



# Office of Children and Family Services

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## Administrative Directive

<b>Transmittal:</b>	18-OCFS-ADM-10
<b>To:</b>	Social Services District Commissioners
<b>Issuing Division/Office:</b>	Division of Child Care Services
<b>Date:</b>	May 7, 2018
<b>Subject:</b>	<b>New Enrollment Requirements &amp; District Option to Establish Enhanced Market Rates for Legally-Exempt Group Child Care Programs</b>
<b>Suggested Distribution:</b>	Directors of Services Directors of Temporary Assistance Supervisors of Day Care Supervisors of Temporary Assistance Child Care Assistance Staff
<b>Contact Person(s):</b>	Joe Ziegler, OCFS Division of Child Care Services, 518-402-6520 Christine Anderson, OCFS Division of Child Care Services, 518-408-3269
<b>Attachments:</b>	Model Letter: <i>District Request for Child Care Plan Amendment Enhanced Market Rates for Legally-Exempt Group Child Care Programs</i>  OCFS-LDSS-4702 (05/2018) <i>Legally-Exempt Group Child Care Program Attestation of Compliance with Enhanced Requirements</i>

**Filing References**

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	SSL and Other Legal Ref.	Manual Ref.	Misc. Ref.
18-OCFS-ADM-09 17-OCFS-ADM-04 16-OCFS-LCM-18 12-OCFS-LCM-01 06-OCFS-INF-06		18 NYCRR 415.4, 415.9			

**I. Purpose**

The purpose of this Administrative Directive (ADM) is to inform social services districts (districts) of regulatory changes to Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), sections 415.4 and 415.9. The regulations were filed on an emergency basis, effective April 16, 2018, and pertain to the provision of child care services funded under the New York State Child Care Block Grant (NYSCCBG). These changes promote the health and safety of children in legally-exempt group child care programs by establishing group size limits and staff-to-child ratios; and provide districts with the option to promote the quality of care by electing to establish an enhanced market rate for eligible legally-exempt group child care programs.

**II. Background**

Section 658E(c)(2)(H) of the federal Child Care and Development Block Grant Act of 2014 requires states to develop appropriate child care provider-to-child ratios that address group size, limits for specific age populations, and the appropriate ratio between the number of children and number of providers in terms of the age of children. Prior to the adoption of the emergency regulations, there were no regulatory standards for staff-to-child supervision ratios and maximum group size requirements for legally-exempt group child care programs funded under the NYSCCBG. OCFS was granted a waiver by the federal Administration for Children and Families with respect to these requirements until September 30, 2017. OCFS requested an extension of this waiver on August 31, 2017 and has received no official response.

OCFS filed regulatory changes on an emergency basis and at the same time as a Notice of Proposed Rulemaking to establish maximum group sizes and supervision standards for caregivers of legally-exempt group child care and to provide districts with the opportunity to incentivize caregivers of legally-exempt group child care to maintain cardio-pulmonary resuscitation (CPR) trained caregivers onsite, to institute a health care plan for the program, and to receive additional annual training. Prior to developing the regulatory changes, OCFS collected stakeholder input and developed the standards in a way to minimize a detrimental impact on access to child care for families and avoid undue costs to legally-exempt group child care programs, while simultaneously improving the health and safety of children.

Legally-exempt group child care means care provided by those caregivers, other than caregivers of informal child care, which are not required to be licensed by or registered with OCFS or licensed/permitted by the City of New York, but which meet all applicable state or local requirements for such child care programs.

### III. Program Implications

#### A. New Enrollment Requirements

##### Staff-to-Child Supervision Ratios and Group Size Requirements

Effective April 16, 2018, each enrolled legally-exempt group child care program must meet and maintain the following minimum staff-to-child supervision ratios and maximum group size requirements, unless a more stringent standard is required by law:

- For three-year-old children:
  - There must be one employee with a caregiving role for every 20 children when engaged in activities where children will be seated while working on a particular activity or skill.
  - There must be one employee with a caregiving role for every 10 children when children are not engaged in seated activities or skills.
  - The maximum group size is 30 children.
- For four-year-old children:
  - There must be one employee with a caregiving role for every 20 children when engaged in activities where children will be seated while working on a particular activity or skill.
  - There must be one employee with a caregiving role for every 12 children when children are not engaged in seated activities or skills.
  - The maximum group size is 36 children.
- For children ages five through 12 years:
  - There must be one employee with a caregiving role for every 25 children.
  - The maximum group size is 50 children.

When children younger than five years of age are cared for in mixed age groups, the staff-to-child supervision ratio and maximum group size applicable to the youngest child in the group must be followed.

Group size refers to the number of children cared for together as a unit. Group size is used to determine the minimum staff-to-child supervision ratio based upon the age of the children in the group.

##### Children Under Three Years of Age

Effective April 16, 2018, child care assistance funded under the NYSCCBG cannot be authorized for a child under three years of age for child care provided in a legally-exempt group child care program, except for

- child care programs located on federal property that are operated in compliance with the applicable federal laws and regulations for such child care programs,
- child care programs located on tribal property which are operated in compliance with the applicable tribal laws and regulations for such child care programs, or
- a child who is at least two years of age at the beginning of the school year but will turn three years of age on or before the applicable calendar date for which a child must be at least five years of age to be eligible for admission to school; and such a child shall be considered three years of age for the purposes of staff-to-child ratio and maximum group size.

Inspections

OCFS and its designees, the applicable district and its designees, and the applicable legally-exempt caregiver enrollment agency (Enrollment Agency) are authorized to inspect any legally-exempt group child care program that is enrolled or applying for enrollment.

**B. Revised Enrollment Form**

The OCFS-4700, *Enrollment Form for Provider of Legally-Exempt Group Child Care*, was revised to incorporate the additional health and safety requirements applicable to all legally-exempt group child care programs (18-OCFS-ADM-09).

In accordance with 18 NYCRR §415.4(f), districts are required to provide a child's caretaker that has applied for or is receiving child care assistance under the NYSCCBG, and is interested in using a caregiver of legally-exempt child care, with the most recent enrollment forms and notify the caretaker that the completed package must be submitted to the applicable Enrollment Agency.

**C. Enhanced Market Rates for Legally-Exempt Group Child Care Programs**

In accordance with changes to 18 NYCRR §415.9(i), there may be multiple market rates for legally-exempt group child care programs: the standard market rate and the opportunity for districts to establish an enhanced market rate or rates.

The standard market rates for payment for legally-exempt group child care programs is the actual cost of care up to 75 percent of the applicable market rates for day care center providers as set forth in 18 NYCRR §415.9(i)(1). The standard market rates must be applied to legally-exempt group child care programs unless the district chooses to have an enhanced market rate or rates available for legally-exempt group child care programs that meet enhanced requirements and the applicable health and safety requirements set forth in 18 NYCRR §415.4(f) and §415.9(i).

Districts may establish one or both of the following categories of enhanced market rates for child care services provided by legally-exempt group child care programs:

Enhanced Market Rate-Health

Districts may establish an enhanced market rate for child care services provided by eligible legally-exempt group child care programs up to 81 percent of the applicable market rate for day care center providers if

- the program prepares a health care plan that meets the specifications of 18 NYCRR §418-1.11(c), and
- the program has at least one employee with a caregiving role in each classroom during the program's operating hours who holds a valid certificate in CPR, appropriate to the ages of the children in the classroom.

Enhanced Market Rate-Training

Districts may establish an enhanced market rate for child care services provided by eligible legally-exempt group child care programs up to 81 percent of the applicable market rate for day care center providers, if

- the caregiver of the legally-exempt group child care program completes the “Health and Safety: Competencies in Child Care for Day Care Center, School-Age Child Care, and Enrolled Legally-Exempt Group Program Directors” course or other course as approved by OCFS, and a minimum of 15 hours of training annually in areas approved by OCFS; and
- each employee with a caregiving role at the legally-exempt group child care program completes a minimum of five hours of training annually in the areas approved by OCFS, in addition to the training required by 18 NYCRR §415.4(f).

### *Both Enhanced Market Rates*

When a district establishes both enhanced market rates for child care services provided by eligible legally-exempt group child care programs as described above, the district must apply the appropriate enhanced market rate or rates when calculating payments for each individual legally-exempt group child care program based upon the enhanced market rate eligibility of each program. For instance, one legally-exempt group child care program may be eligible for the enhanced market rate-health, another program for the enhanced market rate-training, and another program for both enhanced market rates.

When a legally-exempt group child care program is eligible for both enhanced market rates, the enhanced market rate that the district applies when calculating payments must be based on the percentages selected for each individual enhanced market rate, up to a maximum of 87 percent of the applicable market rate for day care center providers. For example, if the district sets both enhanced market rates at 80 percent (5 percentage points above the standard rate of 75 percent), then the enhanced market rate for a legally-exempt group child care program that is eligible for both enhanced market rates is 85 percent of the applicable day care center market rate (75% + 5% + 5% = 85%).

### *Enhanced Market Rates and Differentials*

A legally-exempt group child care program may be eligible for one or both enhanced market rates, and at the same time, be eligible for one or more differential rates set forth in 18 NYCRR §415.9(h). In such instances, the total payment made to a legally-exempt group child care program must not exceed either 100 percent of the applicable market rate for day care centers, or the actual cost of care, whichever is less.

### *Child and Family Services Plan*

To implement one or both enhanced market rates for eligible legally-exempt group child care programs, the district must indicate the applicable options in the child care portion of its Child and Family Services Plan pertaining to

- each category of enhanced requirement the district chooses to incentivize, and
- the percentage that will be applied to the applicable day care center market rate to calculate each enhanced market rate for legally-exempt group child care programs that the district has selected.

Districts may use the attached model letter, *District Request for Child Care Plan Amendment Enhanced Market Rates for Legally-Exempt Group Child Care Programs*, to amend their Child and Family Services Plans to add, remove, or change the percentage of enhanced market rates for eligible legally-exempt group child care programs.

Districts that establish an enhanced market rate for legally-exempt group child care programs must include notification of the availability of the enhanced market rate within the district's written payment policies for providers.

Districts that do not choose to implement an enhanced market rate for legally-exempt group child care programs do not need to take any action.

*District Notification to the Enrollment Agency*

The district must provide advance written notice to the Enrollment Agency of:

- its intention to implement an enhanced market rate for eligible legally-exempt group child care programs including a copy of the applicable part of the Child and Family Services Plan, and
- any subsequent change in the implementation of the enhanced market rate for eligible legally-exempt group child care programs including, but not limited to
  - adding a new enhanced market rate,
  - ending one or both enhanced market rates, and
  - changing the enhanced market rate percentage applied for one or both incentives.

When the district receives OCFS approval for any such change, the district must promptly notify the Enrollment Agency.

**D. Determination That a Legally-Exempt Group Child Care Program Meets the Enhanced Requirements**

*Responsibilities of Legally-Exempt Group Child Care Programs*

If a legally-exempt group child care program wants to apply for an enhanced market rate or rates elected by the district in its Child and Family Services Plan, the program must

- submit to the Enrollment Agency a completed OCFS-LDSS-4702, *Legally-Exempt Group Child Care Program Attestation of Compliance with Enhanced Requirements*,
- submit to the Enrollment Agency additional required documentation demonstrating compliance with the applicable enhanced requirements, which may include, but is not limited to, an appropriate health care plan for the program, copies of the program director's training certificates, and program records of training completion by caregiving staff, and
- comply with a mandatory inspection to determine if the program is in compliance with all applicable health and safety requirements set forth in 18 NYCRR §415.4(f), as well as the requirements for the enhanced market rate set forth in 18 NYCRR §415.9(i).

*Responsibilities of the Enrollment Agency*

The Enrollment Agency is responsible for determining the eligibility of legally-exempt group child care programs for the enhanced market rate or rates for which they apply when a district has implemented such option, and for communicating the results of eligibility determinations both to legally-exempt group child care programs and districts. Specific responsibilities include, but are not limited to the following:

- Reviewing documentation submitted by the legally-exempt group child care program to verify compliance with the enhanced market rate requirements
- Conducting an inspection of the legally-exempt group child care program to determine whether the program is in compliance with the applicable health and safety requirements set forth in 18 NYCRR §415.4(f), as well as the enhanced requirements set forth in 18 NYCRR §415.9(i), within 30 days of receipt of a completed OCFS-LDSS-4702, *Legally-Exempt Group Child Care Program Attestation of Compliance with Enhanced Requirements* requesting an enhanced market rate
- Addressing any noncompliance found in the mandatory inspection with the enhanced market rate requirements or the applicable health and safety requirements set forth in 18 NYCRR §415.4(f) or §415.9(i)
- Documenting all necessary actions, including whether the legally-exempt group child care program meets the enhanced market rate requirements
- Notifying the legally-exempt group child care program of its determination of the program's eligibility for the enhanced market rate(s)
- Notifying the district that the legally-exempt group child care program has been determined eligible for the enhanced market rate (However, to the extent that the Child Care Facility System (CCFS) is enhanced to provide automated notifications to the district, the Enrollment Agency is relieved of the responsibility for a manual notification.)
- Notifying the district of any changes in eligibility of a legally-exempt group for an enhanced market rate (However, to the extent that CCFS is enhanced to provide automated notifications to the district, the Enrollment Agency is relieved of the responsibility for a manual notification.)
- Using appropriate systems and notices, as appropriate and available

#### Applying the Enhanced Market Rate

The district must begin using the appropriate enhanced market rate when calculating payments for an eligible legally-exempt group child care program for all eligible children no later than the beginning of the first full month after the district was notified that the program is eligible for the enhanced market rate or rates.

The district must send the required notice, OCFS-LDSS-4781, *Notice of Intent to Change Child Care Benefits and Family Share Payments*, to the parent/caretaker when

- an enhanced market rate becomes effective,
- an enhanced market rate is no longer applicable (either because the district no longer elects to offer the enhanced market rate or the legally-exempt group child care program is no longer eligible for the enhanced market rate), or
- an enhanced market rate percentage is changed in the child care portion of its Child and Family Services Plan.

#### Continuing Eligibility for the Enhanced Market Rate(s)

A legally-exempt group child care program that has been approved to receive the enhanced market rate will be eligible to receive the enhanced market rate for the duration of that enrollment period, with the following exceptions:

- The district discontinues the enhanced market rate by amending its Child and Family Services Plan.
- The Enrollment Agency determines that the legally-exempt group child care program is no longer eligible for the enhanced market rate based on non-compliance with the enhanced market rate requirements or applicable health and safety requirements set forth in 18 NYCRR §415.4(f) and §415.9(i).

In order to continue to be eligible for the enhanced market rate or rates beyond the initial eligibility period, the legally-exempt group child care program must continue to meet the enhanced market rate requirements, and on an annual basis submit required documentation to the Enrollment Agency and undergo an inspection to determine compliance with the applicable health and safety requirements set forth in 18 NYCRR §415.4(f) and §415.9(i).

#### **IV. System Implications**

If a district establishes one or both optional enhanced market rates for legally-exempt group child care programs, the district and the Enrollment Agency will be required to support the process for verifying enhanced market rate eligibility and calculating accurate payments outside of CCFS and CCTA, until such time as systems changes are made to support the enhanced market rates.

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

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**Issued by:**

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