety requirements and enrollment procedures for legally-exempt providers.

a) NEW LEGALLY-EXEMPT PROVIDER CERTIFICATIONS

To be enrolled by a district to provide child care services under the NYSCCBG, a provider of legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care which is not required to be operated under the auspices of another federal, State or local government agency must attest and certify in writing:

- Whether the provider has ever had a child(ren) removed from his or her care by court order under Article 10 of the Family Court Act;
- Whether the provider has ever had his or her parental rights terminated; and
- Whether, to the best of his or her knowledge, the provider has ever been denied a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home, or had such a license or registration suspended or revoked.

The provider must provide true and accurate information to the district and the parent/caretaker about the reasons for the denial, suspension or revocation and the reasons underlying the loss of parental or custodial rights. Based on guidelines issued by the Office, a district must determine whether to enroll a provider who indicates that he or she has been subject to any of the conditions listed above. The guidelines for implementing this requirement are provided as Attachment A of this ADM.

b) REVISED ENROLLMENT FORMS

The naming of the enrollment forms, LDSS-4699, Enrollment Form for Provider of Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care and the LDSS-4700, the Enrollment Form for Provider of Legally-Exempt Group Child Care has been changed to include an OCFS prefix. The content of these forms has been revised to include the new legally-exempt provider certifications. These forms, OCFS/LDSS-4699 and OCFS/LDSS-4700, are included as Attachments B and C, respectively. Districts must begin using these immediately for all new enrollments.

Districts must notify current recipients of child care assistance of the requirement for providers to complete the new certifications, and provide the certification sections of the revised enrollment forms, OCFS/LDSS-4699 and OCFS/LDSS-4700, to the child care recipients with instructions to have them completed by their provider and returned as a condition of eligibility, at the next case action, recertification or the end of the enrollment period, whichever comes first. At its option, the district may take the additional action of directly informing the enrolled child care providers of these regulatory changes that may affect their status as enrolled providers. Districts must promptly review the certification sections of the revised enrollment form and make an enrollment decision in accordance with the guidelines.

Other additions and changes to the enrollment forms

Administration of medication

On January 31, 2005, new regulations regarding administration of medication went into effect. A new section has been added to the enrollment forms to address the administration of medication in legally-exempt care. The Office issued 05 OCFS ADM-01 dated January 12, 2005 that details guidelines concerning the administration of medication.

Access to where child care services are being provided

In the final Provider Certification section on both enrollment forms, OCFS/LDSS-4699 and OCFS/LDSS-4700, a new certification was added to allow districts access to the child care site when subsidized care is being provided. Districts may use this clause to verify the appropriate delivery of services.

Other changes to the enrollment forms

For both forms, language was added to the case identifying information section to clarify that a parent/caretaker may, but is **not required** to, provide his/her Social Security Number. The parent/caretaker may not be required to disclose the Social Security Number as a condition of eligibility. It explains that the Social Security Number will be used to assist in identifying the child care parent's/caretaker's file. It may also be used by federal, State and local agencies to prevent duplication of services and fraud, and for federal reporting.

In Section I of the OCFS/LDSS-4699, instruction was added to advise the parent and provider that they must submit the Agreement for Legally-Exempt In-Home Child Care when in-home care is provided. Also the response to 2B under Provider Status, was reworded, from "*I care for only 2 children...*" to say, "*I care for no more than 2 children...*"

c) MONITORING DETERMINATIONS PRIOR TO AUTHORIZING PAYMENT

Prior to authorizing payment for child care services provided by a provider of legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care, the district must review information obtained from the provider and determine whether the provider is exempt from the State's child day care licensing and registration requirements and whether the provider meets the basic health and safety requirements. Enrollment information must be updated and reviewed at least annually and at any other time when a change in circumstances warrants such a review.

A district must describe in its CSP/ICP how it will examine and verify the accuracy of information contained in the enrollment forms completed by legally-exempt providers. The district's monitoring activities may involve other components in addition to the review and verification of enrollment paperwork, attendance sheets, work schedules, bills signed by both the child's caretaker and the provider, and other payment records. For example, a district may:

- Conduct random site visits during the hours care is being provided to verify information on the enrollment forms regarding health and safety and whether child care is actually being provided as billed. These random visits can only be conducted as part of an audit function or when the district has received approval to conduct such as part of its CSP/ICP.
- Conduct file reviews to determine whether providers are submitting enrollment documents at least annually and to determine if child care services are reasonably related to the hours of employment, training or education of the child's parent/caretaker.
- Conduct file reviews to determine whether those child care providers who are also receiving TA are accurately reporting their income for the purpose of computing their TA benefits.
- Define additional standards for legally-exempt providers in the district's CSP/ICP. Such standards may include a routine home visit to assess health and safety prior to enrollment; or a local criminal or local child welfare database check of the caregivers and/or persons residing in the home where the child care is provided.
- Make fraud referrals when the district has reason to believe that a provider or a parent/caretaker has made a fraudulent statement.

7. MONITORING OF ATTENDANCE AND PAYMENT RECORDS

Attendance and payment records must be monitored for all providers receiving payment for child care services regardless of the method of payment.

8. ADDITIONAL DISTRICT STANDARDS FOR PROVIDERS OF SUBSIDIZED CHILD CARE SERVICES

Districts may submit to the Office justification for a need to impose additional requirements on child care providers providing subsidized child care services that exceed the current State and federal regulations. The justification for additional standards must include a plan to monitor compliance with such additional requirements. Additional standards are established by including them in the district's CSP/ICP and obtaining approval by the Office. The Office is not obligated to take any action to enforce any additional requirements imposed by a district on child care providers providing care to children receiving a subsidy. The district must not impose such requirements or monitoring without the written approval of the Office.

If the local standard is included in its CSP/ICP and approved the Office, a district may choose to conduct announced or unannounced inspections of the records and the premises of providers of child care to subsidized children. An example of an additional standard a district may select includes conducting inspections *prior* to the actual provision of child care to subsidized children for the purpose of determining whether a child care provider is in compliance with applicable local laws and regulations and any additional requirements imposed on the provider by the district. However, a district may always conduct announced or unannounced inspections of the records and the premises of any provider of care to subsidized children as part of its audit function without the prior approval of the Office.

If the district finds any suspected violations of child care provider licensing or registration regulations promulgated by the Office, and the district must immediately notify the Office and provide the Office with an inspection report documenting the results of such inspection.

9. PAYMENT TO NON-COMPLIANT PROVIDER

A district may refuse to allow a child care provider that is not in compliance with regulations and requirements promulgated by the Office, or any additional district standards as approved by the Office, to provide subsidized child care services to a child. A district may refuse to provide subsidy payments to child care providers who are considered "non-compliant" as set forth herein.

- (1) A legally-exempt, enrolled child care provider must be considered "non-compliant" for the purpose of stopping the issuance of subsidy payments if the district determines:
 - (a) the provider does not meet the health and safety requirements or other requirements set forth by the Office;
 - (b) the provider does not meet the definition of a legally-exempt family child care, legally-exempt in-home child care or legally-exempt group child care; or
 - (c) the provider does not meet locally defined additional requirements set forth in the district's CSP/ICP and approved by the Office.

- (2) A licensed or registered child care provider has due process rights and may only be considered “non-compliant” for the purpose of stopping the issuance of subsidy payments, after one of the following events occurs:
- (a) the provider’s license or registration was suspended following a finding that the public health or a child’s safety or welfare is in imminent danger;
 - (b) the provider was issued a letter to revoke or deny the provider’s child care license or registration and the child care provider’s due process hearing rights have been adhered to and all rights to appeal have been exhausted, resulting in a final decision to revoke or deny the provider’s child care license or registration;
 - (c) the provider was issued a written notification that the provider’s license or registration is no longer valid; or
 - (d) the provider is closed.

The district is responsible for documenting the eligibility status of a provider prior to approving payments for child care. The eligibility status of licensed and registered providers, except for day care centers licensed in New York City, can be verified by using the search capability of the CCFS. CCFS contains up-to-date information on suspension and/or closure actions taken by the Bureau of Early Childhood Services (BECS) licensors. Providers can be viewed according to their facility statuses.

Prior to approving the issuance of a child care subsidy payment, the district should review the statuses of licensed or registered child care providers in their area in CCFS to determine which, if any, have a status of “suspended” or “closed.” When providers have been suspended or closed, the district should check the “status effective” date in CCFS to determine if the provider was “suspended” or “closed” during times when subsidized child care was provided. Payment cannot be made for child care provided during the times the provider was “suspended” or “closed.” However, subsidy must be paid for child care provided for the time period that a program is legally allowed to continue to operate.

Any parent choosing to use a suspended provider should be made aware that such providers are ineligible for subsidy and the district may not issue subsidy payment for care provided by such provider.

10. DUE PROCESS REQUIREMENTS

Written notice of the determination of eligibility and the family share to be paid by the applicant, or ineligibility for child care services, as well as any modification thereto, must be sent to the applicant or recipient. Recipients of child care services must receive timely and adequate notice of any change in child care services, except for changes in the manner of payment. A district must provide timely and adequate notice for those changes that result in a discontinuation, suspension, reduction or termination of such benefits, or force a change in child care arrangement.

An applicant or recipient of child care services must be notified of the right to a fair hearing whenever there is a determination affecting his or her family’s eligibility for child care services.

11. JURISDICTIONAL REQUIREMENTS

When a family which is guaranteed child care services moves from one district to another district within the State, the new social service district is responsible for paying the family’s child care services

beginning with the second full month that the family lives in that district, provided the family remains eligible for guaranteed child care services. The former district is obligated to continue to pay for the guaranteed child care services during the month the family moves to the other district and the first full month following the month the family moved.

However, in a situation where the district *requires* a recipient to attend a program, such as substance abuse residential facility, in another district as part of his or her employment plan, the original district retains responsibility for providing TA benefits for that recipient. The original district is also responsible for all child care services needed for any child who moves to live with, or be near, the recipient, until the recipient's TA expires.

When a child is placed in foster care in a social service district outside of the district where the child resided at the time of placement, and the foster family needs child care services for the foster child and the foster family is eligible to receive such services, the district that has financial responsibility for the foster child will be responsible for providing child care services for the foster child.

For all other families not described above, the social service district where a family resides will be responsible for providing child care services.

12. OTHER ADMINISTRATIVE REQUIREMENTS

A district has the following responsibilities for the administration of child care services:

- (1) In the case of providers from whom the district purchases child care services, contracts, when required by 18 NYCRR section 405.3, must be negotiated in accordance with the purchase of service requirements set forth in such section. The district may review provider budgets, and must monitor attendance and payment records for providers.
- (2) Required reports and claims for reimbursement must be prepared and submitted in the form and manner and at the times required by the Office of Temporary and Disability Assistance and the Office of Children and Family Services.
- (3) Each district must collect and submit information to the Office, in the form and manner and at the times specified by the Office, concerning the disbursement of child care subsidy funds showing the geographic distribution of children receiving child care services from the district.
- (4) The records required to be maintained by State and federal law and regulation, and by requirements of the Office of Temporary and Disability Assistance and the Office of Children and Family Services, must be retained as stated. A district must keep and retain adequate claiming records, retain appropriate documentation in the recipient's case file and make appropriate records available for audit by appropriate State and federal agencies.
- (5) The district is responsible for reporting to the Office, in the form and manner and at the times required by the Office, specific information regarding child care services, including but not limited to, the number of children receiving each specific child care service, the costs of such services separated by the type of child care providers used, and any additional information required for the State to meet federal reporting requirements.
- (6) The district must submit a child care services plan to the Office for approval as part of the district's multi-year CSP/ICP and any annual implementation reports. The plan must be

submitted in the form and manner prescribed by the Office and at the times required by the Office. A district's child care subsidy program must be implemented in accordance with the CSP/ICP approved by the Office.

13. CHILD CARE OVERPAYMENTS

a) OCCURRENCE OF OVERPAYMENTS

Overpayments for child care services may occur as a result of payment for aid continuing for a parent/caretaker who lost a fair hearing. Additionally, overpayments may occur when an applicant or recipient fails to inform the district of changes affecting his or her family's eligibility or child care benefit level. These changes include but are not limited to the following:

- household income
- household composition
- work or approved activity schedule
- hours of care needed
- child care provider
- rate changes.

Overpayments may occur due to the failure of the provider to report changes. These changes include but are not limited to the following:

- child's absence, that is not covered by the district's absence policy
- child withdrawn from care
- hours of care provided
- rate changes.

Overpayments may also occur when a district fails to take timely action to make a change in the family's child care benefit level or when the district makes an error in calculation of the family's child care benefit level.

b) DISTRICT ACTION TO CORRECT OVERPAYMENT

The district must take all reasonable steps to correct promptly any overpayments for child care services to a child's parent/caretaker or a child care provider. For the purposes of this section, "promptly", on the part of the district, means that corrective action must be taken and the client must receive a client notice within 60 days of the date the client notified the district of a change in circumstances. However, when an overpayment occurs as a result of a district's failure to act within 60 days on information provided by a parent/caretaker regarding the circumstances affecting child care benefits, no recovery may be made from the party who provided such information. In the case of a district calculation error or other error causing a child care overpayment, the corrective action must be taken and the client must receive a client notice within 60 days of the date of occurrence of the district error.

Although there is a 60 day grace period for corrective action on child care overpayments, a district is encouraged to take corrective action as soon as possible to lessen the economic impact on the family. A district *should not* wait until the next recertification period to recoup child care overpayments. Such a delay by the district may result in a family receiving additional child care benefits for which it is no longer eligible or applying an inappropriate amount towards the family share of child care costs.

c) *RECOVERY OF OVERPAYMENT*

The following actions are to be taken by the district to determine the overpayment and whether to recover the amount of overpayment:

- determine how the child care overpayment occurred and who was responsible for the overpayment. Responsible parties may include the district, parent, provider or a combination of one or more of these parties;
- determine the amount of the overpayment including the time period for which an overpayment occurred;
- estimate the costs of recovery; and
- determine whether the overpayment rises to the level of fraud.

The district must attempt to recover overpayments when:

- the overpayment resulted from fraud (regardless of the amount of overpayment or whether the parent/caretaker is a current or former recipient);
- the parent/caretaker is *currently* receiving child care benefits (regardless of the amount of overpayment); or
- the estimated cost of recovery of the overpayment from a *former* recipient is less than or equal to the amount of overpayment.

However, when an overpayment occurs as a result of a district's failure to act within 60 days on information provided by a parent/caretaker regarding the circumstances affecting child care benefits, no recovery may be made from the party who provided such information. State reimbursement and FFP cannot be claimed for child care overpayments if the district did not act promptly to correct the overpayment.

d) *MECHANISM OF RECOVERY*

A district must determine the mechanism by which to collect a child care overpayment. Recovery of an overpayment may occur through:

- Repayment to the district by the child's parent/caretaker or provider, whomever is the responsible party.
- Increase in family share. When a child care overpayment occurs with a TA recipient the overpayment can be recouped by imposing a family share on the TA recipient.
- Reduction in the district's payment to the child care provider and increase in the parent/caretaker's family share except where a contract for such services obligates the district to make full payment.

- Recovery of overpayments can be made only from child care benefits unless the recipient voluntarily requests that it be made from his/her available income. If the family is *currently* in receipt of benefits, the district may reduce the amount of the child care benefit and increase the amount of the family share owed by the parent. Alternatively, the district may continue to pay the same benefit level to the provider but instruct the parent/caretaker to pay the family share directly to the district.

When it has been determined that a child care overpayment to a recipient or former recipient has occurred, which does not involve fraud, districts must complete Attachment D, OCFS/LDSS-7009, Notice of Child Care Assistance Overpayment and Repayment Requirements. This notice includes information on the time frame, amount and reason for the overpayment; the mechanism for collection of the overpayment; and the right to an agency conference and fair hearing if the recipient disagrees with the district's determination of the overpayment. The district must give the parent/caretaker the completed form and keep a copy of the signed form in the case record.

In recovering overpayments for child care services from child care recipients, the district must see that child care recipients retain a reasonable amount of funds for any given month. Recovery attempts and amounts must be reasonable. Ideally, complete recovery of all child care overpayments should occur within 12 months. However, in no event can the monthly recovery amount exceed 10% of the monthly gross income of the family. If the recovery amount would exceed 10% of the gross income, the recovery period must be extended beyond 12 months. A parent/caretaker may elect to waive the above limitations and pay back a child care overpayment in a lump sum, over a period of less than 12 months or in amounts that exceed 10% of his or her gross income. Alternatively, districts should consider those circumstances when a parent/caretaker requests that recovery amounts be reduced to less than 10% of the monthly gross income and collection periods be extended beyond 12 months because of undue hardship. In cases in which a TA recipient has no income beyond the TA grant, the district should delay recovery of the overpayment until the family has income in addition to the TA grant. Monthly gross income for a TA recipient includes the amount of the TA cash grant and any earned or unearned income.

When a parent/caretaker or provider is deemed responsible for the child care overpayment, due to acts of commission or omission, the overpayment must be recovered from the parent/caretaker on whose behalf the payments were made or the provider who received payment for such services, whoever is responsible for the overpayment. Overpayments to child care providers or former recipients of child care services who refuse to repay may be recovered in accordance with the legal remedies available under State law.

Underpayments and overpayments may be offset against each other. Districts must collect and maintain information on the collection of overpayments and make appropriate adjustments when claiming Federal Financial Participation (FFP) and State reimbursement, and when satisfying the district's maintenance of effort requirement under the NYSCCBG program. FFP and State reimbursement cannot be claimed for overpayments where no repayment is made and no recovery occurs.

e) APPLICANTS WITH OUTSTANDING OVERPAYMENTS

An applicant for child care services who has not re-paid past overpayments for previous child care services that resulted from the failure to notify the district of a change in circumstances or from fraud, must agree to and comply with a plan to make full repayment of such child care overpayments as a condition of being eligible for the new child care services.

f) SUSPENDING OR TERMINATING BENEFITS

With the exception of child care services authorized as a child protective or a preventive service, a recipient of child care services who fails to comply with an agreed upon plan, must have his or her family's child care benefits suspended or terminated until such time as the recipient comes into compliance with such a plan.

In this situation, districts have the option to either suspend child care benefits or to reduce child care benefits. The OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits, must be sent prior to any action being taken on the recipient's child care benefits. However, districts must take into account that TA recipients cannot be sanctioned for non-participation in a work activity, if they do not have affordable child care. This situation must be examined when determining any reduction in child care benefits for TA families.

14. FRAUD

With the exception of child care services authorized as a child protective or child preventive service, a recipient or former recipient of child care services who has been convicted of or has voluntarily admitted to, on or after May 15, 2004, fraudulently receiving child care services is subject to a disqualification from the child care subsidy program.

a) VOLUNTARY ADMISSION OF CHILD CARE FRAUD

For the purpose of a voluntary admission by a recipient or former recipient, fraudulently receiving child care assistance means that an applicant or recipient applies for or receives child care assistance and intentionally misrepresents, conceals or withholds facts for the purpose of establishing or maintaining eligibility for or increasing the level of child care assistance. The district must obtain a written agreement signed by the individual in which the individual:

- understands and agrees that he or she or a member of the CCSU made a false or misleading statement or committed an act intended to mislead, misrepresent, conceal or withhold facts concerning eligibility for child care assistance;
- describes the fraudulent activity in which he or she participated;
- is notified of the disqualification penalties;
- is held responsible, along with members of the CCSU, for the repayment of any overpayment that resulted from the fraud; and,
- agrees that he or she understands the consequences of signing the agreement.

b) DISQUALIFICATION PENALTIES

A recipient or former recipient who has been convicted of or has voluntarily admitted to fraudulently receiving child care services, and the CCSU for which he or she is a member, are disqualified from receiving child care services for a period of time to be determined in accordance with the following time periods established for an Intentional Program Violation in the TA program as set forth in 18 NYCRR 359.9(a):

- (1) for six months, for the first admission or conviction of child care fraud;

- (2) for 12 months, for the second admission or conviction of child care fraud, or when the offense results in the wrongful receipt of benefits in an amount between \$1,000 and \$3,900;
- (3) for 18 months, for the third admission or conviction of child care fraud or when the offense results in the wrongful receipt of benefits in an amount in excess of \$3,900; or
- (4) for five years, for the fourth or any subsequent admission or conviction of child care fraud.

The disqualification penalty will be applied as follows:

- (1) For a family applying for child care services on or after May 15, 2004 who admitted or was convicted of child care fraud at any time in the past, the district will apply the appropriate disqualification penalty to the applicant and CCSU.
- (2) For a family who applied for child care services prior to May 15, 2004 who admitted or was convicted of child care fraud at any time in the past and the district makes the determination of eligibility on or after May 15, 2004, the district will apply the appropriate disqualification to the applicant and CCSU.
- (3) For a current recipient who was authorized for child care services prior to May 15, 2004 and who admitted or was convicted of child care fraud on or after May 15, 2004, the district will apply the appropriate disqualification penalty to the recipient and CCSU.
- (4) For a current recipient who was authorized for child care services prior to May 15, 2004 and who admitted or was convicted of child care fraud prior to May 15, 2004, the district may not apply a disqualification penalty to the recipient and CCSU.

The disqualification penalty is applied to applicants or recipients that are otherwise eligible for a child care subsidy. If an application for child care is denied or a case is closed because the applicant/recipient is not otherwise eligible, then the disqualification is pended until the individual reapplies and is found eligible for child care subsidies.

If a recipient of TA needs child care in order to participate in an activity required by the district, the disqualification of eligibility for child care services based on a child care fraud conviction or voluntary admission will be suspended during the recipient's participation in the required activity. However, the disqualification period will commence once the recipient is no longer participating in a required activity.

The district must notify applicants, recipients and former recipients when they are subject to a disqualification for child care fraud by using the Attachment E, OCFS/LDSS-7010, Notice of Fraud Determination, Disqualification for Child Care Benefits and Repayment Plan. The district must give the parent/caretaker the completed form and keep a copy of the signed form in the case record.

F. SPECIAL PROVISIONS RELATING TO TEMPORARY ASSISTANCE RECIPIENTS

The following provisions apply to TA recipients:

- (1) Child care services are guaranteed to a family who has applied for or is in receipt of temporary assistance when such services are needed for a child under thirteen years of age in order to enable the child's custodial parent or caretaker relative to participate in activities required by a social services official pursuant to title 9-B of article 5 of the Social Services Law.

- (2) A district may not reduce or terminate TA to an individual or an individual and the family of such individual based on a refusal of the individual to comply with applicable work requirements if the individual is a custodial parent or caretaker relative of a child under 13 years of age and the individual has a demonstrated inability, as determined by the district, to obtain child care needed to comply with such work requirements due to the following reasons:
- (a) Unavailability of appropriate and accessible child care within a reasonable distance from the individual's home or work site;
 - (b) Unavailability or unsuitability of informal child care by a relative or under other arrangements; and
 - (c) Unavailability of appropriate and affordable formal child care arrangements.
- (3) For the purposes of this section, the following definitions apply:
- (a) **Applicable** child means a child under thirteen years of age who is residing with a custodial parent or caretaker relative and who needs child care in order for the parent or caretaker relative to comply with the applicable work requirements.
 - (b) **Appropriate** means the child care provider(s) is open for the hours and days the parent or caretaker relative would need child care in order to comply with the applicable work requirements and the provider(s) is able and willing to provide child care services to the applicable child including addressing any special needs of the applicable child.
 - (c) **Accessible** means the parent or caretaker relative is able, by available public or private transportation, to get the applicable child to and from the child care provider(s) taking into consideration the age and any special needs of the child.
 - (d) **Reasonable distance** means the child care provider(s) is located within a reasonable distance from the parent or caretaker relative's home and work activity, based on locally accepted community standards, as defined in the district's CSP/ICP.
 - (e) **Unsuitability** of informal child care means the physical condition of the home in which care would be provided, or the physical or mental condition of the informal provider, would be detrimental to the health, welfare and/or safety of the applicable child.
 - (f) **Affordable** means the parent or caretaker relative would have sufficient income to pay the family share for the child care services, if required, and/or to pay the cost of care above market rate, if applicable. If the potential provider is a provider of informal child care who would be providing care in the child's home, affordable also means that the parent or caretaker relative would have sufficient income to pay the provider at least minimum wage, if required by State and/or federal law, and to provide such provider with all employment benefits required by State and federal law.
- (4) The district must inform the family:
- (a) About the exception to the penalties associated with the work requirement if the family is unable to locate child care needed to comply with applicable work requirements. The district must explain the procedures used to demonstrate an inability to obtain child care and the definitions of the terms "appropriate" "accessible", "reasonable distance", "unsuitability of informal child care" and "affordable"; and

- (b) That any family assistance received during the time the parent or caretaker relative receives an exception from the work requirements under this section will count toward the family's 60 month limit on receiving such benefits.
- (5) It is the responsibility of the parent or caretaker relative to locate child care needed to comply with such work requirements.
- (6) If the parent or caretaker relative cannot locate the needed child care on his or her own, the parent or caretaker relative must inform the district of his or her efforts to locate such care and request additional assistance in locating care.
- (7) When a parent or caretaker relative requests assistance from the district in locating child care due to an inability to locate the needed child care on his or her own, the district must:
 - (a) Assist the family by referring the parent or caretaker relative to the child care resource and referral agency that is responsible for the areas in which the parent or caretaker relative lives and/or would be expected to work or to another appropriate child care referral agency; and/or
 - (b) Provide the parent or caretaker relative with a list of names, addresses and telephone numbers of eligible providers.
- (8) The parent or caretaker relative must follow-up on all referrals from the district, child care resource and referral agency and/or other child care referral agency, as applicable, and must report his or her success or failure to the district. In order to be excused from complying with the applicable work requirements, the parent or caretaker relative must have a demonstrated inability, as determined by the district, to locate the needed child care for the applicable child(ren) despite the referrals from the district, the child care resource and referral agency and/or any other child care referral agency, as applicable.
- (9) If the parent or caretaker relative has a demonstrated inability, as determined by the district, to locate the child care needed for the applicable child(ren) despite such referrals, the district must offer the parent or caretaker relative two choices of eligible child care providers at least one of which must be a licensed or registered provider.

If the parent or caretaker relative is unwilling to accept child care services from either of these providers; is unable to demonstrate, as determined by the district, that such child care is not appropriate, accessible, suitable, affordable or a reasonable distance from the individual's home or work site; and the individual fails to comply with the applicable work requirements, then the district may reduce or terminate temporary assistance to such parent or caretaker relative and/or that individual's family in accordance with applicable statutory or regulatory provisions.

- (10) A district must determine that a parent or caretaker relative has a demonstrated inability to locate needed child care if all of the following conditions are met:
 - (a) The parent or caretaker relative has provided an attestation that he or she has contacted those accessible and suitable friends, neighbors and relatives who are within a reasonable distance of the individual's home or work site and who have the potential to act as informal child care providers for the applicable child(ren) but those individuals are not appropriate or affordable. The attestation must include a list of the names of the friends, neighbors and relatives the parent or caretaker relative contacted; and

- (b) The parent or caretaker relative has provided an attestation that he or she has contacted all of the child care providers to which the parent or caretaker relative was referred by the district, a child care resource and referral agency and/or any other child care agency, as applicable. The attestation must specify the names of each potential provider contacted and the reasons why that provider is not appropriate, accessible, suitable, affordable or a reasonable distance from the individual's home or work site.
- (11) The district must review and verify the attestations provided by the parent or caretaker relative. If the attestations validly document the unavailability of appropriate, accessible, suitable, affordable child care within a reasonable distance from the individual's home or work site, the district must excuse the parent or caretaker relative from the applicable work requirements.
- (12) A parent or caretaker relative who has been excused from the applicable work requirements due to a demonstrated inability to locate needed child care for his or her applicable child(ren) will be excused from the work requirements only for so long as that demonstrated inability continues to exist.

The parent or caretaker relative must document to the district, through the submission of new attestations on a periodic basis as set forth by the district, that the parent or caretaker relative is continuing to attempt to locate the needed child care including following-up on all new referrals from the district, child care resource and referral agency, and/or any other child care agency, as applicable, and by responding to all offers of child care from the district. New attestations must be submitted in accordance with a schedule developed by the district based on the parent's or the caretaker relative's employment plan.

G. CHILD SUPPORT REQUIREMENTS

This section replaces the child care sections of 99 ADM-5 and 00 INF-2.

1. RESPONSIBILITIES OF PARENT/CARETAKER

For all households in which a parent is continually absent, the custodial parent/caretaker seeking a child care subsidy must demonstrate that: he or she has court-ordered child support in place, he or she is actively pursuing a court order for child support, or he or she has good cause not to actively pursue child support (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause). Voluntary payment of child support on the part of the non-custodial parent or alleged non-custodial parent, without a written separation agreement signed by both parties or a court order specifying child support, does not meet the child care requirement to actively pursue child support. The requirement to actively pursue child support pertains to all children in the CCSU even if the custodial parent/caretaker is not requesting a child care subsidy for each and every child under 13 years of age. However, no amendment to a child support order should be sought to add child care expenses for any child age 13 years or older.

A custodial parent/caretaker can demonstrate to the child care unit that he or she is actively pursuing child support either by:

- a. providing documentation that he or she has applied for services from the Child Support Enforcement Unit (CSEU); or
- b. providing documentation that he or she is actively pursuing child support privately.

In some circumstances, the custodial parent/caretaker may be asked to actively pursue a modification of an order that does not specifically address child care expenses (see *section III.G.6.d, Establishing and Modifying Child Support Orders* of this ADM).

Once court-ordered child support is in place, the custodial parent/caretaker must continue to actively pursue support by modifying and enforcing the order, if appropriate. If the custodial parent/caretaker has applied for child support services from the CSEU, the CSEU will provide services to establish, modify or enforce the child support order.

A custodial parent/caretaker, who has chosen not to actively pursue support by applying for child support services through the CSEU, must demonstrate the actions he or she, or his or her legal representative, is taking to establish, modify, or enforce child support.

The custodial parent/caretaker must demonstrate to the child care worker that he or she is continuing to actively pursue child support. Copies of subpoenas, petitions, and scheduled court dates must be provided by the custodial parent/caretaker to the child care worker to demonstrate the custodial parent/caretaker is continuing to actively pursue support.

a) INTACT HOUSEHOLDS - PARENTS OF CHILDREN BORN OUT OF WEDLOCK

The court will not order child support when both parents are living with the child because there is no non-custodial parent to be held chargeable under a court order for child support. While the district may encourage these parents to legally establish paternity, there is no child care eligibility requirement to establish paternity or to seek child support so long as the parents and child(ren) reside together. If one of the parents moves out of the household, the custodial parent must actively pursue child support from the non-custodial parent in order to be eligible for child care subsidy, unless a good cause exception exists.

b) CUSTODIAL PARENTS IN RECEIPT OF TEMPORARY ASSISTANCE

If the custodial parent or caretaker relative is already pursuing court-ordered support through the CSEU under the requirements of the TA program, his or her continued compliance under the TA program will meet the child care requirement to actively pursue child support. If the custodial parent or caretaker relative has a good cause exception and/or a child support waiver due to domestic violence, the custodial parent or caretaker relative does not need to cooperate with child support requirements in order to receive child care while the good cause exception and/or waiver are in effect.

In addition, a custodial parent or caretaker relative, who receives TA and needs child care in order to participate in an activity required by the district, is guaranteed child care services even if the children are not in receipt of TA (such as those in receipt of SSI), and even if the custodial parent or caretaker relative fails to cooperate with TA child support requirements. The guarantee of child care for the TA custodial parent or caretaker relative supersedes the child care requirement to pursue child support.

However, a custodial parent or caretaker relative who is receiving TA, but is not required by TA to pursue child support, and who needs child care for a purpose not covered by the child care guarantee, must actively pursue child support in order to be eligible for child care services. This circumstance may

occur when the child is in receipt of SSI and the custodial parent or caretaker relative needs child care in order to participate in an activity that is not required by the district (e.g., to attend college in addition to meeting their TA work requirements). The child care guarantee would apply to the time the custodial parent or caretaker is working. However, since attending college is an optional activity that is in addition to his or her required TA activity, the child care guarantee would not apply for care needed to attend college. In order to receive child care for college attendance in addition to child care for his or her TA work requirement, the district must have included this activity in its CSP/ICP, have child care funds available and the custodial parent or caretaker relative must actively pursue child support.

c) CUSTODIAL PARENTS IN RECEIPT OF MEDICAL ASSISTANCE

If the custodial parent/caretaker is in receipt of Medical Assistance (MA) for the child and is already actively pursuing child support, his or her continued compliance will meet the child care requirement to actively pursue child support. This assumes that the parent/caretaker is pursuing cash support as well as medical support. If the parent/caretaker is not pursuing cash support for the child, he or she will be required to do so for purposes of the child care subsidy eligibility. If the custodial parent/caretaker has a good cause exception, the custodial parent/caretaker does not need to actively pursue child support requirements in order to receive child care benefits while the good cause exception is in effect. See additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause.

d) TRANSITIONING CLIENTS AND CLIENTS ELIGIBLE FOR “CHILD CARE IN LIEU OF TA”

Transitioning clients who meet the eligibility criteria for the transitional guarantee and clients who are eligible for the “child care in lieu of TA” guarantee must actively pursue child support. The child care guarantee in these cases does not supersede the requirement to actively pursue child support.

The custodial parent or caretaker relative may still claim the good cause exception. Additionally, if the client can demonstrate that there was a child support waiver due to domestic violence (DV) at the time of the TA case closing, the child care worker must evaluate with the custodial parent or caretaker relative whether good cause still exists. A DV waiver that is dated within the last 12 months is sufficient evidence to demonstrate good cause. See additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause.

e) CUSTODIAL PARENTS NOT IN RECEIPT OF TA

A custodial parent/caretaker who is applying for or receiving child care but is not receiving TA must demonstrate that he or she is actively pursuing child support unless he or she has a good cause exception (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause). In order to meet this requirement, the custodial parent/caretaker may apply for child support services through the CSEU, or may pursue child support by hiring a legal representative or pursue court-ordered child support on his or her own behalf. If he or she chooses to apply for child support services through the CSEU, he or she must complete the DSS-2521, Application for Child Support Services, and must voluntarily continue to actively pursue child support as described in *section III.G.2, Actively Pursuing Child Support Through the CSEU* of this ADM. In the absence of voluntary compliance with child support activities, the CSEU will close the child support case. In these cases, in order to maintain eligibility for child care services, the custodial parent/caretaker must demonstrate to the child care worker that he or she is actively pursuing child support through other legal means (i.e.

privately) or demonstrate good cause not to actively pursue child support.

f) NON-CUSTODIAL PARENTS WHO HAVE SIGNED A CONSENT FOR ADOPTION AND/OR HAVE VOLUNTARILY SURRENDERED THEIR PARENTAL RIGHTS

If a non-custodial parent has signed a consent for adoption and/or surrendered his or her parental rights, the custodial parent/caretaker will not be required to pursue child support for this child in order to be eligible for child care benefits.

g) CARETAKERS WHO ARE NOT THE CHILD'S PARENTS

A caretaker, legal guardian and other individual acting in loco parentis of a child and applying for child care services, is required to demonstrate that he or she is actively pursuing child support from the child's parents unless there is a good cause exception not to do so (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause). Child care workers should carefully consider the circumstances under which the child was placed in the household of the caretaker. In many of these cases, the caretaker may have good cause not to actively pursue child support.

h) FOSTER PARENTS

Foster parents, caring for a child who is in the care and custody of the local social services district, that apply for a child care subsidy for such a foster child are exempt from child support requirements for that foster child. This exemption only applies to the foster child. If the foster parents need child care services for their own children, they must actively pursue child support for their own children parents unless there is a good cause exception not to do so (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause).

2. ACTIVELY PURSUING CHILD SUPPORT THROUGH THE CSEU

Obtaining an appointment with the CSEU may be the first step in actively pursuing child support and should be considered acceptable proof of intent to comply with the requirement to actively pursue child support until it is shown or evidence appears to the contrary. Actively pursuing child support through the CSEU means that the custodial parent/caretaker: applies for child support services by completing the DSS-2521, Application for Child Support Services; takes any necessary steps to establish the paternity of a child born out of wedlock; establishes and enforces orders of child support; and modifies orders of child support, where appropriate, to be consistent with the Child Support Standards Act, which includes a provision for the payment of reasonable child care expenses. The custodial parent/caretaker may need to seek the assistance of the CSEU when an order needs to be modified; may have to appear in court; and, in some districts, will be responsible for filing the petition.

It is the responsibility of the custodial parent/caretaker to demonstrate he or she is actively pursuing support through the CSEU by providing documentation that he or she has applied for CSEU services. The custodial parent/caretaker must write and submit a status report and provide copies of supporting documentation to the child care worker. The status reports must, where applicable and appropriate: indicate when petitions will be filed and court dates have been scheduled, provide proof of attendance at required court dates, provide reasons for any delays granted by the court and provide any other information that would demonstrate the custodial parent/caretaker's active pursuit of child support based

on the stage of the child support enforcement process. If a custodial parent/caretaker is unable to provide verification to the child care worker, the district should determine whether the custodial parent/caretaker should seek assistance from the CSEU or the Family Court in obtaining copies of documents to demonstrate active pursuit of child support.

With the exception of legal services, child support services through the CSEU are provided free of charge. Custodial parents/caretakers who choose to receive legal services in addition to child support services, must sign the Right to Recovery section of the DSS-2521. The costs of any legal services will be recovered only when child support is collected. A custodial parent/caretaker is not required to obtain legal services as part of his or her active pursuit of child support. He or she may choose to represent himself or herself, request legal services from the CSEU or hire his or her own attorney.

Actively pursuing support through the CSEU is one of two ways to demonstrate to the child care unit that the custodial parent/caretaker is actively pursuing child support. In the event that the custodial parent/caretaker elects not to continue to actively pursue support through the CSEU, the CSEU will close the child support services case based on established child support case closure procedures. The custodial parent/caretaker must then demonstrate to the child care worker that he or she is actively pursuing support privately in order to maintain child care eligibility or demonstrate that he or she has good cause not to pursue child support (see additional information in the *section III.G.5, Good Cause* of this ADM for criteria on establishing good cause).

3. ACTIVELY PURSUING CHILD SUPPORT PRIVATELY

Actively pursuing child support privately means the custodial parent (either on his or her own or through the assistance of an attorney) is actively participating in the activities that will lead to the establishment, modification or enforcement of court-ordered child support within a reasonable period of time.

Initially, the custodial parent/caretaker must submit in writing to the district a plan of activities and timeframes for the accomplishment of the establishment, modification or enforcement of a child support order. Such a plan must demonstrate the activities and timeframes for completion are reasonable.

The custodial parent/caretaker must also provide a written update to the plan of activities, no less frequently than at recertification, to demonstrate that he or she is actively engaged in and completing the activities in the plan. The update must include documentation, where applicable and appropriate, that:

- petitions to establish, modify or enforce child support have been or are being filed (including copies of petitions);
- court dates have been arranged and the custodial parent/caretaker or the legal representative has appeared in court on those dates; or
- the acknowledgment of paternity or order of filiation has been completed; and
- the custodial parent/caretaker has obtained a court order for child support.

4. LACK OF INFORMATION

The district must establish procedures for interviewing the custodial parent/caretaker who indicates an

inability to provide sufficient information. These procedures must address providing the custodial parent/caretaker with an opportunity to sign the LDSS-4281, Attestation to Lack of Information form². This activity may be conducted by the child care worker or district designee and may be charged to program costs under the NYSCCBG.

If the custodial parent/caretaker claims lack of information *after* applying for CSEU services, the district must either:

- refer the custodial parent/caretaker to the child care unit to sign the LDSS-4281, Attestation to Lack of Information and close the child support services case, if one had been opened; or
- the CSEU may complete and return the LDSS-4281, Attestation to Lack of Information form to the child care worker and close the child support services case. However, completing the LDSS-4281 is not a required activity under the IV-D program (i.e. for non-TA families). Therefore, this activity must be time studied and cannot be claimed as a child support activity.

If the custodial parent/caretaker has completed, signed and submitted the LDSS-4281 to the child care worker, the custodial parent/caretaker will be excused from actively pursuing child support.

5. GOOD CAUSE

a) *OPPORTUNITY TO CLAIM GOOD CAUSE*

An applicant for, or recipient of, child care services has the right to claim good cause for not actively pursuing child support. This is explained in the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F. The applicant/recipient can make a good cause claim by completing and returning to the district, the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G. The district must provide the OCFS/LDSS-7013, Child Support Requirements Notification Letter to the client along with the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim form. A signed copy of the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim form must be filed in the case record.

If a custodial parent/caretaker is claiming a good cause exception, the case must not be referred to the CSEU pending the determination of whether good cause exists by the child care worker or designee. If the claim of good cause is not raised by the custodial parent/caretaker until after he or she has submitted an application for child support services and raises the good cause issue with the CSEU, the child support worker must assess whether the custodial parent/caretaker wishes to have the CSEU continue with child support services and if not, close the child support case. In addition, the child support worker should refer the case to the child care unit for a determination of good cause.

For child care purposes, good cause exists if pursuing child support would adversely affect the health, safety or welfare of the child or of other persons in the child's household.

If a district so chooses, it may contract with not-for-profit or other agencies or organizations to review and make determinations of good cause. Districts may use NYSCCBG subsidy program funds to pay for contractual services relative to the determination of good cause.

b) APPLICANT OR RECIPIENT REQUIREMENT TO ESTABLISH EXISTENCE OF GOOD CAUSE

An applicant or recipient who refuses to actively pursue child support and who claims to have good cause for not actively pursuing child support must establish that good cause exists and will be required to:

- (1) Specify the circumstances that the applicant or recipient believes provide sufficient good cause for not actively pursuing child support;
- (2) Corroborate the good cause circumstances; and
- (3) If requested, provide sufficient information to permit an investigation of the good cause claim.

c) CIRCUMSTANCES UNDER WHICH ACTIVE PURSUIT OF CHILD SUPPORT IS AGAINST THE BEST INTEREST OF THE CHILD OR OTHER MEMBERS OF THE HOUSEHOLD

The following are considered to be circumstances under which the active pursuit of child support would be against the best interest of the child because it would adversely affect the health, safety or welfare of the child on whose behalf such child support payments are to be made or would adversely affect the health, safety or welfare of another person in the child's household:

- (1) Active pursuit of child support is expected to result in physical harm to the child for whom support is sought;
- (2) Active pursuit of child support is expected to result in emotional harm to the child for whom support is sought;
- (3) Active pursuit of child support is expected to result in physical or emotional harm to the custodial parent/caretaker sufficient to impair the custodial parent/caretaker's ability to care for the child adequately;
- (4) Active pursuit of child support is expected to result in physical or emotional harm to any other member of the child's household;
- (5) The child for whom child support is sought was conceived as a result of incest or forcible rape;
- (6) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction;
- (7) The custodial parent/caretaker is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption, and discussions have gone on for less than three months; or
- (8) The non-custodial parent's rights have been terminated or voluntarily surrendered.

Physical harm and emotional harm must be of a serious nature in order to justify a finding of good cause. A finding of good cause for emotional harm may only be based on a demonstration of an emotional impairment that substantially affects the individual's functioning.

Special Considerations Related to Emotional Harm

For each good cause claim that is based in whole or in part upon the anticipation of emotional harm, the child care worker or designee must consider the following:

- (1) The present emotional state of the individual subject to emotional harm;
- (2) The emotional history of the individual subject to harm;
- (3) The intensity and probable duration of the emotional upset;
- (4) The degree of active pursuit required; and
- (5) The extent of the involvement of the child or individual subject to emotional harm in paternity establishment or support enforcement activity to be undertaken.

The child care worker or appropriate designee must document the findings with respect to the above factors in the case record.

d) SPECIAL CONSIDERATIONS WHEN GOOD CAUSE INVOLVES DOMESTIC VIOLENCE

The child care worker should review the documentation provided by the custodial parent/caretaker. If the documentation is sufficient to verify the good cause claim, the child care worker should make the determination at that time.

If there is no documentation or insufficient documentation, the custodial parent/caretaker may be referred to the domestic violence liaison (DVL) for a more complete assessment. The DVL will make a recommendation regarding the credibility of the claim that the DV situation represents a danger to the custodial parent/caretaker, the child or another member of the household and notify the child care worker of the recommendation. Based on the findings and recommendation of the DVL, the child care worker and supervisor will make the final determination on the good cause claim.

A referral may also be made to the DVL or a local community based domestic violence services organization for information and referral for domestic violence services. The referral for information and services should only be made if the custodial parent/caretaker agrees to such a referral. It is the decision of the custodial parent/caretaker whether or not to seek domestic violence services.

e) PROOF OF GOOD CAUSE CLAIM

The applicant or recipient who claims good cause must provide corroborative evidence within 20 days from the day the claim was made on the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim. If the child care worker or appropriate designee determines that the applicant or recipient requires additional time because of the difficulty of obtaining the corroborative evidence, upon supervisory approval, the child care worker or appropriate designee must allow a reasonable additional period of time.

Good cause may be corroborated with the following types of evidence:

- (1) Court, medical, criminal, child protective services, social services, psychological or law enforcement records indicating that the alleged non-custodial parent might inflict physical or emotional harm on the child or custodial parent/caretaker or other member of the household;
- (2) Medical records indicating that the child, custodial parent/caretaker or other household member has an emotional health history and a present emotional health status which indicates that pursuing child support would be detrimental to the mental and/or emotional health of the applicable individual;

- (3) A domestic violence waiver issued to a former TA recipient and dated within the last 12 months will be considered a demonstration of good cause. Once the date of the waiver exceeds 12 months, good cause will need to be redetermined by the child care worker or appropriate designee;
- (4) A birth certificate, medical record or law enforcement record indicating that the child was conceived as the result of incest or forcible rape;
- (5) Court or other documents indicating that legal proceedings for adoption are pending before a court of competent jurisdiction;
- (6) A written statement from a public or licensed private social agency that it is assisting the custodial parent/caretaker to decide whether to keep the child or release the child for adoption; or
- (7) Sworn statements from individuals (other than the applicant or recipient) with knowledge of the good cause circumstances, which provide the basis for the good cause claim. A “sworn” statement is signed before, and witnessed and signed by, a person who is empowered to administer an oath to the testifier. Persons authorized to administer such oaths include public notaries, commissioners of deeds, judges, town justices, and justices of the peace. The sworn statement must attest to circumstances that would indicate that pursuing child support would adversely affect the health, safety or welfare of a household member.

f) THE NEED FOR ADDITIONAL CORROBORATIVE EVIDENCE

If after examining the corroborative evidence submitted by the applicant or recipient, the child care worker or appropriate designee determines that additional corroborative evidence is needed to make a good cause determination, the child care worker or appropriate designee will:

- (1) Promptly notify the applicant or recipient that additional corroborative evidence is needed; and
- (2) Specify the type of document needed.

If requested by the applicant or recipient, the child care worker or appropriate designee must advise the applicant or recipient how to obtain the necessary documents. Additionally, if requested by the applicant, the child care worker or appropriate designee must make a reasonable effort to obtain any specific documents that the applicant or recipient is not reasonably able to obtain without assistance.

g) INVESTIGATION OF GOOD CAUSE CLAIM WHEN INSUFFICIENT CORROBORATIVE EVIDENCE PRESENTED

The child care worker or appropriate designee may further verify the good cause claim by conducting an investigation if the applicant’s or recipient’s statement of the claim, together with the corroborative evidence, does not provide sufficient information. In domestic violence situations, the parent/caretaker may be referred to the DVL for a more complete assessment.

h) LACK OF CORROBORATIVE EVIDENCE FOR CLAIM BASED ON THE APPLICANT’S/RECIPIENT’S ANTICIPATION OF PHYSICAL HARM

Where a good cause claim is based on the applicant’s or recipient’s anticipation of physical harm and

corroborative evidence is not submitted in support of the claim:

- (1) the child care worker or an appropriate designee will investigate the good cause claim when the child care worker or appropriate designee believes the claim is credible without corroborative evidence, and corroborative evidence is not available;
- (2) good cause will be found if the claimant's sworn statement and the investigation which is conducted satisfy the child care worker, or appropriate designee, that the applicant or recipient has good cause for refusing to actively pursue child support;
- (3) supervisory personnel must approve the determination of good cause and note that approval in the case record; and
- (4) anticipated physical harm must be of a serious nature in order to justify a finding of good cause. In domestic violence situations, the parent/caretaker may be referred to the DVL for a more complete assessment.

i) CHILD CARE ASSISTANCE PENDING A GOOD CAUSE DETERMINATION

The child care worker or appropriate designee must not deny, delay or discontinue child care assistance pending a determination of good cause for not actively pursuing child support if the applicant or recipient has complied with the requirement to furnish corroborative evidence and information or has been referred to the domestic violence liaison for a more complete assessment.

An application or recertification for child care services must be authorized for a maximum period of three months pending a good cause determination. If good cause exists, the authorization for purchase of services must be extended to the normal six-month or twelve-month redetermination period.

j) FINAL DETERMINATION AND NOTIFICATION OF GOOD CAUSE

The child care worker or appropriate designee's determination of whether good cause exists and the basis for the determination must be approved by a supervisor. The final determination of good cause must be in writing; contain the findings and basis for the determination; and be entered in the case record.

The final determination must be made within 30 days from the day the good cause claim is made. The child care worker or appropriate designee may exceed 30 days when the case record documents that additional time is needed because information required to verify the claim cannot be obtained within the 30 days or the custodial parent/caretaker did not provide corroborative evidence within 20 days.

Notification of the good cause determination must be given to the custodial parent/caretaker in writing (see Attachment H, OCFS/LDSS-7012, Notice of Good Cause Determination). A notification that good cause was found to exist excuses the custodial parent/caretaker from actively pursuing child support. The good cause exception from actively pursuing child support may be temporary or permanent depending on the circumstances of the good cause claim. See *section III.G.5.k, Periodic Review of Good Cause* of this ADM for additional information.

If the determination is that good cause does not exist:

- (1) the child care worker or appropriate designee must notify the applicant or recipient (see Attachment H, OCFS/LDSS-7012, Notice of Good Cause Determination) and afford the applicant or recipient the opportunity to demonstrate he or she will actively pursue child

support, withdraw his or her application for child care, or have his or her child care case closed. The custodial parent/caretaker must be informed of his or her right to an agency conference or fair hearing to contest the determination that good cause does not exist. No action to deny or discontinue child care benefits can be made on the basis of the OCFS/LDSS-7012;

- (2) if the applicant or recipient continues to refuse to actively pursue child support absent a fair hearing decision issued in his or her favor, the child care worker or appropriate designee must send the applicant a denial of his or her application for child care benefits, OCFS/LDSS-4780, Denial of Your Application for Child Care Benefits. If the custodial parent/caretaker is a recipient, the child care worker or appropriate designee must send the custodial parent/caretaker the OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits. The child care applicant or recipient then has the option to allow the case action of denial or case closing to take place, or contest the decision to deny or discontinue child care benefits by requesting a fair hearing, or demonstrate he or she is actively pursuing child support.

All of the above-referenced notices must be both adequate and timely.

k) PERIODIC REVIEW OF GOOD CAUSE

The child care worker or appropriate designee must periodically review, no less frequently than at each recertification, those cases in which the child care worker or appropriate designee determined that good cause exists based on a circumstance that is subject to change. In those cases, it is the parent/caretaker's responsibility to provide documentation to support a determination that good cause continues to exist. If the child care worker determines that circumstances have changed to the extent that good cause no longer exists, the district must provide the custodial parent/caretaker with the notice specified above in *section III.G.5.j, Final Determination and Notification of Good Cause* of this ADM.

l) CONFIDENTIALITY

If the good cause exception stems from a claim of domestic violence, child protective or adult protective issues, the district must take precautions to see that this information is secured in the case file and maintained in a confidential manner. 18 NYCRR 357.3(i) and NYS policy stated in 98 ADM-3 Section IV-I on confidentiality related to victims of domestic violence; 18 NYCRR 457.16 on confidentiality related to adult protective services; and, 18 NYCRR 432.7 on confidentiality related to child protective services state that local district social service employees may not reveal information obtained in the course of administering assistance or services to unauthorized sources. Client information that must be safeguarded includes: applications, eligibility status, benefit issuance, investigations and contents of the case record or file. The confidentiality policy applies to all client information maintained and secured by the district whether it is contained in a written record or exchanged verbally.

6. CHILD CARE WORKER RESPONSIBILITIES

a) NOTIFYING CUSTODIAL PARENTS/CARETAKERS

In cases where there is a non-custodial parent, child care workers must inform the custodial parent/caretaker, in writing, of the custodial parent/caretaker's responsibility to actively pursue child support through the CSEU or privately.

The child care worker must first ascertain whether or not the custodial parent/caretaker has previously applied for child support services and, if so, must determine the current status of the child support case. If the custodial parent/caretaker has an active child support case with the CSEU, the custodial parent/caretaker must provide the child care worker with a status report demonstrating that he or she continues to actively pursue support through the CSEU. If the CSEU has sent the custodial parent/caretaker the Contact Notice or the Notice of Intent to Close, and the custodial parent/caretaker has not responded to the CSEU, the custodial parent/caretaker is not considered to be actively pursuing child support.

If the custodial parent/caretaker had previously applied for child support services but the child support case is closed, the child care worker must determine the reason for the child support case closing. Districts may determine whether to obtain information on case closings from the custodial parent/caretaker or from the CSEU. If the case was closed by the CSEU for any of the following reasons, the custodial parent/caretaker is excused from the requirement to actively pursue child support:

- the non-custodial parent is deceased and no further action, including a levy against the estate, can be taken;
- paternity cannot be established;
- the non-custodial parent's location is unknown and regular attempts have been made unsuccessfully to locate the non-custodial parent over a three year period;
- the non-custodial parent cannot pay support for the duration of the child's minority because the non-custodial parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; or
- the non-custodial parent is a citizen of, and lives in, a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, has no reachable domestic income or assets, and reciprocity has not been established with such foreign country.

If the child support services case was closed at the custodial parent/caretaker's request or was closed due to the custodial parent/caretaker's failure to cooperate with the CSEU, the custodial parent/caretaker is not considered to be actively pursuing child support. The custodial parent/caretaker must then demonstrate that he or she is actively pursuing child support privately or has re-applied for child support services from the CSEU in order to meet the child care eligibility requirement of actively pursuing child support or demonstrate good cause not to actively pursue child support.

The child care worker or appropriate designee must notify the applicant or recipient in writing of the right to claim good cause as an exception to the requirement to actively pursue child support and of all the requirements applicable to a good cause determination.

Districts must use the model letter, the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F, or a local equivalent to notify custodial parents/caretakers of their responsibilities regarding child support.

Such notice must inform:

- the custodial parent/caretaker of his or her responsibility to actively pursue child support which may include establishment of paternity;
- the custodial parent/caretaker of the things he or she may have to do to demonstrate he or she is actively pursuing child support;
- the custodial parent/caretaker how to document that he or she is actively pursuing child support;
- the custodial parent/caretaker of what he or she needs to do if he or she does not have a court order for child support;
- the custodial parent/caretaker that he or she may need to modify the court order if the order does not include child care expenses;
- the custodial parent/caretaker, if he or she has a court order but is not receiving child support payments, that he or she must initiate and follow through with steps to enforce the order, if appropriate;
- the custodial parent/caretaker of his or her right to make a good cause claim at any time by informing his or her worker;
- the custodial parent/caretaker of the procedures for claiming good cause not to actively pursue child support; and
- the mother of the father's rights if paternity is established.

The notification letter must be accompanied by the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G. A copy of the written notification must be maintained in the custodial parent/caretaker's case record.

b) SUBMITTAL OF THE DSS-2521: APPLICATION FOR CHILD SUPPORT SERVICES

Child care *applicants* choosing to go to the CSEU for assistance in actively pursuing child support, must complete and sign the DSS-2521. If the applicant, including one who will be placed on a waiting list for a child care subsidy, submits the DSS-2521 to the child care worker, the child care unit must forward the completed DSS-2521 to the CSEU. When child care workers submit the DSS-2521, workers can include their name as the name of referring official (in the agency use only box at the top of the DSS-2521).

No action will be taken to approve the child care application until the child care applicant documents that he or she has requested an appointment from the CSEU or has submitted the DSS-2521 to the child care worker or the CSEU; or documents that he or she is actively pursuing child support order privately. Once the documentation is received demonstrating that the applicant is actively pursuing child support, the child care application can be processed. If the child care applicant cannot demonstrate he or she is actively pursuing child support within 30 days of submitting the child care application, the application must be denied for failure to comply with the requirement to actively pursue child support unless there is good cause not to actively pursue child support.

There is an exception for child care applicants who are claiming good cause. If the child care applicant has submitted the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G, indicating he or she has good cause not to pursue child support, and he or she is otherwise eligible for child care, the child care must be authorized pending the good cause determination. An application by a custodial parent/caretaker who is claiming good cause must be acted upon within 30 days. If the custodial parent/caretaker is otherwise eligible but additional time is needed to demonstrate good cause, child care may be authorized for up to three months while the good cause determination is pending. Districts cannot delay approval of a child care application while a good cause determination is pending so long as the applicant has complied with the requirement to furnish corroborative evidence and information.

If an applicant has a child support order in place that does not include child care expenses, the applicant may be required to pursue modification of the order. Refer to *section III.G.6.d, Establishing and Modifying Child Support Orders* of this ADM for additional information on modifications.

c) GRACE PERIOD DURING INITIAL YEAR OF IMPLEMENTATION (MAY 15, 2004 - MAY 14, 2005)

In a case where there is a non-custodial parent, the district must notify each non-TA child care *recipient* (with an open child care case on May 14, 2004) of the requirement to actively pursue child support. A due date must be included in the notification letter. The due date is based on the timeframe for implementation of the child support requirements for non-TA recipients that is selected by district in its CSP/ICP. The OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F of this ADM, includes important information for the custodial parent/caretaker including the opportunity to claim good cause.

For a recipient (with an open child care case on May 14, 2004) who, in response to the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F, applies for child support services through the CSEU or demonstrates that he or she is actively pursuing child support privately, the district will authorize the child care subsidy case for the normal six-month or twelve-month recertification period.

For a recipient who, in response to the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F, indicates on the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G, that he or she is making a good cause claim will be recertified for three months. The recipient must send corroborative evidence to support the good cause claim within 20 days from the day the good cause claim was made unless given an extension. The district must notify the recipient of the good cause determination using the OCFS/LDSS-7012, Notice of Good Cause Determination, Attachment H. If the determination is that good cause does not exist or cannot be established, the custodial parent/caretaker must be notified of the option to demonstrate he or she is actively pursuing support by providing necessary documentation to the district within ten days of the notice of good cause determination. If no such documentation is provided, the child care recipient must be sent an OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits.

A recipient who, in response to the OCFS/LDSS-7013, Child Support Requirements Notification Letter, Attachment F, does not apply for child support services through the CSEU, cannot demonstrate that he or she is actively pursuing support privately and has not claimed good cause, will, if otherwise eligible, be recertified for three months provided that he or she indicates on the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim, Attachment G, that he or she will actively pursue child support. The recipient must demonstrate by the end of the three-month period that he or she is

actively pursuing child support. If the recipient fails to demonstrate that he or she is actively pursuing child support, the child care recipient must be sent an OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits.

d) ESTABLISHING AND MODIFYING CHILD SUPPORT ORDERS

Child care workers should be aware of the following when guiding custodial parents/caretakers in actively pursuing child support orders with a provision for child care expenses.

Child Care and Child Support Orders

Child support orders are determined under the State's child support guidelines known as the Child Support Standards Act or "CSSA". The CSSA is codified in Section 413 of the Family Court Act (FCA), which governs actions in Family Court, and in Section 240 of the Domestic Relations Law (DRL), which governs actions in the Supreme Court. Seeking child care in the order of support is applicable to both establishing orders of support and modifying orders of support. Under the CSSA, there are circumstances where the court must order an amount to be paid for child care expenses and there are circumstances where the court has discretion to order an amount to be paid for child care expenses. The reasonable child care expenses will generally be prorated between the parties in accordance with the parties' relative incomes. This section provides a general discussion of the rules governing application of the child support guidelines.

Child care provisions should be sought and ordered by the court:

When the custodial parent/caretaker is working; receiving elementary, secondary or higher education; or participating in vocational training that the court determines will lead to employment, and incurs child care expenses as a result of the above, the court must order reasonable child care expenses. The reasonable child care expenses will generally be prorated between the parties in accordance with the relative incomes of the parties.

Child care provisions should also be sought and may be ordered:

When the custodial parent/caretaker is seeking work and incurs child care expenses as a result thereof, the court may determine reasonable child care expenses and apportion the expenses between the parties.

There are exceptions to when a child care worker should require the custodial parent/caretaker to seek a modification to obtain a child care provision in the parent/caretaker's existing order of child support. If any of the following applies, the child care worker should NOT direct the custodial parent/caretaker to seek a modification.

Modification of a child support order should NOT be sought if:

1. The custodial parent/caretaker is receiving TA; or
2. The child care worker is aware that the non-custodial parent's income is at or below the self support reserve, which is 135% of the federal poverty level. For 2005, this amount is \$12,920. It is updated annually and is available from the OTDA website. Thus, in cases where it is clear that the non-custodial parent's income is at or below the self-support reserve and he or she does not have the ability to earn more income, the custodial parent/caretaker should not pursue a modification of an order of child support for the purposes of adding a provision for child care expenses; or

3. When the order of child support was entered or last modified, child care expenses existed and the court did not provide for child care expenses and there has been no substantial change in the parties' circumstances since the order of support was entered or last modified which would justify a modification (e.g. the obligor's income has not increased or the child's need for child care has not changed since the entry of the last order); or
4. The circumstances of the non-custodial parent indicate that the court is unlikely to modify the order due to the limited resources of the non-custodial parent. Such situations should be assessed on a case-by-case basis and may include but are not limited to: incarceration of the non-custodial parent or the non-custodial parent is disabled or unemployed; or
5. The custodial parent/caretaker needs child care for an activity other than employment, educational or vocational training or seeking employment; or
6. The order addresses only the family share and not the total child care expenses.

Note: When the custodial parent is *seeking employment* and incurs child care expenses as a result thereof, the court *may* order reasonable child care expenses. While child care expenses are not mandated in this case, the district can request the non-TA custodial parent to pursue a modification of an order that does not address child care expenses. However, the court may not grant the request for a modification in these cases, depending on the circumstances, because child care expenses are not mandated under these circumstances.

Orders Stated in Terms of a Percentage of Child Care Expenses

A custodial parent/caretaker will not be asked to pursue modification of an order that does not contain a sum certain (i.e. exact dollar) amount for the child care expenses. Where child care costs fluctuate, the custodial parent/caretaker must report any adjustments needed to their child support to the non-custodial parent. In cases where the custodial parent/caretaker has applied for child support services, the CSEU may be consulted if the custodial parent/caretaker is unable to collect the adjustments from the non-custodial parent. If the non-custodial parent is not compliant, it may become necessary to enforce the amounts not paid by petitioning the court.

e) CUSTODIAL PARENT/CARETAKER WHO SEEKS A REDUCTION IN CHILD SUPPORT

A custodial parent/caretaker who obtains a reduction in the amount of a child support order for the purpose of qualifying for, or increasing the amount of, a child care subsidy will not be considered to be actively pursuing child support and will, therefore, be ineligible for a child care subsidy.

f) EXCHANGE OF INFORMATION BETWEEN CHILD CARE AND CHILD SUPPORT UNITS

The district is responsible for determining the mechanism for exchange of information between the child care unit and CSEU. The district must establish procedures to obtain information from the custodial parent/caretaker to document that the custodial parent/caretaker is actively pursuing child support. The first step in establishing that the custodial parent/caretaker is actively pursuing support is documentation provided by the custodial parent/caretaker verifying that the custodial parent/caretaker has submitted a signed application for CSEU services or has an appointment with the CSEU. If the custodial parent/caretaker is unable to provide the documentation, the child care worker may request verification

from the CSEU that an application for child support services has been submitted and/or an appointment has been scheduled.

In applying for child care services, a custodial parent/caretaker signs either the LDSS-2921-Application or a State approved local equivalent. These forms contain the following consent language regarding information needed to determine eligibility:

“I understand that by signing this application form, I agree to any investigation made by the Department of Social Services to verify or confirm the information I have given or any other investigation made by them in connection with my request for assistance.”

No additional consent for release of information from the CSEU or the client’s attorney (if pursuing child support privately) is needed.

g) CONTINUED VERIFICATION OF ACTIVE PURSUIT OF CHILD SUPPORT

The child care worker must verify that the custodial parent/caretaker is continuing to actively participate in child support activities to obtain child support either through the CSEU or privately; already has a child support order and is actively participating (as required by the CSEU or privately) to enforce the order; or has a good cause exception. The custodial parent/caretaker must provide documentation to verify that he or she continues to actively pursue child support. The custodial parent/caretaker must verify where applicable and appropriate that:

- if applying for child support services through the CSEU, the custodial parent/caretaker has submitted the DSS-2521 as required by the district;
- the custodial parent/caretaker has submitted himself or herself and the child(ren) for genetic testing when required to establish paternity;
- the custodial parent/caretaker has filed a petition with family court to obtain an order of child support;
- the custodial parent/caretaker has obtained a court date;
- the custodial parent/caretaker has attended the court appearance as required or that the hearing was postponed for a legitimate reason;
- a child support order has been issued or modified by the court;
- child support payments are being made; and
- an enforcement petition has been filed, if required.

h) CALCULATING NEED AND CHILD CARE BENEFIT AMOUNTS FOR LOW INCOME FAMILIES

With the exception of any child care expenses ordered to be paid by the non-custodial parent to a low income custodial parent/caretaker, child support is treated as income when determining child care eligibility for the low income (i.e. non-TA) custodial parent/caretaker. In a *low income child only* case, the child support is considered income to the child.

The amount the non-custodial parent is required to pay for child care expenses as part of the child support order reduces the low income custodial parent/caretaker’s need for child care. The child care benefit for the low income custodial parent/caretaker is determined by taking the full amount charged by

the child care provider, up to the market rate, and subtracting the non-custodial parent's court-ordered amount of the child care expenses. The child care benefit is further reduced by any family share required of the low income custodial parent/caretaker.

j) SUPPORT ORDERS THAT ADDRESS ONLY FAMILY SHARE RATHER THAN CHILD CARE COSTS

The amount of child care expenses in the child support order *should be* the full cost of child care. However, districts must follow the terms specified in the court order. In some cases, the court order fails to address the full child care expenses and instead looks only at the custodial parent's family share of the subsidy rather than the full child care cost. In these cases, the child support order either specifies an exact dollar amount or refers to the custodial parent's family share of "out of pocket expenses" rather than the full child care expenses. The district must follow the court order as written even if it fails to address the full child care costs.

j) FLUCTUATING CHILD SUPPORT INCOME AND LUMP SUM CHILD SUPPORT PAYMENTS

18 NYCRR 404.5(b)(3) requires that if income fluctuates significantly, the average monthly amount used for determining financial eligibility for child care subsidy must be computed based on income received during a period of not less than three nor more than six months. Child support income received on an irregular basis in an amount that varies significantly, during the three to six month period the district chooses, from the amount in the child support order will be treated as fluctuating income. However, the amount of lump sum or other payments received for child support arrears is not counted as income for the purpose of determining eligibility of the custodial parent/caretaker for child care benefits.

k) INCREASING CHILD CARE BENEFITS WHEN CHILD SUPPORT PAYMENTS ARE DELINQUENT

If child support payments are delinquent, the applicant or recipient must take appropriate action to enforce the child support order. So long as appropriate attempts are being made to enforce the child support order, the district must recalculate the low income custodial parent/caretaker's income excluding the amount of the delinquent child support.

Districts must determine when to make an adjustment to the child care benefit amount when child support payments are past due. In most cases, no adjustment to the child care benefit should occur until the support is at least 30 days past due. However, in situations where the child care arrangement is jeopardized due to the delay in payment, the district may make adjustments to the child care benefit amount *before* the payment is delinquent by 30 days. The adjustment to the child care benefit amount must retroactively cover the period of time support was not received.

The custodial parent/caretaker must be informed that he or she may be required to return some or all of payments for child support arrears to replace adjustments in child care benefits that the district made to cover the non-custodial parent's delinquent payments. In such cases, the district must add the following language to the OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, or OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits:

"Your child care benefit is increased by \$ _____ based on your report of non-receipt of child support. You will be required to pay back the increases in child care benefits when you receive some or all of the back due child support. You must continue to actively pursue child support including enforcement of your child support order to remain eligible for child care benefits. Any change in your income, including receiving back due child support, must be reported to the _____"

Department of Social Services immediately.”

l) RETURN OF CHILD CARE BENEFITS ADJUSTED DUE TO DELINQUENT CHILD SUPPORT PAYMENTS

If child care benefits had been increased to cover delinquent child support payments due from the non-custodial parent, and the non-custodial parent begins paying the delinquent payments, the district must request the custodial parent/caretaker to return some or all of payments for child support arrears to the child care worker to replace the amount of increase in child care benefits that the custodial parent/caretaker received. The district must attempt to recover the increase in child care benefits in all cases in which the amount of increase equals or exceeds the cost of recovery.

When requesting a return of some or all of the lump sum or arrears payment, the district must notify the parent/caretaker in writing of the amount of overpayment that must be returned. Districts must issue the OCFS/LDSS-7009, Notice of Child Care Assistance Overpayment and Repayment Requirements, Attachment D, indicating the reason for the overpayment. The following information must be inserted in the space provided for the reason the overpayment occurred in *Section I* of the OCFS/LDSS-7009, Notice of Child Care Assistance Overpayment and Repayment Requirements:

“Your child care benefits were increased based on delinquent child support from your child’s non-custodial parent. You now have received the delinquent child support. The increase to your child care benefits resulted in an overpayment as described below.”

Such notice must include the calculations used to determine the overpayment and repayment amount, the date that it must be repaid and the rights to an agency conference and fair hearing. Refer to *section III.E.13.d, Child Care Overpayments-Mechanisms of Recovery* of this ADM for more information on repayment plans. A copy of the original OCFS/LDSS-4779, Approval of Your Application for Child Care Benefits, or OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits, issued to the custodial parent/caretaker when child care benefits were increased (which included the notification language described in *section III.G.6.k, Increasing Child Care Benefits When Child Support Payments Are Delinquent* of this ADM) must be included with the request for repayment.

The amount of lump sum or other payment received for child support arrears is not counted as income for the purpose of determining eligibility of the custodial parent/caretaker for child care benefits. Once child support payments are received on a regular basis, the district must include child support as income and determine eligibility for child care benefits, the amount of the child care benefit and the family share prospectively. The OCFS/LDSS-4781, Notice of Intent to Change Child Care Benefits must be provided to the custodial parent/caretaker.

m) DENIAL OR DISCONTINUATION OF CHILD CARE BENEFITS

If a status report from the custodial parent/caretaker or CSEU indicates a failure to actively pursue child support, the child care recipient must be sent an OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits, for failure to actively pursue child support without good cause.

In the case of a custodial parent/caretaker who is not actively pursuing child support and cannot demonstrate that a good cause exception exists, the district must deny or discontinue child care benefits. Districts must use the OCFS/LDSS-4780, Denial of Your Application for Child Care Benefits or the OCFS/LDSS-4782, Notice of Intent to Discontinue Child Care Benefits, as appropriate. These notices include information regarding the parent/caretaker’s rights to appeal the district’s decision. The denial or discontinuation notice must include the following statement: *“You did not actively pursue child*

support for (name of child) and did not show that you have good cause for not actively pursuing child support as required by Title 18 of the New York State Codes, Rules and Regulations, Section 415.3.”

7. CHILD SUPPORT WORKER RESPONSIBILITIES

The child support worker has responsibilities only for the custodial parent/caretaker who applies for child support services through the CSEU. Upon receipt of the DSS-2521, the CSEU should provide any appropriate services to establish paternity or to establish, modify or enforce a child support order.

a) ATTESTATION TO LACK OF INFORMATION

If, after the CSEU investigative interview, a custodial parent/caretaker disavows knowledge of information necessary to identify and locate the alleged non-custodial parent, the CSEU worker would close the child support case. The CSEU must either complete the LDSS-4281, Attestation to Lack of Information form, or refer the custodial parent/caretaker back to the child care worker or designee for completion of the LDSS-4281. A copy of the completed form must be given to the custodial parent/caretaker and will be kept in the child care record as documentation that the custodial parent/caretaker is excused from actively pursuing child support.

b) PROVIDE INFORMATION TO THE CHILD CARE UNIT

The custodial parent/caretaker will be required to document to the child care worker that he or she is actively pursuing child support. However, in some circumstances, the custodial parent/caretaker may lack the documentation needed to verify that he or she is actively pursuing child support. In these cases, the custodial parent/caretaker or the child care worker may ask the CSEU worker to provide information via the Child Support Information Transmittal form (LDSS-2859) or a local equivalent.

c) DISTRIBUTION OF CHILD SUPPORT COLLECTIONS

For all *non-TA* child care cases, child support collected by the CSEU will be sent to the custodial parent/caretaker. In the event the non-TA custodial parent/caretaker is a *former TA recipient*, there may be assigned arrears that will be retained for reimbursement of assistance by the district in accordance with the child support distribution rules. Similarly, in *TA cases*, child support collections will be retained for reimbursement of assistance by the district in accordance with the child support distribution rules. The instruction provided in the Division of Child Support Enforcement (DCSE's) Dear Colleague Letter (DCL) dated January 19, 2000 for creating a non-public assistance child care support ledger in TA cases is cancelled. Child care ledgers in TA cases should be coded as 21CB or 22CB ledgers as appropriate.

For non-TA cases only, any *child care* expenses paid to the family as child support reduces the family's need for a child care subsidy. Because of the potential impact on the child care benefit amount, the child support worker may receive and must respond to a request for information from the child care worker regarding any child care expenses that have been court ordered and are being passed on from the CSEU to the family.

d) NOTIFICATION OF CHILD SUPPORT CASE CLOSINGS

There may be circumstances where a custodial parent had previously applied for child support services and his or her child support case was subsequently closed. The reason for the case closure may impact the custodial parent's requirement to actively pursue child support and the custodial parent's eligibility for child care services.

If the custodial parent/caretaker had *requested* his or her child support case be closed, the custodial parent/caretaker will be required to demonstrate that he or she is actively pursuing child support privately or the custodial parent/caretaker may reapply for child support services through the CSEU. If circumstances have changed, the custodial parent/caretaker may claim good cause.

There are other circumstances where a child support case may have been closed and the custodial parent/caretaker should be excused from actively pursuing child support for child care eligibility purposes. If a previous child support services case was closed due to any of the following reasons, the custodial parent/caretaker is excused from actively pursuing child support:

- the non-custodial parent is deceased and no further action, including a levy against the estate, can be taken;
- paternity cannot be established;
- the non-custodial parent's location is unknown and regular attempts have been made unsuccessfully to locate the non-custodial parent over a three year period;
- the non-custodial parent cannot pay support for the duration of the child's minority because the non-custodial parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; or
- the non-custodial parent is a citizen of, and lives in, a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, has no reachable domestic income or assets and the State has been unable to establish reciprocity with such foreign country.

The child care worker will ask the custodial parent/caretaker to provide a copy of the child support case closure notice. However, there may be circumstances where the custodial parent/caretaker is unable to provide a copy of the notice. In these cases, the child care worker may contact the CSEU to confirm that the case was closed.

8. IMPLEMENTATION TIME FRAMES

The new child support requirement for child care *applicants* was effective May 14, 2004. Districts were allowed to choose to implement the new child support requirement for *recipients* (with an open child care case on May 14, 2004) either effective May 15, 2004 or at next case action or recertification, whichever comes first. The district must have indicated which option it selected in its CSP/ICP. Districts were allowed to request a waiver to extend the implementation timeframe for no more than six months. However, the waiver will pertain only to implementation of this requirement for families in receipt of child care services as of May 14, 2004.

H. METHOD OF MAKING PAYMENTS FOR CHILD CARE SERVICES

1. NEW YORK STATE CHILD CARE BLOCK GRANT

For child care services provided under the NYSCCBG program, payment may be paid by the following methods:

- (1) by advance cash payments, cash reimbursements or vouchers to the child's custodial parent/caretaker for care provided by an eligible provider and supported by a bill signed by both the child's custodial parent/caretaker and the provider. However, a caregiver of informal child care or of legally-exempt group child care must be enrolled with the district before payment may be made for such services.
- (2) by a purchase of services contract or letter of intent in accordance with 18 NYCRR 405.3 or by advance cash payments, cash reimbursements or vouchers to an eligible provider. However, a caregiver of informal child care or legally-exempt group child care must be enrolled with the district before payment may be made for such services. A district cannot require a provider to enter into a purchase of services contract or letter of intent as a condition of receiving payment under NYSCCBG.

A district must establish at least one method of payment by which payment for child care services arranged by the child's custodial parent/caretaker can be made. A district has the option to vary such method on a case-by-case basis to reflect individual case circumstances. However, the district may not vary payment methods if this will result in a limitation on the custodial parent/caretaker's choice of provider. For example, a district that has a policy of paying the custodial parent/caretaker whenever he or she uses a legally-exempt family child care provider or a legally-exempt group child care provider can choose to pay some of these providers directly, if the custodial parent/caretaker has a history of not paying the provider or frequently switching providers. As another example, a district that has a policy of having the custodial parent/caretaker pay the family share to the provider may require the custodial parent/caretaker to pay the family share to the district, if the custodial parent/caretaker has a history of not paying providers. However, the district must treat equally situated families the same.

2. TITLE XX

For child care services provided under Title XX of the federal Social Security Act, or provided as child protective services or child preventive services funded other than under the NYSCCBG program, payment must be made by a purchase of service contract or letter of intent with a licensed or registered provider, or with a public school district operating a child care program which meets State and federal requirements.

I. REIMBURSEMENT FOR CHILD CARE EXPENDITURES

1. PAYMENT FOR CHILDREN'S ABSENCES

This section of the ADM on payment for children's absences replaces 92 ADM-8, Child Care: Reimbursement for Payments for Children's Absences.

A district has the option to choose whether it wants to issue payments on behalf of children who are temporarily absent from child care. Reimbursement is available for any absence, regardless of the reason for the absence, unless limitations are specified in the approved CSP/ICP, or the number of absences exceeds the maximum allowed for routine circumstances.

Reimbursement for such payments is allowable subject to the following conditions.

a) SELECTION OF PROVIDERS

The district must specify in its approved CSP/ICP to which providers such payments will be made, in accordance with one of the options below:

- To only those child care providers with which the district has a contract or letter of intent; *or*
- To all eligible providers of subsidized child care services, except for legally-exempt family day care and legally-exempt in-home providers.

The provider rendering the child care services must be duly licensed or registered to provide child care services, or an enrolled provider of legally-exempt group care. Such providers include: licensed day care centers; registered small day care centers; registered family day care providers; licensed group family day care providers; registered school-age child care programs; public schools providing care to pre-school aged children in accordance with a contract entered into between a public school district and the social services district; and enrolled legally-exempt group providers.

In order to be paid for absences, the provider must require payment for absences from families who are not receiving a child care subsidy, as well as those who are receiving a subsidy. Additionally, the provider must be open and available to provide care on the day the child is absent.

The district must state as part of a contract or agreement or through written notice to the provider that payment is allowable in cases of temporary absences from child care.

b) SELECTION OF BASE PERIOD FOR DETERMINING NUMBER OF ABSENCES

A district must select either a three-month or six-month period as the basis on which it will maintain records and calculate the number of allowable absences. The base period must be identified in the district's CSP/ICP and approved by the Office.

A district must establish a three-month or six-month base period for use in determining maximum temporary absences based on either of the following:

- beginning on the date of a child's admission to child care and ending three or six months later depending on the period selected; or
- beginning on a fixed calendar date for all children entering child care and ending three or six months later depending on the period selected. If this basis is chosen, a child entering child care during a quarterly or semiannual cycle may, during that initial cycle, receive a prorated number of days of absence beginning on the date of entry and ending on the last day of the quarterly or semiannual cycle. All temporary absences thereafter will be computed using the normal quarterly or semiannual cycle.

c) MAXIMUM NUMBER OF ABSENCES-ROUTINE CIRCUMSTANCES

The district must specify in its approved CSP/ICP the number of absences for which providers will be reimbursed. Except in cases of extenuating circumstances defined below, payment for temporary absences from child care are allowed for up to 12 days in any one calendar month; provided, further, that such absences may total no more than 12 days in any three-month period, if the district selects a three-month base period for determining maximum temporary absences; or 24 days in any six-month period, if the district selects a six-month base period for determining maximum temporary absences.

Claims for reimbursement for absences cannot be made for days of absence that occur after the date the child was withdrawn from the child care program. The district should prescribe guidelines for the reporting of a child's absence in its agreement with child day care providers.

d) EXTENUATING CIRCUMSTANCES

A district may also choose to pay for absences that are in addition to routine absences when extenuating circumstances exist. If a district chooses to pay for absences in extenuating circumstances, it must specify such in its approved CSP/ICP and include any limitations that apply. Extenuating circumstances means a situation or occurrence verified by the district and noted in the case record in which a child is temporarily absent from child care for one or more of the following reasons:

- the district determines that the child is unable to attend child care because it is necessary for the child or the child's custodial parent/caretaker to appear in court or to keep other appointments related to the provision of preventive, foster care, adoption, child protective services, or other needs as set forth in the child's services plan;
- the child is ill, has a handicapping or other condition which requires medical care and/or treatment, or the child requires other medical care and/or treatment;
- the child's family is homeless, and the homelessness necessitates the child's absence from child care; or
- the child's custodial parent/caretaker is participating in an approved education or training program and the child's absences coincide with a temporary suspension of such program for purposes including, but not limited to, holidays, school conferences and snow days.

e) MAXIMUM NUMBER OF ABSENCES - EXTENUATING CIRCUMSTANCES

Where it is determined that extenuating circumstances for absences exist, reimbursement is allowed for an additional three days above the maximum for routine absences, for a maximum of 15 days of absence in any one calendar month; provided that all absences may total no more than 20 days in any three-month period, if the district selects a three-month base period for determining maximum temporary absences; or 40 days in any six-month period, if the district selects a six-month base period for determining maximum temporary absences.

f) CHART SUMMARIZING MAXIMUM NUMBER OF ABSENCES ALLOWED BY REGULATION

The chart below summarizes the maximum number of reimbursable days of absence allowed for each period, according to regulation.

		Type of Absence		Total (Maximum number of days)
		Routine (Maximum number of days)	Additional Absences Due to Extenuating Circumstances (Maximum number of days)	
Period	1 Month	12	3	15
	Base Period of 3 Months	12	8	20
	Base Period of 6 Months	24	16	40

g) ABSENCES IN EXCESS OF LIMITS FOR EXTENUATING CIRCUMSTANCES

A district that wishes to claim reimbursement for temporary absences in excess of the limits for extenuating circumstances must submit a written request to the Office for approval. Such requests must be client-specific and must indicate the number of additional absences, the reason for the additional absences and justification for reimbursement. A copy of the written Office approval for reimbursement of child absence in excess of the limits for cases with extenuating circumstances must be maintained as part of the case record.

h) CHILD ABSENT FROM CARE, BUT RECEIVING CARE FROM ANOTHER PROVIDER

Reimbursement is not available for a day a child is absent from care if the provider ordinarily charges the custodial parent/caretaker on a daily or part-time basis and the child for whom reimbursement is requested is otherwise in need of and receives subsidized child care from a different provider on the same day.

2. PROGRAM CLOSURES-LICENSED, REGISTERED OR LEGALLY-EXEMPT GROUP PROGRAMS

A district has the option to choose whether it wants to issue payments on behalf of children when a child care program is closed due to specified circumstances. Reimbursement for payments to licensed, registered or legally-exempt group programs during program closures is allowable subject to the following conditions:

a) SELECTION OF PROVIDERS

The district must identify, in its approved CSP/ICP, the type of providers that are eligible for payment for program closures. The district may choose to make such payments either to those child care providers with which the district has a contract or letter of intent or to all eligible providers of subsidized

child care services with the exception of legally-exempt family day care and legally-exempt in-home providers.

b) REASONS FOR PROGRAM CLOSURE

The district must identify in its approved CSP/ICP the specific holidays and/or circumstances for which it will make payments for program closures. A program closure is allowable for reimbursement if it is due to a State, federal or nationally recognized holiday or due to extenuating circumstances beyond the provider's control including but not limited to:

- natural disaster;
- severe weather; or
- other emergency closings that are due to circumstances other than a substantiated regulatory violation.

Reimbursement is available only for children in receipt of a child care subsidy who would otherwise be present at the child care program. Reimbursement is not available for a day the program is closed if the provider ordinarily charges the custodial parent/caretaker on a daily or part-time basis and the child for whom reimbursement is requested is otherwise in need of and receives subsidized child care services from a different provider on the same day.

The maximum number of days for which reimbursement is allowable due to program closure is five per year.

The district must maintain a record of the payments made under this provision for each provider in order to receive reimbursement.

3. REGISTRATION FEES AND DEPOSITS

Federal and State reimbursement is available for payment of a registration fee and for deposits so long as the provider requires payment of such expenses of private-paying families. The provider rendering the child care services must be duly licensed or registered to provide child care services, or an enrolled provider of legally-exempt group child care. These costs may be claimed as program costs.

4. MARKET RATES

Market rates are updated biennially. The most recent went into effect on October 1, 2003. They may be viewed at the Office's Internet site: <http://www.ocfs.state.ny.us/main>. For a comprehensive discussion of maximum reimbursement for child care subsidy expenditures under the NYSCCBG and Title XX Social Services Block Grant and how to apply the market rates, please refer to 04 OCFS LCM-07.

5. SPECIAL NEEDS PAYMENTS TO LEGALLY-EXEMPT PROVIDERS

In order to assist children with special needs, districts are no longer required, as per 91 ADM-34, to request approval from the Office to apply the special needs market rate to legally-exempt providers funded under the NYSCCBG subsidy program. All the other requirements of 91 ADM-34 still apply,

with the exception of the amount of the special needs market rate, which is set forth in 04 OCFS LCM-07.

6. PAYMENTS FOR TRANSPORTATION EXPENSES

Child care providers that also furnish transportation services have the option to include this expense in their rates or to create a separate charge for these services. If these services are included in the rate, it is reimbursable as long as their rate is within the market rate. If the rate exceeds market rate, the amount in excess of market rate is non-reimbursable. A district may choose to cover these excess costs at local cost or may require the custodial parent/caretaker to pay this excess amount.

If a provider charges transportation expenses as a separate charge to all families including private payers, a district is permitted to make payments for this extra fee as a program cost provided it is indicated in its approved CSP/ICP.

The time spent by the custodial parent/caretaker transporting a child to the child care program is not to be counted as time in which the child is in care.

J. REIMBURSEMENT FOR CLAIMS

1. MAINTENANCE OF EFFORT - NYSCCBG

In order to access funding under the NYSCCBG, each district must maintain the amount of local funds spent for child care assistance under the NYSCCBG at a level equal to or greater than the amount the district spent for child care assistance during federal fiscal year 1995 under Title IV-A of the federal Social Security Act, the federal Child Care and Development Block Grant program, and the State Low Income Child Care program. Each district's claims submitted under the NYSCCBG will be processed in a manner that maximizes the availability of federal funds and ensures that the district meets its Maintenance of Effort (MOE) requirement in each applicable federal fiscal year.

Each district must meet its MOE in cash on a federal fiscal year basis, October through September. If the district is not meeting its MOE, reimbursement of claims for expenditures under the NYSCCBG will be adjusted so that the MOE is being met.

The MOE level for districts are issued along with the district allocation of NYSCCBG funds, in a separate Local Commissioners Memorandum (LCM) after the passage of the State Budget each year.

2. REIMBURSEMENT LEVELS

a) NYSCCBG

Claims for expenditures for child care services provided under NYSCCBG are eligible for the following levels of State and federal reimbursement up to the district's NYSCCBG allocation:

- (1) Reimbursement is provided for 75% of allowable costs for families on TA.
- (2) Reimbursement for all other eligible families is available for 100% of allowable costs,

provided that the district's maintenance of effort is being met.

- (3) Allowable program costs include the following costs of providing child care services:
 - (a) eligibility determinations and re-determinations;
 - (b) participation in adjudicatory and judicial hearings;
 - (c) child care placements including transportation to such placements;
 - (d) inspection, review and supervision of child care placements including monitoring compliance with any additional local child care requirements imposed pursuant to 18 NYCRR section 415.4(f);
 - (e) training of district staff; and
 - (f) the establishment of computerized child care information systems.
- (4) A district must expend its allocation from the NYSCCBG in a manner that provides for equitable access to child care services funds to eligible families.
- (5) A district may spend no more than five percent of its annual NYSCCBG allocation for administrative activities. The term “administrative activities” does not include the costs of providing child care services set forth under “program costs” above. Administrative activities include, but are not limited to the following:
 - (a) providing local officials and the public with information about the program;
 - (b) conducting public hearings;
 - (c) monitoring program activities for compliance with program requirements;
 - (d) maintaining substantiated complaint files;
 - (e) coordinating the resolution of audit and monitoring findings;
 - (f) evaluating program results;
 - (g) managing or supervising persons with responsibilities set forth in paragraphs (a) through (f) of this paragraph;
 - (h) travel costs incurred for official business in carrying out the program; and
 - (i) other costs for goods and services required for the administration of the program including rental or purchase of equipment, utilities, and office supplies.

b) TITLE XX SOCIAL SERVICES BLOCK GRANT

Federal reimbursement for child care services provided under Title XX will be available for 100% of allowable costs up to the district’s annual Title XX Social Services Block Grant allocation.

IV. Systems Instructions

Procedures for the authorization of payment for child care services in the Welfare Management System (WMS) are as follows:

For child care payments for eligible families applying for or receiving temporary assistance, a district can continue to use the DSS-3209, IM/WMS Authorization. A district may, at its option, utilize the

DSS-2970 WMS/Services Authorization to authorize payment for child care for temporary assistance families. Service Type Suffix Code (Data Element #23021) value "S" designates child care services funded under NYSCCBG for temporary assistance applicants/recipients and reimbursed at 75% federal and State share up to the district's allocation ceiling.

A district has the option to authorize payments for child care for NYSCCBG eligible families not in receipt of temporary assistance on the DSS-3209 for Food Stamps and Medical Assistance only cases. These payments are reimbursed at 100% federal and State share up to the district's allocation ceiling.

For all other eligible families, a district must authorize payment in WMS/Services by using Service Type Suffix Code value "R" on the DSS-2970 WMS/Services Authorization that designates child care services funded under NYSCCBG for non-temporary assistance families and reimbursed at 100% federal and State share up to the district's allocation ceiling.

In circumstances of an adult only temporary assistance case in which the children are not included in the temporary assistance filing unit, child care payment is authorized as a temporary assistance family and reimbursed at 75% federal and State share up to the district's allocation ceiling. For cases in which children are in receipt of temporary assistance but the caretaker is not included in the temporary assistance filing unit, child care is authorized in WMS Services and reimbursed at 100% federal and State share up to the district's allocation ceiling.

WMS/Services continues to support monitoring the issuance and return of child care certificates. Instructions for the child care certificate are included in 92 LCM-138 and in the Benefits Issuance Control System (BICS) Operations Manual, page A-82, BICS Production Request 32, in the addition dated April 1, 1993. Information is also provided in the BICS Services Payment Processing Manual, II. Authorizations, E., Self Selected Day Care Certificates, pages II 25-27.

V. Claiming Instructions

NYSCCBG expenditures for child care subsidies for families receiving temporary assistance are claimed on Schedule H Non-Title XX Services for Recipients (LDSS-4283), line 2 (Day Care Services for Children), column 13 (Day Care Block Grant 75%). NYSCCBG program expenditures for child care subsidies for all other eligible families and for allowable program costs are claimed on the Schedule H, line 2, column 12 (Day Care Block Grant 100%). Refer to the Fiscal Reference Manual, Volume 2, and Chapter 3 for detailed instructions for completing the Schedule H.

NYSCCBG child counts and expenditures also must be reported on the Schedule G-2 Summary of Payments for Day Care (LDSS-2109EL). Expenditures made under the services types allowed must be reported on the Schedule G-2, via the Automated Claiming System. The BICS Schedule G-2 report provides the information needed to file the report. Refer to the Fiscal Reference Manual, Volume 2, and Chapter 3 for Schedule G-2 instructions.

Administrative expenditures for the NYSCCBG are claimed in accordance with the services Random Moment Survey (RMS) as Child Care Block Grant costs on line 6, section 1 (associated A-87 costs are claimed on line 4, section 2) of the Schedule D-2, Allocation for Claiming of General Services Administration Expenditures (LDSS-2347B). Instructions for completing the Schedule D-2 are contained in Chapter 9 of Volume 3 of the Fiscal Reference Manual County Cost Allocation Plan for districts outside of New York City. For New York City, the instructions are contained in Chapter 9 of Volume 4 of the Fiscal Reference Manual.

Claiming instructions for district administrative expenditures related to the training of employees which are claimed on the Schedule D-6 "Reimbursement For Training" (LDSS-2347-C) for the NYSCCBG program are covered in Chapter 13 of Volume 3 of the Fiscal Reference Manual for districts outside of New York City. New York City would refer to Volume 4 of the Fiscal Reference Manual.

VI. Other

A. WAIVERS

With the exception of the local child care market rates, a district may request a waiver of any non-statutory child care regulation. The waiver must be described in the district's CSP/ICP and must be approved by the Office prior to its implementation.

B. EFFECTIVE DATE

The regulations were effective on May 15, 2004. Implementation was effective immediately, except for those districts which have requested in their CSP/ICP and received Office approval to implement the new child support provisions (with regard to existing child care cases only) and/or changes in the child care services unit (CCSU) at next case action or recertification, whichever comes first. The new legally-exempt provider certifications must be implemented immediately for providers enrolling on or after May 15, 2004. Districts must notify legally-exempt providers that were enrolled as of May 14, 2004 of the need to sign and return the new attestations no later than the next case action or recertification.

If a district has requested and received approval from the Office for a waiver to delay implementation of any other non-statutory provision, the effective date will be based on the approved waiver.

Larry G. Brown s/s

Larry G. Brown
Deputy Commissioner
Division of Development & Prevention Services

ATTACHMENT A

GUIDELINES FOR REVIEW OF ENROLLMENT FORMS FOR PROVIDER OF LEGALLY-EXEMPT CARE: History of Article 10 Removal; Termination of Parental Rights; and Denial, Revocation and/or Suspension of a Child Day Care License or Registration

I. ENROLLMENT REQUIREMENTS

The previous enrollment requirements specified in 01 OCFS LCM 11 remain in effect and new health and safety assessment requirements have been added to the regulations (18 NYCRR, part 415.4 (f) (7) (iii) and (iv)). In order to be enrolled by a district to provide child care services under the NYS Child Care Block Grant Program, a provider of informal child care or a provider of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State or local government agency must attest and certify in writing regarding the following health and safety categories:

- Whether the provider has ever had a child(ren) removed from his or her care by court order under Article 10 of the Family Court Act (FCA); and/or
- Whether the provider has ever had his or her parental rights terminated, and/or
- Whether the provider has ever been denied a license or registration to operate a school-age child care program, day care center, family day care home or group family day care home, or had such a license or registration suspended or revoked.

For any provider who has a history of the above health and safety concerns, the district must assess, in accordance with these guidelines issued by OCFS, whether the enrollment of such provider poses an unreasonable risk to the health, safety or welfare of the children in the provider’s care.

A. REVISED ENROLLMENT FORMS

Changes have been made to the enrollment forms to include the new certifications. The forms that have been modified are:

- OCFS/LDSS-4699, Enrollment Form for Provider of Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care, and
- OCFS/LDSS-4700, Enrollment Form for Provider of Legally-Exempt Group Child Care.

New sections have been added to each of the enrollment forms to address the provider’s history of Article 10 removals, termination of parental rights (TPR) and denial, revocation and/or suspension of a license or registration to operate a day care program. The provider must sign a certification for category.

II. THE NEW HEALTH AND SAFETY CATEGORIES

A. COMPLETION OF OCFS/LDSS-4699, THE ENROLLMENT FORM FOR A PROVIDER OF LEGALLY-EXEMPT FAMILY CHILD CARE AND LEGALLY-EXEMPT IN-HOME CHILD CARE

1. History of Court-Ordered Article 10 Removal of a Child (Section V)

Background

Article 10 refers to a section in the Family Court Act that addresses abuse and neglect (child protective) proceedings. The removal of a child under FCA Article 10 is a reversible action intended to protect a child from imminent danger (immediate danger of serious harm) or imminent risk to the child’s life or health. Before removing a child to foster care, a judge must consider whether the issuance of a temporary order of protection would eliminate the need for the removal.

A removal may occur without a fact-finding hearing and, in itself, a removal does not establish or prove wrongdoing by the parent/caretaker. A judicial finding, or adjudication, establishes the culpability of the parent/caretaker, in that the abuse or neglect was satisfactorily proven, admitted or consented to in family court. The definitions of abused child and neglected child are found in the Family Court Act, Section 1012.

The reasons for the length of placement may be linked to the resolution of the underlying cause of the removal. Shorter placements may occur when the parent/caretaker's underlying issues are more easily resolved or the extended family has become a placement resource for the child. Because child welfare staff must work towards a goal of reunification of children in foster care with their families as soon as the children can be safely returned home, a long foster care placement may be indicative of more severe factors underlying the removal. A placement lasting 15 months or more has additional significance because when a child has been in foster care for 15 of the preceding 22 months the district may be required to file a petition to terminate parental rights.

a) Provider History

Question 1: The provider must indicate whether he or she has ever had a child removed by court order in an Article 10 proceeding. If the provider has had a child removed by court order in an Article 10 proceeding, the provider must check the second response and must answer questions 2 through 5. These questions apply to *any* child removed from the person's care under Article 10. The provider may or may not be related to such child, but must have been considered "legally responsible" for the child's care at the time. For example, a woman may have been caring for her boyfriend's son and had the child protectively removed from her care. Another example is a child who was living with a friend of her mother's while the mother was away for 2 months and the child was removed from the care of the mother's friend and placed in foster care under court order in an Article 10 proceeding.

Question 2: If the provider has had a child removed, he/she must provide the date that the removal occurred. If the provider has had multiple removals, then all dates should be recorded.

Question 3: The provider must indicate whether, as a result of the Article 10 proceeding, there were judicial findings of abuse or neglect, and if so, what were the specific findings, such as: neglect, abuse or repeated abuse. If there was not a finding of abuse or neglect, the provider must indicate the reason why. An Article 10 removal *not accompanied by a judicial finding* of neglect or abuse may be an indicator that extenuating circumstances exist in the case.

Question 4: The provider must indicate the length of time that the child was in foster care and/or another out-of-home placement under Article 10. If the child was initially placed under Article 10, but then *remained out of the home under another type of family court proceeding*, the provider must give an explanation of why this occurred in his or her written statement (see question 5). Legal mechanisms for foster care placement, other than Article 10, include:

- Voluntary Placement under Social Services Law (SSL) 384-a. The care and custody of a child may be transferred to the district by a written instrument/agreement.
- FCA Article 7 allows for the placement of a Person in Need of Supervision (PINS).
- FCA Article 3 allows for the placement of a Juvenile Delinquent (JD).

Question 5: Any provider who indicates a history that includes an Article 10 removal must provide true and accurate information to the district and the child's parent/caretaker regarding the reasons underlying the child's removal. The provider must prepare and submit to the district and the child's

parent/caretaker a written summary that contains enough detail for the district to ascertain the sequence of events, the severity and the underlying reasons for the events. Underlying reasons are likely to include one or more of the following:

- Alcohol misuse/abuse, drug misuse/abuse, or
- Mental health issues, developmental or cognitive disabilities, or
- Sexual offender issues, or
- Anger management problems; batterer's issues; domestic violence issues, or
- Lack of parenting/ child care skills; lack of understanding of normal child development, or
- Insufficient coping strategies for managing stress; inadequate support system

The narrative should include a certification that all statements made are true and accurate.

b) Provider Certification

The provider must certify that the statements made are true and accurate.

2. History of Termination of Parental Rights (Section VI)

Background

When it is clear that the natural parent of a child in foster care cannot or will not provide a safe family home for the child and when continued foster care is not an appropriate plan for the child, the child welfare agency may initiate a proceeding to terminate the parental rights under SSL 384-b and FCA Article 6. The purpose of such an action is to permanently terminate the parent's custodial rights and guardianship, free the child for adoption, and find a permanent alternative home for the child. Grounds for termination of parental rights include: abandonment, permanent neglect, mental illness/mental retardation of the parent, and severe or repeated abuse.

a) Provider History

Question 1: The provider who has had his/her parental rights terminated must check the second response, and then complete questions 2 and 3. Any provider who has not had his or her parental rights terminated should go on to part B.

Question 2: This question requests the legal basis for termination of the provider's parental rights. Information regarding the basis for the termination of parental rights may be found in the court petition and dispositional order or in child welfare service plans, a copy of which the provider should have received.

Question 3: Any provider who has a history of a termination of parental rights must provide true and accurate information to the district and the child's parent/caretaker regarding the reasons underlying the termination of parental rights. The provider must prepare and submit to the district and the child's parent/caretaker a written summary which contains enough detail for the district to ascertain the sequence of events leading to the termination of parental rights and which identifies the underlying causes.

The narrative should include a certification that all statements made are true and accurate.

b) Certification

The provider must sign and date this certification that all the statements on the form are true and accurate.

3. History of Denial, Revocation or Suspension of a License or Registration to Operate a Child Day Care Program (Section VII)

Background

Denial, revocation and/or suspension of a license to operate a child day care program are legal actions, known as enforcement actions, which are initiated by OCFS licensors when a child care provider is out of compliance with the regulations that are put in place to protect the health and safety of children in child day care. Enforcement action may force a provider to comply with OCFS regulations or may remove the provider's legal authority to operate as a licensed or registered day care provider. However, OCFS may not interrupt the provider's operation until all due process rights have been exhausted, except in the event of imminent danger immediate danger of serious harm to the children in care. When imminent danger is found, a suspension, an order to immediately cease provision of child care services, may be issued.

a) Provider History

Question 1: A provider who has had a denial of an application or renewal of a license or registration to operate a day care program must check the first or second response, as appropriate. If a provider indicates that he or she is appealing a decision, then the process may not yet be finalized, and the district must take this under consideration.

Question 2: A provider who has had a license or registration revoked or suspended must check the second option, and then complete questions 3 and 4.

Question 3: The information given by the provider will help the district retrieve the provider's record from the Child Care Facilities System (CCFS) and obtain information from the appropriate regional office that conducted the enforcement and supervised the provider's program.

Question 4: Any provider who indicates a history including a denial, revocation or suspension of a license or registration to operate a child day care program must provide true and accurate information to the district and to the child's parent/caretaker regarding the reasons for the denial, revocation and/or suspension. The provider must prepare and submit to the district and to the parent/caretaker, a written summary that contains enough detail for the district to ascertain the sequence and severity of the events and the underlying reasons. Underlying reasons may include some of those found in Article 10 and TPR cases or other factors more specifically pertaining to child care programs, such as:

- Lack of child care skills; lack of understanding of normal child development, or
- Unsafe day care site, or
- Inadequate staffing.

The narrative must include a certification that all statements are true and accurate

b) Certification

The provider must sign and date this certification that all the statements on the form are true and accurate.

4. Parent and Provider Certifications, Section VIII

The new certifications for the provider and the parent are summarized below.

a) Provider Certifications

The provider agrees to allow representatives of the district and the State of New York access to the child care program and understands that refusal to do so may result in the provider becoming ineligible and losing enrollment status.

The provider is informed and acknowledges that he or she may not be eligible to provide care if he or she has a history of an Article 10 removal; termination of parental rights (TPR); or denial, revocation and/or suspension of a license or registration to operate a day care program. The provider is also informed that he or she may request the district review any extenuating circumstances to determine if an exception could be made to allow the provider to provide subsidized care.

b) Parent Certification

The parent is informed of and acknowledges that the district may not be able to pay a provider who has a history of an Article 10 removal, termination of parental rights (TPR) or denial, revocation and/or suspension of a license or registration to operate a day care program. The parent is also informed that he or she may request the district review any extenuating circumstances to determine if an exception could be made to allow the provider to provide subsidized care.

B. COMPLETION OF OCFS/LDSS-4700, THE ENROLLMENT FORM FOR PROVIDER OF LEGALLY-EXEMPT GROUP CHILD CARE

The changes in the OCFS/LDSS-4700 parallel those made in the OCFS/LDSS-4699, however, the section numbers vary. As with the Facilities Safety Checklist, completion of the three sections regarding the provider's history of Article 10 removal, TPR and denial, revocation or suspension of a day care license or registration *is not required* for the legally-exempt group providers who operate under the auspices of another Federal, State or local government agency:

- A nursery school, pre-kindergarten or day care program for children three years of age or older or a program for school-age children conducted during non-school hours, operated by a public school district that is providing elementary or secondary education or both in accordance with the compulsory education requirements of the NYS Education Law. The program is located on the same premises or campus where the elementary or secondary education is provided.
- A nursery school that is voluntarily registered with the NYS Education Department and operated in accordance with Part 125 of its regulations.
- A summer day camp operated in accordance with Subpart 7-2 of the State Sanitary Code.
- A day care center, family day care home or other child care program located on federal or tribal property and operated in compliance with applicable federal or tribal laws and regulations.

C. FALSIFICATION OF INFORMATION

If a district has reason to believe a provider is falsifying information on the enrollment forms, the district must make a referral to its fraud investigation unit.

III. EVALUATING PROVIDER HISTORY AND RISK

The district must use the information required by the enrollment form to determine whether to enroll a provider who has:

- had a child removed from his or her care by court order under Article 10 of the Family Court Act (FCA), or
- had his or her parental rights terminated, or
- had his or her license or registration to operate a child day care program denied, revoked or suspended.

Such a history, in nearly all cases, means that the provider has failed to meet the standards for the minimum degree of care of a child while the provider was legally responsible for the child's care, acting either as a child care provider, a parent or a parental substitute. Districts may wish to utilize their own child welfare specialists to assist child care workers in understanding the significance of a particular Article 10 removal or termination of parental rights determination and its implications regarding child caring capability. Districts may utilize the OCFS regional offices for clarification of the circumstances of and reasons underlying the denial, revocation or suspension of a license or registration to operate a day care program.

The district must review the case and if the provider has any of the risk factors that are listed for the high risk group, the provider must be assigned to that group. Assignment to the high risk group, results in a presumptive denial of enrollment, which may be overcome ONLY if the provider demonstrates to the district's satisfaction that enrollment will not jeopardize the health and safety or welfare of children in the provider's care. If the provider does not have any of the characteristics of the high risk group, then he or she should belong to the low risk group, and may be considered for enrollment.

A. THE HIGH RISK GROUP

The high risk group includes any provider who has a history of:

- A removal of a child from his/her care by court order under an FCA Article 10 proceeding; or
- A termination of his /her parental rights; or
- A license or registration to operate a child day care program denied, revoked or suspended due to his/her own actions or inactions based on abuse or neglect, a child fatality due to negligence, chronic non-compliance with regulations, lack of supervision resulting in a serious injury to a child, or other serious violation; or
- A provider who has knowingly provided false information on enrollment forms.

1. Enrollment Decision

The enrollment decision is a presumptive denial. The initial district response to any enrollment application submitted by a provider in the high risk group is to deny enrollment of the provider and to notify the parent/caretaker of the decision. The provider and/or the parent/caretaker may request the district to reconsider its decision.

A high risk provider may be *reconsidered* for enrollment only when the provider demonstrates extenuating circumstances exist. Extenuating circumstances are those extraordinary circumstances, which occurred at the time of the original incidents or since the original incidents, which may

justify enrollment. The following three conditions must be met prior to reconsidering enrolling a provider who has been presumptively denied for enrollment:

- The provider and/or the parent/caretaker must make a written request asking that an exception to the presumption against enrollment be made; and
- The provider must make true, accurate and full disclosure, in writing, of the extenuating circumstances to the parent/caretaker and the district; and
- The parent/caretaker must persist in wanting to use the provider, after receiving full disclosure.

2. Steps for evaluating extenuating circumstances:

- a) The district receives the written request for the exception to the denial of enrollment to be made.
- b) The district may wish to confirm that the parent/caretaker has received and reviewed the provider's statement, and still wishes to use this provider to care for his/her child. If the parent/caretaker wishes to use the provider, then advise the provider to submit the explanation of extenuating circumstances.
- c) The provider submits a written explanation and any proof of the extenuating circumstances, if these have not already been submitted. Extenuating circumstances may include unusual circumstances surrounding the original incident and/or factors which successfully resolve the underlying causes and tend to eliminate risk.

In Article 10 matters and TPR's, the provider's proof should include original paperwork from the family court and child welfare agency, including court petitions, court orders, court summaries/reports, correspondence, service plans, and progress reports. In licensing or registration matters, the proof may include correspondence with OCFS and hearing decisions.

- d) The district reviews the explanation of extenuating circumstances and the proof. Districts must determine on a case-by-case basis whether the documentation is appropriate and sufficient. Extenuating circumstances occurring at the time of the original incidents may include things such as:

- An Article 10 removal from a parent/caretaker who was believed to be neglectful or abusive at the time of removal, but later the allegations were found to be unconfirmed. In this type of situation, you would expect to find that there is no adjudication of abuse or neglect against the individual and that the out-of-home placement is short in duration.

For example, a provider states his child was removed from his care but he did not abuse or neglect the child. The provider states that the child was returned to his care within 2 weeks and there was no adjudication against him. The explanation given is that the judge ordered a removal of the child from the custodial father, based on the caseworker's testimony that the child disclosed she was sexually abused by "daddy". Upon further investigation, it became clear to the CPS caseworker that the abuse occurred while the child was living with her mother, that "daddy" was the child's stepfather, and that the custodial father had no involvement. The abuse petition filed against the father by child protective was withdrawn and the child was discharged from foster care to her father's care and custody.

The father in this example might be able to show the following items as proof of his account: notification letters from Child Protective Services advising of the determination of

GUIDELINES FOR REVIEW OF ENROLLMENT FORMS FOR PROVIDER OF LEGALLY-EXEMPT CARE: History of Article 10 Removal, Termination of Parental Rights, and/or Denial, Revocation and/or Suspension of a Child Day Care License or Registration

the hotline report; family court orders, petitions and court paperwork showing the petition was either withdrawn or dismissed; and/or child welfare service plans.

- In a TPR based on abandonment, it is possible that an estranged parent may not have known that an abandonment proceeding was being conducted, or even that his/her child was in foster care.

Extenuating circumstances occurring after the precipitating incidents include evidence of rehabilitation and successful resolution of underlying causes and other factors which minimize risk. These may include, but are not limited to:

- Successful participation in treatment or counseling (alcohol, drug, mental health, anger management and domestic violence, etc.), or
- Successful participation in parenting skills or child development classes, or
- Demonstration of strategies learned in treatment or class, or
- Development of an appropriate support system and use of effective strategies for coping with stress, or
- A significant period of time has elapsed since the incident and the provider has had significant maturational growth, or
- The provider has had personal achievements which demonstrate the development of relevant skills and knowledge, or
- The provider has not had additional incidents of Article 10 proceedings or termination of parental rights proceedings, or
- The provider has otherwise been rehabilitated.

e) The district must evaluate the severity of the original incident, the underlying causes, what has changed since the incident(s) to reduce risk to children in the provider's care and any extenuating circumstances. Truthfulness and completeness of disclosure from the provider must be considered.

Due to current regulatory constraints, the child care unit may not be able to receive corroboration (or contradiction) of the provider's account directly from a child welfare unit. However, the district should consult with its own child welfare specialists as to the adequacy of the statement and documentation submitted for a current or former child welfare case when the district is considering enrollment of a high risk provider.

For licensing or registration issues, the district may corroborate information given by the provider. District staff can access a facility report on CCFS that summarizes compliance violations within the past 24 months and notes any enforcement action taken in the past 5 years. Districts may contact the licensor named in CCFS for additional information. The licensor can confirm the underlying reasons for the enforcement actions.

f) The district addresses identified concerns with the parent/caretaker.

g) Decision: The district must determine whether an exception should be made to the presumption against enrollment, and notify the parent/caretaker and the provider of the decision. **The district must not enroll any provider unless the provider has satisfactorily demonstrated that enrollment will not jeopardize the health, safety or welfare of children in the provider's care.**

Failure of the provider to cooperate with the information sharing and evaluative process will result in a denial or termination of enrollment.

h) When the district enrolls any such provider, it must obtain a signed statement from the parent/caretaker stating that the parent/caretaker is aware of the provider's specific history of an Article 10 removal, TPR, and/or denial, revocation and/or suspension of a license or registration to operate a child day care program; has received the same written information submitted to the district; and knowingly chooses this provider to care for his or her children.

B. LOW RISK GROUP

A provider is assigned to the low risk group only if the provider does not have any of the risk factors listed for the high risk group. Those providers belonging to the low risk group may include providers who have had a license or registration to operate a day care program denied, revoked or suspended and the lack of compliance was based on circumstances that the provider was attempting to resolve but was not able to adequately resolve in the time frame allowed and since the denial, revocation or suspension, the problem has been adequately resolved. For example, a family day care was closed down due to an unsafe water source. The provider's day care program had been using well water which became contaminated. To resolve the issue, the provider moved to a location that meets all regulatory requirements.

1. Enrollment Decision:

Providers in the low risk group may be considered for enrollment.

2. Action to be taken by the district:

The district must carefully evaluate the provider's history of the denial, revocation and/or suspension of a license or registration to operate a child day care program and should obtain corroboration of the provider's account prior to giving it credence.

When the district enrolls any such provider, it must obtain a signed statement from the parent/caretaker stating that the parent/caretaker is aware of the provider's specific history of an Article 10 removal, TPR, and/or denial, revocation and/or suspension of a license or registration to operate a child day care program; has received the same written information submitted to the district; and knowingly chooses this provider to care for his or her children.

NEW YORK STATE
 OFFICE OF CHILDREN AND FAMILY SERVICES
**ENROLLMENT FORM FOR PROVIDER OF LEGALLY-EXEMPT
 FAMILY CHILD CARE AND LEGALLY-EXEMPT IN-HOME CHILD CARE**

Parent/Caretaker's Name:		Case Number:
Address:		
Telephone:	Social Security Number* (Not required, please see below):	
Provider's Name:		Date Of Birth**:
Address Where Care Is Given:	Provider's Address (If Different):	
Telephone:	Social Security Number:	
<p>* The parent/caretaker may, but does not have to list his/her social security number. You cannot be required to disclose your social security number as a condition of eligibility for child care services. If provided, your social security number will be used to assist in identifying your child care file. It may also be used by federal, State and local agencies to prevent duplication of services and fraud, and for federal reporting.</p> <p>** If the provider is less than 18 years old, the Employment of Minors Form must be completed.</p>		

I. PROVIDER'S STATUS

Provider: Check all statements and answers that apply:

1. I provide care in the child's home (Provider and parent/caretaker must also complete and submit the Agreement For Legally-Exempt In-Home Child Care.)
2. I provide care in my own home or another person's home. (Also check box A, B or C below, whichever applies.)
 - A. I am either the grandparent, great-grandparent, great-great-grandparent, aunt/uncle, great aunt/great uncle, brother/ sister or first cousin of all the children in care; **OR**
 - B. I care for no more than 2 children (not counting my own children or any children older than 13 years); **OR**
 - C. I care for 3 or more children. However, I never have more than 2 children in care at the same time for more than three hours a day.
3. I provide care other than choices #1 or #2 above. (Attach an explanation).
4. I am on temporary assistance, medical assistance, or food stamps. My case # is: _____

How much is the provider charging for each child?

<u>Child's Name</u>	<u>Date of Birth</u>	<u>Amount Charged (per hour/day/week)</u>
A) _____	_____	_____
B) _____	_____	_____
C) _____	_____	_____

I agree that the amount I am charging the parent/caretaker signing this form is NOT MORE THAN the amount I am charging for other children of the same age and similar care.

Who will supply meals and snacks? Meals and snacks may be supplied either by the parent/caretaker or by the provider. *Check the box that states what you have agreed to.* If you want information about how your child care program can get money to help pay for meals and snacks, call the Child and Adult Care Food Program at 1(800) 942-3858.

- The provider will supply snacks and meals.
- The parent/caretaker will supply snacks and meals.
- Other – Explain: _____

II. HOME SAFETY CHECKLIST

Provider and parent/caretaker complete this section together.

A. THE PROVIDER MEETS THESE REQUIREMENTS BEFORE CARING FOR CHILDREN:

- | <u>YES</u> | <u>NO</u> | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | The provider and all children have two separate & remote ways to leave the building in an emergency. |
| <input type="checkbox"/> | <input type="checkbox"/> | Rooms for children are well-heated, well-lighted and well-ventilated. |
| <input type="checkbox"/> | <input type="checkbox"/> | The home is free of unsafe areas (such as swimming pools, open drainage ditches, wells, holes, wood or coal burning stoves, fireplaces, and gas space heaters). If there are unsafe areas, sturdy barriers are in place around the unsafe areas that keep children from getting to them. |
| <input type="checkbox"/> | <input type="checkbox"/> | If child care is provided above the first floor, there are barriers or locks on the windows so children can not fall out. |
| <input type="checkbox"/> | <input type="checkbox"/> | The water supply is safe. There are working toilets. There is hot and cold running water all the time. |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider, all volunteers who are likely to have regular contact with the children and all employees are physically able to provide child care and are free of any communicable disease. Additionally, all persons living in the home (other than the child's own home) are also free of any communicable diseases. |
| <input type="checkbox"/> | <input type="checkbox"/> | The home is free of any dangerous or unsafe conditions that could hurt a child. This includes: <ul style="list-style-type: none"> ▪ Knives and other sharp objects are out of the reach of children. ▪ Small rugs, runners, and electrical cords are held in place so a child won't trip. ▪ Electrical cords do not run under furniture or rugs and are out of the reach of small children. ▪ Extension cords are not overloaded. ▪ Any guns and other firearms are unloaded and stored in a locked drawer or cabinet and the key is kept in a safe place. ▪ Cords to window blinds and shades are out of the reach of children. ▪ Hot liquids are out of the reach of children. ▪ Small items that a child could choke on are out of the children's reach. |
| <input type="checkbox"/> | <input type="checkbox"/> | All matches, lighters, medicines/drugs, cleaning materials, detergents, aerosol spray cans and other poisonous or toxic materials are stored in their original containers. Care is taken so that they do not come in contact with children, where food is prepared, or otherwise be a danger to the children. All of these materials are stored safely away from the children. |
| <input type="checkbox"/> | <input type="checkbox"/> | Each child will receive meals and snacks according to what the parent/caretaker and the provider have agreed. |
| <input type="checkbox"/> | <input type="checkbox"/> | Milk, formula and any food that goes bad if left out will be kept refrigerated. |
| <input type="checkbox"/> | <input type="checkbox"/> | If the provider cares for infants, formula, breast milk and other food items for infants will not be heated in a microwave oven. |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider will always allow the custodial parent/caretaker or caretaker to have access to his/her child in care, to the home while the child is in care, and to any written records concerning the child. |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider will hold evacuation drills at least once a month with the children so they will know what to do in an emergency. |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider has a working telephone OR can get to one very quickly in an emergency. Emergency telephone numbers for the fire department, local police or sheriff's department, poison control center and ambulance service are posted near the phone and are easy to see. |
| <input type="checkbox"/> | <input type="checkbox"/> | If a child in care is under 5 years old, protective caps, covers or permanently installed safety devices are used on all electrical outlets that the child could reach. |
| <input type="checkbox"/> | <input type="checkbox"/> | Paint and plaster are in good repair so that there is no danger of children putting paint or plaster chips in their mouths or of it getting into food. |
| <input type="checkbox"/> | <input type="checkbox"/> | There is at least one operating smoke detector on each floor of the home. The provider will check regularly to make sure all detectors work. |
| <input type="checkbox"/> | <input type="checkbox"/> | The home has a portable first aid kit that is easy to get to in an emergency and is kept in a clean container away from children. It is stocked to treat common childhood injuries and problems. The provider will always replace things in the first aid kit as soon as possible after something has been used or is too old to be used. |
| <input type="checkbox"/> | <input type="checkbox"/> | The parent/caretaker has given the provider signed proof from a doctor or other health care provider that: the child has received all of the immunizations appropriate for the child's age; OR that one or more of the immunizations would harm the child's health; OR the child's parent/caretaker provides a statement saying that the child has not been immunized due to the parent/caretaker's religious beliefs. |
| <input type="checkbox"/> | <input type="checkbox"/> | Stairs, railings, porches and balconies are in good repair. |

B. THE PROVIDER AGREES TO THE FOLLOWING CONDITIONS:

The provider WILL NEVER use corporal punishment or let others use corporal punishment while children are in care. Corporal punishment means doing things directly to a child's body to punish them such as: spanking; biting; shaking; slapping; twisting or squeezing; making the child do physical exercises beyond what is normal; forcing the child to stay still for long periods of time; making the child stay in positions that hurt the child or are bizarre; bathing the child in unusually hot or cold water; and forcing the child to eat or have in the child's mouth soap, foods, hot spices or foreign substances.

The provider WILL NEVER use or be under the influence of alcohol or drugs while children are in care and will make sure that children being cared for do not have contact with people using drugs or alcohol.

The provider WILL NOT smoke or allow smoking in indoor areas or other enclosed areas, such as cars or other vehicles, when children are present.

The provider WILL NEVER leave children alone or in the care of other people.

By signing the home safety checklist, the parent/caretaker and provider agree that they have inspected the home and that all statements on the form are true and accurate.

PROVIDER NAME (Print):	PROVIDER SIGNATURE/DATE:
PARENT/CARETAKER NAME (Print)	PARENT/CARETAKER SIGNATURE/DATE:

III. CRIMINAL HISTORY CERTIFICATIONS

To be completed by provider.

I certify to the best of my knowledge and belief that (Choose one):

- have** been convicted of a crime in New York State or any other place.
- have not** been convicted of a crime in New York State or any other place.

I certify to the best of my knowledge and belief that **any person helping me** to care for children (Choose one):

- has** been convicted of a crime in New York State or any other place.
- has not** been convicted of a crime in New York State or any other place.

If care is provided in a home other than the child's own home, I certify to the best of my knowledge and belief that **any person living in the home who is 18 years of age or older** (Choose one):

- has** been convicted of a crime in New York State or any other place.
- has not** been convicted of a crime in New York State or any other place.

I certify that I have asked each person living in the home (other than the child's own home) who is age 18 or over, each volunteer who is likely to have regular contact with children in care, and each employee if he or she has been convicted of a crime.

If I, or any other person listed below has been convicted of a crime, I or that other person will provide true and accurate information in writing to the parent/caretaker(s) of the children I will be caring for and to the Department of Social Services concerning the crime(s), the date(s) of such convictions and any other relevant information.

I understand that I am not eligible to provide child care if I, or any other person listed below, has been convicted of a felony or misdemeanor against children.

I understand that I am not eligible to provide child care if I, or any such other person listed below, has been convicted of a violent or other serious crime unless extenuating circumstances relating to the conviction(s) exist.

I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow me to provide child care. If I request an exception, I will provide all documents or references required by the Department of Social Services.

List all individuals that will be helping to care for the children and, if care is provided in a home other than the child's own home, list all household members 18 or older.

INDIVIDUALS CARING FOR CHILDREN: _____

HOUSEHOLD MEMBERS: _____

By signing this form the provider agrees that all statements are true and accurate.

PROVIDER NAME (PRINT):	PROVIDER SIGNATURE/DATE:
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IV. ADMINISTRATION OF MEDICATION

NYS Law restricts the right to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to specific medical professionals who are authorized by NYS to administer medication. Some individuals are exempt from this requirement based on their relationship to the child, family or household, and are permitted to administer medications, including:

- The child’s parent/caretaker, step-parent, legal custodian, legal guardian, or member of the child’s household,
- A child care provider employed by the parent/caretaker to provide child care in the child’s home,
- Family members who are related within the 3rd degree of consanguinity to the child’s parent or step-parent, and
- Effective January 31, 2005, child care providers who are trained and authorized by the Office of Children and Family Services (OCFS), under a Health Care Plan for Administration of Medication, approved by a qualified health care consultant, may administer medication when such providers are:
 - operating in compliance with the NYS regulations,
 - authorized by the child’s parent/caretaker, step-parent, legal guardian, or legal custodian to administer medication, and
 - administering medication to subsidized children in care.

To receive OCFS authorization to administer medication, a child care provider must be at least 18 years of age and literate in the language in which the parental permissions and health care provider’s instructions will be given.

Any person who is not authorized by NYS Law, or not exempt from this legal requirement, may only administer over-the-counter topical ointments, sunscreen and topical insect repellent. Examples of medication such providers may not administer include, but are not limited to: Tylenol®; Ritalin®; insulin; antibiotics; and ear, eye or nose drops.

A. QUALIFICATIONS FOR ADMINISTRATION OF MEDICATION

Provider must complete.

1. **Is the provider legally permitted to administer medication to subsidized children when authorized by a parent/caretaker, legal guardian, or legal custodian?**
 Yes.
 No. You are not authorized or permitted to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to the children in your care.
2. **Is an employee or volunteer of the program legally permitted to administer medication to subsidized children when authorized by a parent/caretaker, legal guardian, or legal custodian?**
 Yes. Give employee’s or volunteer’s name: _____
 No. Your employee/volunteer is not authorized or permitted to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to the children in your care.
3. **Give the reason that allows the provider and/or the employee/volunteer to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to subsidized children in the program. Answer this question only if you answered “Yes” to question 1 or 2.**

Check the box(es) below that show the reason(s) that the provider or the employee/volunteer named above is allowed to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to subsidized children in the program. If there is a different answer or reason for different children, the provider must check all answers that apply.

The provider must attach the documentation required for each answer, as indicated.

- A)** I am permitted to give medication because I am employed by the parent/caretaker to provide child care in the child’s home. I am *not* required to have a Health Care Plan for Administration of Medication.
- B)** I am permitted to give medication to the children for whom I am the grandparent, great-grandparent, great-great-grandparent, aunt/uncle (or spouse), great aunt/great uncle (or spouse), brother/sister or first cousin (or spouse). I am *not* required to have a Health Care Plan for Administration of Medication.
- C)** I have a valid professional health care license as a physician, physician assistant, registered nurse or nurse practitioner that authorizes me to administer medication. I am *not* required to have a Health Care Plan for Administration of Medication.

I have attached a copy of my current medical license.

- D)** My employee/volunteer has a valid professional health care license as a physician, physician assistant, registered nurse, or nurse practitioner that authorizes him/her to administer medication. I am required to have a Health Care Plan for Administration of Medication.

I have attached a copy of the approval page of my Health Care Plan for Administration of Medication, and a copy of my employee/volunteer's current medical license.

- E)** I have, or my employee/volunteer has, a valid professional license as a practical nurse or certification as an advanced emergency medical technician that allows me, or my employee/volunteer, to administer medication. I am required to have a Health Care Plan for Administration of Medication.

I have attached a copy of my or my employee/volunteer's current medical license or certification, and a copy of the approval page of the Health Care Plan for Administration of Medication.

- F)** I have, or my employee/volunteer has, met the training requirements of OCFS regulations, 18 NYCRR Part 415.4 (f)(7)(iv)(z). I am required to have a Health Care Plan for Administration of Medication.

I have attached a copy of the approval page of the Health Care Plan for Administration of Medication.

B. INTENT TO SEEK AUTHORIZATION TO ADMINISTER MEDICATION TO SUBSIDIZED DAY CARE CHILDREN

Providers who are not permitted to administer medications and who do not have an employee/volunteer permitted to administer medication must answer this.

Will the provider be seeking authorization to administer medication to children in subsidized care? (Choose one)

- Yes.** I want to learn how to start the process. *Ask the Department of Social Services representative or, in New York City, the Human Resources Administration (HRA) or Administration for Children's Services (ACS) representative, for the following form: Obtaining Authorization to Administer Medication to Children in Legally-Exempt Care.*
- No.** I will not be seeking authorization to administer medication at this time.

C. PARENT/CARETAKER AND PROVIDER AGREEMENT FOR ADMINISTRATION OF MEDICATION

Parent/caretaker must complete.

Who will be responsible for administering medication to your child(ren) in the provider's care? (Check all that apply).

- The child care provider or qualified employee/volunteer named previously will administer medication to the child.
- The legally-exempt child care provider or employee/volunteer will not administer medication. Instead, the parent/caretaker will administer medication or choose a person who is permitted under NYS Education Law to administer medication. This may include a member of the child's household or certain relatives. The relatives who may be authorized include: the child's grandparent, great-grandparent, great-great-grandparent, aunt/uncle (and spouse), great aunt/great uncle (and spouse), brother/sister or first cousin (and spouse). The parent/caretaker will inform the provider in writing when he or she has chosen a person to give medication to his or her child.

D. PROVIDER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION

All providers must read and sign.

I will administer medication in compliance with NYS law and only to the extent that I am permitted by NYS law to do so.

If I have employees, I will make sure that each of my employees administers medications in compliance with NYS law and only to the extent permitted by NYS law.

If I have volunteers, I will make sure that each of my volunteers administers medication in compliance with NYS law and only to the extent permitted by NYS law.

By signing this, I agree that all the statements on this form are true and accurate.

PROVIDER SIGNATURE:	DATE:
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E. PARENT/CARETAKER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION

Parent/caretaker must review and sign the certification below.

I certify that all statements on this form are true and accurate.

I understand that it is **my responsibility** to make sure my child(ren) receives any necessary medication. I understand that if I choose a child care provider who is not able to meet all of my child(ren)'s health care needs, I am responsible for making additional arrangements to meet the child(ren)'s needs. I will make all necessary arrangements prior to placing my child in the provider's care.

My provider has informed me whether he or she (or his/her employee/volunteer) is legally permitted to administer medication. I have read the Qualifications for Administration of Medication, Section IV A, of this enrollment form, and I understand whether or not my provider or his/her employee/volunteer is legally permitted to give medication to my child(ren).

My child care provider and I have discussed who will administer medication to my child(ren) while the child(ren) is in the provider's care. Our agreement regarding who will be responsible for administering medication to my child(ren) is indicated on this form in Section IV C.

I understand that I may administer medication to my child, or that I may authorize another person that is legally permitted to administer medication to my child. I may authorize a member of my child's household or certain relatives of the child to administer medication. The relatives who may be authorized include: the child's grandparent, great-grandparent, great-great-grandparent, aunt/uncle (and spouse), great aunt/uncle (and spouse), brother/sister or first cousin (and spouse).

PARENT/CARETAKER SIGNATURE:	DATE:
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V. HISTORY OF COURT-ORDERED ARTICLE 10 REMOVAL OF A CHILD

Provider must complete.

A. PROVIDER HISTORY

1. I certify that (*choose one*):

- I **have never** had a child removed from my care by court order in a proceeding under Article 10 (child protective) of the Family Court Act (FCA). (*Go to section B*).
- I **have** had a child removed from my care by court order in a proceeding under Article 10 (*child protective*) of the Family Court Act.

2. Date(s) removal(s) occurred: _____

3. As a result of the FCA Article 10 hearing, was there a judicial finding of abuse or neglect?

Yes, there was a judicial finding of abuse or neglect. (*Indicate type of finding below.*)

- Neglect Abuse, severe or repeated Abuse

No, there was no judicial finding of abuse or neglect. (*Indicate reason below.*)

- petition was withdrawn Article 10 petition was not filed with the court
- case was dismissed Other, explain: _____

4. Length of time that the child(ren) were removed from the home (*choose one*):

- 3 days or less more than 3 days and as many as 60 days
- more than 60 days but less than 15 months 15 months or longer

5. *Provider must attach a written description of what led to the removal and the underlying reasons for the removal.*

B. PROVIDER CERTIFICATION REGARDING HISTORY OF ARTICLE 10 REMOVAL

The provider must complete this certification.

By signing this form, I agree that I have provided true and accurate information regarding any history of an Article 10 removal of a child in my care.

SIGNATURE OF PROVIDER:	DATE:
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VI. HISTORY OF TERMINATION OF PARENTAL RIGHTS

Provider must complete.

A. PROVIDER HISTORY

1. I certify and attest that *(Choose one)*:

- I **have never had** my parental rights terminated. *(Proceed to Part B.)*
- I **have** had my parental rights terminated.

2. My parental rights were terminated based on: *(Check reason below)*:

- Abandonment Mental illness Permanent neglect
- Mental retardation Severe or repeated abuse Other, _____

3. *Provider must attach a written description of what led to the termination of parental rights and the underlying reasons for the termination of parental rights.*

B. PROVIDER CERTIFICATION REGARDING HISTORY OF TERMINATION OF PARENTAL RIGHTS

The provider must sign this certification.

By signing this form, I agree that I have provided true and accurate information regarding any history of a termination of my parental rights.

SIGNATURE OF PROVIDER:	DATE:
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VII. HISTORY OF SUSPENSION, REVOCATION OR DENIAL OF A LICENSE OR REGISTRATION TO OPERATE A CHILD DAY CARE PROGRAM

Provider must complete.

(CHILD DAY CARE includes: day care centers, family day care homes, group family day care homes, small day care centers and/or school age child care programs.)

A. PROVIDER HISTORY

1. I certify and attest *(Choose all that apply)*:

- I **have** applied for an initial license or registration to operate a child day care program, and been denied.
- I **have** applied for a renewal of a license or registration to operate a child day care program and been denied.
- I have applied for an initial or renewed license or registration to operate a child day care program and I **have never** been denied an application for or a renewal of a license or registration to operate a child day care program.
- I have never applied for a license or registration to operate a child day care program. *(Go to Part B.)*

2. I certify and attest that *(Choose one)*:

- I **have never had** a license or registration to operate a child day care program revoked or suspended.
- I **have had** a license or registration to operate a child day care program revoked or suspended.

3. If you have ever had a license or registration revoked, suspended or denied, give the name and location of the child day care program(s) for which this action occurred.

4. *Provider must attach a written description of what led to the denial, revocation or suspension of the license or registration to operate a child day care program, and the reasons this occurred.*

B. PROVIDER CERTIFICATION REGARDING LICENSING/REGISTRATION HISTORY

The provider must sign this certification.

By signing this form, I agree that I have provided true and accurate information regarding my history of denial, revocation, or suspension of a license or registration to operate a child day care program.

SIGNATURE OF PROVIDER:	DATE:
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VIII. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS

A. PROVIDER CERTIFICATIONS

I will notify the Department of Social Services immediately if the hours of care, number of children in my care, or any information provided on the enrollment form or attachments changes.

I agree to collect the family share (fee) if instructed to do so by the Department of Social Services. I will immediately notify the Department of Social Services if the parent/caretaker fails to pay the required family share. I agree to provide accurate attendance records as required by the Department of Social Services.

I understand that representatives of the Department of Social Services and the State of New York may visit my child care program to confirm that the information on my enrollment form and/or on attendance forms is true and accurate and that child care services are being provided as listed on those forms. I agree to allow representatives of the Department of Social Services and the State of New York access to all areas where child care is provided for a child receiving a child care subsidy. I understand that if I do not allow such access, then I will be considered an ineligible provider. Any child care that I provide to a child receiving a child care subsidy while I am deemed an ineligible provider by the Department of Social Services will not be reimbursed by the Department of Social Services.

I understand that I may not be eligible to provide child care if I have a history of an Article 10 (child protective) removal of a child by court order, termination of parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program. I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow me to provide child care. If I request an exception, I will provide all information, documents or references required by the Department of Social Services.

B. PARENT/CARETAKER CERTIFICATIONS

I understand that my provider may not be eligible to provide child care if he or she has a history of an Article 10 (child protective) removal of a child by court order, termination of parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program. I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow my provider to provide child care. If I request an exception, the provider must provide all information, documents or references required by the Department of Social Services.

I understand that the Department of Social Services may not be able to pay a provider when:

- The provider, any volunteer who is likely to have regular contact with my children, any employee, or person living in the home (other than the child's home) age 18 years or older has been convicted of a crime; or
- The provider has a history of an Article 10 (child protective) removal of a child by court order; termination of parental rights; or denial, revocation and/or suspension of a license or registration to operate a child day care program.

If the Department of Social Services determines that payment cannot be made to the provider when any of the above events have occurred, I have the right and responsibility to decide whether I want to use this provider. If I choose to continue using such a provider, I am responsible to pay for the child care myself. I understand that I have the right to select another provider.

I will notify the Department of Social Services if the hours that I need child care or other circumstances related to my need or eligibility for child care change. I agree to pay my family share (fee), if any, as directed by the Department of Social Services.

I certify that I have selected this provider to care for my child(ren). I understand that it is my responsibility to monitor the quality of care furnished to my child(ren).

C. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS

We state that to the best of our knowledge and belief all statements made on this form and any attachments are accurate and true. We understand that providing false information may result in the termination of payments and legal action by the Department of Social Services.

We state that the parent/caretaker has specifically asked the provider if the provider, volunteers who are likely to have regular contact with children in care, employees, and if care is provided in the provider's home, persons living in the home age 18 years or over, have been the subject of an indicated report of child abuse or maltreatment. The provider has asked volunteers who are likely to have regular contact with children in care, employees, and if care is provided in the provider's home persons living in the home age 18 years or over, if they have been the subject of an indicated report of child abuse or maltreatment. The provider has given the parent/caretaker true and accurate information in writing regarding any indications of child abuse or maltreatment. The parent/caretaker has considered the information given on child abuse and maltreatment indications and is selecting this provider. The parent/caretaker understands he or she has the right to select another provider.

We state that we completed the Home Safety Checklist together. We understand that payment cannot be made until items marked "No" on the Home Safety Checklist have been corrected. We agree to notify and provide documentation to the Department of Social Services when any item on the Checklist has been corrected or changed.

By signing this form, the parent/caretaker and provider agree to all of the requirements listed above.

PARENT/CARETAKER SIGNATURE:	DATE:
PROVIDER SIGNATURE:	DATE:

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES
ENROLLMENT FORM FOR PROVIDER OF LEGALLY-EXEMPT GROUP CHILD CARE

Parent/Caretaker's Name:		Case Number:
Address:		
Telephone:	Social Security Number* (Not required, please see below):	
Provider's Name:		Date Of Birth**:
Address Where Care Is Given:		
Provider's Address (If Different):		
Telephone:	Social Security Number:	
<p>* The parent/caretaker may, but does not have to list his/her social security number. You cannot be required to disclose your social security number as a condition of eligibility for child care services. If provided, your social security number will be used to assist in identifying your child care file. It may also be used by federal, State and local agencies to prevent duplication of services and fraud, and for federal reporting.</p> <p>** If the provider is less than 18 years old, the <u>Employment of Minors Form</u> must be completed.</p>		

I. HOW MUCH IS THE PROVIDER CHARGING FOR EACH CHILD (IN THIS CASE)?

<u>Child's Name</u>	<u>Date of Birth</u>	<u>Amount Charged (per hour/day/week)</u>
A) _____	_____	_____
B) _____	_____	_____
C) _____	_____	_____

I agree that the amount I am charging the parent/caretaker signing this form is NOT MORE THAN the amount I am charging for other children of the same age and similar care.

Who will supply meals and snacks?

Meals and snacks may be supplied either by the parent/caretaker or by the provider. *Check the box that states what you have agreed to.* If you want information about how your child care program can get money to help pay for meals and snacks, call the Child and Adult Care Food Program at 1(800) 942-3858.

The provider will supply snacks and meals.

The parent/caretaker will supply snacks and meals.

Other – Explain: _____

II. TYPE OF PROGRAM

Provider: Check the statement that describes your program:

1. This program is a nursery school, pre-kindergarten or day care program for children three years of age or older or a program for school-age children conducted during non-school hours, **operated by a public school district** that is providing elementary or secondary education or both in accordance with the compulsory education requirements of the NYS Education Law. The program is located on the same premises or campus where the elementary or secondary education is provided.
2. This program is a nursery school that is **voluntarily registered with the NYS Education Department** and operated in accordance with Part 125 of its regulations. **Attach a copy of your registration.**
3. This program is a summer day camp operated in accordance with Subpart 7-2 of the State Sanitary Code. **Attach a copy of your permit from the NYS Department of Health to operate a summer day camp.**
4. This program is a day care center, family day care home or other child care program **located on federal or tribal property** and operated in compliance with applicable federal or tribal laws and regulations.
5. This is a nursery school, pre-kindergarten or day care program for children three years of age or older or a program for school-aged children conducted during non-school hours, **operated by a private school or academy** which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the NYS Education Law. The program is located on the same premises or campus where the elementary or secondary education is provided.
6. This program is a nursery school or program for preschool-aged children **operated by a nonprofit agency or organization or a private proprietary agency** which is not voluntarily registered with NYS Education Department and which provides services to children for three or less hours per day.
7. This is a school age program that cares for not more than six children.
8. None of the above statements describe this program. If this is your answer, you may need to be licensed or registered. Until you are licensed or registered or can provide documentation that you are legally-exempt from licensing and registering requirements, the Department of Social Services cannot pay you to provide child care. For information about licensing, contact the Bureau of Early Childhood Services at 1-800-732-5207.

*If your program meets the definition found in **statements 1, 2, 3, or 4** above, proceed to **Section IV, Criminal History Certifications**. You do not need to complete the following sections:*

- **Section III, Facility Safety Checklist;**
- **Section V, Administration of Medication,**
- **Section VI, History of Court Ordered Article 10 Removal of a Child**
- **Section VII, History of Termination of Parental Rights**
- **Section VIII, History Of A Suspension, Revocation or Denial of a License or Registration to Operate a Child Day Care Program.**

*If your program meets the definition found in **statements 5, 6, 7 or 8**, then you must complete all sections in this enrollment form.*

All providers must complete Section IX, Parent/Caretaker and Provider Certifications.

III. FACILITY SAFETY CHECKLIST

Provider and parent/caretaker should complete this together.

A. THE PROVIDER MEETS THESE REQUIREMENTS BEFORE CARING FOR CHILDREN:

Yes **No**

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | The provider and all children have two separate & remote ways to leave the building in an emergency. |
| <input type="checkbox"/> | <input type="checkbox"/> | Rooms for children are well-heated, well-lighted and well-ventilated. |
| <input type="checkbox"/> | <input type="checkbox"/> | The facility is free of unsafe areas (such as swimming pools, open drainage ditches, wells, holes, wood or coal burning stoves, fireplaces, and gas space heaters). If there are unsafe areas, sturdy barriers are in place around the unsafe areas that keep children from getting to them. |
| <input type="checkbox"/> | <input type="checkbox"/> | If child care is provided above the first floor, there are barriers or locks on the windows so children can not fall out. |
| <input type="checkbox"/> | <input type="checkbox"/> | The water supply is safe. There are working toilets. There is hot and cold running water all the time. |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider, each volunteer who is likely to have regular contact with the children and each employee are physically able to provide child care and are free of any communicable disease. |
| <input type="checkbox"/> | <input type="checkbox"/> | The facility is free of any dangerous or unsafe conditions that could hurt a child. This includes: <ul style="list-style-type: none"> • Knives and other sharp objects are out of the reach of children. • Small rugs, runners, and electrical cords are held in place so a child won't trip. • Electrical cords do not run under furniture or rugs and are out of the reach of small children. • Extension cords are not overloaded. • Any guns and other firearms are unloaded and stored in a locked drawer or cabinet and the key is kept in a safe place. • Cords to window blinds and shades are out of the reach of children. • Hot liquids are out of the reach of children. • Small items that a child could choke on are out of the children's reach. |
| <input type="checkbox"/> | <input type="checkbox"/> | All matches, lighters, medicines/drugs, cleaning materials, detergents, aerosol spray cans and other poisonous or toxic materials are stored in their original containers. Care is taken so that they do not come in contact with children, where food is prepared, or otherwise be a danger to the children. All of these materials are stored safely away from the children. |
| <input type="checkbox"/> | <input type="checkbox"/> | Each child will receive meals and snacks according to what the parent/caretaker and the provider have agreed. |
| <input type="checkbox"/> | <input type="checkbox"/> | Milk, formula and any food that goes bad if left out will be kept refrigerated. |
| <input type="checkbox"/> | <input type="checkbox"/> | If the provider cares for infants, formula, breast milk and other food items for infants will not be heated in a microwave oven. |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider will always allow the custodial parent/caretaker or caretaker to have access to his/her children in care, to the facility while the child is in care, and to any written records concerning the child. |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider will hold evacuation drills at least once a month with the children so they will know what to do in an emergency. |
| <input type="checkbox"/> | <input type="checkbox"/> | The provider has a working telephone OR can get to one very quickly in an emergency. Emergency telephone numbers for the fire department, local police or sheriff's department, poison control center and ambulance service are posted near the phone and are easy to see. |
| <input type="checkbox"/> | <input type="checkbox"/> | If a child in care is under 5 years old, protective caps, covers or permanently installed safety devices are used on all electrical outlets that children could reach. |

Yes No

- Paint and plaster are in good repair so that there is no danger of children putting paint or plaster chips in their mouths or of it getting into food.
- There is at least one operating smoke detector on each floor of the facility. The provider will check regularly to make sure all detectors work.
- The facility has a portable first aid kit that is easy to get to in an emergency and is kept in a clean container away from children. It is stocked to treat common childhood injuries and problems. The provider will always replace things in the first aid kit as soon as possible after something has been used or is too old to be used.
- The parent/caretaker has given the provider signed proof from a doctor or other health care provider that: the child has received all of the immunizations they should have for the child's age; OR that one or more of the immunizations would harm the child's health; OR the child's parent/caretaker provides a statement saying that the child has not been immunized due to the parent/caretaker's religious beliefs.
- Stairs, railings, porches and balconies are in good repair.

B. THE PROVIDER AGREES TO THE FOLLOWING CONDITIONS:

The provider WILL NEVER use corporal punishment or let others use corporal punishment while children are in care. Corporal punishment means doing things directly to a child's body to punish them such as: spanking; biting; shaking; slapping; twisting or squeezing; making the child do physical exercises beyond what is normal; forcing the child to stay still for long periods of time; making the child stay in positions that hurt the child or are bizarre; bathing the child in unusually hot or cold water; and forcing the child to eat or have in the child's mouth soap, foods, hot spices or foreign substances.

The provider WILL NEVER use or be under the influence of alcohol or drugs while children are in care and will make sure that children that being cared for do not have contact with people using drugs or alcohol.

The provider WILL NOT smoke or allow smoking in in-door areas or in other enclosed areas, such as in cars or other vehicles, when children are present.

The provider, volunteers, and employees WILL NEVER leave children alone or in the care of other people.

BY SIGNING THE FACILITY SAFETY CHECKLIST, THE PARENT/CARETAKER AND PROVIDER AGREE THAT THEY HAVE INSPECTED THE FACILITY AND THAT ALL STATEMENTS ON THE FORM ARE TRUE AND ACCURATE.

PROVIDER NAME (PRINT):	PROVIDER SIGNATURE:	DATE:
PARENT/CARETAKER NAME (PRINT):	PARENT/CARETAKER SIGNATURE:	DATE:

IV. CRIMINAL HISTORY CERTIFICATIONS:

To be completed by provider

A. PROVIDER HISTORY

I certify to the best of my knowledge and belief that **I** (Choose one):

- have** been convicted of a crime in New York State or any other place.
- have not** been convicted of a crime in New York State or any other place.

B. OTHER CAREGIVER (EMPLOYEE AND VOLUNTEER) HISTORY

I certify to the best of my knowledge and belief that **any VOLUNTEER**, who is likely to have regular contact with children in care, and **any EMPLOYEE** (Choose one):

- has** been convicted of a crime in New York State or any other place.
- has not** been convicted of a crime in New York State or any other place.

C. CERTIFICATION

I certify that I have asked each volunteer, who is likely to have regular contact with children in care, and I have asked each employee, if he or she has been convicted of a crime.

If I, or any other person listed below has been convicted of a crime, I or that other person will provide true and accurate information in writing to the parent/caretaker(s) of the children I will be caring for and to the Department of Social Services concerning the crime(s), the date(s) of such convictions and any other relevant information.

I understand that I am not eligible to provide child care if I, or any other person listed below, has been convicted of a felony or misdemeanor against children.

I understand that I am not eligible to provide child care if I, or any such other person listed below, has been convicted of a violent or other serious crime unless extenuating circumstances relating to the conviction(s) exist.

I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow me to provide child care. If I request an exception, I will provide all documents or references required by the Department of Social Services.

List all employees, and all volunteers who are likely to have regular contact with children in care.

BY SIGNING THIS FORM THE PROVIDER AGREES THAT ALL STATEMENTS ARE TRUE AND ACCURATE.

PROVIDER NAME (PRINT):	PROVIDER SIGNATURE:	DATE:
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*If your program is program type 1, 2, 3, or 4 as defined in Section II, proceed to **Section IX, Parent/Caretaker and Provider Certifications.***

V. ADMINISTRATION OF MEDICATION

NYS Law restricts the right to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to specific medical professionals who are authorized by NYS to administer medication. Some individuals are exempt from this requirement based on their relationship to the child, family or household, and are permitted to administer medications, including:

- The child’s parent, step-parent, legal custodian, legal guardian, or a member of the child’s household,
- A child care provider employed by the parent/caretaker to provide child care in the child’s home,
- Family members who are related within the 3rd degree of consanguinity to the child’s parent or step-parent, and
- Effective January 31, 2005, child care providers who are trained and authorized by the Office of Children and Family Services (OCFS), under a Health Care Plan for Administration of Medication, approved by a qualified health care consultant, may administer medication when such providers are:
 - ▲ operating in compliance with the NYS regulations,
 - ▲ authorized by the child’s parent/caretaker, step-parent, legal guardian, or legal custodian to administer medication, and
 - ▲ administering medication to subsidized children in care.

To receive OCFS authorization to administer medication, a child care provider must be at least 18 years of age and literate in the language in which the parental permissions and health care provider’s instructions will be given.

Any person who is not authorized by NYS Law, or not exempt from this legal requirement, may only administer over-the-counter topical ointments, sunscreen and topical insect repellent. Examples of medication such providers may not administer include, but are not limited to: Tylenol®; Ritalin®; insulin; antibiotics; and ear, eye or nose drops.

A. QUALIFICATIONS TO ADMINISTER MEDICATION

Provider must complete.

1. Is the provider legally permitted to administer medication to subsidized children when authorized by a parent/caretaker, legal guardian, or legal custodian?

Yes.

No. You are not authorized or permitted to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to the children in your care.

2. Is an employee or volunteer of the program legally permitted to administer medication to subsidized children when authorized by a parent/caretaker, legal guardian, or legal custodian?

Yes. Give employee/volunteer's name: _____

No. Your employee/volunteer(s) is not authorized or permitted to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to the children in your care.

3. Give the reason that allows the provider and/or the employee/volunteer to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to subsidized children in the program. Answer this question only if you answered "Yes" to question 1 or 2.

Check the box(es) below that show the reason(s) that the provider or the employee/volunteer named above is allowed to administer medication other than over-the-counter topical ointments, sunscreen and topically applied insect repellent to subsidized children in the program. If there is a different answer or reason for different children, the provider must check all answers that apply.

The provider must attach the documentation required for each answer, as indicated.

A) I have a valid professional health care license as a physician, physician assistant, registered nurse or nurse practitioner that authorizes me to administer medication. I am *not* required to have a Health Care Plan for Administration of Medication.

I have attached a copy of my current medical license.

B) My employee/volunteer has a valid professional health care license as a physician, physician assistant, registered nurse, or nurse practitioner that authorizes him/her to administer medication. I am required to have a Health Care Plan for Administration of Medication.

I have attached a copy of the approval page of my Health Care Plan for Administration of Medication, and a copy of my employee/volunteer's current medical license.

C) I have, or my employee/volunteer has, a valid professional license as a practical nurse or certification as an advanced emergency medical technician that allows me, or my employee/volunteer, to administer medication. I am required to have a Health Care Plan for Administration of Medication.

I have attached a copy of my or my employee's/volunteer's current medical license or certification, and a copy of the approval page of the Health Care Plan for Administration of Medication.

D) I have, or my employee/volunteer has, met the training requirements of OCFS regulations, 18 NYCRR Part 415.4 (f)(7)(iv)(z). I am required to have a Health Care Plan for Administration of Medication.

I have attached a copy of the approval page of the Health Care Plan for Administration of Medication.

B. INTENT TO SEEK AUTHORIZATION TO ADMINISTER MEDICATION TO SUBSIDIZED DAY CARE CHILDREN

Providers who are not permitted to administer medications must answer this.

Will the provider be seeking authorization to administer medication to subsidized day care children? (choose one).

Yes. I want to learn how to start the process. *Ask the Department of Social Services representative, or in New York City, the Human Resource Administration (HRA) or Administration for Children's Services (ACS) representative, for the following form: Obtaining Authorization to Administer Medication to Children in Legally-Exempt Care.*

No. I will not be seeking authorization to administer medication at this time.

C. PARENT/CARETAKER AND PROVIDER AGREEMENT FOR ADMINISTRATION OF MEDICATION

Parent/caretaker must complete this section.

Who will be responsible for administering medication to your child(ren) in the provider’s care? *(Check all that apply).*

- The child care provider or qualified employee/volunteer named previously will administer medication to the child.
- The legally-exempt child care provider or employee/volunteer will not administer medication. Instead, the parent/caretaker will administer medication or choose a person who is permitted under NYS Education Law to administer medication. This may include a member of the child’s household or certain relatives. The relatives who may be authorized include: the child’s grandparent, great-grandparent, great-great-grandparent, aunt/uncle (and spouse), great aunt/great uncle (and spouse), brother/sister or first cousin (and spouse). The parent/caretaker will inform the provider in writing when he or she has chosen a person to give medication to his or her child.

D. PROVIDER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION

Provider must complete this section:

I will administer medication in compliance with NYS law and only to the extent that I am permitted by NYS law to do so.

If I have employees, I will make sure that each of my employees administers medication in compliance with NYS law and only to the extent permitted by NYS law.

If I have volunteers, I will make sure that each of my volunteers administers medication in compliance with NYS law and only to the extent permitted by NYS law.

By signing this, I agree that the all statements on this form are true and accurate.

PROVIDER SIGNATURE:	DATE:
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E. PARENT/CARETAKER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION

I certify that all statements on this form are true and accurate.

I understand that it is **my responsibility** to make sure my child(ren) receive(s) any necessary medication. I understand that if I choose a child care provider who is not able to meet all of my child(ren)’s health care needs, I am responsible for making additional arrangements to meet the child(ren)’s needs. I will make all necessary arrangements prior to placing my child in the provider’s care.

My provider has informed me whether he or she (or his/her employee/volunteer) is legally permitted to administer medication. I have read the Qualifications For Administration Of Medication, Section V A, of this enrollment form, and I understand whether or not my provider or his/her employee/volunteer is legally permitted to give medication to my child(ren).

My child care provider and I have discussed who will administer medication to my child(ren) while the child(ren) is in the provider’s care. Our agreement regarding who will be responsible for administering medication to my child(ren) is indicated on this form in Section V C.

I understand that I may administer medication to my child, or that I may authorize another person that is legally permitted to administer medication to my child. I may authorize a member of my child’s household or certain relatives of the child to administer medication. The relatives who may be authorized include: the child’s grandparent, great-grandparent, great-great-grandparent, aunt/uncle (and spouse), great aunt/great uncle (and spouse), brother/sister or first cousin (and spouse).

PARENT/CARETAKER SIGNATURE	DATE:
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VI. HISTORY OF COURT-ORDERED ARTICLE 10 REMOVAL OF A CHILD

Provider must complete.

A. PROVIDER HISTORY

1. I certify that (*choose one*):
 - I *have never* had a child removed from my care by court order in a proceeding under Article 10 (child protective) of the Family Court Act (FCA). (*Go to section B.*)
 - I *have* had a child removed from my care by court order in a proceeding under Article 10 of the Family Court Act.
2. Date(s) removal(s) occurred: _____
3. As a result of the FCA Article 10 hearing, was there a judicial finding of abuse or neglect?
 - Yes, there was a judicial finding of abuse or neglect. (*Indicate type of finding below.*)
 - Neglect Abuse, severe or repeated Abuse
 - No, there was no judicial finding of abuse or neglect. (*Indicate reason below.*)
 - petition was withdrawn Article 10 petition was not filed with the court
 - case was dismissed Other, *explain*: _____
4. Length of time that the child(ren) were removed from the home (*choose one*):
 - 3 days or less more than 3 days and as many as 60 days
 - more than 60 days but less than 15 months 15 months or longer
5. *Provider must attach a written description of what led to the removal and the underlying reasons for the removal.*

B. PROVIDER CERTIFICATION REGARDING HISTORY OF ARTICLE 10 REMOVAL.

The provider must complete this certification.

By signing this form, I agree that I have provided true and accurate information regarding any history of an Article 10 removal of a child in my care.

SIGNATURE OF PROVIDER:	DATE:
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VII. HISTORY OF TERMINATION OF PARENTAL RIGHTS

Provider must complete.

A. PROVIDER HISTORY

1. I certify and attest that (*Choose one*):
 - I *have never* had my parental rights terminated. (*Proceed to Part B.*)
 - I *have* had my parental rights terminated.
2. My parental rights were terminated based on: (*Check reason below*):
 - Abandonment Mental illness Permanent neglect
 - Mental retardation Severe or repeated abuse Other: _____
3. *Provider must attach a written description of what led to the termination of parental rights and the underlying reasons for the termination of parental rights.*

B. PROVIDER CERTIFICATION REGARDING HISTORY OF TERMINATION OF PARENTAL RIGHTS

The provider must sign this certification.

By signing this form, I agree that I have provided true and accurate information regarding any history of a termination of my parental rights.

SIGNATURE OF PROVIDER:	DATE:
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VIII. HISTORY OF A SUSPENSION, REVOCATION OR DENIAL OF A LICENSE OR REGISTRATION TO OPERATE A CHILD DAY CARE PROGRAM

(CHILD DAY CARE includes: day care centers, family day care homes, group family day care homes, small day care centers and/or school age child care programs.) *Provider must complete.*

A. PROVIDER HISTORY

1. I certify and attest (*Choose all that apply*):

- I have applied for an *initial* license or registration to operate a child day care program, and been denied.
- I have applied for a *renewal* of a license or registration to operate a child day care program and been denied.
- I have applied for an initial or renewed license or registration to operate a child day care program and I *have never been denied* an application for or a renewal of a license or registration to operate a child day care program.
- I have never applied for a license or registration to operate a child day care program. (*Go to Part B.*)

2. I certify and attest that (*Choose one*):

- I *have never had* a license or registration to operate a child day care revoked or suspended.
- I *have had* a license or registration to operate a child day care revoked or suspended.

3. If you have ever had a license or registration revoked, suspended or denied, give name and location of the child day care program(s) for which this action occurred _____

4. *Provider must attach a written description of what led to the denial, revocation or suspension of the license or registration to operate a day care program, and the reasons this occurred.*

B. PROVIDER CERTIFICATION REGARDING LICENSING/REGISTRATION HISTORY

The provider must sign this certification.

By signing this form, I agree that I have provided true and accurate information regarding my history of denial, revocation or suspension of a license or registration to operate a child day care program.

SIGNATURE OF PROVIDER:	DATE:
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IX. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS

A. PROVIDER CERTIFICATIONS

I will notify the Department of Social Services immediately if the hours of care or number of children in my care changes.

I agree to collect the family share (fee) if instructed to do so by the Department of Social Services. I will immediately notify the Department of Social Services if the parent/caretaker fails to pay the required family share. I agree to provide accurate attendance records as required by the Department of Social Services.

I understand that representatives of the Department of Social Services and the State of New York may visit my child care program to confirm that the information on my enrollment form and/or on attendance forms is true and accurate, and that child care services are being provided as listed on those forms. I agree to allow representatives of the Department of Social Services and the State of New York access to all areas where child care is provided for a child receiving a child care subsidy. I understand that if I do not allow such access, then I will be considered an ineligible provider. Any child care that I provide to a child receiving a child care subsidy while I am deemed an ineligible provider by the Department of Social Services will not be reimbursed by the Department of Social Services.

I understand that I may not be eligible to provide child care if I have a history of an Article 10 (child protective) removal of a child by court order, termination of my parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program. I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow me to provide child care. If I request an exception, I will provide all information, documents or references required by the Department of Social Services.

B. PARENT/CARETAKER CERTIFICATIONS

I understand that my provider may not be eligible to provide child care if he or she has a history of an Article 10 (child protective) removal of a child by court order, termination of parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program. I understand that I may request that the Department of Social Services review any extenuating circumstances to determine if an exception could be made to allow my provider to provide child care. If I request an exception, the provider must provide all information, documents or references required by the Department of Social Services.

I understand that the Department of Social Services may not be able to pay a provider when:

- The provider, any volunteer, who is likely to have regular contact with my children, or any employee has been convicted of a crime; or
- The provider has a history of an Article 10 removal of a child by court order, termination of parental rights, or denial, revocation and/or suspension of a license or registration to operate a child day care program.

If the Department of Social Services determines that payment cannot be made to the provider when any of the above events have occurred, I have the right and responsibility to decide whether I want to use this provider. If I choose to continue using such a provider, I am responsible to pay for the child care myself. I understand that I have the right to select another provider.

I will notify the Department of Social Services if the hours that I need child care or other circumstances related to my need or eligibility for child care change. I agree to pay my family share (fee), if any, as directed by the Department of Social Services.

I certify that I have selected this provider to care for my child(ren). I understand that it is my responsibility to monitor the quality of care furnished to my child(ren).

C. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS

We state that to the best of our knowledge and belief all statements made on this form and any attachments are accurate and true. We understand that providing false or inaccurate information may result in the termination of payments and legal action by the Department of Social Services.

We state that the parent/caretaker has specifically asked the provider if the provider, volunteers who are likely to have regular contact with children in care, or employees have been the subject of an indicated report of child abuse or maltreatment. The provider has asked all volunteers who are likely to have regular contact with children in care and all employees if they have been the subject of an indicated report of child abuse or maltreatment. The provider has given the parent/caretaker true and accurate information in writing regarding any indications of child abuse or maltreatment. The parent/caretaker has considered the information given on child abuse and maltreatment indications and is selecting this provider. The parent/caretaker understands he/she has the right to select another provider.

If the provider is required to complete the Facility Safety Checklist, we state that we have completed it together. We understand that payment cannot be made until items marked "No" on the Facility Safety Checklist have been corrected. We agree to notify and provide documentation to the Department of Social Services when any item on the Checklist has been corrected or changed.

By signing this form, the parent/caretaker and provider agree to all of the requirements listed above.

PARENT/CARETAKER SIGNATURE	DATE
PROVIDER SIGNATURE	DATE

NOTICE OF CHILD CARE ASSISTANCE OVERPAYMENT AND REPAYMENT REQUIREMENTS

NOTICE DATE		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE		
CASE NUMBER	CIN NUMBER	GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP OR Agency Conference _____ Fair Hearing Information and Assistance 1-800-342-3334 Record Access _____ Legal Assistance Information _____		
CASE Name (And C/O Name if Present) and ADDRESS				

OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	TELEPHONE NO.
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YOU HAVE THE RIGHT TO A FAIR HEARING TO APPEAL THIS DECISION. YOU ALSO HAVE THE RIGHT TO AN AGENCY CONFERENCE. BE SURE TO READ THE BACK OF THIS NOTICE ON HOW TO APPEAL THIS DECISION AT A FAIR HEARING AND/OR REQUEST AN AGENCY CONFERENCE.

Section I-Notice of Child Care Assistance Overpayment

You received more child care benefits than you should have (overpayment) from _____ to _____. The amount of the overpayment is \$_____.

The reason the overpayment occurred is:

- You or someone in your household failed to inform us of changes that affect your eligibility or benefit level.
- We incorrectly gave you more benefits than you should have gotten due to: _____
- Other: _____

Explanation and Calculation of Overpayment: _____

The regulations that allow us to do this are 18 NYCRR 415.4 (i) and (j).

Section II-Repayment Plan Agreement

If you are requesting a Fair Hearing regarding this decision, you are not required to complete and sign the repayment plan at this time. However, you must complete and sign the Fair Hearing request on the reverse side of this form and return it to the address indicated on the reverse.

You are required to make full repayment by _____. If you are unable to repay the overpayment as shown below or you want to set up another agreement plan, or if you have any questions please call _____ at _____, right away. Otherwise, sign this agreement, make a copy of it for yourself, and return the agreement to the address at the bottom of this page.

If you do not respond to this notice, your case will be closed.

Your repayment plan is shown below.

- Revised Family Share--Recovery will be made from your child care benefits. To repay this debt, you must pay \$_____ per week. This is in addition to your current family share of \$_____ per week. **Your total family share** is now \$_____ per week. You must make this payment each week to your child care provider. Your first payment is due on _____. We will pay your provider \$_____ per week.
- You must make weekly payments of \$_____ to the Department of Social Services. You must send payment to the address below. Your first payment is due on _____. We will pay your provider \$_____ per week.

I agree to repay by this method. I understand that failure to pay the amount stated on time will result in a discontinuation of my child care benefits and/or legal action may be taken in the court to recover this overpayment.

Signature _____
Date

Return this repayment plan agreement to:

RIGHT TO A CONFERENCE: You may have an agency conference to review these actions. A conference is when you meet with someone from the agency, other than the person who made the decision, to discuss your case. You may request an agency conference by calling the number on the front of this notice, in the upper right hand corner. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. Requesting an agency conference is not the same as requesting a fair hearing. Read below for fair hearing information.

RIGHT TO A FAIR HEARING: If you disagree with the decision made by our agency, you may request a fair hearing. At the hearing you will have the opportunity to present written and oral evidence to demonstrate why you think the agency’s decision is wrong and the action should not be taken. You have the right to be represented by legal counsel, a relative, friend or other person, or you may represent yourself. You have the right to bring witnesses and to question witnesses at the fair hearing. You have the right to present written and oral evidence at the hearing, and should bring any documents that may be helpful in presenting your case, such as this notice, pay stubs, receipts, child care bills, medical verification, letters, etc. There is additional information below on how to obtain access to your file and copies of documents in your file.

YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING:

When you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or, to represent yourself.

TO REQUEST A FAIR HEARING:

Telephoning: 1 800-342-3334 (Please have this notice with you when you call).

Online: Complete an online request form at: <http://www.otda.state.ny.us/oah/forms.asp>.

Walk In Locations: 14 Boerum Place, Brooklyn, NY OR 330 West 34th Street, Third Floor, Manhattan, NY.

Writing: Complete the following information, sign and mail a copy of this entire notice to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201.

Please keep a copy for yourself.

Faxing: Complete the following information, sign and fax this entire notice to the New York State Office of Administrative Hearings at: 518-473-6735.

I want a fair hearing. The Agency’s action is wrong because: _____

I understand I may be eligible for aid continuing (current recipients only). My benefits have been stopped and I wish to have my benefits restored (aid continuing) until the hearing decision is issued.

If you request a fair hearing and aid continuing, within ten (10) days of the date of the postmark of the mailing of this notice, your child care will be reinstated and will be unchanged until the fair hearing decision is issued. However, if you lose the fair hearing, you will owe any child care that you should not have received. We are required to recover any child care overpayments. We must make a claim against you for any child care you receive that you were not entitled to, which may be collected by reduction of future child care benefits, through lump sum installment payments, or through legal action. If you want to avoid this possibility you can check the box below. You can also indicate over the telephone or in a letter that you do not want reinstatement of your child care.

I do not want my benefits continued until the hearing decision is issued.

Signature of Client: _____ **Date:** _____

LEGAL ASSISTANCE: If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under “Lawyers” or by calling the number indicated on the first page of this notice.

ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS: You have a right to look at your case file, and to receive free copies of the documents that the agency will put into evidence and other documents necessary for you to prepare for the fair hearing. To review your file or receive copies of any documents in your file, you can call us at the Record Access telephone number listed at the top of page 1 of this notice or write us at the address printed at the top of page 1 of this notice. If you want the documents mailed to you, you must specifically ask that they be mailed. You should ask for documents ahead of time. They will be provided to you within a reasonable time before the date of the hearing.

INFORMATION: If you want more information about your case, how to ask for a fair hearing, how to see your file, or how to get copies of documents, call us at the telephone numbers listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice.

NOTICE OF FRAUD DETERMINATION, DISQUALIFICATION FOR CHILD CARE BENEFITS AND REPAYMENT PLAN

NOTICE DATE:		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE		
CASE NUMBER	CIN NUMBER			
CASE NAME (And C/O Name if Present) AND ADDRESS				
		GENERAL TELEPHONE NUMBER FOR QUESTIONS OR HELP _____		

		OR		
		Agency Conference Fair Hearing Information and Assistance Record Access Legal Assistance Information	_____ 1-800-342-3334 _____ _____	
OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	TELEPHONE NO.

YOU HAVE THE RIGHT TO AN AGENCY CONFERENCE AND TO A FAIR HEARING TO APPEAL THIS DECISION. BE SURE TO READ THE BACK OF THIS NOTICE ON HOW TO REQUEST AN AGENCY CONFERENCE AND/OR A FAIR HEARING.

Section I: This notice is to inform you:

1. The Department of Social Services has determined that you have fraudulently received child care benefits and you are disqualified from receiving child care benefits, AND
2. You have received an overpayment and you must repay the overpayment.

The regulation which allows us to do this is: 18 NYCRR 415.4(i).

Section II: Fraud Determination

The Department's finding of fraudulent receipt of child care benefits was based on:

- Your conviction by a court of law on _____ of fraudulently receiving child care benefits.
- Your signing a voluntarily admission dated _____.

The fraudulent activity resulted in an overpayment of \$ _____, occurring from _____ to _____.

Section III: Length of Disqualification Period

As a result of the fraudulent receipt of benefits, you are disqualified from receiving child care benefits. New York State regulations, 18 NYCRR 415.4(i)(13), establish time periods for suspension or termination of benefits depending on the number of offenses and the amount of fraudulent benefits received.

Your disqualification period is:

- Six months, because this is your first offense.
- 12 months, because this is your second offense or the amount of fraudulent benefits you received was between \$1,000 and \$3,900.
- 18 months because this is your third offense, or the amount of fraudulent benefits you received was in excess of \$3,900.
- Five years, because you have committed four or more previous offenses.
- Other (*State length of period and reason*): _____.

Section IV: Effective Date of Disqualification

- Your disqualification will begin on _____ and end on _____.
- You will be subject to the above disqualification penalty if you apply for and are found eligible for child care benefits at a future date.
- Your disqualification period will begin or resume once you are no longer participating in an activity required by TA.

Section V: Repayment Plan Agreement

If you are requesting a Fair Hearing regarding this decision, you are not required to complete and sign the repayment plan at this time. However, you must complete and sign the Fair Hearing request on the reverse side of this form and return it to the address indicated.

You are required to make full repayment by _____. If you are unable to repay the overpayment as shown below or you want to set up another agreement plan, or if you have any questions please call _____ at _____, right away. Otherwise, sign this agreement, make a copy of it for yourself, and return the agreement to the address at the bottom of this page.

Your repayment plan is shown below.

- Recovery will be made from your child care benefits. To repay this debt, you must pay \$ _____ each week to your child care provider. This is in addition to your current family share of \$ _____ per week. Effective _____, your **total family share** will be \$ _____ per week and the amount we pay to your provider will be reduced to \$ _____.
- To repay this debt, you must pay the Department of Social Services \$ _____ per week. Your first payment is due on _____. The final payment is due on _____. Send payments to:
- You must continue to follow the repayment plan and/or court order that is already in effect, and is attached to this notice.

I agree to repay by this method. I understand that failure to pay the amount stated above on time will result in a discontinuation of my child care benefits and/or legal action may be taken in the court to recover this overpayment.

Signature _____

Date _____

Return this repayment plan agreement to:

RIGHT TO A CONFERENCE: You may have an agency conference to review these actions. A conference is when you meet with someone from the agency, other than the person who made the decision, to discuss your case. You may request an agency conference by calling the number on the front of this notice, in the upper right hand corner. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. Requesting an agency conference is not the same as requesting a fair hearing. Read below for fair hearing information.

RIGHT TO A FAIR HEARING: If you disagree with the decision made by our agency, you may request a fair hearing. At the hearing you will have the opportunity to present written and oral evidence to demonstrate why you think the agency's decision is wrong and the action should not be taken. You have the right to be represented by legal counsel, a relative, friend or other person, or you may represent yourself. You have the right to bring witnesses and to question witnesses at the fair hearing. You have the right to present written and oral evidence at the hearing, and should bring any documents that may be helpful in presenting your case, such as this notice, pay stubs, receipts, child care bills, medical verification, letters, etc. There is additional information below on how to obtain access to your file and copies of documents in your file.

YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING

When you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person, or, to represent yourself.

TO REQUEST A FAIR HEARING:

Telephoning: 1 800-342-3334 (Please have this notice with you when you call).

Online: Complete an online request form at: <http://www.otda.state.ny.us/oah/forms.asp>.

Walk In Locations: 14 Boerum Place, Brooklyn, NY OR 330 West 34th Street, Third Floor, Manhattan, NY.

Writing: Complete the information below, sign and mail a copy of this entire notice to the New York State Office of Administrative Hearings, Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201. **Please keep a copy for yourself.**

Faxing: Complete the information below, sign and fax this entire notice to the New York State Office of Administrative Hearings at: 518-473-6735.

<input type="checkbox"/> I want a fair hearing. The Agency's action is wrong because: _____ <input type="checkbox"/> I understand I may be eligible for aid continuing (current recipients only). My benefits have been stopped and I wish to have my benefits restored (aid continuing) until the hearing decision is issued. If you request a fair hearing and aid continuing, within ten (10) days of the date of the postmark of the mailing of this notice, your child care will be reinstated and will be unchanged until the fair hearing decision is issued. However, if you lose the fair hearing, you will owe any child care that you should not have received. We are required to recover any child care overpayments. We must make a claim against you for any child care you receive that you were not entitled to, which may be collected by reduction of future child care benefits, through lump sum installment payments, or through legal action. If you want to avoid this possibility you can check the box below. You can also indicate over the telephone or in a letter that you do not want reinstatement of your child care. I do not want my benefits continued until the hearing decision is issued. Signature of Client: _____ Date: _____
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LEGAL ASSISTANCE: If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS: You have a right to look at your case file, and to receive free copies of the documents that the agency will put into evidence and other documents necessary for you to prepare for the fair hearing. To review your file or receive copies of any documents in your file, you can call us at the Record Access telephone number listed at the top of page 1 of this notice or write us at the address printed at the top of page 1 of this notice. If you want the documents mailed to you, you must specifically ask that they be mailed. You should ask for documents ahead of time. They will be provided to you within a reasonable time before the date of the hearing.

INFORMATION: If you want more information about your case, how to ask for a fair hearing, how to see your file, or how to get copies of documents, call us at the telephone numbers listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice.

Notice Date: _____

Case Number: _____

CIN Number: _____

Dear _____:

New York State requires that low-income families who are applying for or receiving child care benefits *actively pursue child support*. This is required whenever a non-custodial parent is absent from the home, unless the Department of Social Services determines you have *good cause* not to actively pursue child support. This requirement to actively pursue child support, which became effective on May 15, 2004, is necessary because:

- all children deserve support from both parents;
- child support is an important part of assisting a family to become self-sufficient; and
- by obtaining child support, more families in need of child care benefits may receive them.

You will be ineligible for child care benefits, unless you demonstrate to your child care worker that you are actively pursuing child support or you have good cause not to pursue child support. This requirement applies to all of your dependent children, even if you are not applying for child care for each child.

Enclosed with this letter is information on:

- Actively pursuing child support;
- Documenting your efforts to actively pursue child support;
- Claiming good cause not to actively pursue child support;
- Proving that good cause exists; and
- A father's rights when paternity is established.

Also enclosed is the Agreement to Actively Pursue Child Support or Good Cause Claim form, OCFS-LDSS-7011, which you should complete after you read the other enclosures. On this form you must indicate either your willingness to actively pursue child support or your inability to actively pursue child support because you are claiming good cause. **By _____, you must return the enclosed form, OCFS/LDSS-7011, and either demonstrate that you are actively pursuing child support or claim good cause not to actively pursue child support.** You have 20 days to submit proof of your good cause claim. If you are claiming good cause and need additional time to gather documentation, please tell your child care worker.

If you have any questions regarding the child support requirements, please call _____, at _____.

Sincerely,

Actively Pursuing Child Support

You can actively pursue child support in the following ways:

- Establish paternity for your child (legally determining the child's father),
- Obtain a court order of child support, and
- Get the child support owed to you.

Things you may be required to do when actively pursuing child support include, but are not limited to:

- Provide information to identify and locate the non-custodial parent,
- Provide information or documentation needed to establish paternity (legally determining the child's father),
- Take all actions deemed necessary for genetic testing for yourself and the child,
- Take all actions deemed necessary to establish child support orders,
- Take all actions deemed necessary to modify an existing order that does not address child care,
- Take all actions deemed necessary to enforce an existing child support order when you are not receiving the support payments as ordered,
- Appear as a party/witness at a court proceeding, and
- Provide additional information as needed or attest to the lack of information under penalty of perjury.

You can do this by:

- Hiring private legal counsel who will prepare and file petitions, represent you in court and work to actively pursue support,
- Doing these things on your own, or
- Applying for child support enforcement services with the Department of Social Services' Child Support Enforcement Unit (CSEU). With the exception of legal services, child support services through the CSEU are provided free of charge.

Documenting Your Efforts

If you do not have a court order for child support:

- Show your child care worker that you have an appointment with or have applied for child support services from the CSEU and are actively pursuing support; or
- Submit your detailed written plan of activities and timeframes which includes the actions you or your legal representative have taken or will take to actively pursue child support, and documentation which supports these actions.

If you have a court order for support:

- Show your child care worker a copy of the court order for child support and evidence of child support payments, such as deposit records of child support payment checks or other payment records; OR
- Show your child care worker a copy of the court order for child support. If support is not being received, document your attempts to have the child support order enforced. Proof may include court documentation such as a copy of the violation petition, court summonses, court orders following the violation.

You must provide a report at case opening and at each recertification to show you are actively pursuing child support. Your worker may require more frequent reports depending on your case circumstances. The report must list the actions you have taken and/or will take to pursue child support, and when you expect to complete these actions. You must document the actions you describe in the report.

Claiming Good Cause Not To Actively Pursue Child Support

You have the right to claim good cause not to actively pursue child support if pursuing child support would adversely affect your health, safety or welfare; the health, safety and welfare of the child on whose behalf child care payments are to be made; or the health, safety and welfare of other persons in the child's household. Some of the reasons that may be considered good cause include:

- Your active pursuit of child support is likely to cause physical or emotional harm to you, your child, or someone living in your household; OR
- Your child came from a pregnancy due to incest or rape; OR
- You are working with the court or an authorized adoption agency to have your child adopted.

To establish that good cause exists, you must claim good cause on the OCFS/LDSS-7011, Agreement to Actively Pursue Child Support or Good Cause Claim form and submit it to the Department of Social Services. Then, you must prove that good cause exists by providing documentation.

If you are claiming good cause, your application or recertification for child care benefits will be processed for a maximum authorization period of three months, while the good cause determination is made. The Department of Social Services will inform you of its decision on the OCFS/LDSS-7012, Notice of Good Cause Determination. If good cause is established, the authorization period will be extended to the normal six or twelve month reauthorization period.

You have the right to make a good cause claim **at any time** by telling your child care worker about your concern.

Proving That Good Cause Exists

In addition to submitting your claim of good cause, you must prove to the Department of Social Services that good cause exists. To do this, you must explain the circumstances and provide evidence by the date it is required. If you need additional time to gather evidence, you must tell your worker. The Department of Social Services may give you up to an additional 20 days to obtain the evidence.

Examples of evidence you can give for a good cause claim include:

- Birth certificate, medical or law enforcement records which show that your child came from a pregnancy due to incest or rape;
- Court records or other records that show that a legal adoption proceeding is pending in court;
- Court, medical, criminal, child protective, social services, psychological or law enforcement records which show that the non-custodial parent might physically or emotionally harm you, the child or another household member;
- Medical records indicating that the child, custodial parent/caretaker or other household member has an emotional health history and a present emotional health status which indicates that pursuing child support would be detrimental to the mental and or emotional health of that person;

- A written statement from a public or private agency that you are being aided in a decision on whether to keep or put your child up for adoption;
- Sworn statements from individuals, other than yourself, with knowledge of the good cause circumstances. Such individuals might include friends, relatives, neighbors, clergy, social workers and medical staff. The sworn statement must attest to circumstances that indicate pursuing child support would adversely affect the health, safety or welfare of the child on whose behalf child care payments are to be made or of other person's in the child's household. It must be signed in front of and witnessed by a person who is empowered to administer an oath to the testifier. Persons authorized to administer an oath include public notaries, commissioners of deeds, judges, town justices, and justices of the peace; or
- A domestic violence waiver received while you were getting Temporary Assistance. The domestic violence waiver must be dated within the last 12 months of your application or recertification for child care.

If you need help, ask the Department of Social Services. If your good cause claim is due to physical harm, the Department of Social Services may still be able to approve your good cause claim if you cannot get the evidence.

You must submit your evidence within 20 days of completing the good cause claim. If you need additional time to get the evidence, ask your child care worker if you can be granted an extension.

Once you make a good cause claim and submit your evidence, the Department of Social Services will examine the evidence and notify you if additional evidence is needed. If you do not submit any evidence or no evidence exists, and your good cause claim is based on anticipated physical harm, the Department of Social Services may still investigate the good cause claim even without evidence, as long as you submit a sworn statement signed by an individual other than yourself and the Department of Social Services feels the sworn statement is credible.

The Department of Social Services will determine whether good cause exists based on the parent/caretaker's evidence and the investigation by the Department of Social Services, if needed. You will receive notification of the decision made by the Department of Social Services on the OCFS/LDSS-7012, Notice of Good Cause Determination.

A final good cause determination will be made within 30 days after you sign and submit the Good Cause Claim, unless the Department of Social Services allows you additional time to provide documentation. If additional time is allowed for you to submit documentation, the final determination of good cause will be made within 10 days following the extended due date.

If you do not provide the required information by the required date, you will receive a notice that the Department of Social Services intends to deny or discontinue your child care benefits because you have not actively pursued child support and have not demonstrated good cause not to pursue support.

If the Department of Social Services determines that good cause does not exist, refusal to actively pursue support will result in the Department of Social Services denying your application or closing your child care case. If this happens, you will be notified of your right to request a fair hearing to review the Department of Social Services' decision in this matter.

A Father's Rights When Paternity is Established

Prior to establishing an order for child support it may be necessary to legally establish the child's father. This is known as establishing paternity. A court may establish paternity by naming the legal father of a child, or paternity may be established when the mother and father acknowledge a child's father by signing an acknowledgment of paternity form anytime after the child is born. Your child care worker will need to verify that the form was properly filed and the father is registered in the Putative Father Registry.

Establishing paternity provides a father legal responsibilities *and* legal rights to a child, including:

- The right to seek custody of the child;
- The right to seek visitation with the child;
- The right to take part in any adoption or foster care plans for the child;
- The right to object to any adoption or foster care placements of the child; and
- The right to inherit from the child.

AGREEMENT TO ACTIVELY PURSUE CHILD SUPPORT OR GOOD CAUSE CLAIM

1) APPLICANT/RECIPIENT INFORMATION		
NAME	PHONE	CASE NUMBER
ADDRESS		
2) CHILD SUPPORT REQUIREMENTS NOTIFICATION LETTER The Child Support Requirements Notification Letter explains that you are required to actively pursue child support for your children and any child living with you, unless the Department of Social Services determines that you have “good cause” not to pursue such support. Please read the letter and make sure you understand your rights and responsibilities regarding child support, before you complete and sign this form. <i>Indicate below if you have received the Child Support Requirements Notification Letter.</i> <input type="checkbox"/> I have received the Child Support Requirements Notification Letter. <input type="checkbox"/> I have not received the Child Support Requirements Notification Letter.		
3) ACTIVE PURSUIT OF CHILD SUPPORT OR GOOD CAUSE CLAIM Will you actively pursue child support? <i>Choose one.</i> <input type="checkbox"/> Yes. <i>Complete 3A, the Agreement to Actively Pursue Child Support.</i> <input type="checkbox"/> No. I cannot pursue child support as it would expose myself, my child or another household member to physical or emotional harm. <i>Complete 3B, the Good Cause Claim.</i> The Department of Social Services will inform you of its decision on the OCFS/LDSS-7012, Notice of Good Cause Determination. 3A) AGREEMENT TO ACTIVELY PURSUE CHILD SUPPORT I agree to actively pursue child support. I can actively pursue child support without exposing myself, my child or anyone in my household, to physical or emotional harm. I will actively pursue child support in the following way: <i>Choose one.</i> <input type="checkbox"/> I will pursue child support through the Child Support Enforcement Unit (CSEU). I understand that, with the exception of legal services, CSEU services are provided free of charge. I understand I must give my child care worker a written report which includes: the actions I have taken to actively pursue child support and the documentation which confirms these actions. <input type="checkbox"/> I will pursue support on my own behalf or hire an attorney to represent me. I understand I must give my child care worker a detailed written plan of activities and timeframes which includes the actions I (or my attorney) have taken or will take to actively pursue child support and documentation which confirms these actions. I understand if circumstances change, that I may claim good cause at any time by informing my child care worker. 3B) GOOD CAUSE CLAIM I am making a Good Cause Claim. I cannot pursue child support for <i>one or more</i> of the following reasons: <ul style="list-style-type: none">• It would expose myself, my child or another household member to physical or emotional harm;• The child for whom child support is sought was conceived as a result of incest or forcible rape;• A legal proceeding for the adoption of the child is pending before a court;• I am being assisted by a public or licensed private social agency to resolve the issue of whether I will relinquish my child for adoption; and discussions have gone on for less than 3 months; or• The non-custodial parent’s rights have been terminated or voluntarily surrendered. <i>Indicate below if you have enclosed documentation of your good cause claim.</i> <input type="checkbox"/> I have enclosed the following documentation (proof) of my good cause claim: _____ <input type="checkbox"/> I have not enclosed documentation of my good cause claim. I understand I have 20 days to submit proof of my good cause claim. I understand that I may ask my child care worker for additional time if the documents I need to prove my good cause claim cannot be obtained within 20 days.		
4) CERTIFICATION I certify and attest that all statements made on this form are true and accurate. SIGNATURE OF APPLICANT/RECIPIENT DATE		

Return this form to:

ATTACHMENT H

NOTICE OF GOOD CAUSE DETERMINATION

NOTICE DATE:		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE		
CASE NUMBER	CIN NUMBER	GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP _____ ----- OR Agency Conference _____ Fair Hearing information and assistance 1-800-342-3334 Record Access _____ Legal Assistance information _____		
CASE NAME (And C/O Name if Present) AND ADDRESS				
<div style="border: 1px solid black; width: 90%; margin: auto; height: 80%;"></div>				
OFFICE NO.	UNIT NO.	WORKER NO.	UNIT OR WORKER NAME	TELEPHONE NO.

Good Cause Found

The Department of Social Services has reviewed the documentation you provided and has determined that you have good cause not to actively pursue child support. Therefore, you have been granted a good cause exception from the child support requirement to actively pursue child support, which means you do not have to actively pursue child support. You are required to immediately notify your worker of any change in circumstances that may affect your good cause exception. Your good cause exception will be reassessed no later than _____.

This decision was based on 18 NYCRR 415.3(c).

Good Cause NOT Found

- You have **not** been granted a good cause exception from the child support requirement. The Department of Social Services has reviewed the documentation used to support your claim of good cause and determined that you do not qualify for a good cause exception from the child support requirement.
- You have **not** been granted a good cause exception from the child support requirement because you did not provide evidence within 20 days of submitting the good cause claim form (or by the date required if you were granted an extension).

This decision was based on 18 NYCRR 415.3(c).

If you think the agency's determination is incorrect, please see the information on the reverse of this form, which provides you with instructions for requesting an agency conference or fair hearing to challenge the agency's good cause exception determination.

If your good cause claim has been denied, please read the additional information below.

Because your good cause claim has been denied, you must actively pursue child support to be eligible for child care benefits. Refusal to actively pursue child support, without a good cause exception, will result in the Department denying your application or closing your child care case.

You are required to demonstrate no later than _____ that you are actively pursuing child support. You can actively pursue child support from the non-custodial parent through the Child Support Enforcement Unit (CSEU) or by private legal means.

- Actively pursuing a court order for child support *through the CSEU* means that you must: obtain an appointment with the CSEU, if necessary; complete the DSS-2521, Application for Child Support Services; and continue to participate in child support activities, as required.
- If pursuing a child support order *privately*, you (or your legal representative) must participate in child support activities that will lead to the establishment, modification or enforcement of court-ordered support within a reasonable period of time. You must give your child care worker a detailed written plan of activities and timeframes which includes the actions you (or your legal representative) have taken to actively pursue child support, documentation which confirms these actions; and, the actions you (or your legal representative) plan to take to actively pursue child support in the future.

**YOU HAVE THE RIGHT TO APPEAL THIS DECISION.
BE SURE TO READ THE BACK OF THIS NOTICE ON HOW TO APPEAL THIS DECISION**

RIGHT TO A CONFERENCE: You may have an agency conference to review these actions. A conference is when you meet with someone from the agency, other than the person who made the decision, to discuss your case. You may request an agency conference by calling the number on the front of this notice, in the upper right hand corner. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. Requesting an agency conference is not the same as requesting a fair hearing. Read below for fair hearing information.

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<input type="checkbox"/>	I want a fair hearing. The Agency's action is wrong because:

-	

-	
<input type="checkbox"/> I understand I may be eligible for aid continuing (current recipients only). My benefits have been stopped and I wish to have my benefits restored (aid continuing) until the hearing decision is issued.	
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<input type="checkbox"/> I do not want my benefits continued until the hearing decision is issued.	
Signature of Client: _____	Date: _____

LEGAL ASSISTANCE: If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

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