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TRANSMITTAL: 92 INF-29

TO: Commissioners of  
 Social Services

DIVISION: Family and  
 Children  
 Services

DATE: April 13, 1992

SUBJECT: Child Care: Parental Responsibilities When Employing  
 an In-Home Child Care Provider

SUGGESTED

DISTRIBUTION: Directors of Services  
 Employment Coordinators  
 IM Supervisors  
 Day Care Staff  
 Staff Development Coordinators

CONTACT PERSON: Dee Woolley, Bureau of Early Childhood Services  
 1-800-342-3715, extension 4-9324 Userid # 89A800

ATTACHMENTS: Responsibilities When You Employ an In-Home Child  
 Care Provider (Available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
90 ADM-27		415.1(c)			
90 ADM-31					

The purpose of this Informational Letter (INF) is to distribute information to social services districts regarding the responsibility of parents to pay minimum wage and provide benefits when they choose to utilize an in-home child care provider.

As defined by 18 NYCRR 415.1(c)(3), in-home child care is child care "furnished by a provider who is chosen and monitored by the caretaker relative and who is at least 18 years of age, or who is less than 18 years of age and meets the requirements for employment of minors as set forth in Article 4 of the State Labor Law, who certifies to the caretaker relative that he or she is or is not the subject of an indicated report of child abuse or maltreatment and has not been convicted of any crime against children, provided that such providers who furnish informal in-home child care for more than four hours a day and more than four days a week must be paid by the caretaker relative at least the minimum wage as set forth in Article 19 of the State Labor Law and must receive social security and workers' compensation coverage" (emphasis added).

It is the responsibility of the social services district to notify caretaker relatives of the minimum wage and benefit requirements. The benefits which must be provided for an in-home child care provider vary. The caretaker relative may be responsible for provision of some benefits even when the minimum wage requirement does not apply. The attachment entitled "Responsibilities When You Employ An In-Home Child Care Provider" was developed in response to requests from social services districts for a handout summarizing parental responsibilities regarding the payment of minimum wage and provision of benefits. Social services districts may wish to duplicate this attachment for distribution to caretaker relatives who indicate a desire to employ an in-home child care provider.

When calculating the cost of care provided by an in-home child care provider, costs which the caretaker relative will accrue in order to provide benefits required by state and federal law may be added to the rate charged by the child care provider. Payment should then be made to the caretaker relatives, allowing them to pay the in-home provider the rate being charged and to apply the difference, if any, to the cost of applicable benefits. When the total cost of care, including such benefits, exceeds the local market rate, it is the responsibility of caretaker relatives to pay the difference between the applicable market rate and the cost of care.

Social services districts are not responsible for monitoring whether caretaker relatives provide applicable benefits. However, social services districts may wish to require caretaker relatives to submit copies of tax report forms and/or insurance payment receipts as proof of the provision of benefits when the cost of such benefits has been included in the calculation of the cost of care.

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Joseph Semidei  
Deputy Commissioner  
Division of Family and  
Children Services

## RESPONSIBILITIES WHEN YOU EMPLOY AN IN-HOME CHILD CARE PROVIDER

Minimum wage and other benefit levels are subject to change. The figures given below are in effect for wages paid in 1992. You must meet the following requirements when you employ an in-home child care provider:

1. Minimum Wage Requirement

When you have someone care for your child(ren) in your own home for more than four (4) hours per day and more than four days per week you must pay your in-home child care provider no less than minimum wage. The federal minimum wage level is \$4.25 an hour for the first 40 hours and \$6.375 an hour after 40 hours.

2. Social Security Taxes (FICA)

If you pay your in-home child care provider cash wages of \$50 or more during a calendar quarter, you are responsible for reporting and paying FICA each quarter. FICA does not apply to wages paid to your spouse or your children under age 21 years. You are responsible for paying FICA on wages paid to your parents. As an employer, you must withhold 7.65% of your in-home child care provider's earnings for FICA and must pay an equal amount from your own funds. For more information on the FICA rate, forms, filing procedures and general assistance, you may contact the nearest Internal Revenue Service (IRS) office.

3. Federal Unemployment Tax (FUTA)

As an employer, you are required to make FUTA payments if you pay your in-home child care provider a total of \$1000.00 or more in cash wages in any calendar quarter. This tax must be paid by you as the employer. It is not deducted from your in-home child care provider's wages. You must file a Form 940 or Form 940-EZ at the end of the year. Only the first \$7000 of the wages are subject to FUTA. To calculate the amount of tax due, multiply \$7000 by .008. FUTA does not apply to wages paid to your spouse, your parents or your children under age 21 years. For more information on the FUTA rate, forms, filing procedures and general assistance, you may contact the nearest IRS office.

4. NYS Unemployment Insurance

If you pay your in-home child care provider a total of \$500 or more in a calendar quarter, you are required to provide Unemployment Insurance coverage. The employer contribution rate in New York State is 3.3% for 1992. For more information, contact the nearest Unemployment Insurance office.

5. Workers' Compensation

When your in-home child care provider works 40 or more hours per week, you are responsible for providing Workers' Compensation coverage. This requirement does not apply to your spouse or your children under age 21 years. You may not charge any part of the cost of Workers' Compensation to your in-home child care provider. This insurance may be purchased from any private company licensed to write such coverage in New York State or from the State Insurance Fund, a State agency headquartered at 199 Church Street, New York, N.Y. 10007. When you have one domestic worker, Workers' Compensation coverage costs approximately \$270 per year. For more information, contact the nearest office of the Workers' Compensation Board.

(OVER)

6. Disability Benefits

When your in-home child care provider works 40 or more hours per week, you are responsible for providing Disability Benefits insurance. This requirement does not apply to your spouse or your children under age 21 years. Insurance may be purchased from any insurance company authorized to write Disability Benefits insurance in New York State or from the State Insurance Fund. The rate for disability insurance is \$.57/\$100 wages for female employees and \$.24/\$100 wages for male employees. The minimum amount which must be paid is \$50 per year. For more information, contact the nearest office of the Workers' Compensation Board.

You may add the cost of these benefits to the rate charged by your in-home child care provider in order to calculate the full cost of your child care. The county department of social services may be able to pay all or some portion of these benefits as long as the total cost of care does not exceed the local market rates for informal child care. When the total cost of care exceeds the local market rate, you are responsible for paying the difference between the total cost of care and the local market rate.

EXAMPLE

Mrs. Smith is a Transitional Child Care recipient in Albany County. She employs an in-home child care provider who cares for her three children. The ages of her children are six months, two years and four years. Mrs. Smith's in-home child care provider works eight hours per day, five days per week. Therefore, Mrs. Smith is required to pay her in-home child care provider at least the minimum wage of \$4.25 per hour (\$170 per week).

For purposes of this example, we will assume that Mrs. Smith's in-home child care provider worked 50 weeks during the year and earned \$170 per week. Mrs. Smith paid her in-home child care provider a total of \$8500 for the year (approximately \$2125 per quarter). Mrs. Smith is responsible for the following:

Wages (at minimum wage):	\$170.00
Social Security Taxes	12.00
Federal Unemployment Tax	1.12
NYS Unemployment Insurance	4.62
Workers' Compensation	5.40
Disability Benefits	1.00
TOTAL	<u>\$194.14</u>

The county department of social services can pay the actual cost of care up to the local market rates. The following weekly market rates for informal child care apply in this example:

6 month old	\$ 77.25
2 year old	70.50
4 year old	<u>66.00</u>
TOTAL	<u>\$213.75</u>

In this example, Albany County can reimburse or make advance payment to Mrs. Smith in the amount of \$194.14 per week, the total cost of care. Mrs. Smith then can pay her in-home child care provider \$158 per week (the employee's net weekly income after \$12.00 per week is withheld for FICA) and apply the remaining \$36.14 per week to the provision of the required federal and state benefits.