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PART 1: OVERVIEW OF THE ENROLLMENT PROCESS

A. COMMUNICATION BETWEEN THE ENROLLMENT AGENCY AND THE DISTRICT

The district has an immediate need to know the enrollment decisions made by the Enrollment Agency (EA). The EA must notify the district of any status changes resulting from a finding of imminent danger on the same day. For all other applicable actions concerning the enrollment of the provider, the EA must notify the district in a manner agreed upon by the district and the EA.

B. ENROLLMENT FORMS AND ATTACHMENTS

All requests for enrollment and attached forms must be recorded on the most recently revised version of the appropriate form. The following forms have been updated at this time:

- **OCFS-LDSS-4699**, Enrollment Form for Provider of Legally-Exempt Family Child Care and Legally-Exempt In-Home Child Care.
- **OCFS-LDSS-4700**, Enrollment Form for Provider of Legally-Exempt Group Child Care.
- **OCFS-LDSS-4699.1**, Employment of Minors Form. This form must be completed when the legally-exempt provider is under the age of 18 years.
- **OCFS-LDSS-4699.1A**, Employment of Minors, Information. This information explains limitations on minors’ employment.
- **OCFS-LDSS-4699.2**, Legally-Exempt In-Home Child Care Provider Agreement Form. This form must be completed when the provider cares for the child in the child’s home.
- **OCFS-LDSS-4699.2A**, Parental Responsibilities When Employing a Legally-Exempt In-Home Child Care Provider. This information describes the parents’ responsibilities when employing an in-home child care provider.
- **OCFS-LDSS-4699.3**, Legally-Exempt Provider Training Record Form. This form must be completed when the provider has completed 10 hours of training in the past year, and wants to receive an enhanced market rate.
- **OCFS-LDSS-4699.4**, Parental Acknowledgment. This form, or its equivalent, must be completed during the enrollment process when the parent wishes to employ a legally-exempt provider who has a criminal history or a day care enforcement history. It must also be used following a review of extenuating circumstances, when it has been determined that the provider may be enrolled.

C. ENROLLMENT INFORMATIONAL PACKAGE

The EA must dispense the **OCFS-7026**, Enrollment Information Package for Legally-Exempt Providers, to all providers upon the initial enrollment
determination, either temporary or upon full review, and also at re-enrollment. The OCFS-7026 replaces the LDSS-4812, which is now obsolete. This informational package contains:

- **Important Information When Caring For My Child** - A form with important information about the child, to be completed by the child’s parent.
- **Emergency Response Information Sheet** - An emergency information form for the provider to complete and post by each phone.
- **Food Program for Children in your Child Care Program** - Information about the New York State Child and Adult Care Food Program.
- **Exit Drills in the Home** - Tips for developing an emergency escape plan.
- **Preventing Child Abuse and Maltreatment** - Guidance on what to do if the provider suspects that a child is being abused or maltreated.
- **Health and Infection Control: Proper Diapering and Hand Washing Techniques.**
- **Where to Get Training and Technical Assistance** - A list of community resources.
- **Regional Offices.**
- **New York State Department of Health Immunization Schedule.**

D. **INITIAL ENROLLMENT- WHEDCO NYC**

When a child’s parent/caretaker is interested in selecting a legally-exempt child care provider, the district must give the enrollment form and attachments to the child’s parent/caretaker. The district must notify the parent/caretaker that the package must be submitted to the applicable EA where the child resides. The jurisdiction for the initial provider enrollment is the county where the child resides, even if financial responsibility for the child belongs to another social services district. The provider and parent/caretaker must complete the enrollment form and any required attachments in full and return it to the applicable EA.

1. **Enrollment Intake and CCFS Data Entry**

   A) **Determination of Packet Completeness**

   All enrollment agencies operating under the WHEDCO contract must review the enrollment package, including attachments, for completeness and enter basic enrollment information data in the Child Care Facility System (CCFS), on the same day that it is received, unless it is received after 4 p.m. If the enrollment package is received after 4 p.m., the enrollment agency must make the determination of completion and enter basic enrollment information into CCFS by 12 p.m. the next business day. Additionally, if the package is received “incomplete”, the EA must, on the same day of the determination of incomplete status, send the appropriate CCFS generated Notice of Incomplete Enrollment Form to the provider, with a copy to the parent and notice to district, advising of what information is missing. If the determination is made after 4 p.m., the EA must mail or give the appropriate CCFS generated letter to the provider and the parent by 12 p.m. on the next business day. The original enrollment package must be retained with the EA, and a photocopy of the incomplete pages sent.
The provider must be given 10 days to return the missing information/items. If the provider does not return the missing items within 10 days, the EA must send out the appropriate CCFS generated letter, *Notice of Withdrawal of Your Enrollment Request*, informing the provider that the enrollment status will be considered “Withdrawn” if missing materials are not received within 40 days of the receipt of the enrollment package. A copy of this letter is sent to the parent/caretaker and notification is given to the district. If the missing items are not received within 40 days, the status of the enrollment package is changed to “Withdrawn”, and the district is notified.

2. **Entry of Data into Legally-Exempt CCFS**

If the provider is currently enrolled with that EA, the EA updates the enrollment information. If the provider is actively enrolled with another EA, the new enrollment package must be referred to and processed by the EA that is currently responsible for the provider’s enrollment.

If the provider is not currently enrolled, then a new record is created in CCFS, and the basic information is entered. This must include:

- Provider name, Social Security Number (if provided on the enrollment form) and mailing address. (Please note the social security number is not a “required” item.);
- Site address, if different from the mailing address, and site phone number;
- Business information, including program type, and if applicable, certificate number;
- Primary paying county, and local county vendor ID number;
- Status of “Received-Incomplete” or “Received-Complete” and status effective date.

A) **NYC Specific Actions**

Further, the EA must notify the district of all applicable actions concerning the enrollment of the provider via the connection between CCFS and Automated Child Care Information System (ACCIS). The EA will notify Agency for Children Services (ACS) of “withdrawn” enrollment packets by stamping the Child Care Return Appointment notice Human Resources Administration (HRA) or the voucher (ACS) “withdrawn” and send the original with the parent (HRA) or mail/transmit it to ACS central.

In addition, the EA must electronically check the validity of the provider’s social security number.
B) CCFS Database Check to Verify Legally-Exempt Provider’s History of Day Care Enforcement

The EA must, on the same day that the enrollment packet is received (Unless it is received after 4 p.m.), conduct searches on CCFS to determine whether the provider is currently enrolled, licensed or registered, or if they have applied for and been denied a child day care license or registration or had a child day care license or registration suspended or revoked. If the packet is received after 4 p.m. the EA must verify the provider’s legally-exempt status by reviewing the number of children receiving care from the provider, and their schedules, to determine if the provider is legally-exempt from licensing and registration requirements, and then check CCFS to determine whether the provider is currently enrolled, licensed or registered, or if they have applied for and been denied a child day care license or registration or had a child day care license or registration suspended or revoked, by 12 p.m. on the next business day.

3. Preliminary Review and Decision-WHEDCO NYC

A) Review

All enrollment agencies operating under the WHEDCO contract must conduct a review of the enrollment packet and make a temporary enrollment decision on the same day that the packet is determined complete, unless the determination of completion is made after 4 p.m. If the determination of completion is made after 4 p.m., the enrollment agency must make the temporary enrollment decision by 12 p.m. on the next business day. In reviewing the completed enrollment packet to make a temporary enrollment decision, the EA must determine:

- Whether the provider is legally-exempt from the OCFS day care licensing and registration requirements and for care provided in NYC, the requirements of the NYC Department of Health, and

- Whether the completed home or facility safety checklist, or any of the attestations for health and safety requirements, raises any immediate concerns.

If the enrollment packet raises immediate concerns, the EA must deny enrollment or complete a full review before determining enrollment.

Additionally, when the completed home or facility safety checklist raises concerns, the EA must work with the legally-exempt provider to quickly resolve the areas of concern.

When a health and safety issue is identified which precludes the provider from enrollment, the EA must immediately deny enrollment. Such health and safety issues include:

- Conviction of a crime against a child or other violent or serious crimes (category A or B crime, as specified in Section VI. C. 3. Determining the Category of the Crime) by the provider or the provider’s employee,
volunteer or, when care is not provided in the child’s home, provider’s household member,

► Provider’s history of termination of parental rights,

► Provider’s history of court ordered removal of a child under Family Court Act Article 10,

► Provider’s history of day care enforcement in the high risk category.

The parent/caretaker is not eligible to be enrolled as the provider. Whenever the child care provider is the “other” parent/caretaker and/or the provider is living in the child’s home, the EA must request the local district to determine whether the provider is part of the Child Care Services Unit (CCSU), as defined in 18 NYCRR Part 415, or the TA filing unit and can be an eligible provider for the child care subsidy program. Parent/caretakers are not eligible to be paid as legally-exempt providers for children for whom they are responsible. Additionally, members of the TA filing unit and members of the CCSU, except for siblings, are not eligible providers. The district must promptly notify the EA of its findings. The EA must not enroll a child care provider if the district determines that the provider is not an eligible provider.

B) Documentation
On the same day as receiving the completed enrollment package, and making a temporary enrollment decision, the EA must enter into CCFS all appropriate data and information. This includes, but is not limited to:

(1) Enrollment Status:
   a. Received Complete: The enrollment status will remain at “Received-Complete” if the decision is to delay the enrollment decision pending full review. See page 11.
   b. Temporarily Enrolled
   c. Denied

(2) Status Date
If the enrollment status has changed, update the status date.

(3) Period Start Date
For status of “Temporarily Enrolled”, the enrollment period start date must be completed.

(4) Initial Opened Date
For status of “Temporarily Enrolled”, the initial opened date must be completed.

(5) Enrollment Requirements:
The EA’s determinations based on the review of the attestations on the enrollment form pertaining to:

a. Legally Exempt Verification  
b. Medication Administration Status  
c. Home/Facility Safety Checklist and Date  
d. Day Care Enforcement History  
e. Termination of Parental Rights  
f. Court Ordered Article 10 Removal  
g. Criminal History  

Note: Each known reason for denial must be documented in CCFS.

(6) OTHER  
a. CACFP participation date must be entered, if applicable.  
b. 10 Hours of Training determination must be entered.

C) Decision and Notification  
All enrollment agencies operating under the WHEDCO contract must conduct a review of the enrollment packet and make a temporary enrollment decision on the same day that the packet is determined complete, unless the determination of completion is made after 4 p.m. If the determination of completion is made after 4 p.m., the enrollment agency must make the temporary enrollment decision by 12 p.m. on the next business day.

On the same day that a WHEDCO enrollment agency has determined an enrollment packet is complete, and made their temporary enrollment decision, they must also generate in CCFS the appropriate notices of its temporary enrollment decision. The EA must mail these notices to the providers and parents by the next business day after the date the notice is generated in CCFS.

(1) Decision to Temporarily Enroll-  
The EA must enroll a provider on a temporary basis if the provider is legally-exempt from the New York State child day care licensing and registration requirements AND a review of the completed checklist and the documentation of, and attestations for, the health and safety requirements in the enrollment package does not raise any immediate concerns.

The EA must generate in CCFS the appropriate notices to be mailed by the following business day.

a. To the provider:  
   • 2 copies of the CCFS generated Notice to Provider of Temporary Enrollment Legally-Exempt Child Care. The 2nd copy is for the provider to give to CACFP. (If the notice of temporary enrollment
is generated in CCFS after 4 p.m., all enrollment agencies operating under the WHEDCO contract must send the OCFS-7026 by 12 p.m. on the next business day.)

- OCFS-7026, Enrollment Information Package for Legally-Exempt Providers, and

A list of CACFP sponsors.

b. To the parent:

- The CCFS generated Verification to Parent of Temporary Enrollment of the Legally-Exempt Child Care Provider. The EA must keep a copy of all notifications sent to the provider and parent.

c. The EA notifies the district of the decision in a manner agreed upon between the EA and the district.

d. Additionally, once temporary enrollment has been granted, all enrollment agencies operating under the WHEDCO contract must send the provider’s W-9 and Terms & Conditions form to the payment vendor, YMS Management Associates, Inc. Further, once a provider has been temporarily enrolled, the EA must scan and index the enrollment packet and necessary documents into the HRA Viewer.

(2) DECISION TO DENY ENROLLMENT-

The provider does not meet one or more requirements for enrollment.

According to the Health and Safety Requirements for Providers Section of this Guide, the provider must be denied enrollment when the attestations state:

- A criminal history that includes convictions for a crime (or attempt to commit a crime) against children.

The provider must be presumptively denied enrollment when the attestations state a history including any of the following risk factors:

- Termination of parental rights,
- Court ordered Article 10 removal,
- Criminal history that includes convictions for violent or other serious crimes, not against a child.

Please note that a provider who has been denied enrollment and whose basis for denial is “presumptive” has the right to request a review of extenuating circumstances. For additional information on extenuating circumstances, refer to Part 1, F; Part 2, Section V, F and Part 2, Section VI, C, 6 of this Guide.
If the EA has, at this point, received other results that preclude enrollment, such as those from the check of the New York State Sex Offender Registry or from an additional local standard, the EA must promptly deny enrollment.

The EA must generate in CCFS the appropriate notices to be mailed by the following business day.

- The EA sends the provider, with a copy to the parent, the CCFS generated Notice of Denial of Enrollment. Due to confidentiality issues, the EA should not disclose to the parent that a provider has been denied enrollment specifically due to a history of termination of parental rights or court ordered removal of a child. This reason is purposely omitted on the Notice of Denial of Enrollment. The EA may give more specific information regarding the reason for denial to the provider only.
- The EA must immediately notify the district.

When the district is notified of the denial of an enrollment, the district must issue the OCFS-LDSS 4781, Notice of Intent to Change Child Care Benefits, to inform the parent that the provider’s enrollment package has been denied and to advise the parent that he or she must select another child care provider. When a legally-exempt child care provider is denied by the EA, the legally-exempt child care provider cannot be reimbursed by the district for any care provided.

(3) DECISION TO DELAY ENROLLMENT DECISION PENDING FULL REVIEW-
When health or safety concerns are indicated in any of the attestations but do not require denial or presumptive denial, then the EA must not temporarily enroll the provider.

- The provider’s enrollment status in CCFS remains at “Received-Complete”.
- The EA must generate in CCFS the Acknowledgment of Receipt of Enrollment Package and mail this by the following business day to the provider and the parent.
- The EA also notifies the district.

For these providers, the EA must conduct an evaluation of the identified health and safety concern(s) according to this Guide. Additionally, the results from all database checks and, if applicable, the review of additional standards must be reviewed before the provider may be considered for full enrollment.

4. **Enrollment Requirements Determined by the District-WHEDCO NYC**
On the same day as receiving the provider’s completed enrollment package, the enrollment agencies operating under the WHEDCO contract must make a decision regarding temporary enrollment and request the following checks for legally-exempt family and in-home child care providers from the appropriate
district. If the results are not received by the date they are due, the EA must inform the district. A copy of these initial requests and any follow-up requests made when results are overdue must be maintained by the EA.

A) Local District Child Welfare Database

By the next business day after the initial enrollment of a legally-exempt family or in-home child care provider (or the notice of acknowledgement of enrollment packet is generated in CCFS), and annually thereafter, the enrollment agencies operating under the WHEDCO contract must request that a local child welfare database check is done by the appropriate district. This check is done to determine if the legally-exempt family or in-home child care provider has ever had a child removed by court order under Family Court Act Article 10, and if the legally-exempt family, or in-home child care provider has ever had his or her parental rights terminated under Social Services Law 384-b. The search is conducted by the district where the provider currently resides.

- The search is conducted only on the legally-exempt family or in-home child care provider. Employees, volunteers or household members of the legally-exempt family or in-home child care provider are not subjects of this database check.
- Only one local child welfare database check is done annually, per enrollment. When a provider has a significant change which requires a new enrollment, such as change of modality or location, a separate child welfare database check must be done. The results of each check are limited to the district in which the provider resides. They are not statewide.

In making the request, the EA must give the following information related to the legally-exempt family or in-home child care provider:

- Full name
- Maiden name, and/or other names by which the legally-exempt family or in-home child care provider is known
- Date of birth
- Address
- Social security number, if known. Please note that this information may not be available as it is not required to be provided as a condition of enrollment.
The requests may be made in the form agreed upon by the district and the EA. A sample format is shown below.

<table>
<thead>
<tr>
<th>REQUEST FOR LOCAL CHILD WELFARE DATABASE CHECK</th>
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<tbody>
<tr>
<td>18 NYCRR SECTION 415.4(f)(8)(ii)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NAME OF LEGALLY EXEMPT IN-HOME OR FAMILY CHILD CARE PROVIDER</th>
<th>OTHER NAMES KNOWN BY (FOR EXAMPLE, MAIDEN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE OF BIRTH</td>
<td>SOCIAL SECURITY NUMBER, IF AVAILABLE</td>
</tr>
<tr>
<td>ADDRESS</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REQUESTED BY</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME</td>
</tr>
<tr>
<td>--------------</td>
</tr>
<tr>
<td>ENROLLMENT AGENCY</td>
</tr>
</tbody>
</table>

If needed to accurately match the child care provider to a database record, the district may request additional information from the EA, such as names of provider’s household members. **However, the district cannot conduct the local child welfare database check on or share information pertaining to individuals other than the legally-exempt family or in-home child care provider.**

The district must conduct the local database check and return the results to the EA within 15 days of the receipt of the request, as specified under Part I, D “Initial Enrollment, Full Review, District Responsibilities” of this Guide.

**B) Approved Additional Local Standards**

Upon the written approval by OCFS, a district may impose additional requirements on child care providers providing subsidized child care services. Each EA must be aware of whether the districts it works with have any approved additional local standards so that the EA can request review of the additional local standards as appropriate. All enrollment agencies operating under the WHEDCO contract must also request that the district review the provider against any approved additional local standards, when applicable, at the same time as requesting a local child welfare database check.

- The provider must meet the additional local standard(s) for the **district that issues the child care subsidy payment**. This is usually the parent’s county of residence, but not always. For example: A parent and child are permanent residents of Saratoga County, have a Temporary Assistance case, and the parent is receiving substance abuse treatment in Jefferson County. Child care is needed during the day while the parent attends treatment. In this case, the child care subsidy is paid by Saratoga County, so its additional local standards, if any, apply to the provider caring for this parent’s child.
• When multiple districts are issuing a child care subsidy for a legally-exempt child care provider, a determination is made by EACH district regarding its own additional local standards.

• When a provider does not meet the approved additional standards for a district, he or she cannot be an eligible provider for that specific district. This means it is possible that a provider may be eligible to provide subsidized child care for one district, but not another.

5. Full Review
Within 40 days of receipt of the completed enrollment package, the EA must complete a full review of the enrollment package and determine whether the provider meets all the requirements for enrollment. A decision must be made and the provider, parent and district informed.

A) District Responsibilities
Within 15 days of receiving the request:

1.) The district must conduct a search of its local child welfare database to determine whether the provider has ever had:

   a. A court ordered removal under Family Court Act (FCA) Article 10 and/or

   b. A termination of parental rights under Social Service Law 384-b or equivalent authority.

   The district must determine whether any such provider is the legally responsible person for any court ordered Article 10 removals or termination of parental rights

2.) The district must determine whether the provider meets the requirements for enrollment according to this Guide. Refer to Part 2, Section V Health and Safety Requirements for Providers, Evaluating Provider History and Risk.

3.) The district must inform the EA of the results, in writing, within 15 days of receiving the request, whether the enrollment requirements pertaining to the provider’s history of court ordered Article 10 removal and the provider’s history of termination of parental rights are met or not met. The results have 2 components: one for the court ordered Article 10 removal and one for the termination of parental rights.

   • If a provider had a child removed from his or her care by court order under Article 10, and the provider was the respondent in the proceeding, the legally-exempt child care provider does not meet the enrollment requirement.

   • If a person has had his or her parental rights terminated pursuant to SSL 384-b, and the provider was the respondent in the proceeding,
the legally-exempt child care provider does not meet the enrollment requirement.

4.) Any provider who is denied enrollment by the EA, because he or she does not meet the enrollment requirement pertaining to history of removal of a child by court order under FCA Article 10 or termination of parental rights is allowed to request a review of extenuating circumstances. The provider must send the written request for a review of extenuating circumstances to the EA, who will forward all relevant documentation to the district for review. The review of extenuating circumstances as it pertains to child welfare issues is discussed in:

- Part 1, Section F, Review of Extenuating Circumstances
- Part 2, Section V, F, Review of Extenuating Circumstances

5.) The recommended written format for sharing results with the EA is shown below.

<table>
<thead>
<tr>
<th>RESULTS OF LOCAL CHILD WELFARE DATABASE CHECK</th>
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<tbody>
<tr>
<td>18 NYCRR 415.4(f)(8)(ii)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NAME OF CHILD CARE PROVIDER</th>
<th>DATE OF BIRTH</th>
<th>DATE RECEIVED</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENROLLMENT AGENT</td>
<td>ENROLLMENT AGENCY</td>
<td></td>
</tr>
</tbody>
</table>

RESULTS

These results are based on a search of ______________ County’s local child welfare database.

1. Court Ordered Removal/Placement under Family Court Act Article 10:
   - [ ] Meets enrollment requirement.
   - [ ] Does NOT meet enrollment requirement.

2. Termination of Parental Rights:
   - [ ] Meets enrollment requirement.
   - [ ] Does NOT meet enrollment requirement.

3. Date of Child Welfare Database Search: ____________________________

COMPLETED BY

<table>
<thead>
<tr>
<th>SIGNATURE OF DSS PERSON COMPLETING THIS FORM</th>
<th>DATE RESULTS SENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME (PLEASE PRINT)</td>
<td>PHONE</td>
</tr>
<tr>
<td>COUNTY</td>
<td></td>
</tr>
</tbody>
</table>

Alternatively, a district may choose to use a spreadsheet format, containing the values shown above specific to each legally-exempt family or in-home child care provider, to return results for multiple legally-exempt family or in-home child care providers at one time.
Districts must limit the information shared with the EA to that specified above.

The EA must presumptively deny enrollment to any provider who has had his or her parental rights terminated and/or was the respondent in an Article 10 court ordered removal or placement of a child. Upon receiving notification of a denial on this basis, the provider may request a “Review of Extenuating Circumstances” to determine if an exception can be made allowing him or her to provide child care. Such review would be conducted by the local district. Please refer to Part 2, Section V, F, Review of Extenuating Circumstances, for additional information on the review process.

6.) Within 30 days of the date of the request for review of additional local standards, any district that has State approved additional local standards must evaluate the provider for compliance with the additional local standards and notify the EA, in writing, whether or not the additional local standards have been met. The district must return the results to the EA within the designated time frames.

Evaluation and monitoring of OCFS approved additional local standards for enrollment is the responsibility of the district. The district may perform the additional local standard or contract with another agency to perform the additional local standard. Districts with OCFS approved additional local standards must establish a process for the sharing of information related to the additional local standard with the EA.

However, this varies when the additional standard is for a criminal background check to verify the provider’s criminal history information given on the enrollment form. The local district is responsible for arranging the criminal background check and making sure the EA receives any history of criminal convictions within the allotted time frame. The EA is responsible for evaluating any criminal history found and making the enrollment determination, as it pertains to the criminal history record.

B) Enrollment Agency Reviewing Responsibilities

Within 40 days of receipt of the complete enrollment package, the EA must conduct a full enrollment review, including assessment of the specific health and safety concern(s). The risk factors found in reviewing the enrollment package must be evaluated according to the details specified in the following pages of this Guide. The EA must evaluate the results and, using this Guide to evaluate risk, make a determination whether the provider may be considered for enrollment. The EA receives the results of all database checks and, if applicable, the review of additional standards before a final approval for enrollment can be made.

1.) The EA must thoroughly review, in accordance with this Guide, any health and safety concern indicated in the attestations that does not preclude enrollment.
2.) The EA must conduct a review of the CCFS license and registration database to determine whether or not a family or in-home provider has applied for and been denied an initial license or registration, or had his or her license or registration to operate a child day care program denied, revoked or suspended. This determination is recorded in CCFS.

3.) The EA must call the New York State Sex Offender Registry at 1-800-262-3257 to determine whether a legally-exempt family or in-home child care provider, the provider’s employee, volunteer and, when care is provided in a home other than the child’s home, household member age 18 years or over is a registered sex offender. A provider may not be enrolled if the provider or other person named above is listed on the New York State Sex Offender Registry. This determination must be recorded in CCFS.

4.) The EA must review and maintain in its files the written results of the child welfare database checks received from the district. Any provider who does not meet the requirements for the local child welfare database check cannot be enrolled. If the EA does not receive the results of the child welfare database check within the designated 15 day time frame, the EA must notify the district. The status of the requirement is documented in CCFS. **The EA cannot complete the full review and make a full enrollment decision until the results from the district are received.** This may result in providers retaining an enrollment status of “Temporarily Enrolled” for an indeterminate amount of time.

5.) The EA must review and maintain in its files the written results of the additional local standard review. Any provider who does not meet the requirements for the additional local standard cannot be enrolled. If the EA does not receive the results of the additional local standard within the designated 30 day time frame, the EA must notify the district. The status of the requirement is documented in CCFS. **The EA cannot complete the full review and make a full enrollment decision until the results from the district are received.** This may result in providers retaining an enrollment status of “Temporarily Enrolled” for an indeterminate amount of time.

6. **Enrollment Agency: Documentation, Full Decision and Notification**

Within 40 days of receiving the complete enrollment package the EA must determine whether the provider is eligible for enrollment, document the decision in CCFS, and generate the necessary notifications. Such notifications must be mailed to the provider and parent by the next business day after the notices are generated. The EA must also notify the district in the manner agreed upon by the EA and the district.

   A) **Documentation**

Within 40 days of receiving the complete enrollment package, the EA must enter into CCFS all appropriate data and information. This includes, but is not limited to:
(1) **Enrollment Status**

   a. Approved
   
   b. Denied
   
   c. Closed: Voluntary
   
   d. Closed: Terminated
   
   e. Withdrawn
   
   f. Temporarily Enrolled

(2) **Status Date**

When the enrollment status changes, the status date must be updated to reflect the date associated with the status.

(3) **Period Start Date**

If the provider was Temporarily Enrolled, the enrollment period start date remains. If the provider is changing from “Received-Complete” to “Approved”, the enrollment start date must be completed.

(4) **Initial Opened Date**

For a status of Temporarily Enrolled or Approved, the initial opened date must be included.

(5) **Enrollment Requirements**

Document the EA’s determinations of the provider’s compliance and/or noncompliance with all enrollment requirements, including those previously mentioned for temporary enrollment and updating or adding the following:

- Day Care Enforcement History, adjusted, if appropriate, per CCFS verification
- Termination of Parental Rights, adjusted, if appropriate, per child welfare database check
- Court Ordered Article 10 Removal, adjusted, if appropriate, per child welfare database check
- New York State Sex Offender Registry Check

\[\square\]

1 This status would only be chosen if the provider’s enrollment status was “received-complete”, the EA had not received the results from the local district for the child welfare database check and/or the additional local standards, the provider met all other enrollment requirements and the EA was required to make a determination as the 40 day time period for reviewing the enrollment was ending.
County Requirements Met (OCFS approved additional local standards)

All Household members and/or Staff Meet Approval

Each known reason for denial or presumptive denial must be documented in CCFS.

(6) OTHER

- CACFP participation date must be entered, if applicable.
- 10 Hours of Training determination must be entered.

B) Decision and Notification

Within 40 days of receiving the complete enrollment package, the EA makes an enrollment decision and issues appropriate notifications. The EA must keep a copy of all notifications sent to the provider and parent.

If the EA has not received the results from the local district within 40 days of receiving the complete enrollment package, the EA must proceed with documenting all enrollment requirements in CCFS and evaluate any providers with a status of “Received-Complete” for Temporary Enrollment. Providers who have a status of “Temporarily Enrolled” will retain that status until the results from the district are received.

The risk factors found in reviewing the enrollment package or results of database checks must be evaluated according to the details specified in Part 2 of this Guide. The EA must not enroll any provider who does not meet the enrollment requirements. At any point in the process when the EA becomes aware that a health and safety issue exists that precludes enrollment, the EA must promptly proceed with making the decision to deny enrollment.

There may be situations where a legally-exempt child care provider had been temporarily enrolled and there is indication that the legally-exempt child care provider provided a false attestation or inaccurate or incomplete information on the enrollment package. The response by the EA will depend on whether the provider is found to be in violation of other regulations and if the false statement was knowingly made in the enrollment packet. For example, the legally-exempt child care provider may not have indicated that there had been a termination of parental rights or a court ordered removal of a child under Article 10 of the FCA, when in fact the database check revealed that there was a termination of parental rights or court-ordered removal of a child. Regulations preclude enrollment of this provider, and in this situation, the EA will terminate enrollment and send the appropriate notice to the legally-exempt child care provider, parent and district. The district must provide notice to the parent/caretaker that payment for child care services rendered by the legally-exempt child care provider is suspended and the parent/caretaker must select another child care provider. Additionally, if payments were made, the district must determine the amount of overpayment, take necessary action to determine if fraud exists and collect such overpayment as detailed in 05-OCFS ADM-03.
1.) **Denial**-If the provider does not meet one or more of the enrollment requirements:

The EA sends the provider the CCFS generated **Notice of Denial of Enrollment**, with a copy to the parent. Due to confidentiality issues, the EA must not disclose to the parent that a provider has been denied enrollment specifically due to a history of termination of parental rights or court ordered removal of a child. This reason is purposely omitted on the **Notice of Denial of Enrollment**.

The EA immediately notifies the district of the decision.

When the denial determination is based on a “presumptive denial”, the provider may request the EA conduct a review of extenuating circumstances. When the reviewing agency determines an exception can be made to the presumption against enrollment, the EA must enroll the provider if all other enrollment requirements are met. However, if the EA has not conducted a **complete** review process, a full review must be done at this time. The EA may only enroll a provider who meets **ALL** enrollment requirements.

Additional information on the review of extenuating circumstances is found in Part 1, Section F, Review of Extenuating Circumstances.

For child welfare and day care enforcement issues, refer to Part 2, Section V, F, Review of Extenuating Circumstances.

For criminal history issues, refer to Part 2, Section VI, C, 6, Extenuating Circumstances Review.

2.) **Approval of Enrollment**-If the provider meets all enrollment requirements:

The EA enrolls a provider only if the provider meets all health and safety requirements. The EA sends the provider 2 copies of the CCFS generated **Notice to Provider of Enrollment Legally-Exempt Child Care**. The second copy is for the provider to give to CACFP.

If the provider was not temporarily enrolled prior to the full enrollment decision, the EA must also send the OCFS-7026, **Enrollment Information Package for Legally-Exempt Providers**.

The EA sends the parent the CCFS generated **Verification to Parent of Enrollment Legally-Exempt Child Care** and notifies the district of the decision.

3.) **Closed: Voluntary**-When a provider is temporarily enrolled, and cannot be fully enrolled because the associated parent/caretaker has been determined ineligible for a child care subsidy, the enrollment status becomes “Closed-Voluntary”. The EA sends the provider and parent/caretaker the CCFS generated **Notice of Enrollment Closing**. The EA must notify the district of the decision immediately.
4.) **CLOSED: TERMINATED**-When a provider is temporarily enrolled, and cannot be fully enrolled because the provider does not meet the enrollment requirements, the enrollment status becomes “Closed-Terminated”. The EA sends the provider and parent/caretaker the CCFS generated Notice of Termination. The EA must immediately notify the district of the decision.

5.) **WITHDRAWN**-When a provider has submitted a complete enrollment package, has not been temporarily enrolled, and cannot be enrolled because the parent/caretaker is not eligible for a child care subsidy, the enrollment status becomes “Withdrawn.” The EA sends the provider the CCFS generated Notice of Withdrawal of Enrollment Request, with a copy to the parent/caretaker. The EA immediately notifies the district of the decision.

6.) **TEMPORARILY ENROLLED**-The provider’s status may be changed from “Received-Complete” to “Temporarily Enrolled” under the following conditions:

► the EA is required to make a determination as the 40 day time period for reviewing the enrollment was at an end,

► the EA has not received the local district results for review of approved additional standards and/or the results of the local child welfare database check, and

► the provider has met all other enrollment requirements.

This will allow the provider to be eligible to receive payment. The provider’s status will remain at “Temporarily Enrolled” until the district results are received. At that time, the EA will evaluate and make a final enrollment determination.

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**C. Enrollment Period - (This subsection updated 12/2010)**

The provider is enrolled for a 12 month period, the beginning of which is denoted by the Period Start Date. The Period End Date is automatically calculated by CCFS to occur 12 months from the Period Start Date. The Initial Opened Date is generally synchronized with the earliest Period Start Date.

1) **Determining the Enrollment Period Start and Initial Opened Dates**

Upon the first change of the provider enrollment status to an eligible, “enrolled” status, CCFS provides a default Period Start Date for the provider drawn from the system’s “First Received Date”, which is the earliest of the “Received-Incomplete” or Received-Complete” status effective date(s).

The EA must adjust the Period Start Date as follows:
• When the local district has already provided[^2] the EA with the Child Care Subsidy Start Date, which is within 60 days of the date the enrollment form was first received, enter the Child Care Subsidy Start Date in CCFS as both the Period Start Date and Initial Opened Date. However, if the Child Care Subsidy Start Date is greater than 60 days prior to the “First Received Date”, then enter the Child Care Subsidy Start Date as the Initial Opened Date and, leave the default Period Start Date unchanged or set it to a contemporaneous date.

• When the care start date reported by the provider/parent on the enrollment form is within 60 days of the date the enrollment form was first received, enter the given care start date in CCFS as both the Period Start Date and Initial Opened Date. However, if the care start date is greater than 60 days prior to the “First Received Date”, then enter the Child Care Subsidy Start Date as the Initial Opened Date and, leave the default Period Start Date unchanged or set it to a contemporaneous date.

2) Inform the parties

The EA notifies the provider and parent using the appropriate CCFS generated notice. The EA notifies the district by issuing a copy of the appropriate CCFS generated notice or by other means, as agreed.

3) Local District Request for Review of Provider Eligibility Backwards

When the provider has been providing care prior to the Period Start Date and certain other conditions are met, the district may request the EA extend of the provider’s enrollment backwards to the Child Care Subsidy Start Date. The local district must promptly upon notification of the Period Start and/or Initial Opened Dates request this action, in writing, using the model form, Local District Request for Eligibility Review to Extend Enrollment Period for Legally-Exempt Child Care Provider, or a local equivalent.

4) Changes to the Initial Opened Date

Upon receipt of such district request by the EA, the EA must review existing provider information, including, but not limited to, the enrollment form, CCFS and file notes, to determine if there were any known factors that would have precluded the provider from being continuously eligible back to the requested date. If there were no health or safety issues known to the agency that would preclude enrollment, the provider’s eligibility can be extended. Examples of factors that preclude extension of the enrollment include, but are not limited to: a sex offender living in the provider’s home, a stairway collapse in the residence where care is provided, the provider had an employee that was convicted of a category B crime, and, the provider had a previous enrollment terminated and the provider had not yet corrected the non-compliance.

The EA then takes the following action:

1. If there are known health and safety factors that would have precluded the provider’s eligibility during all of the specified period:

   The EA finds the provider ineligible for the extension, and informs the local district using the Local District Request for Eligibility Review to Extend Enrollment Period for Legally-Exempt Child Care Provider or local equivalent. No change is made to either the Initial Opened or Period Start Dates.

2. If there are no known health and safety factors that would have precluded the provider’s continuous eligibility during the specified period:

   The EA finds the provider eligible for the extension and:

[^2]: Some districts have a mechanism in place for informing the EA of this date by recording it on the enrollment form that is given to the parent.
The EA changes the Initial Opened Date in CCFS. The EA is not required to notify the provider and parent of this change.

The EA notifies the LD either through return of the Local District Request for Eligibility Review to Extend Enrollment Period for Legally-Exempt Child Care Provider (or local equivalent) or by copy of the appropriate notice sent to the provider and parent.

3. If there are known health and safety factors that would have precluded the provider’s continuous eligibility for a portion of the specified period:

The EA determines to what point in time it is appropriate to extend the provider’s eligibility continuously backwards. The EA makes changes in CCFS and issues notifications as described in number 2, above.

E. PROVIDER TRAINING AND ENHANCED MARKET RATE

The enhanced market rate is available for a provider of legally-exempt family child care and in-home child care that has submitted appropriate documentation and been approved by the EA. The documentation must show he or she has completed 10 or more hours of training annually in the areas set forth in section 390(a)(3)(b) of the Social Services Law. To receive the enhanced market rate beyond the 12-month period, the provider must complete an additional 10 or more hours of training annually and submit documentation to the EA.

The EA must verify and determine whether to approve the additional training, document the decision in CCFS, and promptly notify the district. For enrolling or re-enrolling providers, the decision is made as part of the enrollment review. For providers who submit documentation after the enrollment or re-enrollment decision, the decision regarding approval of the training must be made within 10 days of receiving the request from the provider.

When the district is notified by the EA that a legally-exempt family child care or in-home child care provider has completed 10 or more hours of training, then the provider is eligible to receive the enhanced market rate for a period of 12 months, on or after August 31, 2006. When the eligibility determination for the enhanced rate is made concurrently with the enrollment decision, the district may make the enhanced market rate effective on the enrollment start date. In any event, the district must always apply the enhanced market rate no later than the beginning of the first full month following the approval by the EA of the enhanced rate. The district must send the required notice, OCFS/LDSS-4781 Notice of Intent to Change Child Care Benefits, to the parent/caretaker.

For those cases in which the district has not been notified by the EA that a legally-exempt family child care or in-home child care provider is eligible for the enhanced market rate, districts must apply the standard market rate.

F. REVIEW OF EXTENUATING CIRCUMSTANCES

A provider may request a review of extenuating circumstances when a provider has been denied enrollment due to a history of:

- Court ordered Article 10 removal,
- Termination of parental rights,
- Day care enforcement action,
Criminal convictions which are designated as Category B or C crimes in this Guide, Part 2, Section VI, C, 3, Determining the Category of Crime. Providers listed on the New York State Sex Offender Registry cannot be enrolled and are not eligible for an extenuating circumstances review.

The review process is as follows.

1.) The provider submits the request to the EA for a review of extenuating circumstances.

2.) The EA receives the written request for the exception to the denial of enrollment to be made and written explanation of extenuating circumstances. Extenuating circumstances may include unusual circumstances surrounding the original incident and/or factors that successfully resolve the underlying causes and tend to eliminate risk. If the provider has also been denied for any non-reversible reason, the review of extenuating circumstances does not proceed. The review is initiated once the EA has verified that the parent/caretaker still wishes to use the provider and that the parent/caretaker has reviewed the provider’s descriptive statement submitted with the enrollment packet.

3.) The EA changes the provider’s CCFS enrollment status to reflect the review of extenuating circumstances status, and determines which agency(ies) will be involved with the review.

4.) Any extenuating circumstances review pertaining to court-ordered Article 10 removals or termination of parental rights must be sent to the district for review and determination. The EA must send the district the request for extenuating circumstances review; a copy of the enrollment form, all attachments, and written summaries; the explanation of the extenuating circumstances, if available; and any other relevant information. The district must conduct the review according to Part 2, Section V, F, Review of Extenuating Circumstances, of this Guide and notify the EA that the review whether the provider meets the enrollment requirement(s).

5.) The EA conducts the review of extenuating circumstances for any presumptive denial pertaining to criminal histories or the denial, revocation or suspension of a day care program’s license or registration. For criminal history issues, refer to Part 2, Section VI, C, 6, Extenuating Circumstances Review, of this Guide. For denial, revocation or suspension of a day care program’s license or registration, refer to Part 2, Section V, F, Review of Extenuating Circumstances.

6.) The reviewing agency must determine whether an exception could be made to the presumption against enrollment with regards to the specific requirement(s) it is reviewing. Whenever the reviewing agency determines that the provider now meets the particular requirement for enrollment, the reviewing agency must obtain the signed OCFS-LDSS-4699.4, Parental Acknowledgment form.

7.) The EA receives the relevant determinations, if any, from the DSS, and makes the final enrollment determination and notifications. When the reviewing agency has made an exception to the presumption against enrollment, the EA must enroll the provider, if all other enrollment requirements are met. However, if the EA has not conducted a complete review process, a full review must be done at this time. The EA may only enroll a provider who meets ALL enrollment requirements.
G. PAYMENT ISSUES (THIS SUBSECTION UPDATED 12/2010)

1) Payment Issues

Request for Eligibility Review to Extend Enrollment Period

The EA determines the provider's eligibility to be a legally-exempt child care provider and informs the district. The district makes the child care subsidy case eligibility decisions and promptly informs the EA of its decision. Payment must not be issued unless the district has established the family's eligibility for child care subsidy AND the EA has approved for the provider's enrollment, either full, temporary, partial, etc.

If the legally-exempt child care provider has been providing child care prior to the actual Initial Opened Date determined for the provider's enrollment, and the district intends to issue subsidy payment for child care provided prior to the Initial Opened Date selected by the EA, the district must inform the EA of the Child Care Subsidy Start Date immediately following the first notification from the EA that the provider is either temporarily enrolled, partially approved or approved, and request the EA determine whether the provider’s enrollment may be extended backwards to the desired date. The local district uses the Local District Request for Eligibility Review to Extend Enrollment Period for Legally-Exempt Child Care Provider model form or the local equivalent for this purpose. Timeliness is important as the Child Care Facility System will not allow date changes beyond certain time periods. If the district does not promptly notify the EA of the need to adjust the Initial Opened Date, then the payments made by the district may be ineligible for State reimbursement.

The Child Care Subsidy Start Date is determined by the district as follows:

1. For low income families eligible for a transitional child care guarantee, payment can begin after the month in which the family's TA case closed or, for those who chose child care in lieu of TA, the month after the family is no longer financially eligible for TA.

2. For low income families not eligible for the transitional child care guarantee and when the determination of eligibility for a child care subsidy was made within 30 days of the date of application, payment can go back to the date of application.

3. For TA applicants and recipients eligible for a child care guarantee, payment may go back to the date the parent was required by the district to participate in a required activity.

4. For TA recipients eligible for a child care guarantee, payment may go back to the date the parent was engaged in work as defined by the district.

5. For TA recipients not eligible for a child care guarantee, payment may go back to the date the parent was participating in an activity approved by the district.

6. For families for whom a court has ordered the district to pay for child care services, payment can go back to the date ordered.

Upon receipt of the request, EA then reviews known information and determines whether the provider’s enrollment can be extended and, if so, to what extent. The EA notifies the provider and parent using the appropriate CCFS generated notice only if the Period Start Date is adjusted. The EA notifies the local district of its decision using the Local District Request for Eligibility Review to Extend Enrollment Period for Legally-Exempt Child Care Provider model form or the local equivalent.

3 CCFS freezes the Period Start Date 30 days after the Period Start Date first appears in CCFS

4 CCFS will not allow the Period Start Date to be reset to a date that is more than 60 days prior to the First Received Date.
Impact of Local District Delays on Enrollment and Payment

If the district does not return the results of the local child welfare database check or the additional local standards review within the timeframes required for the EA to make a timely enrollment decision, and the child care provider has met all other enrollment requirements, the legally-exempt child care provider’s status will progress to “partial approval”. The district cannot choose to withhold payment for care given by “temporarily enrolled” or “partially approved” legally-exempt child care providers. The final enrollment decision will be made by the EA when the district results are received. OCFS may revoke any additional local standard that causes a substantial delay in the enrollment process on a regular basis.

2) Required Notification to the EA of Relevant Case Activity

The district must notify the EA when an enrolled provider stops caring for a subsidized child. The EA will change the provider’s enrollment status to “Inactive”; however, the provider’s enrollment period does not close at that time. The change to “inactive” benefits the EA, the district, the provider and parents.

- Informs the EA that the Family Child Care provider is not currently caring for subsidized children and should not be selected for an inspection.
- Allows the provider to quickly reactivate for the same family.
- Allows the provider to activate for a subsequent family with an abbreviated process.

If, at the end of the 12 month enrollment period, the provider is not caring for a subsidized child, the status will be changed to “Closed-Voluntary”.

H. COORDINATION WITH THE CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

The EA is required to conduct on-site inspections of at least 20% of the currently enrolled legally-exempt family child care providers annually. Legally-exempt family child care providers who are actively participating with the CACFP are excluded from the inspection list. The EA is responsible for keeping CCFS updated with information pertaining to CACFP participation. At initial enrollment, a provider who is participating with CACFP is required to submit proof of participation to the EA. The EA records in CCFS must contain the most recently documented date of participation. Periodically, the EA will receive from CACFP, the DOH 4118, Monitoring Checklist for Day Care Homes. When these are received, the EA must update the CACFP “participation date” in CCFS, based on the date of the last CACFP visit. Additionally, the EA must forward to the district, on a monthly basis, any copies it receives of the DOH 4118, Monitoring Checklist for Day Care Homes for the district’s records.

I. CHANGES DURING PROVIDER’S ENROLLMENT

1. Changes to Provider’s Enrollment Information

Legally-exempt providers are required to report changes to the EA. The enrollment approval is specific to the provider, the location of care, and the type of care. If any of these three things changes, the current enrollment ends and a new enrollment package must be submitted.

The EA can document verbal receipt of information such as a new phone number, or new married name, by making a written note to the file. However, when the change may impact on the provider’s status as an eligible provider, the provider must inform the parent/caretaker and resubmit the applicable section of the enrollment package as an update. The parent/caretaker signature must be included if required.

Some changes will trigger additional action by the EA. For example, if a new employee is reported for a legally-exempt family child care provider, the EA must conduct the check of the New York State Sex Offender Registry for that individual. The EA must promptly evaluate the situation and address with the provider the new health and safety concerns and their effect on the
provider’s eligibility. If that individual has a sex offender history, the EA will immediately work with the provider to implement a safety plan, so that the person with the sex offense history will not have contact with the children in care. The EA must evaluate the provider’s response and determine whether it will bring the provider into compliance with the health and safety requirements. The EA will change the provider’s enrollment status as appropriate. The presence of a sex offender in the home may lead to a status change to “Closed: Terminated”. The EA must promptly inform the district of any change in enrollment status.

When requested by the provider, the EA must verify if the provider has completed 10 or more hours of training on areas set forth in section 390-a (3)(b) of the Social Services Law. Within five business days of receipt of the request, the EA must review the request to determine if the required documentation is complete and notify the provider if documentation is missing. Within 10 days of the receipt of the completed request, the EA must make a determination, update CCFS and notify the provider and district of the outcome.

2. New Family Is Added To Existing Enrolled Provider

If an additional family selects a provider who is already enrolled, the parent/caretaker of the new family must complete the initial enrollment package (including any required attachments) with the provider and submit it to the EA that has already enrolled the provider. The provider may only be enrolled with one EA at a time. The EA must review the package within 10 days of receiving the completed package, to verify continuing legally-exempt status and any changes. Until CCFS tracks family specific activities, the actions taken regarding the subsequent added family must be done manually. Do not change the provider’s approved enrollment status in CCFS to reflect that a 2nd package has been received. If the package for the subsequent family is received incomplete, use the model notice provided with your training manual to inform the provider and parent of its incomplete status and the items that are missing. Once a complete package is received, it must be reviewed within 10 days to determine if there are any changes from the approved package. Any changes must be entered into CCFS within the same 10-day timeframe, and a decision made regarding adding this family to the approved enrollment. If there are no changes, then child care subsidy payment may begin for this family. The EA must notify the parent of a satisfactory result using the CCFS generated, Verification to Parent of Enrollment. The EA must also notify the district.

Any new health and safety concerns must be evaluated and the provider’s enrollment status may be changed to reflect any non-compliance. If a provider’s status is changed as a result of a determination of imminent danger/risk or illegal care, the EA must notify the provider, parent and district verbally that same day. The EA must also issue a written notification to the provider, parent and district by the following business day. When a provider is found to be operating illegally, then a complaint must be made to the regional office of the Bureau of Early Childhood Services.

Each time a subsequent family is added to a provider’s enrollment, the EA must determine whether the provider has met any approved additional local standards for that district which is responsible for issuing the family’s child care subsidy.
J. **RE-ENROLLMENT**

1. **Distribution of Forms**

Once a provider is *actively enrolled with the EA*, the EA is responsible for issuing the re-enrollment package at least 30 days prior to the end of the enrollment period, to the enrolled provider who is still associated with a child care subsidy case. The re-enrollment package will be completed by the parent/caretaker and provider, and submitted to the EA. During the transitional year, each family will have to complete a separate re-enrollment package with the provider.

The EA will be able to determine which providers have re-enrollments coming due through the use of CCFS tools. The EA may send a screening letter to the provider to determine whether the provider is currently caring for a subsidized child and wishes to be re-enrolled. Within 30 days of the enrollment expiration, the EA must send the enrollment package and a cover letter to the provider with the instructions that the package be completed and returned to the EA within 10 days of the date of the letter. The EA must send the parent/caretaker a copy of the cover letter and notify district.

If a completed re-enrollment package is not received by 15 days prior to the enrollment expiration date, the EA must send a notice to alert the legally-exempt child care provider that the provider’s enrollment period is expiring and notify the district. The district must issue an OCFS-LDSS 4781, Notice of Intent to Change Child Care Benefits, to inform the parent that payment to the provider will be withheld on the enrollment expiration date unless the provider submits a re-enrollment package to the EA; and advising the parent that he or she may choose to select another provider.

A legally-exempt child care provider whose enrollment period has expired and has not submitted a re-enrollment package is allowed to submit a completed re-enrollment package within 30 days after the enrollment expiration date. Such providers are eligible for a child care subsidy payment for care after the expiration date unless the enrollment agency finds a serious health and safety concern or determines that the legally-exempt child care provider does not meet the enrollment requirements as set forth in New York State’s Title 18 NYCRR Section 415.1, 415.4, and 415.9. A legally-exempt child care provider that does not submit a completed re-enrollment package within 30 days after the enrollment expiration date will be closed and is not eligible for a child care subsidy payment after the expiration date. However, the legally-exempt child care provider may submit a new enrollment package as an initial enrollee and would be eligible for payment if it is determined that the legally-exempt child care provider can be enrolled.

2. **Re-enrollment Intake**

When a re-enrollment package is received, the EA must review it for completeness, determine whether the re-enrollment package raises any immediate concerns, and enter appropriate information into CCFS within 5 business days of receipt of the re-enrollment package. If the re-enrollment package raises any immediate concerns that would preclude re-enrollment.
according to guidelines issued by OCFS, the EA must terminate the enrollment. For all other packages, the provider’s status becomes “In Renewal” upon timely receipt of the package or “Expired-In Renewal”, when a package is received after the enrollment period has ended.

If the package is incomplete, the EA must issue notification by the 5th business day following the receipt of the incomplete packet. The EA must mail the notice to the provider, with a copy to the parent/caretaker by the next business day after the notice is generated.

3. Preliminary Re-enrollment Review, Decision, Documentation and Notification
Within 10 calendar days of receiving a completed re-enrollment package, the EA must:

A) Verify the provider’s legally exempt status.

B) Review and evaluate any changes to the re-enrollment package and conduct follow up activities as appropriate. The EA evaluates changes to the enrollment package and does not re-evaluate conditions that were addressed during previous enrollment reviews. For example, a provider has a history of having a day care license suspended. This situation was reviewed at the time of initial enrollment and the determination was made by the EA in accordance with this Guide that the provider could be enrolled. If there are current health or safety factors, the EA must assess and determine whether to terminate the enrollment or take other corrective action.

C) Request the applicable district to check for any updates to the local child welfare database since the last check of the database was conducted, to determine whether the provider has had his or her parental rights terminated or had a child removed from his or her care by court order under Family Court Article 10.

D) Request, when applicable, the district(s) to determine whether the provider meets any additional standards for enrollment.

E) If there are current health or safety factors, assess and determine whether to terminate the enrollment or take other corrective action.

F) Maintain a copy of the initial requests made to the district, and any follow-up requests when results are overdue.

4. Full Re-enrollment Review, Decision, Documentation and Notification
Within 40 days of receipt of a completed re-enrollment package, the EA must conduct a full review and make a determination whether the provider meets the requirements for re-enrollment. The full review includes:
A) A check by the EA of the CCFS database to determine whether the provider has applied for and been denied a child day care license or registration or had a child day care license or registration suspended or revoked.

B) A check by the EA of each provider of legally-exempt family child care or legally-exempt in-home child care, any employee, any volunteer who has the potential for regular and substantial contact with children in care, and for providers of legally-exempt family child care, each household member age 18 or older against the New York State Sex Offender Registry via the Registry’s toll free telephone number.

C) The EA should receive the results of the local child welfare database check back from the district within 15 days from the date of request. The EA must contact the district if the results are not received within 15 days. A copy of the initial request and any follow-up requests made when results are overdue must be maintained by the EA. The re-enrollment cannot be fully approved until the results have been received.

D) Where applicable, any additional local standards that have been established in the district’s Child and Family Services Plan must also be met. The EA should receive the results of the review of additional local standards back from the district within 30 days from the date of the request. The EA must contact the district if the results are not received within 30 days. A copy of the initial request and any follow-up requests made when results are overdue must be maintained by the EA. The re-enrollment cannot be fully approved until the results have been received.

The EA cannot complete the full review and make a re-enrollment decision until the results from local child welfare database check and/or the additional local standard review are received from the district. This may result in providers retaining enrollment statuses such as “In Renewal” or “Expired – In Renewal” for an indeterminate amount of time. The district cannot choose to withhold payment for care given by such legally-exempt child care providers whose full enrollment decision cannot be made due to the district’s failure to meet required timeframes.

E) The updated provider information, final re-enrollment decision and provider compliance with all re-enrollment requirements must be updated into CCFS.

F) The EA, within 40 days of receipt of the provider’s completed re-enrollment package, must generate in CCFS the appropriate notices of its determination of re-enrollment. The EA must mail the notices to the provider and parent by the next business day after the date the notice is generated in CCFS. The EA must immediately notify the district of the decision.
5. When No Package is Received for an Expiring Provider

A.) The EA uses the list of expiring providers, provided by the district, to track the return status for each provider currently enrolled with the district.

B.) If the EA does not receive a completed re-enrollment package by 15 days prior to the enrollment expiration date, the EA may send the provider a notice of anticipated expiration, with a copy to the district.

C.) Upon receiving notification from the EA that a completed re-enrollment package has not been received, the district must issue a OCFS-LDSS 4781, Notice of Intent to Change Child Care Benefits to the parent to advise the parent that the provider’s enrollment will expire and the provider will no longer be an eligible provider.

D.) When the enrollment expires, and if the district has issued the above notice of change in benefits, the district may withhold payment of benefits for care given after the expiration date. Providers with a status of “Expired” are not eligible for subsidy payment for care provided beyond the enrollment expiration date unless they are subsequently approved for enrollment back to the expiration date.

E.) If the EA does not receive a completed re-enrollment package by the enrollment period end date, the enrollment expires. The EA must change the provider’s enrollment status in CCFS to “Expired” and also change the status date. The EA must notify the district immediately of the change in the provider’s status and determine from the district whether the district is providing a child care subsidy for any child in the provider’s care. If the provider is caring for a child who receives a child care subsidy, the EA must actively facilitate re-enrollment of the provider, including conducting a home visit/inspection to facilitate completion of the renewal packet.

F.) If the provider is found to be in compliance, the EA must expedite the re-enrollment process by assisting the provider in completing the re-enrollment package during the inspection visit. If such a provider submits a completed re-enrollment package within 30 days of expiration, that provider’s enrollment will be changed to “Expired-In Renewal” and enrollment will continue pending the re-enrollment determination. The EA must conduct a full review. The provider is eligible for a child care subsidy payment for care after the expiration date unless the EA finds a serious health and safety concern or determines that the provider does not meet the enrollment requirements as set forth in New York State’s Title 18 NYCRR Section 415.1, 415.4, and 415.9.

G.) If the EA finds the provider to be out of compliance with health and safety requirements, the EA must change the enrollment status of the provider to “Closed: Terminated”. The EA must record the non-compliance issues in CCFS, change the provider’s status and input a status date. The EA must
immediately notify the district of the change in status and send appropriate notifications to the provider and parent.

H.) If a completed re-enrollment package is not received within 30 days of expiration, and the EA has not terminated the enrollment, the enrollment status will change to "Closed: Voluntary". However, the provider may submit a new enrollment package as an initial enrollee and the provider would be eligible for payment if a favorable enrollment determination is made.

I.) The EA must promptly update CCFS to accurately reflect the provider’s current compliance and status.

NOTE: When the EA conducts an inspection of the provider during the 30 day period after the expiration of the enrollment period, the inspection may be counted in the 20% inspections done by the EA, as long the EA sent the re-enrollment package at least 30 days prior to the enrollment expiration date and the provider was not inspected within the previous 12 months by the EA.

K. NOTIFICATIONS
The EA must use the appropriate CCFS generated notifications/verifications to inform the provider and the parent/caretaker of any determination regarding enrollment including: the temporary enrollment decision required by 10 days after receipt of completed enrollment package, full enrollment decision required by 40 days after receipt of the completed enrollment package, annual renewal of enrollment or change in enrollment. Copies of the notification and verification letters must be kept in the provider’s file.

Each Notification to Provider of Enrollment must be sent in duplicate to the provider. The provider must be given the OCFS-7026, Enrollment Information Package for Legally-Exempt Providers at the earliest notification of enrollment. Documentation must be in the case record regarding the information provided to the parent/caretaker.

The EA must immediately inform the district of any determination regarding enrollment in a manner agreed upon between the two agencies.

Any denial of enrollment must describe the reasons why the provider cannot be enrolled and indicate if the provider could be enrolled if corrective action is taken. For example, if a provider cannot be enrolled due to the lack of smoke alarms, the parent/caretaker must be informed that enrollment may be completed once the EA receives verification that smoke alarms are installed and operating. If the circumstances cannot be rectified (such as a provider with a conviction for a crime against children), the district must inform the parent/caretaker that he or she has to find another provider. The district should offer assistance in locating another provider.

NOTE: Due to confidentiality issues, the EA should not disclose to the parent that a provider has been denied enrollment specifically due to a history of
termination of parental rights or court ordered removal of a child. This reason is purposely omitted on the CCFS generated Notice of Denial of Enrollment.

Legally-exempt providers do not have a right to a hearing on the denial of enrollment. Unlike licensed or registered providers who are being denied a permit to operate, legally-exempt providers that do not meet the health and safety standards are not being denied the ability to operate. Although they are denied payment of child care subsidy funds, they are not prohibited from caring for children of private pay parent/caretakers.
For Agency Use

The fields at the top of the first page are there for use by the legally-exempt caregiver enrollment agency (EA) and the local district. The DSS Agency/Unit/Worker field is intended to identify the local district staff person who is managing the child care subsidy case. If a local district worker is assigned, it is recommended that the local district complete this field when handing out the enrollment form. The enrollment ID is determined by the Child Care Facility System (CCFS) at the time the provider’s enrollment is initially opened in CCFS. The other fields are for the EA to use to track events and dates critical to the enrollment process.

General Instructions

The provider completes this form with the parent receiving or applying for subsidy. Each section contains instructions about who should complete it.

Section 1. Provider and Parent Information

A. Provider Contact Information

The provider must complete all applicable fields. If different, both the provider’s contact address and site address must be given. The provider’s social security number must be requested, but if the provider refuses to give this, it cannot be required unless the district is issuing payment to the provider. If the provider does not have a telephone number, a contact telephone number should be obtained. When the provider does not speak English as his or her primary language, the EA should send enrollment forms in the provider’s primary language, if available, or should make every attempt to obtain translation/interpreter services to assist the provider in completing the enrollment forms.

The provider’s enrollment is specific to the provider and to the site. When either of these changes, the enrollment ends and a new enrollment package must be submitted. Additionally, only one child care provider may operate out of a site. If a provider applies to be enrolled and the EA determines there is an active legally-exempt or active licensed/registered program already operating from the same site, then the applying provider cannot be enrolled. A building with multiple apartments, or units, has multiple sites.

Please note:

Only one legally-exempt provider can operate in the same home during the same time period. Also, a provider cannot operate a legally-exempt family child care
home in a home that is a registered family day care home or a licensed group family day care home.

B. LOCAL DISTRICT INFORMATION

Identify each county that is issuing child care subsidy payments. This will assist the EA in identifying districts that should be notified about enrollment actions. If the provider receives child care subsidy payments directly from a district, he or she will have a vendor number assigned by the district. If that number is known, it should be recorded on the enrollment form and in CCFS.

C. PARENT INFORMATION FOR FAMILIES RECEIVING CHILD CARE SUBSIDY

To facilitate exchange of information between the EA and the local district, the parent/caretaker information must be completed for each parent/caretaker who is receiving a child care subsidy. The primary parent/caretaker is the person who is applying for child care subsidy. The name of the other parent/caretaker is requested and should be obtained when there is another caretaker living in the parent/caretaker’s home.

Section II. LEGALLY-EXEMPT STATUS OF CHILD CARE PROVIDER

A. TYPE OF LEGALLY-EXEMPT CARE

1. Minor Status of Provider

Legally-exempt providers who are under 18 years of age must be working in accordance with the labor standards for minors. Providers must be at least 14 years of age in order to comply with New York State Labor Law. The minor provider must be given the OCFS-LDSS-4699.1, Employment of Minors Form and the OCFS-LDSS-4699.1A, Employment of Minors, Information, a summary of the New York State Labor Laws. The provider must then submit the completed Employment of Minors Form and submit a copy of his or her working papers to the EA. The EA must verify that the minor provider is working within the parameters defined on his or her working papers.

2. Current Enrollment Status

The EA must expedite the review process for providers who are updating their enrollment, by reviewing only the factors that have changed. Providers who are currently enrolled and re-enrolling are subject to review of the factors that have changed and also the database checks. If the provider was ever enrolled, or ever applied to be enrolled, he or she should indicate the county of enrollment. The enrollment ID number should be recorded if known. CCFS generates an enrollment ID (facility ID) for each provider record. The provider will have a facility ID if the enrollment data has been entered into the statewide CCFS enrollment data system. The facility ID number will help the EA identify the provider’s record.
3. Legally-Exempt Provider
The provider must be legally-exempt from the licensing and registration requirements of the Office of Children and Family Services. The provider cannot be enrolled as a legally-exempt provider if the provider is currently licensed or registered child care provider. This can be determined by conducting the routine search of CCFS licensed/registered providers. Additionally, any concerns about the provider operating illegally must be resolved before a provider may be considered legally-exempt.

4. Type of Legally-Exempt Care Provided
The provider must check either statement a, b or c to indicate what type of care arrangement applies. The EA must determine the legally-exempt status of the provider by obtaining information on where care is being given, how many children are in the care of the provider, the hours the children are in care, and, if any familial relationship exists between the provider and those children. The EA must review the child specific information and the child care schedule on the following pages, and obtain any additional information, as appropriate, to determine whether the care being provided is legally-exempt from regulation.

A) In-home care
In-home care is care provided in the child's own home. For in-home care, the number of children that can be in care is not limited as long as all the children reside in this household. However, if a child (other than the provider's own child) not residing in the household is provided child care in the in-home situation, then the care modality becomes a family child care arrangement and the restrictions on the number of children in care for a legally-exempt family child care provider apply. The requirements pertaining to household members, such as attestations for criminal history, and the check of the NYS Sex Offender Registry now also apply to those appropriate household members.

B) Family child care
Family child care is care provided in the home of the provider or in another person's home. The provider must meet one of the requirements in statement (1), (2), or (3) below in order to be enrolled as a family child care provider. Care is limited to a total of two children or if more than two children are in care, care must be for three hours or less per day. The provider cannot care for more than two children who are not legally related to the provider for more than three hours per day and still meet the definition of legally-exempt. In determining the number of children, the provider's own children and any children age 13 years and over are not included in the count.

(1) RELATIVE CARE:
A provider of legally-exempt family child care can care for an unlimited number of children as long as all the children are related to the provider within the third degree of consanguinity. 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. However, 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.

(2) CARE FOR NO MORE THAN 2 CHILDREN:
When care is being provided for more than three hours per day, a provider of legally-exempt family child care may only care for one or two children. These hours need not be consecutive.

(3) CARE FOR 3 OR MORE CHILDREN, BUT NEVER MORE THAN 2 AT ANY ONE TIME FOR MORE THAN 3 HOURS PER DAY:
When care is provided for three hours or less per day a provider can care for any number of children. A provider of legally-exempt family child care may care for more than two children for some portion of the day as long as there are never more than 2 children in care at the same time for a period of time in excess of 3 hours a day.

An example of care which is not legally-exempt: Three or more children go to a neighbor's home for 1 hour before school starts in the morning and for 2 1/2 hours after school in the afternoon, the provider cannot be considered legally-exempt and is required to be registered as a family day care provider or licensed as a group family day care provider.

C) Other care
When this statement is checked, the provider should attach an explanation of the care arrangement. The provider may be caring for children in a situation that does not clearly fit in the in-home care or the family child care categories as described.

Such situations include the arrangement in which the provider is caring for one child in that child’s own home and bringing another child into that home for care. The modality of child care in this situation is family child care and the provider must meet the requirements for that modality. However, the parent whose child is receiving care in the child’s own home must also complete and submit the OCFS-LDSS 4699.2, Agreement for Legally-Exempt In-Home Child Care.

Additionally, a provider who is caring for a mix of relative and non-relative children would not check statement B(1).

5. Amount Charged for Subsidized Care
Regulations specify that child care subsidy payments for eligible families/children cannot exceed the amount the provider charges to the general public for equal care in the providing home. In this question, the provider indicates whether he or
she is charging the subsidized parent the same amount or less than the amount charged for other children of the same age and similar care. If a provider is charging a subsidized family more than the amount charged a non-subsidized family, for similar care, the provider cannot be enrolled.

6. **Number of Families the Provider Gives Care For**

This question attempts to determine if the provider is caring for families that are not mentioned on this form. The EA must know about all children the provider is giving care for, including those who are not receiving a child care subsidy, to accurately determine whether the provider is legally-exempt. If the number of families listed by the provider is more than the number of families that the EA has schedules of care for (page 3 of the enrollment form), then the form is incomplete and EA must request the schedules of the missing families.

B. **CHILD SPECIFIC INFORMATION FOR ALL FAMILIES**

To determine whether legally-exempt care is being provided, the EA must know about all children the provider is caring for. The provider must show the schedules of all children in his or her care. This chart may be duplicated to accommodate additional children in a family, or additional families. A separate chart should be used for each family. The EA must use the schedule information to verify that the provider is not caring for more children than is allowed for a legally-exempt provider.

1. **Family One**

The provider or parent/caretaker must list case and child care information for the subsidized family that this enrollment form pertains to. All fields must be complete.

2. **Family Two**

The provider must complete schedule information, for all other families the provider is providing care for, regardless of whether subsidy is issued. The following requested information is optional: parent name, child’s last name, and child’s date of birth.

Section III. ADDITIONAL PROVIDER INFORMATION

1. **Food Stamps, Temporary Assistance or Medical Assistance**

Providers who are in receipt of temporary assistance, including family assistance and safety net assistance; food stamps (FS) and/or medical assistance (MA) may furnish their case number. The EA must forward this information to alert the appropriate social services district unit(s) whenever a recipient is enrolled as a provider of legally-exempt family child care or legally-exempt in-home child care. Payments received for child care services must be budgeted as income for temporary assistance, safety net, food stamps and medical assistance recipients who are child care providers.
2. Training

Some providers may be eligible to receive an enhanced market rate. To be eligible, providers must submit to the EA the OCFS-LDSS-4699.3, Legally-Exempt Provider Training Record Form, showing they have completed 10 hours of training during the past 12 months in areas specified in Social Services Law 390-a(3)(b), and, have satisfactory documentation of the training.

The training areas that may be considered are:

- Principles of childhood development: the developmental stages of the age groups for which the program provides care;
- Child care program development;
- Nutrition and health needs of infants and children; may include the Administration of Medication;
- Shaken baby syndrome: identification, diagnosis and prevention;
- Child abuse and maltreatment: identification and prevention;
- Child abuse and maltreatment: statutes and regulations;
- Safety and security procedures;
- Business record maintenance and management; or
- Statutes and regulations pertaining to child care.

Providers must complete and submit the OCFS-LDSS-4699.3, Legally-Exempt Provider Training Record Form to the EA. The EA must verify that the training was received within the designated timeframe and that the topics fall within the categories listed above. Once approved, the legally-exempt family or in-home child care provider is eligible for the enhanced market rate for a period of 12 months.

The EA must verify and determine whether to approve the additional training, document the decision in CCFS, and promptly notify the district. For enrolling or re-enrolling providers, the decision is made as part of the enrollment review. For providers who submit documentation after the enrollment or re-enrollment decision, the decision regarding the training must be made within 10 days of receiving the request from the provider.

When notified by the EA that a legally-exempt family child care or in-home child care provider has completed 10 or more hours of training, the district must apply the enhanced market rate no later than the beginning of the first full month for 12 months following the date the district was notified by the EA of the approval of the enhanced market rate.

For those cases in which the district has not been notified by the enrollment agency that a legally-exempt family child care or in-home child care provider is eligible for the enhanced market rate, districts must apply the standard market rate.
3. Meals and Snacks
The provider must indicate who will be responsible for providing meals and snacks.

4. Participation in the Child and Adult Care Food Program (CACFP)
Regulations require that all enrollees be referred to CACFP, a federal program administered by the New York State Department of Health that assists providers with meeting the cost of providing nutritious meals and snacks. If the provider is already participating in CACFP, then the EA must obtain documentation of participation, which may include the CACFP agreement DOH-3821; the most recent monitoring checklist, DOH-4118; or the claim reimbursement stub. The documentation must be dated within the past 12 months to establish participation. The EA enters the most recent date, establishing participation, into CCFS. The EA must update the participation date in CCFS whenever it receives new proof of participation from CACFP or the provider. Once entered into CCFS, the CACFP participation date can be used to exclude CACFP providers from the 20% annual inspection list.

Section IV. HOME SAFETY CHECKLIST AND CERTIFICATION

The provider and the parent/caretaker must complete this home safety checklist, additional agreements, conditions and certification, jointly, before the provider may care for children. There are two parts to the checklist. The provider must meet all of the requirements in the checklist, and agree to abide by all of the conditions in the certification section before he or she can be enrolled. If the home safety checklist indicates there is a health or safety concern, but the provider resolves the issue prior to the temporary enrollment decision, the EA may consider that provider for temporary enrollment.

A. HOME SAFETY CHECKLIST
Generally, the statements in the checklist must be answered "YES" in order for the provider to be enrolled. Enrollment cannot be authorized until all checklist items marked "NO" have been corrected. Any exceptions are specifically noted on the checklist. The EA must receive and review documentation that corrections have been made prior to enrolling.

Most of the items on the home/facility safety checklist are self-explanatory. However, additional clarification is provided for the following.

• **Two means of escape:** There must be two ways out of the home that can be used in the event of an emergency. Both means of escape have to be remote from one another (separate and apart, not side-by-side or adjacent to one another along the same wall) and lead to an immediate escape. They do not have to be doors that immediately lead to the outdoors. Consideration must be given to the provider's ability (such as the provider's age and physical condition) to use an alternate means of escape (e.g., a window leading to a fire escape or an emergency ladder that descends from a window) and to
remove all children safely in an emergency. The number, ages and any
handicapping condition of the children in care are factors to be considered.

- **Provider health/physical condition:** The provider attests that the provider and
anyone assisting in the care of children are physically, emotionally and
mentally able to provide care. In addition, the provider must certify that he or
she, anyone assisting in the care of the children, and all persons residing in
the home, are free of communicable disease unless the person’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. Further, when
care is provided in a home that is not the child’s home, the communicable
disease clause also applies to household members in the home where care is
provided.

If the EA has reason to suspect that the information provided is incorrect or
incomplete, the EA may require that the provider submit a statement from a
physician, physician’s assistant or nurse practitioner verifying the information.

**B. ADDITIONAL CONDITIONS, AGREEMENTS AND CERTIFICATION**

The provider must agree to abide by the additional conditions following the
checklist, before he or she can be enrolled. Please note that only the provider
may be alone with the children in care, even if the provider has employees or
volunteers who help to care for the children. Neither the parent/caretaker nor the
provider can be given a waiver of any of these requirements. For example, a
parent/caretaker may say he or she does not care that the provider smokes.
Smoking indoors while children are in care (or in a vehicle) is prohibited.
Similarly, a provider who will not abide by the prohibition against corporal
punishment (i.e., "I just give them a swat on the behind," ) is not eligible
for enrollment. The examples of corporal punishment listed in this section are not
meant to be an exhaustive list and are cited in order to clarify and emphasize that
such actions are unacceptable.

The provider and parent/caretaker(s) must sign and date the attestation that the
home has been inspected with the parent/caretaker, that all statements in the
Home Safety Checklist are true and accurate, and that provider and
parent/caretaker(s) agree with the conditional statements. Failure of the
parent/caretaker(s) or provider to sign the checklist precludes the provider from
being enrolled. If a minor is providing care, failure of the adult in charge of the
home to sign the checklist also precludes the provider from being enrolled.

**Section V. HEALTH AND SAFETY REQUIREMENTS FOR PROVIDERS**

This section of the guidelines helps EA’s understand results obtained from review
of the form and also help local districts when evaluating results of child welfare
database checks and extenuating circumstances. Requirements for completion
of the form for each of these 3 areas are discussed individually below in
subsections A, B, and C. For guidance on evaluating provider risk and
enrollment decision refer to subsection D. Subsection E discusses verification of
the attestations. Subsection F discusses review of extenuating circumstances.
A. PROVIDER’S HISTORY OF TERMINATION OF PARENTAL RIGHTS

A provider of legally-exempt family or in-home 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 whether the provider has ever had his or her parental rights terminated.

1. 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/or 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.

2. Provider History

Question 1:

The provider who has had his or 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 EA and the child’s parent/caretaker regarding the reasons underlying the termination of parental rights. The summary must contain enough detail for the EA to ascertain the sequence of events leading to the termination of parental rights and must identify the underlying causes. Both the provider and the parent/caretaker must sign the attached summary. The provider must check the box to indicate that he or she has submitted to the EA AND to the child’s parent/caretaker a written summary. An enrollment form is not considered to be “complete” if this step is not done for any provider who has a history of a termination of parental rights.

Certification

The provider must sign and date this certification that all the statements on the form are true and accurate.
B. PROVIDER’S HISTORY OF COURT-ORDERED ARTICLE 10 REMOVAL OF A CHILD

1. Background
A provider of legally-exempt family or in-home 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 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).

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 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 local district may be required to file a petition to terminate parental rights.

2. 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.
care under court order in an Article 10 proceeding.

**Question 2:**

If the provider has had a child removed, he or 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, which may not be considered here, 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 a court ordered Article 10 removal must provide true and accurate information to the EA and the child’s parent/caretaker regarding the reasons underlying the child’s removal. The summary must be submitted to the EA and the child’s parent/caretaker and contain enough detail for the EA to ascertain the sequence of events, the severity and the underlying reasons for the events. Underlying reasons are likely to include, but not be limited to, 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.

Both the provider and the parent/caretaker must sign the attached summary. The provider must check the box to indicate that he or she has submitted to the EA AND to the child’s parent/caretaker a written summary. An enrollment form is not considered to be “complete” if this step is not done for any provider who has a history of a court ordered Article 10 removal.

Provider Certification

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

C. PROVIDER’S HISTORY OF SUSPENSION, REVOCATION OR DENIAL OF A LICENSE OR REGISTRATION TO OPERATE A CHILD DAY CARE PROGRAM

A provider of legally-exempt family or in-home 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 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.

1. 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 and registrars 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, which is an order to immediately cease provision of child care services, may be issued.
2. Provider History

Question 1:

A provider must indicate if he or she has ever had a day care license or registration. This alerts the reviewer that a record should be found in CCFS during the database check.

Question 2:

A provider who has had a denial of an application or renewal of a license or registration to operate a day care program must indicate this by checking the appropriate response.

If a provider indicates that he or she is appealing the revocation or suspension of a license or registration to operate a day care program, he or she cannot be enrolled. A provider who is in enforcement, but is not yet closed, still has a licensed/registered status. New York State Regulations do not allow a child care provider to simultaneously have a licensed or registered status AND a legally-exempt status.

Question 3:

A provider who has had a license or registration revoked or suspended must check the second option, and then complete questions 4 and 5.

Question 4a:

The information given by the provider will help the EA retrieve the provider's record from the CCFS and obtain information from the appropriate regional office that conducted the enforcement and supervised the provider's program.

Question 4b:

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 EA 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 EA and to the parent/caretaker, a written summary that contains enough detail for the EA to ascertain the sequence and severity of the events and the underlying reasons for the action taken. 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.

Both the provider and the parent/caretaker must sign the attached summary. The provider must check the box to indicate that he or she has submitted to the EA AND to the child’s parent/caretaker a written summary. An enrollment form is not considered to be “complete” if this step is not done for any provider who has a history including a denial, revocation or suspension of a license or registration to operate a child day care program.

Certification

The provider must sign and date this certification that they have provided true and accurate information on the form.

D. EVALUATING PROVIDER HISTORY AND RISK AND ENROLLMENT DECISIONS

The EA reviews the attestation and any attachment pertaining to history of denial, revocation or suspension of a license or registration to operate a child day care program on the enrollment form and also the results of the CCFS database check. Enrollment agencies 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 EA also reviews the attestations and any attachment(s) pertaining to court ordered Article 10 removal or termination of parental rights. If any history of court ordered Article 10 removal or termination of parental rights is indicated on the enrollment form, then the EA reviews and denies enrollment according to these guidelines. If the attestations do not show a history of a court ordered Article 10 removal or termination of parental rights, the district will conduct the database search and make the determination as to whether the requirements are met or not met, in accordance with this Guide.

A history of removal of a child by court order under FCA Article 10, termination of parental rights, or suspension, revocation or denial of a license/registration to operate a child day care program nearly always 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. Both the EA, in evaluating attestations on the enrollment form, and the local district, in evaluating results for the child welfare database check, will use the following guidelines for assigning providers to a risk group and making enrollment decisions.

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 or the parent/caretaker requests reconsideration of the enrollment decision and demonstrates to the EA’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.
1. High Risk Group

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

- A removal of a child from his or her care by court order under an FCA Article 10 proceeding; or
- A termination of his /her parental rights under SSL 384-b; or
- A license or registration to operate a child day care program denied, revoked or suspended due to his or 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.

The enrollment decision for a provider assigned to a high risk group is a presumptive denial of enrollment. The EA must notify the provider, the parent/caretaker and the local district of the decision. The provider and/or the parent/caretaker may request the EA to reconsider its decision.

A high risk provider may be reconsidered for enrollment only after a presumptive denial is issued and if 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 EA; and
- The parent/caretaker must acknowledge that he or she continues to want to use the provider, after receiving full disclosure. The OCFS-LDSS 4699.4, Parental Acknowledgment is available for this purpose.

2. 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, however, he or she 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 that became contaminated. To resolve the issue, the provider moved to a location that meets all regulatory requirements.

Providers in the low risk group may be considered for enrollment. The EA 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 EA 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 denial, revocation and/or suspension of a license or registration to operate a child day care program;
- Has received the written explanations, (which should contain the same information submitted to the EA); and
- Knowingly chooses this provider to care for his or her children.

The OCFS-LDSS 4699.4, Parental Acknowledgment may be used for this purpose.

E. VERIFICATION OF THE HEALTH AND SAFETY ATTESTATIONS

1. Child Welfare Database Check

All enrollment agencies operating under the WHEDCO contract must request that the applicable district conduct a child welfare database check to determine whether the provider has had his or her parental rights terminated, or had a child removed from his or her care by court order under Family Court Act Article 10, by the next business day after the notice of temporary enrollment or notice of acknowledgement of enrollment packet has been generated in CCFS. The enrolling agency is required to verify the attestations within 40 days of receiving the completed enrollment package. The EA must request a local child welfare database check from the district where the provider resides. The EA must provide the local district with the legally-exempt child care provider’s name and sufficient identifying information from the enrollment form to conduct an accurate database check. Upon receipt of the notice, the local district must conduct a search of its local child welfare database(s) to determine whether the child care provider has ever had:

- A child removed from his or her care by court order under FCA Article 10 and/or
- His or her parental rights terminated under Social Services Law 384-b.

If the district does not find a record for the provider indicating the provider had a removal of a child by court order under FCA Article 10 or a termination of parental rights, then the district instructs the EA, in writing, that the requirements to be enrolled are met.
If the database search indicates that the provider does have a history of removal of a child by court order under FCA Article 10 and/or a termination of parental rights, then the district must determine whether the person found in the data match is truly the provider, and if so, was the provider the legal respondent in the legal action. If the person on the data match is confirmed to be the provider and legally responsible, then the decision is made according to the requirements in this Guide.

Within 15 days of the receipt of the request for a child welfare database check, the district must notify the EA in writing of the database results:

- In regards to the history of a court ordered Article 10 removal, the provider meets OR does not meet the enrollment requirement.
- In regards to the history of termination of parental rights, the provider meets OR does not meet the enrollment requirement.

The local district does not release any additional information to the EA.

When a local district determines according to this Guide that the provider does not meet the requirement, the provider is presumptively denied enrollment by the EA. Such a provider may request a review of extenuating circumstances upon receipt of the denial.

2. Child Care Facility System Check

Enrollment agencies operating under the WHEDCO contract are required to verify, on the same day they have received the completed enrollment packet, whether or not the provider has applied for and been denied a child day care license or registration, or had his or her child day care license or registration revoked or suspended. If the EA received the completed packet after 4 p.m., the EA must verify the provider’s legally-exempt status by reviewing the number of children receiving care and their schedules to determine if the provider is legally-exempt from licensing and registration requirements; then by 12 p.m. on the next business day, conduct a CCFS check. The EA must view a provider’s licensing/registration record in CCFS that summarizes compliance violations within the past 24 months and notes any enforcement action taken in the past 5 years. The EA may contact the licensor named in CCFS for additional information. The licensor can confirm the underlying reasons for the enforcement actions.

F. REVIEW OF EXTENUATING CIRCUMSTANCES

A provider may request an extenuating circumstances review if he or she is denied enrollment based on a history of a removal of a child from his or her care by court order under an FCA Article 10 proceeding; a termination of his/her parental rights under Social Services Law 384-b; or a denial, revocation or suspension of a license or registration to operate a child day care program. The EA is responsible for determining whether the criteria for initiating the review are met.
1. Criteria for Initiating Review of Extenuating Circumstances
   A) The EA receives the written request for the exception to the denial of enrollment to be made and written explanation of extenuating circumstances. Extenuating circumstances may include unusual circumstances surrounding the original incident and/or factors that successfully resolve the underlying causes and tend to eliminate risk.

   B) The EA must confirm that the parent/caretaker still wishes to use the provider and that the parent/caretaker has reviewed the provider’s descriptive statement submitted with the enrollment package.

   The review is initiated once the criteria are met. The EA changes the provider’s CCFS enrollment status to reflect the review status.

2. The Review of Extenuating Circumstances
   The review of extenuating circumstances is conducted by the EA or the district, depending on the original reasons for the presumptive denial. When the request pertains to a court ordered Article 10 removal or termination of parental rights, the EA must forward the request, the explanation of extenuating circumstances, the enrollment form, all attachments, and any additional information pertaining to this matter to the local district for review. The EA must notify the provider that the local district is responsible for the review of extenuation circumstances. The EA must conduct the review of extenuating circumstances pertaining to denial, revocation or suspension of a day care license or registration.

   A) The reviewing agency must verify, to the extent that it is able, that the information given on the enrollment form and attachments, regarding the description of the original incident and the underlying reasons, are true and accurate. Refer to Part 2, Section V, Health and Safety Requirements for Providers, of this Guide for additional discussion on the underlying reasons. If any required database check(s) serving to verify the attestations had not been done during the initial review of enrollment, such check must be conducted at this point. The reviewing agency may request that the provider submit proof as appropriate.

   B) The reviewing agency must evaluate the provider’s claim of extenuating circumstances. Extenuating circumstances occurring after the precipitating incidents include evidence of rehabilitation and successful resolution of underlying causes and other factors that 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.

The reviewing agency may request that the provider submit proof as appropriate. And it is the responsibility of the provider to submit such proof. Failure of the provider to cooperate with the information sharing and evaluative process will result in a denial or termination of enrollment.

C) The reviewing agency 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.

D) The reviewing agency must determine whether an exception should be made to the presumption against enrollment pertaining to the requirement it is reviewing. The reviewing agency must not allow an exception to be made unless the provider has satisfactorily demonstrated that enrollment will not jeopardize the health, safety or welfare of children in the provider’s care.

E) When an exception is made, the provider must share with the parent, true and accurate information regarding the extenuating circumstances. The agency making the exception must obtain a signed statement from the parent/caretaker stating that the parent/caretaker:

• Understands the provider was initially denied enrollment and an exception has been made to allow the provider to be enrolled,
• Has received the written explanations of the provider’s history, and
• Knowingly chooses this provider to care for his or her children.

The OCFS-LDSS 4699.4, Parental Acknowledgment may be used for this purpose. When the local district is the agency obtaining the parent’s acknowledgment, the local district must provide a copy to the EA.

F) When the local district is conducting a review of extenuating circumstances, the local district must notify the EA of the results.

G) The EA will make the final enrollment determination as follows:

• When the reviewing agency determines an exception to the presumption against enrollment cannot be made, the EA cannot enroll the provider.
• When the reviewing agency has made a decision to overturn the presumptive denial, the EA must reconsider the provider for enrollment. However, the EA must conduct as full review of the
enrollment package, including all required database checks and additional local standards requirements, and determine whether the provider has met ALL other enrollment requirements. The EA may only enroll a provider who meets ALL enrollment requirements.

H) The EA makes and records the enrollment decision in CCFS. The EA notifies the district, the parent/caretaker and the provider of decision following the review of extenuating circumstances.

**Section VI. Health and Safety Requirements for Provider, Employees, Volunteers and Household Members**

A. **Provider’s Household Members and People Who May be Helping to Care for Children**

For providers of legally-exempt family or in-home child care, the provider must list all people who may help to care for children, including:

- Each volunteer who is likely to have regular contact with children in care,
- Each employee, and
- If care is given in a home other than the child’s home, list each person living in the home that is age 18 years or over.

Identifying information is requested so that the required database checks can be run and the provider’s record, if any, may be accurately identified.

The provider is reminded that he or she must be present when children are in the care of employees, volunteers, and when care is given outside of the child’s home, household members.

B. **Information on Reports of Child Abuse and Maltreatment**

The provider certifies that he or she has:

- Listed all people who may be helping to care for children, and if the provider provides care in a place other than the child’s home, has listed all household members;
- Asked each of these people if they have been the subject of an indicated report of child abuse or maltreatment;
- Informed the parent/caretaker whether any of the potential caregivers or the provider have been the subject of any indicated reports of child abuse or maltreatment;
- When an indication of child abuse or maltreatment exists, given the parent/caretaker, in writing, true and accurate information, including: a description of the incident(s), the date of the indication(s) and any other relevant information regarding the indication(s); and
- Agreed that all statements are true and accurate.
The parent certifies that:

- He or she 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 informed him or her whether any indicated report of child abuse or maltreatment exists;
- When an indication of child abuse or maltreatment exists, the provider has given him/her written information regarding such indication of child abuse or maltreatment;
- He or she has carefully considered the information on child abuse and maltreatment indications that he or she has been given, and he or she is selecting this provider;
- He or she understands he or she has the right to select another provider; and
- By signing the form he or she agrees that all statements are true and accurate.

There may be circumstances when the EA is aware that the information the parent/caretaker received from the provider regarding indicated reports of child abuse or maltreatment is inaccurate or false. Note that the EA can act only on information it has legally obtained. The EA cannot seek out child protective information by conducting a State Central Register check or requesting the district to conduct a check and cannot provide confidential information to the parent/caretaker without the provider's consent. Districts/EAs must inform the parent/caretaker that the provider cannot be enrolled until the provider gives correct information to the parent/caretaker. If the parent/caretaker wishes to use the provider, the EA must contact and inform the provider that the provider must give a full account of the indicated report(s) to the parent/caretaker. No action can be taken on the enrollment of the provider until the parent/caretaker is given a correct written statement from the provider and makes a decision based on this information. If the revised statement leads the EA to conclude that the child would be at risk if placed with this provider, the worker must inform the parent/caretaker of this conclusion and that the EA may file a report with the State Central Register should the parent/caretaker place his or her child with this provider.

C. PROVIDER’S, EMPLOYEE’S AND VOLUNTEER’S CRIMINAL HISTORY

Background

Article 23-A of the New York State Correction Law was enacted to prevent unfair discrimination in the licensure and employment of a person previously convicted of one or more criminal offenses. In order to make a fair and accurate determination of the person’s appropriateness to care for children, the EA must
obtain pertinent documentation from the legally-exempt child care provider and may interview the provider as needed.

The EA must review the criminal history record of the provider, volunteers with regular and substantial contact with the children in care, employees and, for providers of legally-exempt family child care (other than in-home care), household members age 18 years or older.

- If the conviction is for a felony or misdemeanor crime against children, the provider cannot be enrolled. Therefore, a criminal evaluation does not ever need to be conducted.

- A conviction for a violent and other serious crime creates a strong presumption against enrolling the legally-exempt provider. After denial of enrollment, a provider convicted of a violent or other serious crime can request that the district consider and review any extenuating circumstances pertaining to the conviction and determine whether an exception could be made to the presumption against enrollment. This presumption could be overcome only upon a showing of some extraordinary circumstances justifying enrollment.

- For all other felony and misdemeanor convictions the district must evaluate, during the full enrollment review, whether the criminal background poses an unreasonable risk to the safety and welfare of the child(ren). The EA is authorized to reject or terminate the enrollment of a legally-exempt provider based on the outcome of the criminal history review/evaluation. When an evaluation is required, the EA must follow the procedure for conducting the evaluation, so that an appropriate determination can be made.

Failure to cooperate with the criminal history review/evaluation will result in a denial or termination of the enrollment of a legally-exempt provider. Without an evaluation, the EA will be unable to accurately assess the safety of the children either in the provider’s care or planning to be in the care of the provider.

1. Review of the Criminal History Section of the Enrollment Form

This section solicits information regarding whether the provider or any employee or volunteer has any criminal convictions in New York State or in any other jurisdiction. The provider must complete each statement for him/herself and on behalf of all volunteers who have the potential for regular and substantial contact with children in care and all employees by checking the appropriate box, which provides accurate and correct information related to their specific situations. Additionally, the provider of legally-exempt family child care must also attest to the criminal convictions of household members (age 18 years or over) of the home in which care is being provided (other than the child’s own home). The provider must attest that he or she has specifically asked each volunteer, employee, and such household member if he or she has been convicted of a crime.

If the provider or any employee, volunteer, or household member has been convicted of a crime, additional information concerning the specifics of the crime, the date of conviction and other relevant information must be provided to both the
Sealed criminal convictions for crimes committed as a juvenile are not considered in the evaluation of an individual's criminal background. However, if there is independent knowledge of the events in question, for example the applicant voluntarily tells his history of fire setting or sexual abuse, that information could be used since it is separate and distinct from the sealed criminal record. The review would be based on the underlying facts of the activity and not the fact that the person was convicted.

2. Evaluating Criminal History and Appropriateness to Care for Children
For purposes of evaluating criminal history, crimes have been grouped into 3 categories.

- **Crimes against children, felony or misdemeanor.** The provider cannot be enrolled and a criminal history evaluation does not need to be conducted.

  A provider who has been convicted or a provider that employs an individual, uses a volunteer or provides care in a home (other than the child’s own home) in which there is a household member age 18 years or older who has been convicted of a felony or misdemeanor crime against children (or of an attempt to commit a felony or misdemeanor crime against children) cannot be enrolled. Felony and misdemeanor crimes against a child are listed on the following pages.

- **Violent or other serious crimes, not specific to children.** There is a strong presumption against enrolling the legally-exempt provider. The provider is “presumptively” denied enrollment.

  A provider convicted or a provider which employs an individual, uses a volunteer or provides care in a home (other than the child's own home) in which a household member age 18 years or older who has been convicted of a **violent or other serious crime** is considered by the Office of Children and Family Services to present an unreasonable risk to the safety or welfare of the child(ren) in legally-exempt care. A conviction for any of these crimes creates a strong presumption **against** enrolling the legally-exempt provider in question, and the EA must deny enrollment.

  A provider, who has been presumptively denied enrollment, can request that the EA consider and review any extenuating circumstances pertaining to the conviction. The EA is not required to review extenuating circumstances concerning these convictions **unless** the parent/caretaker indicates that he or she still wants to arrange care with this provider. The provider is responsible for supplying documentation that details the extenuating circumstances. The EA must review the criminal history and extenuating circumstances according to the following guidelines, and determine whether an exception could be made to the presumption against enrollment. The presumption can be overcome **only** upon a showing of some extraordinary circumstances justifying enrollment and a determination that the conviction **would not pose**...
an unreasonable risk to the safety or welfare of the child. If the parent/caretaker still wishes to use the provider, the EA must obtain a signed statement from the parent/caretaker indicating that the parent/caretaker is aware of the specific convictions(s) and still chooses this provider. A model acknowledgment form that the EA may use for this purpose is provided as OCFS-LDSS-4699.4, Parental Acknowledgment.

- **All other felony or misdemeanor convictions.** The EA must evaluate the criminal history according to the following guidelines and determine whether the criminal background poses an unreasonable risk to the safety and welfare of the child (ren). The provider must furnish additional information needed for the evaluation. Such information may include, but is not limited to: the nature of the crime, the penalties imposed as the result of the conviction, any evidence of rehabilitation, and the length of time that has elapsed since the conviction. The information provided must be verified. Evaluations must be made in a manner consistent with these guidelines. The EA may enroll the provider if the EA determines that the conviction would not pose an unreasonable risk to the safety or welfare of the child. If the parent/caretaker still wishes to use the provider, the EA must obtain a signed statement from the parent/caretaker indicating that the parent/caretaker is aware of the specific convictions(s) and still chooses this provider. A model acknowledgment form that the EA may use for this purpose is provided as OCFS-LDSS-4699.4, Parental Acknowledgment. A provider, who has been denied enrollment based on this type of conviction, can request that the EA consider and review any extenuating circumstances pertaining to the conviction.

3. **Determining the Category of the Crime**
The category the crime belongs to will determine the EA’s next step, as stated above. Use the lists below to determine if the crime identified belongs to the category of “crime against a child” or a “violent crime or other serious crime”.

   A) **Crimes Against Children**
   A provider who has been convicted or a provider that employs an individual, uses a volunteer or provides care in a home (other than the child’s own home) in which there is a household member age 18 years or older who has been convicted of a felony or misdemeanor crime against children or of an attempt to commit a felony (or misdemeanor crime against children) cannot be enrolled.
(1) **FELONIES AGAINST A CHILD**

120.01 – Reckless Assault of a Child by a Child Day Care Provider
120.05 – Assault 2nd degree/Subdivision (8) relates to a child less than 11 Subdivision (9) relates to a child less than 14
120.12 – Aggravated Assault Upon a Person Less than 11
130.25 – Rape 3rd degree/subdivision (2) relates to child less than 17
130.30 – Rape 2nd degree
130.35 – Rape 1st degree/Subdivision (3) relates to a child less than 11
130.40 – Sodomy 3rd degree/Subdivision (2) relates to a child less than 17
130.45 – Sodomy 2nd degree/Relates to a child less than 14
130.50 – Sodomy 1st degree/Subdivision (3) relates to a child less than 11
130.65 – Sexual Abuse 1st degree/Subdivision (3) relates to a child less than 11
130.66 – Aggravated Sexual Abuse 3rd degree/Subdivision (1)(c) relates to a child less than 11
130.67 – Aggravated Sexual Abuse 2nd degree/Subdivision (1)(c) relates to a child less than 11
130.70 – Aggravated Sexual Abuse 1st degree/Subdivision (1)(c) relates to a child less than 11
130.75 – Course of Conduct Against a Child 1st degree
130.80 – Course of Sexual Conduct against a Child 2nd degree
130.85 – Female Genital Mutilation
130.75 – Course of Sexual Conduct against a Child 1st degree

(2) **MISDEMEANORS AGAINST A CHILD**

130.52 – Forcible touching
130.55 – Sexual abuse 3rd degree
130.60 – Sexual abuse 2nd degree
135.45 – Custodial interference
230.04 – Patronizing a prostitute 3rd degree
260.03 – Abandonment of a child; defense
260.05 – Non-support of a child in the second degree
260.10 – Endangering the welfare of a child

(3) **FORMER PENAL LAW OFFENSES**

480 – Abandonment of Children
481 – Abandonment of Children under 14 years of age
483-a – Carnal Abuse of a Child

B) **Violent or Other Serious Crimes, Not Specific to Children**

A list of violent or other serious crimes, which are not specific to children, are listed below. If the provider, employee, volunteer or household member (when care is not provided in child’s home) has committed any of the crimes below against a child, then the specific occurrence of that crime is a crime against a child and is treated as such. A conviction for any of these crimes creates a strong presumption against enrolling the legally-exempt provider. A provider convicted of a violent or other serious crime can request that the EA consider and review any extenuating circumstances pertaining to the conviction and...
determine whether an exception could be made to the presumption against enrollment.

(1) **ANY OF THE FOLLOWING CLASS A-1 FELONIES:**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>125.25</td>
<td>Murder 2nd degree</td>
</tr>
<tr>
<td>125.27</td>
<td>Murder 1st degree</td>
</tr>
<tr>
<td>135.25</td>
<td>Kidnapping 1st degree</td>
</tr>
<tr>
<td>150.20</td>
<td>Arson 1st degree</td>
</tr>
</tbody>
</table>

(2) **ANY OF THE FOLLOWING CLASS B VIOLENT FELONIES:**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>120.07</td>
<td>Gang Assault 1st degree</td>
</tr>
<tr>
<td>120.11</td>
<td>Aggravated Assault on a Public Officer</td>
</tr>
<tr>
<td>125.20</td>
<td>Manslaughter 1st degree</td>
</tr>
<tr>
<td>130.35</td>
<td>Rape 1st degree</td>
</tr>
<tr>
<td>130.50</td>
<td>Sodomy 1st degree</td>
</tr>
<tr>
<td>130.70</td>
<td>Aggravated Sexual Abuse 1st Degree</td>
</tr>
<tr>
<td>130.75</td>
<td>Course of Sexual Conduct Against a Child 1st degree</td>
</tr>
<tr>
<td>120.10</td>
<td>Assault 1st degree</td>
</tr>
<tr>
<td>135.20</td>
<td>Kidnapping 2nd degree</td>
</tr>
</tbody>
</table>

(3) **ANY OF THE FOLLOWING CLASS C VIOLENT FELONIES:**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>120.06</td>
<td>Gang Assault 2nd degree</td>
</tr>
<tr>
<td>120.08</td>
<td>Assault on a Police Officer</td>
</tr>
<tr>
<td>125.13</td>
<td>Vehicular Manslaughter 1st</td>
</tr>
<tr>
<td>125.15</td>
<td>Manslaughter 2nd</td>
</tr>
<tr>
<td>130.67</td>
<td>Aggravated Sexual Abuse 2nd degree</td>
</tr>
<tr>
<td>140.25</td>
<td>Burglary 2nd Degree</td>
</tr>
<tr>
<td>160.10</td>
<td>Robbery 2nd degree</td>
</tr>
</tbody>
</table>

(4) **ANY OF THE FOLLOWING CLASS D VIOLENT FELONIES:**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>120.05</td>
<td>Assault 2nd degree</td>
</tr>
<tr>
<td>120.25</td>
<td>Reckless Endangerment</td>
</tr>
<tr>
<td>120.60</td>
<td>Stalking 1st (eff. 12/1/99)</td>
</tr>
<tr>
<td>125.12</td>
<td>Vehicular Manslaughter 2nd</td>
</tr>
<tr>
<td>130.65</td>
<td>Sexual Abuse 1st degree</td>
</tr>
<tr>
<td>130.66</td>
<td>Aggravated Sexual Abuse 3rd degree</td>
</tr>
<tr>
<td>215.12</td>
<td>Tampering with a Witness 2nd degree</td>
</tr>
<tr>
<td>215.16</td>
<td>Intimidating a Witness or Victim 2nd degree</td>
</tr>
</tbody>
</table>

(5) **ANY OF THE FOLLOWING CLASS E FELONIES**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>120.00</td>
<td>(Sub 00H) Assault 3rd degree as a Hate Crime*</td>
</tr>
<tr>
<td>120.55</td>
<td>Stalking 2nd *</td>
</tr>
<tr>
<td>125.10</td>
<td>Criminally Negligent Homicide*</td>
</tr>
<tr>
<td>130.53</td>
<td>Persistent Sexual Abuse 4th *</td>
</tr>
<tr>
<td>130.65(a)</td>
<td>Aggravated Sexual Abuse 4th *</td>
</tr>
</tbody>
</table>

* A conviction for an **attempt** at any of the above Class E Felonies does not result in a presumptive denial.

(6) **SEX OFFENSES**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>130.25</td>
<td>Rape 3rd degree</td>
</tr>
<tr>
<td>130.30</td>
<td>Rape 2nd degree</td>
</tr>
<tr>
<td>130.35</td>
<td>Rape 1st degree</td>
</tr>
<tr>
<td>130.40</td>
<td>Sodomy 3rd degree</td>
</tr>
<tr>
<td>130.45</td>
<td>Sodomy 2nd degree</td>
</tr>
<tr>
<td>130.50</td>
<td>Sodomy 1st degree</td>
</tr>
<tr>
<td>130.53</td>
<td>Persistent Sexual Abuse (eff. 2/1/01)</td>
</tr>
<tr>
<td>130.65</td>
<td>Sexual Abuse 1st degree</td>
</tr>
<tr>
<td>130.65(a)</td>
<td>Aggravated Sexual Abuse 4th (eff. 2/1/01)</td>
</tr>
<tr>
<td>130.66</td>
<td>Aggravated Sexual Abuse 3rd degree</td>
</tr>
<tr>
<td>130.67</td>
<td>Aggravated Sexual Abuse 2nd degree</td>
</tr>
<tr>
<td>130.70</td>
<td>Aggravated Sexual Abuse 1st degree</td>
</tr>
<tr>
<td>130.85</td>
<td>Female Genital Mutilation</td>
</tr>
<tr>
<td>130.90</td>
<td>Facilitating a Sex Offense with a controlled substance*</td>
</tr>
<tr>
<td>130.91</td>
<td>Placing a False Bomb 2nd degree</td>
</tr>
<tr>
<td>130.92</td>
<td>Falsely Reporting an Incident 2nd degree</td>
</tr>
<tr>
<td>130.93</td>
<td>Placing a False Bomb 1st degree</td>
</tr>
<tr>
<td>130.94</td>
<td>Placing a False Bomb 1st degree</td>
</tr>
<tr>
<td>130.95</td>
<td>Placing a False Bomb 1st degree</td>
</tr>
<tr>
<td>255.25</td>
<td>Incest</td>
</tr>
</tbody>
</table>

Please note: Any person listed on the New York State Sex Offender Registry may not be enrolled.

(7) **CRIME OF TERRORISM**

490.25 – Crime of Terrorism-violent felony when person commits murder, assassination or kidnapping with intent to intimidate, coerce or influence the policy of government.
(8) **HATE CRIMES**

A conviction for one of the crimes listed below as a result of section 485.05 of the Penal Law transforms a reportable conviction into a presumptive disqualifying conviction. That crime will be categorized as a crime involving violence. The following crimes will become presumptive disqualifying convictions when the NYS Division of Criminal Justice Services (DCJS) identifies them as a hate crime.

120.00 – Assault 3rd degree
120.20 – Reckless Endangerment 2nd degree
150.05 – Arson 4th degree
150.10 – Arson 3rd degree

(9) **FORMER PENAL LAW OFFENSES**

70 – Abduction
221 – Arson 1st
222 – Arson 2nd
240 – Assault 1st
242 – Assault 2nd
402– Burglary 1st
403– Burglary 2nd
690 – Sodomy, Crime against Nature
1042 – Homicide
1044 – Murder 1st
1046 – Murder 2nd
1049 – Non-Negligent Manslaughter
1050 – Manslaughter 1st
1052 – Manslaughter 2nd
1053 – Vehicular Homicide
1110 – Incest
1400 – Maiming
1250 – Kidnapping
1260 – Kidnapping
1270 – Kidnapping
1780 – Willfully Poisoning Food
1895 – Endangering Life by Maliciously Placing Explosives

Note: The list of Former Penal Law Offenses set forth above is not an all-inclusive list and is intended to include felony offenses which contain elements similar to the existing offenses referenced in this official list.

(10) **DRUG-RELATED OFFENSES WITHIN FIVE (5) YEARS**

220.06 – Criminal Possession of a Controlled Substance 5th degree
220.09 – Criminal Possession of a Controlled Substance 4th degree
220.16 – Criminal Possession of a Controlled Substance 3rd degree
220.18 – Criminal Possession of a Controlled Substance 2nd degree
220.21 – Criminal Possession of a Controlled Substance 1st degree
220.31 – Criminal Sale of a Controlled Substance 5th degree
220.34 – Criminal Sale of a Controlled Substance 4th degree
220.39 – Criminal Sale of a Controlled Substance 3rd degree
220.41 – Criminal Sale of a Controlled Substance 2nd degree
220.43 – Criminal Sale of a Controlled Substance 1st degree

220.46 – Criminal Injection of a Narcotic Drug
220.55 – Criminally Using Drug Paraphernalia 1st degree
220.60– Criminal Possession of Precursors of Controlled Substances
220.65 – Criminal Sale of a Prescription for a Controlled Substance
221.20 – Criminal Possession of Marijuana 3rd degree
221.25 – Criminal Possession of Marijuana 2nd degree
221.30 – Criminal Possession of Marijuana 1st degree
221.45 – Criminal Sale of Marijuana 3rd degree
221.50 – Criminal Sale of Marijuana 2nd degree
221.55 – Criminal Sale of Marijuana 1st degree

(11) **ATTEMPTS**

A felony conviction for the attempt to commit any violent crimes and other serious crimes set forth above creates a strong presumption against enrolling the legally-exempt provider.

C) **All Other Felony or Misdemeanor Convictions**

Crimes not mentioned above should belong to third category, All Other Felony or Misdemeanor Convictions, but changes to penal law do occur. You can find an
up-to-date listing of New York State Penal Law on the New York State Senate’s website, [www.senate.state.ny.us](http://www.senate.state.ny.us).

4. Evaluating Criminal History and Extenuating Circumstances

Criminal history evaluations are conducted during the enrollment review for providers whose criminal history does NOT include a crime against a child or a violent or serious crime.

Criminal history evaluations are conducted during a review of extenuating circumstances after a denial of enrollment. Providers whose crime belongs to Group B (above) and who were “presumptively” denied enrollment above, or providers whose crime belongs to Group C (above) and who were denied enrollment, are eligible to request a review of extenuating circumstances. Providers from Group A, Crimes Against Children, are not allowed a review of extenuating circumstances.

A) Nature and seriousness of the crime.

Consider the nature of the crime committed, the effect of the crime and whether the crime involved any violence. A felony is a more serious crime than a misdemeanor. Felonies are classified from “A” to “E”, with an “A” felony being the most serious.

The explanation offered by the provider and the underlying facts of the criminal act are important pieces of information that need to be collected. The EA will want to read all the background facts of the case and not just rely on the statutory definitions of the convictions themselves.

Sealed criminal convictions as a juvenile, age 16 or under, are not considered in the evaluation of an individual's criminal background. However, if there is independent knowledge of the events in question, for example the provider voluntarily tells his or her history of fire setting or sexual abuse, that information could be used since it is separate and distinct from the sealed criminal record. The review would be based on the underlying facts of the activity offered by the provider, and not the fact that the person was convicted.

B) Indications regarding the person’s character or judgment.

An examination of the circumstances involved in the crime and the degree with which the person used their judgment should be assessed. Some circumstances when reviewed in light of a person's age and experience are better explained and understood than others. For example, a shoplifting crime committed by a teenager may be viewed differently than a crime where physical injury is inflicted on an animal or another child.
C) **Age of the person when the crime was committed and how long ago it occurred.**

A review of the criminal history record and the determination of what action should be taken will consider the age of the person at the time of the commission of the crime. Also considered is the passage of time since the last involvement with the criminal justice system.

D) **Pattern of criminal behavior.**

Examine whether there were similar crimes committed repeatedly over time and if the crimes became more serious over time.

E) **Circumstances and/or factors that indicate the incident is likely to be repeated.**

Does the individual verbalize the belief that he or she would do it again or minimize the importance of committing a crime?

The EA should take into consideration the number of convictions. Where there is more than one conviction, each conviction should be evaluated separately. The EA should also evaluate the total effect of more than one conviction in assessing the risk the individual might pose to children.

F) **The individual’s explanation for the crime.**

A person’s explanation of his or her behavior will give the EA insight into what motivates the person to act and the person’s judgment abilities. If an individual asserts that the charges have been “taken care of” or have “been dropped”, ask the individual to submit copies of any documentation that would support the disposition of the case. This includes:

- court papers,
- probation reports,
- police reports,
- an explanation, in writing, why he or she should be permitted to provide care to children.

G) **Truthfulness of the individual when providing information about his or her criminal history.**

The enrollment form informs the provider that failure to truthfully and accurately provide information may constitute grounds for denial or termination of enrollment or for legal action. If a provider has been deceitful in filling out the enrollment form or an individual has been deceitful in providing information, the deceit should be seen as painting part of the picture in assessing his or her character and ability to care for children.

An assessment of the person’s explanation for not advising the EA of the existence of a criminal history should be made part of the record. The person
may have believed that a sealed record or an arrest disposed of by an Adjournment in Contemplation of Dismissal constitutes a non-conviction and therefore did not answer accurately to the criminal conviction inquiry.

H) Jail time served or community service performed.
The extent of the sentence may also reflect the court’s perception of the seriousness of the crime. Receiving the maximum or minimum sentence for a crime may become a part of the EA’s analysis of the case.

The individual must provide information and documentation that court ordered obligations have been completed. This should be part of the assessment as it speaks to the integrity and reliability of the provider.

I) Efforts and success at rehabilitation.
Evidence of rehabilitation may include a Certificate of Relief from Disabilities, a Certificate of Good Conduct and/or documentation of successful job performance.

- A Certificate of Relief from Disabilities is a document issued by the court (which sentenced the applicant) to relieve a first offender of any forfeiture or disability or to remove any bar to employment automatically imposed by law by reason of his or her conviction. The certificate may create the presumption of rehabilitation in regard to the offense specified in the document and only that offense. However, the EA may find a person with such a certificate unfit for employment, when all relevant factors are considered. A Certificate of Relief from Disabilities is not considered as applicable in regard to the categories of crimes against children and other violent crimes. Conversely, not all first offenders will have received a Certificate of Relief from Disabilities. Use other types of documentation listed below.

- A Certificate of Good Conduct is issued to reduce a sentence due to good conduct and the efficient and willing performance of duties assigned to the person while incarcerated.

- Performance evaluations and references for jobs held subsequent to the last conviction which indicate a successful record of employment, especially in positions similar to the position for which the person is applying, may be considered an indicator of rehabilitation, especially in positions similar to that of child care provider.

J) The individual’s explanation of how his or her circumstances have changed since the crime was committed.
The person may be able to point out things such as continuing education, volunteer experiences, life experiences, references, or performance evaluations that have had a rehabilitative effect. Collect any documents that show evidence of rehabilitation.
K) Consider the relationship (if any) between the crime and the responsibilities involved in caring for children.

For example, a conviction for embezzlement would bear a direct relationship to a job handling money, but would not necessarily be directly related to the duties of a provider working with children. Many cases will not be as clear as this example. It is understood that judgment and consultation will be necessary to make some of the more difficult assessments and recommendations.

L) Consider whether this person will be closely monitored or supervised while performing child care, or if he or she will be providing independent care to a group of children.

The fact that a volunteer may not be given the responsibility to independently care for children may be considered in the assessment process. However, if there is any chance (no matter how remote) that a person could be alone with a child, then the safety of the child must be considered to be the first priority.

5. Making Enrollment Decisions

The EA must determine whether the specific conviction would eliminate the provider from being enrolled.

- When there is a conviction for a crime against children, felony or misdemeanor, the provider cannot be enrolled.
- When there is conviction for a violent or other serious crime, not against a child, the provider is “presumptively” denied enrollment.
- For all other felony and misdemeanor convictions, the EA must evaluate the criminal background and determine whether enrollment of the provider poses an unreasonable risk to the safety and welfare of the child(ren).

The EA is not required to review the criminal background of the provider, volunteers or employees unless the parent/caretaker indicates that he or she still wants to arrange care with the provider.

Use of provider with criminal history

If the EA determines that the conviction would not pose an unreasonable risk to the safety or welfare of the child and the parent/caretaker still wishes to use the provider, the EA must obtain a signed statement from the parent/caretaker indicating that the parent/caretaker is aware of the specific convictions(s) and still chooses this provider. The OCFS-LDSS-4699.4, Parental Acknowledgment or local equivalent must be used for this purpose.

6. Extenuating Circumstances Review

The provider may request a review of extenuating circumstances when the provider has received a presumptive denial based on a violent or other serious crime, not specific to children; or, a denial based on another felony or
misdemeanor conviction, not specific to children. When the conviction pertains to a crime against children, felony or misdemeanor the provider is not entitled to a review of extenuating circumstances. Please refer to the sub-section above titled Evaluating Criminal History and Extenuating Circumstances for specifics on how to evaluate the criminal history and extenuating circumstances.

D. NEW YORK STATE SEX OFFENDER REGISTRY CHECK AND RESULTS

As a condition of full enrollment and re-enrollment of an informal provider, the EA must call the New York State Sex Offender Registry at 1-800-262-3257 to determine if the provider, employee, volunteer and, for caregivers of legally-exempt family care, each household member 18 years or older is listed as a sex offender on the New York State Sex Offender Registry. To obtain a search, the EA must provide the registry with the person’s name and either the date of birth or the NYS driver’s license number. The registry will inform the EA if the person is listed and, if listed, the level at which the person is rated.

A provider who is listed on the New York State Sex Offender Registry or a provider that employs an individual, uses a volunteer or provides care in a home (other than the child’s own home) in which there is a household member age 18 years or older who is listed on New York State Sex Offender Registry cannot be enrolled. The EA determines whether the results preclude the provider from enrollment and records this information in CCFS.

Section VII. ADMINISTRATION OF MEDICATION TO CHILDREN

Background

NYS Education Law limits the practice of the administration of medication other than over-the-counter topical ointment, sunscreen and topically applied insect repellent to authorized medical professionals. Some individuals are exempt from this requirement based on their relationship to the child, family or household, and are permitted to administer medication, including:

- The child’s parent, step-parent, legal custodian, legal guardian,
- A household member of the child,
- A child care provider employed by the parent/caretaker to provide child care in the child’s home, and
- Family members who are related within the 3rd degree of consanguinity to the child’s parent or step-parent.

Other legally-exempt providers will have to obtain training and complete the OCFS authorization process if they wish to administer medication to children in subsidized care.

Effective January 31, 2005, legally-exempt child care providers who are trained and authorized by the Office of Children and Family Services (OCFS), with a
Health Care Plan for the 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 be literate in the language in which the parental permissions and health care provider's instructions will be given.

The provider must complete this section and state whether the provider or any employee is legally permitted to administer medication, other than over-the-counter topical ointments, sunscreen and topically applied insect repellent, to children in the provider's care. “Legally permitted” includes providers who are licensed medical professionals currently authorized under NYS Education Law to administer medication and those who are “exempt” from this requirement by NYS Education Law, Title 8, Article 139, Section 6908, as mentioned above.

Any child care provider who is required to have an approved Health Care Plan for the Administration of Medication in order to administer medication, must submit a copy of the approval page of their plan. Providers who have met the training requirements through their professional medical training are required to submit a current copy of their license or certificate. The requirements for each individual circumstance are indicated on the enrollment form in the description of the provider (or employee’s) qualifications.

A. QUALIFICATIONS TO ADMINISTER MEDICATION

1. Is the provider legally permitted to administer medication to subsidized children when authorized by a parent/caretaker, legal guardian, or legal custodian? These 3 groups of individuals are specifically identified in the NYS Education Law as those who may authorize and direct a qualified child care provider, employee or caregiver to administer medication. Although not mentioned on the enrollment form, the EA should be aware that “An adult in whose care a child has been entrusted and who had been authorized by the parent/caretaker to consent to any health care for the child” may also authorize and direct a qualified child care provider, employee or caregiver to administer medication.

   If the answer is yes, then there must be a reason identified in question number 3.

2. Is the employee/volunteer legally permitted to administer medication to subsidized children when authorized by a parent/caretaker? If the answer is yes, the provider must give the name of the employee or volunteer here, and give the reason in question number 3.

3. Reason Why the Provider and/or Employee is Permitted to Administer Medication.
Any person who answers “no” to both questions 1 and 2 should skip this question.

Anyone who answers “Yes” to either question 1 or 2 must give an answer here. If both the provider and an employee/volunteer are legally permitted to give medication, a reason must be given for each. There are six options, and the provider must check ALL that apply to the person or persons who are designated to administer medication. Whenever the approval page for the Health Care Plan for the Administration of Medication must be submitted, the EA must review it according to Part 2 Section VII, Review of the Approval Page for the Health Care Plan for the Administration of Medication, of this Guide.

**Option A applies if**

The child care provider is employed by the parent/caretaker, providing child care in the home of the child. An in-home provider is exempt because he or she is considered to be a “person employed primarily in a domestic capacity.” He or she does not have to complete a Health Care Plan for the Administration of Medication.

**Option B applies if**

The provider is related within the third degree of consanguinity to the parent or step-parent of the child. The EA should refer to the definition for relative within the third degree of consanguinity found in 18 NYCRR, section 413.2 (a)(1) before ruling any relative out. The definition follows:

A relative within the third degree of consanguinity of the parent or step-parent includes: 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.

These providers are permitted to administer medication to children they are related to, as stated above, without meeting the OCFS training requirements and developing a Health Care Plan for the Administration of Medication.

**Option C applies if**

The provider is a currently licensed medical professional who is authorized to administer medication under the NYS Education Law AND who meets the definition of a Health Care Consultant. The following professionals meet both of these requirements:

- physician,
- physician’s assistant,
nurse practitioner, and
• registered nurse.

These providers are permitted to administer medication within the scope of their licenses. The provider must give the EA a copy of his or her current professional NYS license, which must be in one of the above professions.

The EA must check the license to see if it is current and issued in one of the above professions. If the license is not current, the EA should determine whether the provider has a current license, and ask for a current copy if one exists. If the provider does not produce a current medical license or other acceptable documentation to show that the license is still in effect, then the EA must inform the parent/caretaker that the provider is not permitted to administer medication unless the provider meets Option F.

If there are any concerns regarding the validity of the license or the professional behavior of the health care provider, the EA may contact the NYS Education Department, Office of the Professions.

Telephone: (518) 474-3817

Internet Site:  http://www.op.nysed.gov/opsearches.htm

Mailing Address:
New York State Education Department, Office of Professions
State Education Building - 2nd floor
89 Washington Avenue
Albany, NY 12234

Option D applies if

The employee is a currently licensed physician, physician’s assistant, nurse practitioner, or registered nurse, authorized to administer medication under the NYS Education Law. In addition to the copy of the professional license for the employee, the provider must have a Health Care Plan for the Administration of Medication. The EA must review the medical license, as described previously, and the approval page of the health care plan.

Option E applies if

The provider or employee is authorized or certified to administer medication:

• under the NYS Education Law in the profession of practical nurse, or
• under the NYS Public Health Law, in the profession of advanced emergency medical technician.

When administering medication, these caregivers must adhere to both the requirements of their license or certification and OCFS regulations. Legally-exempt child care providers may be authorized by OCFS beginning on or
after January 31, 2005. The provider must complete a Health Care Plan for the Administration of Medication and have a Health Care Consultant visit the child care site, review the plan, and approve the plan.

The provider must submit to the EA a copy of the approval page of the current Health Care Plan for the Administration of Medication and a copy of his or her current professional NYS license or certification in one of the above professions.

The EA must check the license or certification to see if it is current and issued in one of the above professions. If the license or certification is not current, the EA should determine whether the caregiver has a valid license or certification, and ask for a current copy if one exists. If the caregiver does not produce a current medical license or certification then the EA must inform the parent/caretaker that the caregiver is not permitted to administer medication unless the provider meets Option F.

The EA must review the approval page of the Health Care Plan for the Administration of Medication. For instructions refer to Part 2, Section VII, Health Care Plan for the Administration of Medication, Review of the Approval Page, of this Guide.

Option F applies if

The child care provider or employee is certified to administer medication and authorized by OCFS according to Title 18 NYCRR, Section 415.4 (f)(7)(iv)(z) on or after January 31, 2005. These providers must be operating under an approved Health Care Plan for the Administration of Medication.

The provider must submit a copy of the approval page of the Health Care Plan for the Administration of Medication to the EA.

The EA must review the approval page of the Health Care Plan for the Administration of Medication. For instructions refer to Part 2, Section VII, Health Care Plan for the Administration of Medication, Review of the Approval Page, of this Guide.

B. PARENT/CARETAKER AND PROVIDER AGREEMENT ON ADMINISTRATION OF MEDICATION

The parent/caretaker must indicate whether the parent/caretaker or the child care provider is responsible for meeting the medication needs of the child while in the care of the provider.
The first option applies if:

The provider or a qualified person designated by the provider will administer medication to the child. The provider or qualified person designated by the provider must meet the qualifications discussed in Part 2, Section VII A, Qualifications for Administration of Medication, of this Guide.

The second option applies if:

The parent/caretaker will administer the medication personally or will designate a person, other than the provider or the provider’s qualified employee or volunteer, who is legally permitted by law to do so. A parent/caretaker may authorize a qualified medical professional, or an exempt person, as stated in Title 8, Article 139, Section 6908 of the NYS Education Law, such as a member of the child’s household or a relative, to administer medication to the child. 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 must inform the provider, in writing, of any person authorized to give a child medication.

It is possible that the parent/caretaker and child care provider will share the responsibility. In that event, it is their mutual responsibility to make sure that they plan adequately to meet the child’s needs. They should indicate on the enrollment form that they will share the responsibility.

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

Will the provider be seeking authorization to administer medication to children in subsidized care?

This question is intended to identify providers who are not currently authorized to administer medication but may be interested in becoming authorized. Providers should indicate whether they will be seeking OCFS authorization to administer medication. If any provider answers “yes,” the EA should offer referral information to relevant service providers, as well as give the handout, Obtaining Authorization to Administer Medication to Subsidized Children in Legally-Exempt Care.

The local CCRR is the primary resource for child care providers who need help becoming authorized by OCFS to administer medication. The EA should modify the above handout to include resource numbers specific to the area for the local Chapter of the Red Cross or other relevant resources. The handout Obtaining Authorization to Administer Medication to Children in Legally-Exempt Care briefly explains the process and requirements, which are summarized below.

1. Basic requirements- the provider administering medication or the qualified person designated by the provider to administer medication must:

   • Be at least 18 years of age, and
• Be literate in the language in which the permissions and the medication instructions are given.

Please note that both of these requirements must be established by the MAT trainer prior to issuing a certificate and by the health care consultant prior to approving the Health Care Plan for the Administration of Medication.

2. The provider or the employee designated by the provider to administer medication must be trained and possess a current certification in each of the following areas.
   • Medication Administration Training (MAT),
   • Cardio-pulmonary Resuscitation (CPR), and
   • First Aid.

3. The provider must have a Health Care Plan for the Administration of Medication approved by a qualified health care consultant within the past 2 years.

4. The provider must have a qualified health care consultant of record. Prior to approving the plan, the health care consultant will review the policies and procedures for the administration of medication to children in this child care program that are receiving child care subsidy, as set forth in the Health Care Plan for the Administration of Medication. This review process includes a site visit and the verification of staff qualifications for all staff designated to give medicine, including: review of the documents that show the individuals have the necessary professional license or have completed the required training, review of the proof that the person giving the medicine is at least 18 years of age, and a determination that the person giving the medicine is literate in the language that the health care provider’s instructions and the parent’s/caretaker’s permissions are provided. When the consultant determines that the Health Care Plan for the Administration of Medication meets the requirements set forth in regulation, 18 NYCRR 415.4(f)(7)(iv)(z), the consultant may sign and approve the plan.

D. PROVIDER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION
All providers must read and sign this. The provider attests that he or she, and any employees and volunteers, will administer medication only to the extent permitted by law. The provider also attests to the truth and accuracy of the answers given.

E. PARENT/CARETAKER CERTIFICATION REGARDING ADMINISTRATION OF MEDICATION
The parent/caretaker’s responsibility to make an adequate plan to meet the needs of the child is reinforced. The parent/caretaker must read, sign and date the certification.
F. REVIEW OF THE APPROVAL PAGE FOR THE HEALTH CARE PLAN FOR THE ADMINISTRATION OF MEDICATION

As part of the enrollment process, for any provider who must complete a Health Care Plan for the Administration of Medication, the EA must review the approval page to confirm that a Health Care Consultant has approved the plan and that the qualifications of the Health Care Consultant are clearly stated. The approval page is in Section VIII of OCFS-LDSS 7000, Health Care Plan for the Administration of Medication for Legally-Exempt Providers.

1. Plan Approval Leads to OCFS Authorization to Administer Medication

The approval of the plan is the responsibility of the Health Care Consultant. Prior to approving the plan, the health care consultant visits the child care site, reviews the plan to determine that the plan to administer medication to children in the provider’s care is safe, reasonable and determines that the provider has met all the necessary OCFS requirements. This includes a determination that the person designated to administer medication to children in subsidized care meets the training requirements, is at least 18 years of age and meets the literacy requirement. When a qualified health care consultant approves the Health Care Plan for the Administration of Medication, the designated person who is certified to administer medication becomes authorized to administer medication only to subsidized children and only within the framework of the Health Care Plan for the Administration of Medication.

2. Health Care Consultant

The definition of Health Care Consultant may be found in Title 18 of the New York State Code of Rules and Regulations (NYCRR) section 413.2 (ak) and is as follows: “Health care consultant means a physician, physician’s assistant, nurse practitioner, or registered nurse who possesses a valid New York State license in his or her field. Such consultant may include a health care professional who is an employee of a local Department of Health.”

3. Review of the Approval Page

The health care consultant certification and approval section must include:

- Signature and plan approval date-The consultant’s signature is absolutely required. Check to make sure that the approval date is within 2 years of the date the plan was submitted to the EA. A Health Care Plan for the Administration of Medication is valid for two years from the time of approval by the health care consultant. Providers are required to renew their plans, and resubmit their approval page every two years. If the plan’s expiration is imminent, the EA must remind the parent/caretaker and provider that a new one must be submitted.

- Printed name and title-the EA must be able to read the consultant’s name and profession.
• Professional medical license number and expiration date of license, legibly written. Compare the expiration date with the plan approval date to make sure that the license was valid at the time the plan was signed (the expiration date of the license must occur after the plan approval date).

• The phone number and address for the health care consultant.

All of the information requested in the Health Care Consultant Certification and Approval section is important to demonstrate whether a qualified Health Care Consultant has approved the Health Care Plan for the Administration of Medication, in effect authorizing the child care program to administer medication. If information identifying the health care consultant or his or her credentials is missing, the EA representative should check to see if the missing information can be obtained. If the deficiency cannot be immediately corrected, the EA must inform the parent/caretaker of the approval’s inadequacies and that the provider does not meet the legal requirements to administer medication. A missing phone number or address does not necessitate such action if all other areas in this section are satisfactorily completed. If this information is missing, the EA should request that it be provided to the EA and also recorded on the original plan at the child care site. It is primarily for the use of the parent/caretaker and provider and is not grounds for rejection of the plan.

4. Concerns Regarding the License of the Health Care Consultant

If there is any concern regarding the qualifications of the health care consultant or the validity of the license, the EA may contact the NYS Education Department, Office of the Professions:

Telephone: (518) 474-3817

Internet Site: http://www.op.nysed.gov/opsearches.htm.

Mailing Address:

New York State Education Department, Office of Professions
State Education Building - 2nd floor
89 Washington Avenue
Albany, NY 12234

5. Affect On Enrollment

Inadequacies in the approval page do not exclude the provider from enrollment. However, the provider may not administer medication until this section is satisfactorily completed.

6. Additional Information on the Health Care Plan for the Administration of Medication for Legally-Exempt Provider

For additional information, refer to OCFS/LDSS 7001, Instructions for Completing the Health Care Plan for the Administration of Medication. When a parent/caretaker or provider has questions regarding the completion of the
plan, he or she should contact their local Child Care Resource and Referral agency.

G. CHILD WITH SPECIAL HEALTH CARE NEEDS VS. CHILD WITH SPECIAL NEEDS
The Health Care Plan for the Administration of Medication addresses the concept of a "child with special health care needs," which is defined in 18 NYCRR Section 413.2(am): “Children with special health care needs means children who have chronic physical, developmental, behavioral or emotional conditions expected to last 12 months or more and who require health and related services of a type or amount beyond that required by children generally.” Please note that the definition of “child with special health care needs” is different from the definition of “child with special needs” found in 18 NYCRR Section 415.1(c). The definition of a “child with special needs” is used by the district for eligibility determinations and for determination of maximum child care reimbursement rate. A child with “special health care needs” is not considered to be a “child with special needs” unless the child meets the definition stated in 18 NYCRR 415.

H. MEDICATION ERRORS AND NON-COMPLIANCE WITH ADMINISTRATION OF MEDICATION REGULATIONS
Providers are required to report any medication errors they make, by the following business day, to the appropriate OCFS Bureau of Early Childhood Services Regional Office or, in NYC, the Department of Health and Mental Hygiene. A listing of regional offices can be found by navigating to either the OCFS Internet or intranet sites, then to Day Care, Resource and Oversight Agency Listings, and to the list of OCFS Bureau of Early Childhood Services Regional Offices.

If the EA becomes aware of any medication errors or other medication-related concerns, the EA should also report them to the appropriate OCFS Bureau of Early Childhood Services Regional Office or, in NYC, the Department of Health and Mental Hygiene (DOHMH). These reports will be handled as day care complaints. The investigating office must inform the EA when complaints for providers currently enrolled by the EA are substantiated.

If OCFS, or NYC DOHMH, determines that a legally-exempt provider is unwilling or unable to operate in compliance with the regulations regarding the administration of medication; or if OCFS has taken actions against a provider based on a failure by the provider or employee to comply with the requirements for administration of medication, OCFS may require retraining OR may prohibit the provider or employee from being involved with the administration of medication.

A provider’s eligibility to receive payment is coupled with his or her compliance with law and regulation. A provider who is not legally permitted to administer medication, but does so anyway, is not eligible for a child care subsidy payment.
I. FORMS PERTAINING TO THE ADMINISTRATION OF MEDICATION

A parent/caretaker or provider may need several forms and/or handouts to complete the process of becoming authorized to administer medication, and to document authorization and instructions for administering medication. The necessary forms are available through the EA and the SUNY website. The list below identifies the forms and/or handouts related to administration of medication.

*Letters and handouts that help the parent/caretaker or provider understand how the administration of medication regulations affect them.*

- Model Letter to Parent/Caretaker-Administration of Medication
- OCFS/LDSS-7007, Obtaining Authorization to Administer Medication to Subsidized Children in Legally-Exempt
- Model Letter to Legally-Exempt Providers-Administration of Medication
- OCFS/LDSS-7008, Provider Handout-Administration of Medication

*Forms for obtaining authorization to administer medication under OCFS regulations:*

- OCFS/LDSS-7000, Health Care Plan for the Administration of Medication for Legally-Exempt Provider
- OCFS/LDSS-7001, Instructions for the Health Care Plan for the Administration of Medication for Legally-Exempt Provider
- Medication Administration Training (MAT) Grant Application
Forms needed by providers to administer medication to children:

- OCFS/LDSS-7002, Written Medication Consent Form
- OCFS/LDSS-7004, Log of Administration
- OCFS/LDSS-7003, Verbal Medication Consent Form and Log of Administration
- OCFS/LDSS-7005, Medication Error Report Form
- OCFS/LDSS-7006, Individual Health Care Plan for a Child with Special Health Care Needs

Section VIII. Parent/Caretaker and Provider Certifications

This section specifies responsibilities and requirements with which providers and parents/caretakers must comply, as well as rights of the parent/caretaker.

A. Parent/Caretaker Certifications

Certifications include the following:

The parent/caretaker also certifies that he or she will notify the Department of Social Services if there is a change in the number of hours that care is needed or if any other circumstance changes that would affect his or her need for care or eligibility for child care services.

The parent/caretaker certifies that he or she has selected the provider to furnish care to the children and assumes responsibility for monitoring the quality of care furnished to the children.

The parent/caretaker understands and agrees to pay the family share (fee) as directed by the Department of Social Services.

The parent/caretaker must certify that he or she understands the social services district may not be able to pay a provider if the provider is ineligible. If the parent chooses to use such a provider, the parent is responsible to pay for the child care. The parent/caretaker has the right to select another provider.

The parent/caretaker states that he or she understands these agreements apply for as long as the provider is caring for his or her children.

B. Provider Certifications

Certifications include the following:

The provider must certify that he or she will notify the EA immediately of changes in the number of children in care or the number of hours that care is provided. In addition, the provider will maintain and submit accurate attendance records as
required by the Department of Social Services. The provider also agrees to collect the family share (fee) if instructed by the social services district to do so and will inform the district if the parent/caretaker fails to pay the required family share.

The provider agrees to allow representatives of the district, the EA 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 understands that the Department of Social Services will check its child welfare database for history of court ordered removal of a child under Family Court Act (FCA) Article 10 and any termination of parental rights. The provider understands that the EA will check the New York State Sex Offender Registry to determine if he or she, any volunteer who is likely to have regular contact with children in care, any employee, or person living in the home (other than the child’s home) age 18 years or older is listed on the New York State Sex Offender Registry for committing a sex offense. The provider understands that the EA will check the New York State Child Care Facility System to determine whether the provider has ever been denied a child day care license or registration, or had a child day care license or revoked, suspended or denied.

The provider understands that any child care provided to a child receiving a child care subsidy, while he or she is deemed an ineligible provider by the EA, will not be reimbursed by the Department of Social Services.

The provider understands and agrees to meet all the conditions for as long as he or she is providing child care and the he or she is required to inform the EA and the parent/caretaker of changes in the information stated on the enrollment form.

C. PARENT/CARETAKER AND PROVIDER CERTIFICATIONS

The parent/caretaker and provider are informed of and acknowledge 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 or 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.

The parent/caretaker and provider understand that if the EA determines a provider cannot be enrolled, then the Department of Social Services cannot issue payment for care given by the provider. The parent/caretaker has the right and responsibility to decide whether he or she wants to use this provider. If the parent/caretaker chooses to use such a provider, the parent/caretaker is responsible to pay for the child care.

The parent/caretaker and provider are also informed that they may request the EA review any extenuating circumstances to determine if an exception could be made to allow the provider to provide subsidized care.

The parent/caretaker and provider certify that the statements on the enrollment form and any attachments are accurate and true. They understand and
acknowledge that providing false or inaccurate information could cause termination of payments and legal action by the Department of Social Services.

Both the parent/caretaker and the provider are required to sign and date this section attesting that they agree with the terms and conditions in this section. The provider cannot be enrolled if either the parent/caretaker or provider refuses to sign or agree to the requirements.

D. CERTIFICATION
Certifications include the following:

The parent/caretaker and provider certify to the best of their knowledge that all statements made on this enrollment form and any attachments to it are true and accurate. They understand that providing false information or deliberately concealing information may result in the provider being denied enrollment, the provider’s enrollment being terminated, the Department of Social Services terminating child care subsidy payments, and/or the local Department of Social Services taking legal action against the provider or parent/caretaker.

PART 3: THE OCFS-4700, ENROLLMENT FORM FOR LEGALLY-EXEMPT GROUP CHILD CARE PROVIDERS

A. CLARIFICATION ON THE FORM
The sections of the OCFS 4699 which pertain to legally-exempt groups are the same or slightly modified in the OCFS 4700. Please note that the requirement for database checks does not apply to legally-exempt groups. The Legally-Exempt Status section is different and is explained below.

Section II. Legally-Exempt Group Provider Status

Question A 2. Some legally-exempt group providers operate under the auspices of another federal, State or local government agency. They are required to adhere to the standards and requirements of the program’s lead agency.

Question B 2. Type of Provider Program. Programs types a, b, c and d are legally-exempt group providers operating under the auspices of another federal, State or local government agency. Program types e, f and g are programs that are not required to operate under the auspices of another federal, State or local government agency. When a provider selects program type h, additional information is required to make a determination of legally-exempt status.

Because programs a, b, c and d are required to adhere to the standards and requirements of the program’s lead agency, they do not have to complete the following sections of the form:

• III. Facility Safety Checklist,
• IV. Health and Safety Requirements for Provider, and

• VI. Administration of Medication (These programs do not receive authorization to administer medication through OCFS.)

B. MULTIPLE FAMILIES USING THE SAME LEGALLY-EXEMPT GROUP PROVIDER

Some legally-exempt group child care providers may be caring for a number of children subsidized by the district. Rather than have the provider submit multiple enrollment forms, the EA has the discretion to use some of the information on the enrollment form recently submitted by the provider.

In all cases, each family who has a subsidized child in care must complete:

• Section I, Provider and Parent Information, and
• Section VII, Parent and Provider Certifications.

However, the following sections of the enrollment form may be completed once and copied for each subsidized parent:

• Section II, Legally-Exempt Group Provider Status,
• Section IV, Health and Safety Requirements for Providers, and
• Section V, Health and Safety Requirements for the Provider, Employees and Volunteers.

The EA has the option to allow legally-exempt group providers that are caring for multiple children receiving child care subsidies to complete the Section III, Facility Safety Checklist by conducting a group walk-through with more than one parent at a time. If the provider completes the Facility Safety Checklist in this manner, he or she must attach a page listing the names and signatures of all parents who participated in the walk-through and who are attesting to the accuracy of the answers to the Facility Safety Checklist. This listing must include the parents' signatures and dates signed. The parent and provider must attest that all items in the Facility Safety Checklist are being met and will continue to be met before the provider can be enrolled.
A. REGULATORY REQUIREMENT

The district is required to conduct a local child welfare database check to determine the legally-exempt family and in-home child care provider’s history of court ordered Article 10 removals and termination of parental rights pursuant to Social Services Law (SSL) 384-b. The use of the predefined COGNOS Impromptu Reports to meet the regulatory requirements is optional.

The regulations addressing this requirement are below:

18 NYCRR 415.4(f)(8)(ii) - Effective July 31, 2006

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

(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 database 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 database 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.

B. THE COGNOS IMPROMPTU REPORTS FOR SEARCHING THE LOCAL CHILD WELFARE DATABASE

The COGNOS Impromptu Reports designed for the district to use for searching the child welfare database are:

1. Termination of Parental Rights Report
2. Adoption Reportable Events Report
3. Court Ordered Article 10 Removal Report

These three predefined reports are based on either legal or adoption codes entered into the Child Care Review Service (CCRS), which tracks children in foster care placements. The reports identify cases for which a court ordered Article 10 removal/placement under Family Court Act Article 10 or a termination of parental rights under Social Services Law 384-b has been recorded in CCRS and which are assigned to the county initiating the COGNOS Impromptu Report. Due to the nature of CCRS being a child-specific database, which does not link an activity to a named adult, this report must be used in conjunction with other verification steps to accurately determine a legally-exempt family or in-home child care provider’s local child welfare history.

C. RUNNING THE COGNOS IMPROMPTU REPORTS

The information on these reports, especially the “Adoption Reportable Events” report, is highly confidential, and the district is cautioned to take all appropriate measures to safeguard confidentiality. The person conducting the search must have the following:

- OCFS Data Warehouse access. If you are not an OCFS Data Warehouse user, your security coordinator will need to request access on your behalf by sending an e-mail to Joe Delucia at: Joe.Delucia@ocfs.state.ny.us.
- CONNECTIONS “full access" assigned by your security coordinator.
- A mapped T drive.
- The COGNOS Impromptu Reports kit, consisting of the COGNOS IMR’s, technical descriptions of each COGNOS report, and instructions for downloading the COGNOS IMR’s. Local district staff obtains these items from the district’s designated contact person for the COGNOS Impromptu reports for searching the child welfare database. A master list of these contact people is maintained by Ann Haller at 518 408-0759, or by E-mail: Ann.Haller@ocfs.state.ny.us.
D. PRIOR TO REVIEWING THE COGNOS REPORTS

It is possible that a case listed on the COGNOS report would exist under a name other than the legally-exempt family or in-home child care provider's. Foster care cases are generally named after the mother and adoption cases are named for the child who has been freed for adoption. To identify all possible case matches on the COGNOS reports, it is necessary to conduct a preliminary search on the legally-exempt family or in-home child care provider’s name in the Welfare Management System (WMS) to retrieve possible case names and numbers.

To identify the services cases associated with the legally-exempt child care provider:

- Search WMS on the legally-exempt family or in-home child care provider’s name, date of birth and social security number (if known).
- Identify services cases with a foster care component.
- Record or print the services case number(s). Use this list when reviewing the Court Ordered Article 10 Removal and Termination of Parental Rights reports only.
- Open the case composition window and print the list of names for each case. This list is best suited for using with the Adoption Reportable Events report.

E. REVIEWING THE COGNOS IMPROMPTU REPORTS

The information on the COGNOS reports, especially the “Adoption Reportable Events” report, is highly confidential. The district should assign the reviewing responsibilities to a person who understands confidentiality issues pertaining to foster care and adoption information. The district must secure the reports so that they cannot be viewed by unauthorized individuals and must dispose hard copies of the reports appropriately. Results of the database checks must be shared in the format specified, taking care to release only the designated information. Additionally, the person reviewing the reports should have an understanding of CRRS codes, legal activities and adoption activities. Some interpretation and verification steps are necessary when a “hit” is found. It may be helpful to have a CCRS coding guide, which is available on the public folders, through the following path: All Public Folders/DFA.STATE.NY.US/OCFS/TSU/CCRS reference documents.

1. The Court Ordered Article 10 Removal Report

This report lists all cases with CCRS assignments to your county that contain legal codes for court ordered removals or placements under Article 10. Each case entry includes a case ID and a case name that can be used to match up your legally-exempt family or in-home child care provider. The “legal activity” is the date the “removal order” or “placement order” was issued.

   A) Search for a Match.

   You can search your report in one of the ways below.

   - By WMS service case number. This method should be used for the Court Ordered Article 10 Removal. Using the service case numbers
obtained for the legally-exempt family or in-home child care provider in WMS, you can look for a matching number under the column labeled “Case ID”. With the report open on your screen, select View ➔ Screen Layout from the menus at the top of the screen. This removes the header area and page breaks from the report. Click once on the first Case ID in the report to highlight it. Select Edit ➔ Find from the menus at the top of the screen. Type the Case ID you are looking for in the dialog box, and click the Find ➔ Next button. Make sure to use capital letters. (Note: The Edit ➔ Find method will only work properly if you have switched to Screen Layout.) If you find a match based on a services case number, proceed to Step B.

- By Case Name. Using the list of the names found in the WMS case composition, you will search for a match under the “Case Name” column. With the report open on your screen, select View ➔ Screen Layout from the menus at the top of the screen. This removes the header area and page breaks from the report. Since the report is in alphabetical order by Case Name, you can use the scroll bar along the right margin to move through the report in search of a particular Case Name. If you find a match based on the Case Name, you can determine if the legally-exempt family or in-home child care provider is or was a member of that case by “drilling down” to the case composition. If the legally-exempt family and in-home child care provider is listed in the case composition, proceed to Step B.

B) Determine the Role of the Legally-Exempt Family or In-Home Child Care Provider in the Identified Case(s).
If the legally-exempt family or in-home child care provider is listed, you must determine his or her role in the removal/placement using local records. Determine the provider’s age at the time of the legal activity by comparing the legally-exempt child care provider’s “date of birth” and the “activity date”. If the legally-exempt family or in-home child care provider was an adult or could have been a parent at the time of the activity, you must review local records to determine whether the provider was the “respondent” in the court matter and whether the child was removed from his or her care.

C) Interpret the Results. Using local records, confirm the legally-exempt family or in-home child care provider’s role and whether the provider meets the enrollment requirement for the history of court ordered removal of a child under FCA Article 10. Any legally-exempt child care provider, who was the respondent in a proceeding under FCA Article 10 resulting in a court order removing or placing a child, does not meet the enrollment requirement. Additional information on making this determination is found in 05-OCFS ADM-03.

2. The Termination of Parental Rights Report
This report lists all cases with a CCRS assignment to your county that contain a legal activity codes for judicial decisions terminating parental rights and/or an appeal of the termination of parental rights decision.
A) **Search for a Match by Case Number or Name.** Search the report for matches as described above, under Court Ordered Article 10 Removals.

B) **Determine The Role of the Legally-Exempt Family or In-Home Child Care Provider in the Identified Case(s).** Verify the role of the legally-exempt family or in-home child care provider in any matched cases as described above under Court Ordered Article 10 Removals. If the legally-exempt family or in-home child care provider was an adult or could have been a parent at the time of the activity, you must review local records to determine whether the legally-exempt family or in-home child care provider was a respondent in a termination of parental rights preceding and whether his or her rights were terminated, or if it was another person in the case whose rights were terminated.

C) **Interpret the Results.** Any legally-exempt family or in-home child care provider who has had his or her parental rights terminated pursuant to SSL 384-b does not meet the enrollment requirement, and must be “presumptively” denied enrollment. Any provider who has had a stay of the order terminating parental rights or a successful appeal of the order may request a review of extenuating circumstances and rebut the denial by presenting evidence of either a stay of the TPR or the successful appeal of the TPR. A higher appellate court may issue a stay of the court order terminating parental rights pending appeal. A stay prevents enforcement of the court order terminating parental rights pending the disposition of the appeal. This information will be considered only after a denial of enrollment and if the provider requests a “review of extenuating circumstances.”

3. **The Adoption Reportable Events Report**

This report provides another way to seek information on termination of parental rights. It identifies all cases with a CCRS assignment to your county that contain adoption codes reporting termination of the parental rights of either the mother or legal father. This means that even if only one parent has had his or her rights terminated, there will be a coding entry for both the mother and father. The reviewer of this report must understand the codes used to accurately interpret it.

Naming convention for these cases is to name the case after the child. You should not expect to find the name of the person you are searching for listed as a case member on these cases.

A) **Search for a Match by Case Name.** This method should be used for the Adoption Reportable Events Report. Using the list of the legally-exempt child care provider’s children’s names from the WMS case composition, search for matches under the “Case Name” column.

B) **Determine the Role of the Legally-Exempt Family or In-Home Child Care Provider in the Identified Case(s).** The reviewer must be familiar with CCRS codes used in order to accurately interpret this report. The report lists a code for the legal mother and a separate code for the legal father. For each parent, it lists a code specifying the legal means used to free the child. Review the data returned for the identified case. The reviewer must recognize the codes specifying mother and legal father, and
determine if the method used to free for adoption (by reviewing the code listed) for each parent is a TPR or another method.

C) **Interpret the Results.** Any legally-exempt family or in-home child care provider who was the respondent in a termination of parental rights proceeding pursuant to SSL 384-b and had his or her parental rights terminated *does not meet the enrollment requirement.*

**F. CONTACTS**

For help in reviewing and interpreting the results, or programmatic information, contact Ann Haller at 518 408-0759, or e-mail: Ann.Haller@ocfs.state.ny.us.

For technical assistance with the COGNOS Impromptu Reports, contact Jennifer Gordon at (518) 473-0801 or e-mail: Jennifer.Gordon@ocfs.state.ny.us.