415.1 Definitions.

For purposes of this Part and instruction of the department pertaining thereto, the following definitions of terms shall apply:

(g) Eligible provider means one of the following:

(1) a validly licensed or properly registered day care center or a properly registered school-age child care program operated by a voluntary non-profit corporation or association or an authorized child caring agency; or

(2) a validly licensed or properly registered child day care center or a properly registered school-age child care program operated by a private proprietary corporation or organization or by an individual; provided, however, that for child care services provided under Title XX of the Federal Social Security Act or provided as child protective services or preventive services that are funded other than under the New York State Child Care Block Grant Program, such a provider will be an eligible provider only with the prior approval of the commissioner of the Office of Children and Family Services upon the demonstration by the social services district that conveniently accessible non-profit facilities are unavailable or unable to provide the required care; or

(3) a public school district operating a child care program which meets State and Federal requirements; or

(4) a family day care home properly registered with the department to provide child care services to children; or

(5) a group family day care home issued a valid license by the department to provide child care services to children; or

(6) a caregiver of informal child care as defined in subdivision (h) of this section who is enrolled with the social services district in accordance with section 415.4(f) of this Part; provided, however, that such a caregiver is not an eligible provider for child care services provided under Title XX of the Federal Social Security Act or provided as child protective services or preventive services that are funded other than under the New York State Child Care Block Grant Program; or

(7) a caregiver of legally-exempt group child care as defined in subdivision (i) of this section which is enrolled with the social services district in accordance with section 415.4(f) of this Part; provided, however, that such a caregiver is not an eligible provider for child care services provided under Title XX of the Federal Social Security Act or provided as child protective services or preventive services that are funded other than under the New York State Child Care Block Grant Program except as provided in paragraph (3) of this subdivision.

(h) 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 public 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.

(1) Legally-exempt family child care means:

(i) 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 the requirements for the employment of minors as set forth in article 4 of the New York State
Labor Law, and who is chosen and whose services are monitored by the child's caretaker; or

(ii) 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 New York State 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 caretaker; or

(iii) child care provided by a relative within the third degree of consanguinity of the parent(s) or step-parent(s) of the child or children except where such relative is a person legally responsible for, or the caretaker relative of, such child or children. Relatives within the third degree of consanguinity of the parent(s) or step-parent(s) of the child include: the grandparents of the child; the great-grandparents of the child; the great-great-grandparents of the child; the aunts and uncles of the child, including the spouses of the aunts and uncles; the great-aunts and great-uncles of the child, including the spouses of the great-aunts and great-uncles; the siblings of the child; and the first cousins of the child, including the spouses of the first cousins.

(2) Legally-exempt in-home child care means:

(i) child care furnished in the child's own home by a caregiver who is chosen and monitored by the child's 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 New York State Labor Law; provided, however, that the child's caretaker must provide the caregiver with all employment benefits required by State and/or Federal law, and must pay the caregiver at least the minimum wage, if required.

(i) Legally-exempt group child care means care provided by those caregivers, other than caregivers of informal child care as defined in subdivision (c) of this section, which are not required to be licensed by or registered with the department 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 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-aged 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; and

(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.
(r) **Office** means the New York State Office of Children and Family Services.

(s) **Legally-exempt caregiver enrollment agency** means the agency under contract with the office to enroll caregivers of legally-exempt child care to provide subsidized services under the New York State Child Care Block Grant. For each district in New York State except for the City of New York, the legally-exempt caregiver enrollment agency will be the applicable child care resource and referral agency under contract with the office to serve that district. For the City of New York, the legally-exempt caregiver enrollment agency will be an entity or entities identified by the office in consultation with the New York City Human Resources Administration and the New York City Administration for Children's Services.

### 415.4. Local district responsibility.

Each local social services district shall be responsible for compliance with the following requirements:

(c) Child care services requirements.

(i) The social services district shall allow, disallow, or defer a claim for reimbursement, submitted by an eligible provider to the social services district, for the purpose of providing child care services pursuant to this Part within 30 days of receiving such claim.

(ii) The social services district may defer a claim for reimbursement only in the following circumstances:

(a) Upon the recommendation of a federal, state, or local agency, when the agency has informed the social services district that continued payments of such claims place the social service district at risk of making payments for services that were not provided in accordance with the applicable state regulations, or

(b) After an initial review of the claim by the social services district revealed inaccuracies in the claim that warrant a more detailed review, or

(c) Upon notification of the existence of a pending criminal charge involving fraud.

(iii) The social services district may disallow payment for claims for services provided to any and all children receiving a child care subsidy for the time period in which:

(a) an enrolled provider is found by the Office to be operating or have operated a child care program, required to be licensed or registered with the Office, without obtaining such license or registration, or

(b) a licensed or registered provider is found by the Office to be operating or have operated over its licensed or registered capacity, or
(c) an enrolled informal provider is found by the Office to be caring or have cared for more children than the limits defined in section 415.1(h).

(f) Enrollment of caregivers of informal and legally-exempt group child care. A social services district may only make payments for child care provided by caregivers of informal or legally-exempt group child care if the caregiver has been enrolled by a legally-exempt caregiver enrollment agency on either a temporary or final basis in accordance with this subdivision. Each social services district must provide a child's caretaker that has applied for or is receiving child care subsidies under the New York State Child Care Block Grant and who is interested in using a caregiver of legally-exempt child care with an enrollment package and notify the caretaker that the completed package must be submitted to the applicable legal-exempt caregiver enrollment agency.

(1) Each legally-exempt caregiver enrollment agency must establish procedures for enrolling, for payment purposes, a caregiver of informal child care or a caregiver of legally-exempt group child care, as defined in section 415.1 of this Part, who or which chooses to provide child care services under the New York State Child Care Block Grant Program. Such enrollment procedures must:

(i) collect only such information about the caregiver as determined by the Office of Children and Family Services to be necessary to make payments and to furnish information to the caregiver or to a recipient;

(ii) facilitate appropriate and prompt payments; and

(iii) permit the caregiver to enroll with the legally-exempt caregiver enrollment agency after selection by a recipient.

(2) Each legally-exempt caregiver enrollment agency must distribute health and safety information as specified by the office to all newly enrolled caregivers of informal child care and caregivers of legally-exempt group child care.

(3) 

(i) Prior to enrolling or re-enrolling a caregiver of informal child care or a caregiver of legally-exempt group child care, the legally-exempt caregiver enrollment agency must review the enrollment package obtained from the caregiver and determine, within 10 days of receiving the enrollment package, whether the enrollment package is complete and the caregiver is exempt from the State's child day care licensing and registration requirements.

(ii) If the caregiver is exempt from the State's child day care licensing and registration requirements, and the completed checklist and attestations in the enrollment package do not raise any immediate concerns, the legally-exempt caregiver enrollment agency must enroll the caregiver on a temporary basis until the legally-exempt caregiver enrollment agency completes a full review of the package. The legally-exempt caregiver enrollment agency must notify the applicable social services district of the enrollment of the legally-exempt caregiver on a temporary basis.

(iii) The legally-exempt caregiver enrollment agency must complete a full review of the enrollment package within 40 days of receiving the completed enrollment package to determine whether the caregiver meets the enrollment requirements including the basic health and safety requirements set forth in paragraph (7) of this subdivision and the additional requirements for informal child care caregivers set forth in paragraph (8) of this subdivision, if applicable. The legally-exempt caregiver
enrollment agency must notify the applicable social services district of its final determination regarding the enrollment of the legally-exempt caregiver.

(iv) Caregivers enrolled with a social services district on or before the effective date of these regulations, must document compliance with the requirements set forth in paragraph (7) of this subdivision and the additional requirements for informal child care caregivers in paragraph (8) of this subdivision, if applicable, before or as part of the next redetermination of eligibility for child care services for a child in the caregiver's care.

(v) Enrollment information must be updated and reviewed at least annually and at any other time when a change in circumstances warrants such a review including but not limited to when the caregiver seeks to serve another child. The legally-exempt caregiver enrollment agency only must verify any changes that have occurred to the caregiver's enrollment information since the last enrollment package was submitted.

(4) If the caregiver is exempt from the licensing and registration requirements and the caregiver otherwise meets the qualifications set forth in section 415.1(h) or (i) of this Part, and meets the basic health and safety requirements set forth in paragraph (7) of this subdivision and the additional requirements for informal child care set forth in paragraph (8) of this subdivision, if applicable, or integrated county plan, then the legally-exempt caregiver enrollment agency must enroll the caregiver for the purpose of providing child care services to eligible families under the New York State Child Care Block Grant Program unless the applicable social services district informs the legally-exempt caregiver enrollment agency that the caregiver does not meet a locally-defined additional requirement set forth in the social services district's consolidated services plan or integrated county plan in accordance with subdivision (h) of this section.

(5) A caregiver of informal child care or a caregiver of legally-exempt group child care must be enrolled with the legally-exempt caregiver enrollment agency before payment is made to such caregiver by a district for providing child care services under the New York State Child Care Block Grant Program.

(6) Each legally-exempt caregiver enrollment agency must maintain an automated roster, in the New York State Child Care Facilities System, of the caregivers of informal child care and caregivers of legally-exempt group child care enrolled with such legally-exempt caregiver enrollment agency including the name and address of each such caregiver and information about the caregiver's compliance with the enrollment requirements at such time and in manner and form required by the office.

(7) Basic health and safety requirements for caregivers of informal or legally-exempt group child care.

(i) At the time of applying for enrollment and for re-enrollment, the caregiver must furnish a sworn statement indicating whether, to the best of his or her knowledge, such caregiver, any employee of the caregiver, and any volunteer who has the potential for regular and substantial contact with children in care, and, for caregivers of legally-exempt family child care, each household member age 18 or older, has ever been convicted of a misdemeanor or a felony in New York State or any other jurisdiction. Prior to furnishing the caretaker and the legally-exempt caregiver enrollment agency with such information, the caregiver shall inquire of each such employee, volunteer and household member regarding whether that person has ever been convicted of a misdemeanor or any felony in New York State or any other jurisdiction.

(a) When a caregiver, indicates that he or she or such an employee, volunteer or household member has been convicted of a crime, the caregiver must give the caretaker and the legally-exempt caregiver enrollment agency true and accurate information about the crime which
will enable the caretaker and the legally-exempt caregiver enrollment agency to evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child(ren). Such information must include, but is not limited to, the nature of the crime, the penalties imposed as a result of the conviction, and the length of time which has elapsed since the conviction.

(b) No person convicted of a felony or misdemeanor against children or, for caregivers of legally-exempt family child care, whose household includes an individual convicted of such a crime may be enrolled by a legally-exempt caregiver enrollment agency as a child care caregiver.

(c) No legally-exempt informal child care program or legally-exempt group child care program which employs an individual or uses a volunteer convicted of a felony or misdemeanor against children may be enrolled by a legally-exempt caregiver enrollment agency as a child care caregiver.

(d) A legally-exempt caregiver enrollment agency may enroll a caregiver who has been convicted or whose employee, volunteer or household member has been convicted of other felony or misdemeanor offenses, consistent with guidelines issued by the office for evaluating applicants with criminal conviction records.

(ii) The caregiver must furnish the child's caretaker with true and accurate information, in writing, indicating whether, to the best of the caregiver's knowledge, such caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children and, for caregivers of legally-exempt family child care, any household member age 18 or older, has ever been the subject of an indicated report of child abuse or maltreatment in New York State or any other jurisdiction. Prior to furnishing the caretaker with such information, the caregiver shall inquire of each such employee, volunteer and household member regarding whether that person has ever been the subject of an indicated report of child abuse or maltreatment. The caregiver must furnish the child's caretaker with information regarding any such indicated report including a description of the incident, the date of the indication and any other relevant information.

(iii) To be enrolled by a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of informal child care or a caregiver 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:

(a) whether, to the best of his or her knowledge, the caregiver 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. If a caregiver indicates that he or she has been denied such a license or registration or had such a license or registration suspended or revoked, the caregiver must provide true and accurate information to the child's caretaker and the legally-exempt caregiver enrollment agency about the reasons for the denial, suspension or revocation. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked, based on guidelines issued by the office; and

(b) whether the caregiver has ever had his or her parental rights terminated, or had a child(ren) removed from his or her care by court order under article 10 of the Family Court Act. If a caregiver indicates that he or she has had his or her parental rights terminated or has had a
child(ren) removed from his or her care by court order under article 10 of the Family Court Act, the caregiver must provide true and accurate information regarding the reasons underlying the loss of parental or custodial rights. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had his or her parental rights terminated or has lost custody of a child(ren) by court order under article 10 of the Family Court Act, based on guidelines issued by the office.

(iv) To be enrolled with a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of legally-exempt group child care must attest and certify in writing either that:

(a) the caregiver is legally operating under the auspices of another Federal, State or local government agency; or

(b) if the caregiver of legally-exempt group child care is not required to operate under the auspices of another Federal, State or local governmental agency, then the caregiver must meet the additional health and safety requirements set forth in subparagraphs (iv) and (v) of this paragraph.

(v) To be enrolled by a legally-exempt caregiver enrollment agency to provide child care services under the New York State Child Care Block Grant Program, a caregiver of informal child care or a caregiver of legally-exempt group child care which is not required to be operated under the auspices of another Federal, State or local governmental agency also must attest and certify in writing, and the child's caretaker must attest and certify in writing, that the caregiver meets and has agreed to continue to meet the following basic health and safety requirements:

(a) The caregiver and all children have two separate and remote ways to escape in an emergency.

(b) Rooms for children are well-lighted and well-ventilated. Heat, ventilating and lighting equipment are adequate for the protection of the health of the children.

(c) The caregiver will use barriers to restrict children from unsafe areas. Such areas include, but are not limited to, swimming pools, open drainage ditches, wells, holes, wood and coal burning stoves, fireplaces and permanently installed gas space heaters.

(d) Where child care is provided on floors above the first floor, windows on floors above the first floor are protected by barriers or locking devices to prevent children from falling out of the windows.

(e) Adequate and safe water supply and sewage facilities are provided and comply with State and local laws. Hot and cold running water is available and accessible at all times.

(f) The caregiver certifies that the caregiver and each employee and each volunteer with the potential for regular and substantial contact with children in care is physically fit to provide child care and are free of any communicable disease and, for caregivers of legally-exempt family child care, that all persons residing in the home are free of any communicable disease unless the caregiver’s or household member’s health care provider has indicated that the presence of a communicable disease does not pose a risk to the health and safety of the children in care. If the legally-exempt caregiver enrollment agency has reasonable cause to
suspect that the information provided by the caregiver is incorrect, the legally-exempt caregiver enrollment agency may require that the caregiver submit a statement from a physician, physician's assistant or nurse practitioner verifying the information.

(g) Suitable precautions will be taken to eliminate any conditions in areas accessible to children that pose a safety hazard.

(h) All matches, lighters, medicines, drugs, cleaning materials, detergents, aerosol cans and other poisonous or toxic materials are stored in their original containers and used in such a way that they will not contaminate play surfaces, food or food preparation areas or constitute a hazard to children. Such materials will be kept in a place inaccessible to children.

(i) The caregiver will ensure that each child receives meals and snacks in accordance with the plan developed jointly by the caregiver and the child's caretaker.

(j) Perishable food, milk and formula will be kept refrigerated.

(k) When the caregiver cares for infants, formula, breast milk and other food items for infants will not be heated in a microwave oven.

(l) The caretaker of a child will have unlimited access to the child, and to the premises when the child is in care and to written records regarding the child.

(m) Evacuation drills will be conducted at least monthly with the children during the hours that children are in care.

(n) The caregiver will never use corporal punishment or allow others to use corporal punishment while children are in care.

(o) The caregiver will never use or be under the influence of alcohol or drugs while children are in care and will make sure that children are not exposed to individuals using drugs or alcohol while in care.

(p) The caregiver will not smoke or allow smoking in indoor areas while children are in care or in vehicles while children are being transported.

(q) The caregiver will never leave children unsupervised or in the care of individuals who are not authorized to supervise the children.

(r) The caregiver has either a working telephone or immediate access to one. Emergency telephone numbers for the fire department, local or State Police or sheriff's department, poison control center and ambulance service are posted conspicuously on or adjacent to the telephone.

(s) Protective caps, covers or permanently installed obstructive devices are used on all electrical outlets that are accessible to young children.

(t) 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 their food.
(u) There is one operating smoke detector on each floor of the home or facility. Such detectors will be checked regularly to insure proper operation.

(v) The home or facility is equipped with a portable first aid kit that is accessible for emergency treatment. The first aid kit is stocked to treat a broad range of injuries and situations and will be restocked as necessary. The first aid kit and any other first aid supplies are kept in a clean container or cabinet not accessible to children.

(w) The caregiver will not give child care to any child unless the caregiver has been furnished with a statement signed by a physician or other authorized individual who specifies that the child has received age appropriate immunizations; or a statement signed by a physician or other authorized individual who indicates that one or more of the immunizations would be detrimental to the child's health, or the child's caretaker provides a statement indicating that the child has not been immunized due to the caretaker's religious beliefs.

(x) Stairs, railings, porches and balconies are in good repair.

(y) The caretaker and the caregiver certified in writing that to the best of their knowledge, all statements made on the enrollment or re-enrollment form and any attachments thereto are accurate and true. Any false information, certified and attested to by the caregiver or the caretaker on either the enrollment or re-enrollment form or any attachment thereto, may result in the caregiver being denied enrollment or the termination of the caregiver's enrollment by the legally-exempt caregiver enrollment agency and/or the social services district terminating child care subsidy payments and/or taking legal action against the caregiver or caretaker.

(z) The caregiver may not administer medication to any child in his or her care except to the extent that the caregiver is authorized under the Education Law to administer medications or has met the requirements for the administration of medications as defined in section 418-1.11 of this Title.

(8) Additional health and safety requirements for caregivers of informal child care.

(i) A legally-exempt caregiver enrollment agency must refer a caregiver of informal child care to the child and adult care food program (42 USC 1758, 1759[a], 1762[a], 1765, and 1766) at initial enrollment of any caregiver not currently enrolled, or at the annual re-enrollment of any currently enrolled caregiver. If the caregiver is or becomes a participant in the child and adult care food program, the caregiver must provide the legally-exempt caregiver enrollment agency with a copy of documentation of participation in the program. A legally-exempt caregiver enrollment agency must verify the caregiver's documentation to determine whether the caregiver is a participant in the child and adult care food program.

(ii) Upon applying for enrollment, and as part of the annual re-enrollment process, a legally-exempt caregiver enrollment agency must verify the information in the attestation of each caregiver of informal child care to determine if the caregiver's parental rights have been terminated, or if a child(ren) was removed from his or her care by court order under article 10 of the Family Court Act.

(a) The legally-exempt caregiver enrollment agency will request that the applicable social services district conduct a child welfare database check of the caregiver and provide the applicable social services district with such available information about the caregiver as is
necessary to complete the database check to determine whether the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under article 10 of the Family Court Act. The district must provide the legally-exempt caregiver enrollment agency with the results of the child welfare database check within 15 days of receiving the request.

(1) When the check of the district's child welfare data base reveals that the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under article 10 of the Family Court Act, the district shall provide the specific office mandated information on the foster care and/or court records concerning the caregiver’s termination of parental rights and the removal of the child from the caregiver’s home to the legally-exempt caregiver enrollment agency for the purposes of determining whether to enroll the caregiver.

(2) When the check of the district's child welfare data base reveals that the caregiver has had his or her parental rights terminated or had a child removed from his or her care by court order under article 10 of the Family Court Act, the caregiver must provide the caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding the reasons underlying the loss of parental or custodial rights, if such information has not already been provided to the caretaker and the legally-exempt caregiver enrollment agency. A legally-exempt caregiver enrollment agency must determine, based on guidelines issued by the office, whether to enroll a caregiver who has had such a loss of parental or custodial rights.

(iii) Upon applying for enrollment, and as part of the annual re-enrollment process, a legally exempt caregiver enrollment agency will:

(a) Check each caregiver against the office's child care facility system to determine whether the caregiver has ever been denied a child day care license or registration or had a child day care license or registration suspended or revoked. When the check of the office's child care facility system reveals that the caregiver has been denied a child day care license or registration or had a child day care license or registration revoked or suspended, the caregiver must provide the caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding any such denial, revocation or suspension, including a description of the reason for denial, revocation or suspension, the date of the denial, revocation or suspension, and any other relevant information, if such information has not already been provided to the caretaker and the legally-exempt caregiver enrollment agency. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked based on guidelines issued by the office.

(b) Check each caregiver of informal child care, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and for caregivers of legally-exempt family child care, each household member age 18 or older against the New York State Sex Offender Registry maintained by the New York State Division of Criminal Justice Services, via the Registry's toll free telephone number to determine if such caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and for caregivers of legally-exempt family child care, each household member age 18 or older is listed on the New York State Sex Offender Registry. When the New York State Sex Offender Registry
reveals that a caregiver, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, or for caregivers of legally-exempt family child care, a household member is listed on the Sex Offender Registry for committing a sex offense, the legally-exempt caregiver enrollment agency may not enroll such a caregiver.

(iv) On an annual basis, the applicable legally-exempt caregiver enrollment agency must conduct on-site inspections including reviewing the immunization records of at least 20 percent of the currently enrolled legally-exempt family child care caregivers, as defined in this Part, in the applicable district who do not participate in the child and adult care food program to determine whether such caregivers are in compliance with the health and safety standards set forth in this section.

(a) The office will provide by January 31st of each year to the legally-exempt caregiver enrollment agency instructions for compiling a list of the caregivers that must be inspected and a minimum unduplicated number of providers that must be inspected. The legally-exempt caregiver enrollment agency must complete the inspections and report the results of the inspections in a manner and format as specified by the office by December 31st of each year.

(b) If the legally-exempt caregiver enrollment agency finds that a caregiver is non-compliant with any requirements of this section, the legally-exempt caregiver enrollment agency will assist the caregiver in working towards compliance, in the manner and according to the timeframes established by the office. If the caregiver does not come into compliance with the requirements within the required timeframes, the legally-exempt caregiver enrollment agency will terminate the enrollment of the caregiver and notify the appropriate district of that the caregiver's enrollment has been terminated.

(g)

(1) Where a social services district is subsidizing child care services pursuant to any of the provisions of this Part, the district may submit to the office justification for a need to impose additional requirements on child care providers providing subsidized child care services and a plan to monitor compliance with such additional requirements. A social services district may make participation in the child and adult care food program a condition of enrollment for each caregiver of informal child care who will be providing an average in excess of 30 hours of care per week to one or more subsidized children provided the district sets forth this requirement in the district's consolidated services plan or integrated county plan. No such additional requirements or monitoring may be imposed without the written approval of the office.

(2) To the extent that a social services district has established any additional standards for caregivers of legally-exempt child care, the district's monitoring process must include procedures for notifying the applicable legally-exempt caregiver enrollment agency if the district determines that such a caregiver is not in compliance with an additional standard. Any such procedures established by the social services district may not extend the timeframes set forth in subdivision (f) of this section for legally-exempt caregiver enrollment agency to review an enrollment package.

(h)

(1) A social services district may refuse to allow a child care provider that is not in compliance with this section and regulations promulgated by the Office, or any approved additional requirements of the social services district, to provide subsidized child care services to a child.
(2)

(i) A social services district may disqualify a provider from receiving payment for child care services provided under the child care subsidy program if a provider:

(a) is criminally convicted of fraud;

(b) is found to be civilly liable for fraud;

(c) has voluntarily admitted to filing a false claim for reimbursement for child care services;

(d) has been disqualified from the Child and Adult Care Food Program, by the New York State Department of Health and/or its sponsoring agency, for submission of false information on the application, submission of a false claim for reimbursement or failure to keep required records;

(e) has failed to comply with the terms of a repayment plan with the social services district, or

(f) has a conviction of any activity that occurred in the past seven (7) years that indicated a lack of business integrity; or

(g) has been found by a social services district, after the social services district has conducted an administrative review in accordance with clause (ii) of this subparagraph, to have submitted a false claim(s) to a social services district for reimbursement.

(ii) An administrative review by a social services district must include the following:

(a) A review of the claims submitted to the social services district and any other information or documentation obtained by the social services district to determine the accuracy of the information contained in the claims; and if a social services district determines after such a review that a provider submitted inaccurate information in the claims, then a preliminary review report must be prepared by a social services district and sent to the child care provider that is the subject of the review for a response.

(b) A child care provider must be given 20 days, from the date the district sent the preliminary review report to respond to the report. A child care provider may respond in writing presenting evidence and arguments that the provider believes refute the findings of the preliminary review report, or may request a formal review by a social services district, which allows a provider, in person, to present evidence and arguments in support of his/her position.

(c) If no response from a provider is received by a social services district within 20 days from the date of the postmark of the preliminary review report, the report may be finalized by a social services district. A final report, issued under this subclause, may be the basis for a social services district to disqualify a provider from providing subsidized child care.

(d) If a response from a provider is received by a social services district within 20 days from the date of the postmark of the preliminary report, the social services district must review and evaluate the response and may make appropriate changes based on the response.
from the provider, before issuing a final review report. Upon completion of the review, the social services district shall issue a final review report, such report must be sent to the child care provider that is the subject of the review.

(e) A child care provider, upon receipt of a final review report, must be given 10 days from the date of the postmark of the final review report to respond, and to request a formal review by the social services district. A final review report issued under this subclause, where a provider does not request a formal review within the 10-day specified timeframe, or does not provide a response that disproves the findings of said report, may be the basis for a social services district to disqualify a provider from providing subsidized child care.

(f) A social services district, upon receipt of a request for a formal review by a provider found in a final review report to have submitted inaccurate claims, must conduct such a review within 30 days of receipt of the request.

(g) A social services district at a formal review must allow a provider, in person, to present evidence and arguments in support of the provider’s position.

(h) A social services district, after a formal review and after reviewing the evidence and arguments supplied by a provider at a formal review must make a final determination of whether a provider submitted false claims. A final determination that a provider submitted false claims may be the basis for a social services district to disqualify a provider from providing subsidized child care.

(iii) A provider who has been disqualified from receiving payment for child care services provided under the child care subsidy program by a social services district under clause (i) of this subparagraph is ineligible to receive such payments through any social services district for five years from the date of the disqualification, if such a provider made full restitution of any and all falsely obtained funds to the social services district. If such a provider did not make full restitution to a social services district, then the provider will remain ineligible to provide subsidized child care.

(iv) A social services district that disqualifies a provider from receiving a payment for child care services provided under the child care subsidy program must provide appropriate information concerning the disqualification to the appropriate regional office of the Office’s Division of Child Care Services if the provider is a licensed or registered day care provider, or to the appropriate legally-exempt caregiver enrollment agency if the provider is a legally-exempt child care provider.

(3) In accordance with a plan approved by the Office, a social services district will have the right to make announced or unannounced inspections of the records and premises of any provider that provides care for subsidized children, including the right to make inspections prior to subsidized children receiving care in a home where the inspection is for the purpose of determining whether the child care provider is in compliance with applicable laws and regulations and any additional requirements imposed on such a provider by the social services district. A social services district must notify the Office immediately of any violations of regulations and must provide the Office with an inspection report documenting the results of such inspection.

(4) Nothing contained in this Part will diminish the authority of the local social services district from referring a matter to the appropriate district attorney or law enforcement agency.
415.12 Eligible provider responsibilities.

(a) An eligible provider that provides child care services to families receiving child care subsidies must comply with the following requirements:

   (1) An eligible provider must operate their child care program in compliance with the applicable Office regulations. Failure to operate in compliance with the Office regulations may result in the Office taking enforcement action pursuant to section 413.3 of this Title.

   (2) An eligible provider, on a daily basis, must maintain current and accurate attendance records for each child showing the date of attendance with the time of arrival and departure. Full day absences must also be noted.

   (3) An eligible provider must certify that all documentation and information provided to a social services district is accurate and true. Any false or fraudulent claims for payments by a provider may result in the deferral or disallowance of payment for such claims with a social services district, a referral to the Office for the revocation of a provider's registration or license, and/or referral for criminal prosecution.

   (4) An eligible provider must not charge more for subsidized child care than the provider charges for non-subsidized care.