Questions and Answers-Legally-Exempt Child Care Provider Enrollment
October 4, 2010

1) What does the reference mean in the Guide to Enrollment regarding “Drug-Related Offenses Within Five Years” (p. 60, # 10). For these crimes, does the Enrollment Agency have to take the date of the crime into account?

Answer: Yes, but not the date of the crime, rather the date of conviction. The specific convictions on this list, “Drug-Related Offenses Within Five Years”, are considered Category B crimes,(violent or other serious crimes), as long as the conviction occurred within the past five years. If the date of conviction occurred more than five years ago, the crimes listed are not considered “violent or other serious crimes, Category B”. If the crime would have been considered a Category B crime, but it is outside of 5 year timeframe, then the conviction is a Category C crime.

2) Does an enrollment agency have a role in investigating any complaint received by the OCFS regional office?

Answer: Yes. The enrollment agency is always responsible for investigating enrollment violations, including health and safety issues which fall under 18 NYCRR 415, for legally-exempt child care providers who are currently enrolled on any level. Note that per SSL 390, the Regional Office is responsible for investigating all complaints regarding “illegal daycare”. Investigations of “illegal child care” allegations are routinely assigned to the local day care registrar when the modality of illegal care appears to be Family Day Care or School Age Child Care. When the daycare provider appears to be subject to licensing requirements, the complaint of illegal care is investigated by the regional office licensor. When both the enrollment agency and the registrar or licensor have a role, then both agencies must investigate the concerns relevant to their responsibilities.

3) Does the enrollment form require that the provider list their own child on page 3 of the enrollment packet? Would the provider have to list just the children in care, or all of the children that live in the household? If so, will this be updated in the new guidelines?

Answer: On the enrollment form (revision date 2006), providers are only required to list the children to whom the child care provider is providing child care services. The child care provider is not required to list other children living in the household.

4) If the enrollment agency serving Westchester County receives an enrollment packet for a Bronx parent at a Westchester location, does the packet have to be processed according to NYC timeframes?

Answer: The enrollment agency serving NYC is contractually required to expedite enrollment using specific timeframes which differ from those required for upstate enrollment agencies. Upstate enrollment agencies are not bound by the same timeframes as the enrollment agency serving NYC, however there is nothing that prohibits the agency from performing according to the expedited timeframes.
5) In the Guide to Enrollment (p. 37), it states under relative care, “...as soon as one non-relative child is in care, the care is NOT considered ‘relative’ care and the maximum number of children cannot exceed eight.” Does this mean that there is a limit in a FCC situation where the provider cannot have more than eight children at a time, even when the care is less than 3 hours per day?

Answer: No. Each situation is unique. There is no simple rule for determining whether a provider is overcapacity. Please refer to the Guide to Inspections, pages 12-13 for the exercise to use when determining whether a family child care provider is legally-exempt or is over capacity.

6) What if there are ONLY relatives within the 3rd degree of consanguinity children – is there a limit to the number of children who can be in care at one time?

Answer: There is no regulation which specifically limits the number of children who can be in care with a relative when the provider is related within the 3rd degree of consanguinity to a parent of each child. However, the enrollment agency must consider whether the provider is meeting all other enrollment requirements. For example, the enrollment agent should consider whether the provider could safely evacuate with all children in an emergency. The ages and capabilities of the children, competence of the provider and the layout of the child care site would be relevant. Add number

Why is using the online sex offender registry not a valid way to verify providers against the NYS Sex Offender Registry?

Answer: The Division of Criminal Justice’s (DCJ) online database does not include all known New York State sex offenders. Known New York State level one sex offenders and sex offenders awaiting assignment to a risk level are not listed on the website search tool. Information on level one and pending sex offenders is provided by phone contact with DCJS.

OCFS allows an Enrollment Agency to use an alternate method to determine whether the provider and other relevant persons are registered sex offenders in the NYS Registry only to the extent that the enrollment agency has established that the alternate method will provide a comprehensive search result which includes all levels of sex offenders and those pending a risk level assignment. It is the Enrollment Agency’s responsibility to make sure that the agency does not enroll any child care provider, any employee of the child care provider, any volunteer who has the potential for regular and substantial contact with children in care, and for providers of legally exempt family child care, household member listed on the New York State Sex Offender Registry.

7) Please clarify how many child welfare database requests should be made and how often those requests should be sent to the LDSS.

Within 10 days of the receipt of the provider’s completed enrollment package the EA must make a decision regarding temporary enrollment and request the appropriate checks for legally-exempt family and in-home child care providers from the appropriate local district.

If the results are not received by the date they are due, the EA informs the district that the results are overdue. Note that the district is required to return the results to the EA within 15 days of receiving the request for database check.
The EA should notify the local district in a manner mutually agreed upon of the names of providers whose results are overdue and those names should not be included in the same list of providers who are being referred for the first time or for their annual renewal check. Any notification to the district of overdue child welfare database results should be clearly labeled as such.