



## Office of Children and Family Services

ANDREW M. CUOMO  
Governor

SHEILA J. POOLE  
Commissioner

### Informational Letter

<b>Transmittal:</b>	
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies Child Care Providers
<b>Issuing Division/Office:</b>	Division of Child Care Services
<b>Date:</b>	February 7, 2020
<b>Subject:</b>	<b>Major Regulatory Revisions as of February 7, 2020</b>
<b>Suggested Distribution:</b>	Directors of Social Services Child Care Programs Child Care Resource and Referral Agencies Legally-Exempt Enrollment Agencies
<b>Contact Person(s):</b>	Licensed and Registered Child Care: Regional Offices <a href="https://ocfs.ny.gov/main/childcare/regionaloffices.asp">https://ocfs.ny.gov/main/childcare/regionaloffices.asp</a>  Legally-Exempt Child Care: Sonoma Pelton, OCFS Division of Child Care Services, 518-408-6074 Sonoma.Pelton@ocfs.ny.gov
<b>Attachments:</b>	

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		Article 18 §414, §415, §416, §417, §418-1 §418-2			

#### I. Purpose

The purpose of this Informational Letter (INF) is to provide licensed and registered child care programs and legally-exempt group programs information regarding the regulatory changes included in the revised emergency regulations issued February 7, 2020.

#### II. Background

Chapter 56 of the Laws of 2019 included legislative changes to conform New York State Law with the federal Child Care and Development Block Grant Act of 2014. On September 25, 2019, the New York State Office of Children and Family Services (OCFS) issued

emergency regulations and a notice of proposed regulation to enact these legislative changes. These changes affected Parts 403, 404, 405, 406, 413, 414, 415, 416, and 417 and Subparts 418-1 and 418-2 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR). Among other changes, the regulation language included the comprehensive background clearance process, safe sleep rules, emergency plans, and training requirements.

By the conclusion of the 60-day public comment period, OCFS received over 400 comments regarding the regulatory proposal. These comments came from parents, child care providers, itinerant service providers, and child care advocacy groups. After a careful review of public comment, OCFS has revised its regulations where possible to ease burdens on programs and parents, and to allow children to obtain necessary services. Such revisions were done in a manner that will not jeopardize the health and safety of children in care, and to align with federal and state law.

Additionally, in light of the comments received regarding access for outside service providers, on January 13, 2020, OCFS issued INF 20-OCFS-INF-02, *Safety Related Background Checks for Persons Providing Services to Children in a Child Day Care Setting. The options detailed in the INF remain in effect.*

### **III. Program Implications**

OCFS has now filed new emergency regulations and a revised notice of proposed rulemaking affecting the same sections of the NYCRR referenced above. These new emergency regulations go into effect immediately. These revised proposed regulations are open to public comment until April 7, 2020. This INF is to highlight two important revisions that will better support parents, providers and programs while also supporting the safety of children in care.

#### **1) Special Education Itinerant Service Providers**

In order to facilitate access to outside service providers, and alleviate concerns regarding requirements of the Health Insurance Portability and Accountability (HIPAA), Americans with Disabilities Act (ADA) and Individuals with Disabilities Education Act (IDEA), OCFS authorizes the following options for child care providers to address the outside service provider needs:

- OCFS has revised its regulations to authorize special education itinerant service providers providing services pursuant to the IDEA Part B, IDEA Part C, Section 504 of the federal Rehabilitation Act of 1973, or Article 89 of the New York Education Law to receive a comprehensive background clearance should the provider plan to leave the itinerant service provider unsupervised with the child receiving services.
- OCFS has revised its regulations to clarify that itinerant service providers **may** be considered volunteers so that they may complete the comprehensive background clearance requirements. Once such service providers receive a comprehensive background clearance, they can work unsupervised.

- As stated in the 20-OCFS-INF-02 referenced above, itinerant service providers may continue to work under supervision or can exercise the options outlined in 20-OCFS-INF-02 (the waiver of space and parental consent options).
- This revision and the previous options are intended to provide flexibility for programs and service providers to ensure the provision of necessary services to children in child care settings in the most appropriate way.

## 2) Provisional Employment

OCFS has further revised its regulations to authorize provisional employment for licensed and registered programs and legally-exempt group programs as aligned with federal regulations. Under the September 25, 2019 regulations, employees and volunteers could not begin work until the individual was notified that they had been fully cleared through the comprehensive background clearance process.

OCFS has revised the regulation to allow for new employees after September 25, 2019, to begin working provisionally so long as they have submitted the fingerprint check, provided that any other required documentation<sup>1</sup> (such as a medical history and criminal background attestation) is received by the provider. Staff hired provisionally must be supervised at all times by staff with an approved background clearance. Provisional staff must never be alone with children. This rule change is made possible through a time limited federal waiver.

To clarify, the submission of fingerprints means that the individual has undergone the fingerprint process for FBI and state fingerprint review, but the results have yet to be returned. Programs will need to maintain a receipt of the fingerprint check on record at the site for all provisional employees. Provisional employees must remain supervised by individuals who have received qualifying results on the background clearances and shall remain provisional until they receive notification from OCFS that they have received qualifying results on all background clearances. OCFS will review a sampling of employee files during routine inspections to ensure providers have proof of fingerprinting in the form of a receipt and all other required forms are on file for every provisional employee. OCFS has revised these emergency regulations to provide requested relief to the field.

Should you have any questions or concerns, please contact your regional office or enrollment agency for assistance or consideration.

## IV. Contacts

Regional Offices

<https://ocfs.ny.gov/main/childcare/regionaloffices.asp>

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<sup>1</sup> 414.15(b)(11), 416.15(b)(11), 417.15(b)(11) 418-1.15(b)11.

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

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**Issued by:**

Janice M. Molnar, Ph.D.  
Deputy Commissioner  
Division of Child Care Services