

SUBPART 418-2 Small Day Care Centers (January 31, 2005)

Section 418-2.1 Definitions, Enforcement and Hearings.

The provisions of Part 413 of this Title apply to this Subpart

418-2.2 Procedures for applying for and renewing a registration

(a) Applicants for a registration must submit to the Office:

- (1) a completed application, including required attestations, on forms furnished by the Office or approved equivalents. Such application and attestations must include an agreement by the applicant to operate the small day care center in conformity with applicable laws and regulations;
- (2) certificate of occupancy or other documentation from the local government authority having jurisdiction for determining compliance with the New York State Uniform Fire Prevention and Building Code showing that the facility has been inspected and approved within the 12 months preceding the date of application for use as a small day care center, in accordance with the appropriate provisions of such Code;
- (3) documentation from local zoning authorities or officials, where such authorities or officials exist, that a small day care center is a permitted use under any zoning code applicable to the area in which the small day care center is located;
- (4) documentation from the local health office or the New York State Department of Health showing that the facility has been inspected and approved within the 12 months preceding the date of application;
- (5) where a provider uses a private water supply, a report from a state licensed laboratory or individual, based on tests performed within the 12 months preceding the date of application, showing that the water meets standards for drinking water established by the New York State Department of Health;
- (6) certification, on forms provided by the Office, that the building, its property and premises, and the surrounding neighborhood and environment are free from environmental hazards. Such hazards include but are not limited to dry cleaners, gas stations, nuclear laboratories or power plants, property designated as a federal superfund clean-up site, and any property with known contaminated ground or water supplies. Where the historical or current use of the building, its property and premises, or the surrounding neighborhood indicate that an environmental hazard may be present, inspection or testing must be completed by the appropriate local official or authority to

determine if such hazard exists. Documentation of the inspection or testing must be appended to the statement required by this paragraph and include a statement from the appropriate local official or authority following this inspection and/or testing that the building, its property and premises, and the surrounding neighborhood meet applicable standards for sanitation and safety;

(7) documentation from service personnel licensed by the New York State Department of State to perform fire alarm systems maintenance, repair and testing which shows that fire alarm and detection systems have been inspected, tested and maintained in accordance with the applicable requirements of the New York State Uniform Fire Prevention and Building Code for use of the building as a small day care center;

(8) documentation from service personnel qualified to perform fire suppression systems testing showing that fire suppression equipment and systems have been tested and maintained in accordance with the applicable requirements of the New York State Uniform Fire Prevention and Building Code for use of the building as a small day care center;

(9) documentation from an inspector from the New York State Department of Labor, or an insurance company licensed to write boiler insurance in New York State, showing that all steam or hot water boilers have been inspected and approved in accordance with the requirements of the New York State Department of Labor. For all other fuel burning heating systems and equipment, and boilers not subject to the New York State Department of Labor requirements, documentation of service by a heating contractor performed within the 12 months preceding the date of application;

(10) a diagram of the portion of the building to be occupied by the small day care center and all adjacent areas of such building, as required in section 418-2.3 of this Subpart;

(11) a description of program activities offered to meet the needs of children, as described in section 418-2.7 of this Subpart;

(12) a copy of the evacuation plan, as required in section 418-2.5 of this Subpart, specifying alternate means of egress;

(13) a health care plan developed in accordance with the requirements of section 418-2.11 of this Subpart;

(14) health statements for the provider and any alternate provider completed within the 12 months preceding the date of application, as required in section 418-2.11 of this Subpart;

(15) a summary of the training and experience of the provider and any alternate provider, as described in section 418-2.13 of this Subpart;

(16) the names, addresses and day time telephone numbers of at least three references each for the provider and any alternate provider, as specified in section 418-2.13 of this Subpart;

(17) sworn statements by the provider and any alternate provider indicating whether, to the best of their knowledge, they have ever been convicted of a misdemeanor or a felony in New York State or any other jurisdiction, and fingerprint cards as required to comply with the requirements of section 413.4 of this Article;

(18) certification, on forms provided by the Office, of the status of the individual applicant's child support obligations or payments, in accordance with the requirements of Section 3-503 of the General Obligations Law;

(19) certification, on forms provided by the Office, that the small day care center is providing workers' compensation in accordance with the requirements of New York State law;

(20) the Statewide Central Register clearance form necessary to complete required screening by the Statewide Central Register of Child Abuse and Maltreatment to determine if the provider or any alternate provider is the subject of an indicated report of child abuse or maltreatment;

(21) when the small day care center is incorporated, a copy of the certificate of incorporation or an amendment thereto showing that the corporation has the authority to establish and operate day care centers and verification of the filing of such certificate. When a small day care center is operated by a corporation, such corporation shall immediately notify the Office upon any transfer or reapportionment of corporate stock or any change in ownership of the corporation;

(22) when the small day care center is owned by an individual, corporation, partnership or other entity using a business or assumed name, a copy of the certificate of doing business under an assumed name obtained from the county clerk;

(23) completed fingerprint cards necessary to conduct a criminal history record check pursuant to section 413.4 of this Part; and

(24) a statement signed by the provider or authorized representative of the provider that the center is in compliance with all applicable statutes and regulations.

(b) Small day care centers located in public school buildings currently used for elementary, middle or secondary education programs approved by the New York State Education Department are exempt from the requirements set forth in paragraphs (2)-(9) of subdivision (a) of this section. Each such program must submit a copy of the current certificate of occupancy issued by the State Education Department as part of the application. For those programs not issued such certificates of occupancy, the appropriate local equivalent, acceptable to the State Education Department, must be submitted.

(c) Applicants for a registration must submit all the documentation required in subdivision (a) of this section within 90 days after the submission of the first piece of such documentation to the office. An applicant who fails to submit all documentation within the 90 days will be deemed to have withdrawn such application.

(d) Applicants for a registration may not be issued a registration until an inspection of the small day care center has been conducted showing compliance with the requirements of this Subpart and the relevant provisions of the Social Services Law.

(e) Applicants for renewal of a registration must submit to the Office at least 60 days in advance of the expiration date of the registration the following:

(1) a completed application for renewal, including required attestations, on forms furnished by the office, or approved equivalents. Such application and attestations must include an agreement by the applicant to operate the small day care center in conformity with applicable laws and regulations;

(2) proof of compliance with the training requirements of section 418-2.14 of this Subpart;

(3) certification, on forms provided by the Office, of the status of the individual applicant's child support obligations or payments, in accordance with the requirements of Section 3-503 of the General Obligations Law;

(4) certification, on forms provided by the Office, that the building, its property and premises, and the surrounding neighborhood and environment are free from environmental hazards. Such hazards include but are not limited to dry cleaners, gas stations, nuclear laboratories or power plants, property designated as a federal superfund clean-up site, and any property with known contaminated ground or water supplies. Where the historical or current use of the building, its property and premises, or the surrounding neighborhood indicate that an environmental hazard may be present, inspection or testing must be completed by the appropriate local official or authority to determine if such hazard exists. Documentation of the inspection or testing must be

appended to the statement required by this paragraph and include a statement from the appropriate local official or authority following this inspection and/or testing that the building, its property and premises, and the surrounding neighborhood meet applicable standards for sanitation and safety;

(5) certification, on forms provided by the Office, that the small day care center is providing workers' compensation in accordance with the requirements of New York State law;

(6) health statements for the provider and any alternate provider completed within the 12 months preceding the date of the application for renewal, as required in section 418-2.11 of this Subpart;

(7) where a provider uses a private water supply, a report from a state licensed laboratory or individual, based on tests performed within the 12 months preceding the date of the application for renewal, showing that the water meets the standards for drinking water established by the New York State Department of Health;

(8) documentation from service personnel licensed by the New York State Department of State to perform fire alarm systems maintenance, repair and testing which shows that fire alarm and detection systems have been inspected, tested and maintained in accordance with the applicable requirements of the New York State Uniform Fire Prevention and Building Code;

(9) documentation from service personnel qualified to perform fire suppression systems testing showing that fire suppression equipment and systems have been tested and maintained in accordance with the applicable requirements of the New York State Uniform Fire Prevention and Building Code; and

(10) documentation from an inspector for the New York State Department of Labor, or an insurance company licensed to write boiler insurance in New York State, showing that all steam or hot water boilers have been inspected and approved in accordance with the requirements of the New York State Department of Labor. For all other fuel burning heating systems and equipment and boilers not subject to the New York State Department of Labor requirements, documentation of service by a heating contractor performed within the 12 months preceding the date of the application for renewal.

(f) The Office may grant an application for renewal of a registration without conducting an inspection of the small day care center. If the Office determines within its discretion that an inspection is necessary, a renewal of the registration may not be issued until an

inspection has been conducted showing compliance with the requirements of this Part and the relevant provisions of the Social Services Law.

(g) Small day care centers located in public school buildings currently used for elementary, middle or secondary education programs approved by the New York State Education Department are exempt from the requirements set forth in paragraphs (6)-(10) of subdivision (d) of this section. Each such program must submit a copy of the current certificate of occupancy issued by the State Education Department as part of the application. For those programs not issued such certificates of occupancy, the appropriate local equivalent, acceptable to the State Education Department, must be submitted.

418-2.3 Building and Equipment

(a) (1) Each applicant must submit to the Office at the time of application for registration a diagram of the proposed small day care center showing the planned occupancy or use of all areas of the building and all adjacent outside areas. For the areas to be used for day care, the diagram must specify: the purposes for which space will be used; the number and locations of exits and alternate means of egress; and the outdoor play areas available to the children in care.

(2) Whenever change(s), addition(s) or expansion(s) are proposed which will affect, or reasonably may be expected to affect, those portions of the building designated for the care of children or for their egress in case of an emergency, the provider must receive written approval from the Office prior to initiating such change(s), addition(s), or expansion(s).

(b) Areas that will be used by the children must be well-lighted and well-ventilated. Heating, ventilation and lighting equipment must be adequate for the protection of the health of the children. A temperature of at least 68 degrees Fahrenheit must be maintained in all rooms to be occupied by children.

(c) A firm sanitary crib, cot, bed or washable padded mat of adequate size must be provided for all children requiring a rest period. The resting/napping places must be located in safe areas of the center where there is no draft and where children will not be stepped on or block safe egress. Individual sanitary bed coverings must be available, as needed, for each child requiring a rest period. When night care is provided, a child four years of age or older shall not sleep in a room shared with another child of the opposite sex. No crib, cot, bed or mat may be occupied by more than one child, nor by a child and any adult. No child three years of age or older shall sleep in the same room with an adult of the opposite sex.

- (d) Stackable cribs are prohibited.
- (e) Toxic paints or finishes must not be used on room surfaces, furniture or any other equipment, materials or furnishings which may be used by children or are within their reach.
- (f) Peeling or damaged paint or plaster must be repaired promptly. Concrete floors used by the children must be covered with appropriate material.
- (g) Each small day care center must have adequate indoor space for the comfort of the children and to accommodate a variety of activities for the number of children in care.
- (h) Readily accessible outdoor play space which is adequate for active play must be provided.
- (i) Convenient, adequate and sanitary toilet facilities must be provided for the children in a separate, properly ventilated room readily accessible to children.
- (j) A functioning, sanitary shower or tub must be available when night care is provided.
- (k) Adequate and safe water supply and sewage facilities must be provided and must comply with State and local laws. Hot and cold running water must be available and accessible at all times.
- (l) Space must be provided so that children's personal items may be stored separately. Coat hooks must be spaced so that coats and other outer garments do not touch each other.
- (m) All buildings used for small day care centers must remain in compliance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code. Any part of any building used as a small day care center shall meet the requirements applicable under the New York State Uniform Fire Prevention and Building Code to a C6.1 or C6.2 occupancy classification, as appropriate to the ages of the children in care.

418-2.4 Fire Protection

- (a) Suitable precautions must be taken to eliminate all conditions which may contribute to or create a fire hazard.
- (b) Evacuation drills must be conducted at least monthly during various hours of operation of the small day care center in accordance with the recommendations of the local fire marshal or fire department. If evening and/or night care is provided, such drills

must be conducted monthly during each shift of care. A record of these drills must be kept on file using forms furnished by the Office or approved equivalents.

(c) Fire detection, alarm and fire fighting equipment appropriate to the type of building construction, size, height and occupancy must be provided.

(1) All fire alarm and detection systems must be inspected, tested and maintained in accordance with the applicable requirements of the New York State Uniform Fire Prevention and Building Code. All such inspections, testing and maintenance must be conducted by service personnel licensed by the New York State Department of State to perform fire alarm systems maintenance, repair and testing. The caregivers must be instructed in the function and operation of fire alarm and detection systems used in the small day care center.

(2) All fire suppression equipment and systems must be tested and maintained in accordance with the applicable requirements of the New York State Uniform Fire Prevention and Building Code. All such inspections, testing and maintenance must be conducted by service personnel qualified to perform fire suppression systems maintenance, repair and testing. The caregivers must be instructed in the function and operation of fire suppression equipment and systems used in the small day care center.

(d) Adequate means of egress must be provided. Children may be cared for only on such floors as are provided with readily accessible alternate means of egress to other floors, in the case of fire-resistant buildings, and to the outside in the case of non-fire-resistant buildings. Such means of egress must be remote from each other.

(e) All corridors, aisles, and approaches to exits must be kept unobstructed at all times.

(f) Steam or hot water boilers must be inspected and approved in accordance with the requirements of the New York State Department of Labor by an inspector from the New York State Department of Labor, or by an insurance company which is licensed to write boiler insurance in the State. All other fuel burning heating systems and equipment and boilers not subject to the New York State Department of Labor requirements must be serviced by a heating contractor once every 24 months.

(g) Rooms containing boilers, fuel burning furnaces or other fuel burning heating equipment must be constructed using a minimum of one-hour fire resistance materials or materials of a greater fire resistance when required by the New York State Uniform Fire Prevention and Building Code. Unless it is determined by the Office or local fire safety officials that the current heating equipment poses an imminent danger to the health and safety of children in care, those facilities which were licensed and operating on June 1,

2001 which are not in compliance with the requirement for one-hour fire resistance construction must make necessary changes in order to comply with the requirement no later than January 1, 2004. Upon a determination by the Office or local fire safety official that an imminent danger exists, such changes must be made immediately.

(h) Trash, garbage and combustible materials must not be stored in the furnace room or in rooms or outdoor areas adjacent to the facility that are ordinarily occupied by or accessible to children.

(i) The provider must conduct monthly inspections of the premises to observe possible fire or safety hazards. Any such hazard must be corrected immediately. A record of all inspections and all corrections must be maintained at the program.

418-2.5 Safety

(a) Suitable precautions must be taken to eliminate all conditions in areas accessible to children which pose a safety or health hazard.

(b) The provider must submit a written plan for the emergency evacuation of children from the premises for each shift of care provided (day, evening, night), using a form furnished by the Office, or an approved equivalent form. Primary emphasis must be placed on the immediate evacuation of children. The plan, as approved by the office, must be posted in a conspicuous place in the center. The approved emergency evacuation plan must describe the following:

(1) how children and caregivers will be made aware of an emergency;

(2) primary and secondary evacuation routes;

(3) methods of evacuation, including where children and caregivers will meet after evacuating the building, and how attendance will be taken; and

(4) notification of authorities and the children's parents.

(c) Portable electric heaters or other portable heating devices, regardless of the type of fuel used, may not be used in small day care centers.

(d) Radiators and pipes located in rooms occupied by children must be covered to protect the children from injury.

(e) Porches, decks and stairs must have railings with a barrier extending to the floor or ground to prevent children from falling. Acceptable types of barriers include, but are not limited to, banisters, intermediate rails, and heavy screening.

(f) Small day care centers must provide and use barriers to restrict children from unsafe areas. Such areas include, but are not limited to, swimming pools, open drainage ditches, wells, holes, wood and coal burning stoves, fireplaces and permanently installed gas space heaters.

(g) The use of non-public swimming pools, spa pools and all fill-and-drain wading pools is prohibited.

(h) Public swimming pools and adjacent areas used by the children must be constructed, maintained, staffed and used in accordance with Chapter 1, subpart 6-1, of the New York State Sanitary Code, and in such a manner as will safeguard the lives and health of children.

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

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

(k) Indoor and outdoor plants which are hazardous to children must not be accessible to the children.

(l) Any pet or animal kept indoors or outdoors at the small day care center must be in good health, show no evidence of carrying disease, and pose no threat to children. This provision also applies to those pets or animals present at the center which do not belong to caregivers.

(m) The small day care center must have immediate access to a minimum of one stationary single-line telephone for general use and emergencies. Emergency telephone numbers for the fire department, local or state police or sheriff's department, poison control center, and ambulance service must be posted conspicuously on or next to each telephone with the capacity to make outside calls. Devices used for purposes of caller identification or call blocking shall not be used to block in-coming calls from parents or legal guardians of children in care, representatives of the Office or agents of the state or local government during the hours of operation of the child day care program.

(n) Materials and play equipment used by the children must be sturdy and free from rough edges and sharp corners.

(o) Outdoor equipment such as swings, slides and climbing apparatus must be installed and used in accordance with the manufacturer's specifications and instructions, be in good repair, and be placed in a safe location. Such equipment and apparatus may be used only by the children for whom it is developmentally appropriate.

(p) Clear glass panels must be marked clearly to avoid accidental impact. Glass in outside windows less than 32 inches above the floor level must be of safety grade or otherwise protected by use of barriers to avoid accidental impact.

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

(r) An operable flashlight or battery powered lantern must be kept in the child care area. Such equipment must be properly maintained for use in the event of a power failure.

(s) Every closet door latch must be constructed to enable children to open the door from inside the closet. Every bathroom door lock must be designed to permit opening of the locked door from the outside in an emergency. The opening device must be readily accessible to the caregivers.

(t) The following items must be used and stored in such a manner that they are not accessible to children: handbags, backpacks or briefcases belonging to adults; plastic bags; and toys and objects small enough for children to swallow.

(u) High chairs, when used, must have a wide base and be used only for children who are able to sit up independently. A safety strap must be fastened around children who are seated in high chairs.

418-2.6 Transportation

(a) The provider must obtain written consent from the parent of the child for any transportation provided to children in care at the small day care center provided or arranged for by a caregiver.

(b) A caregiver must never leave a child unattended in any motor vehicle or other form of transportation.

(c) Each child must board or leave a vehicle from the curb side of the street.

(d) All children must be secured in safety seats or by safety belts as appropriate for the age of the child in accordance with the requirements of the Vehicle and Traffic Law

before any child may be transported in a motor vehicle where such transportation is provided or arranged for by the provider.

(e) Any motor vehicle, other than a public form of transportation, used to transport children in care at the small day care center must have a current registration and inspection sticker and must be operated by a person who is at least 18 years of age and possesses a valid driver's license.

418-2.7 Program Requirements

(a) The small day care center must establish a written daily schedule of program activities which offers reasonable regularity in routines, including snack and meal periods, nap and rest periods, indoor activities and outdoor play time. When night care is provided, this schedule must include a routine of good personal hygiene practices, including changing into night clothes, brushing teeth, and washing before bed in the manner to be agreed between the parent and the provider.

(b) Children must receive instruction, consistent with their age, needs and circumstances, in techniques and procedures which will enable them to protect themselves from abuse and maltreatment.

(c) Each small day care center must provide a sufficient quantity and variety of materials and play equipment appropriate to the ages of the children and their developmental levels and interests, including children with developmental delays and disabilities, that promote the children's cognitive, educational, social, cultural, physical, emotional, language and recreational development.

(d) As age and development permit, children must be allowed freedom of movement and must be provided with an environment designed to develop such skills as crawling, standing, walking and running.

(e) Children must be provided an opportunity to choose between quiet activities and active play.

(f) Daily supervised outdoor play is required for all children in care, except during inclement or extreme weather or unless otherwise ordered by a health care provider.

(g) Except while sleeping, awaking or going to sleep, an infant must not be left in a crib, playpen or other confined space for more than 30 minutes at any one time. Other than at meals or snack time, a child must not be left in a high chair for longer than 15 minutes.

(h) For day and evening care, appropriate rest and quiet periods which are responsive to individual and group needs must be provided so that children can sit quietly or lie down to rest.

(i) Sleeping and napping arrangements must be made in writing between the parent and the provider. Such arrangements include: the area of the center where the child will nap; whether the child will nap on a cot, mat, bed or a crib; and how the napping child will be supervised. Sleeping arrangements for infants require that the infant be placed on his or her back to sleep, unless medical information is presented to the provider by the parent that shows that arrangement is inappropriate for that child.

(j) For children unable to sleep, time and space must be provided for quiet play. During day and evening care, children must not be forced to rest for long periods of time.

418-2.8 Supervision of Children

(a) Children cannot be left without competent direct supervision at any time.

(1) Children who are able to toilet independently, including fastening and unfastening clothing, wiping themselves, flushing the toilet, and washing their hands, may use a bathroom on another floor for a short period of time without direct adult supervision.

(2) With the written permission of the parents, providers may allow school-aged children to participate in activities outside the direct supervision of a caregiver. Such activities must occur on the premises of the small day care center. The caregiver must physically check such children every 15 minutes.

(b) No person under 18 years of age can be left in sole charge of the children at any time.

(c) The provider must be the primary caregiver of children in a small day care center.

(1) For short-term, non-recurring absences, a substitute or alternate provider may care for children in place of the provider. If no substitute or alternate provider is available, care may not be provided and parents must be notified that care at the small day care center will not be available. Parents must be notified when a substitute or alternate provider will be caring for the children.

(2) For other than short-term, non-recurring absences, only an alternate provider may care for the children in place of the provider.

(d) No child can be released from the small day care center to any person other than his or her parent, person currently designated in writing by such parent to receive the child, or other person authorized by law to take custody of a child. No child can be released

from the small day care center unsupervised except upon written instruction of the child's parent. Such instruction must be acceptable to the small day care center and should take into consideration such factors as the child's age and maturity, proximity to his or her home, and safety of the neighborhood.

(e) Visitor control procedures.

(1) Each small day care center shall require any and all visitors to the facility to:

(i) sign in upon entry to the premises;

(ii) indicate in writing the date of the visit and the time of entry to the facility;

(iii) clearly state in writing the purpose of the visit; and

(iv) sign out upon departure from the facility indicating in writing the time of departure.

(2) Each small day care center shall establish such other rules and policies as are necessary to provide for monitoring and control of visitors to protect the health, safety and welfare of children in care. As part of such rules and policies, each small day care center shall determine who shall be considered a visitor to the facility for purposes of this subdivision.

(f) Surveillance cameras may not be used as a substitute for competent direct supervision of children.

418-2.9 Discipline

(a) The small day care center must establish written disciplinary guidelines and provide copies of these guidelines to all caregivers and parents of children in care at the center. These guidelines must include acceptable methods of guiding the behavior of children. Discipline must be administered in such a way as to help each child develop self-control and assume responsibility for his or her actions through clear and consistent rules and limits appropriate to the ages and development of the children in care. The caregivers must use acceptable techniques and approaches to help children solve problems.

(b) Any discipline used must relate to the child's action and be handled without prolonged delay on the part of the caregiver so that the child is aware of the relationship between his or her actions and the consequences of those actions.

(c) Isolating a child in a closet, darkened area, or any area where the child cannot be seen and supervised by a caregiver is prohibited.

(d) Where a child's behavior harms or is likely to result in harm to the child, others or property, or seriously disrupts or is likely to seriously disrupt group interaction, the child may be separated briefly from the group, but only for as long as is necessary for the child to regain enough self-control to rejoin the group. The child must be placed in an area where he or she is in the view of, and can be supervised and supported by, a caregiver. Interaction between a caregiver and the child must take place immediately following the separation to guide the child toward appropriate group behavior. Separation of a child from the group in a manner other than that provided for in this subdivision is prohibited.

(e) Corporal punishment is prohibited. For the purposes of this Subpart, the term corporal punishment means punishment inflicted directly on the body including, but not limited to, spanking, biting, shaking, slapping, twisting or squeezing; demanding excessive physical exercise, prolonged lack of movement or motion, or strenuous or bizarre postures; and compelling a child to eat or have in the child's mouth soap, foods, hot spices or other substances.

(f) Withholding or using food, rest or sleep as a punishment is prohibited.

(g) Discipline may be administered only by the caregiver.

(h) Methods of discipline, interaction or toilet training which frighten, demean or humiliate a child are prohibited.

418-2.10 Child Abuse and Maltreatment

(a) Any abuse or maltreatment of a child, either as an incident of discipline or otherwise, is prohibited. A small day care center must prohibit and may not tolerate or in any manner condone an act of abuse or maltreatment by an employee, volunteer or any other person under the provider's control. An abused child or maltreated child means a child defined as an abused child or maltreated child pursuant to section 412 of the Social Services Law.

(b) In accordance with the provisions of sections 413 and 415 of the Social Services Law, the small day care center provider, alternate provider, or substitute must report any suspected incidents of child abuse or maltreatment concerning a child receiving child day care to the Statewide Central Register of Child Abuse and Maltreatment or cause such a report to be made when the provider has reasonable cause to suspect that a child coming before them in their capacity as a small day care center provider is an abused or maltreated child. Such report must be followed by a written report within 48 hours, in the form and manner prescribed by the Office, to the child protective service of the social services district in the county in which the child resides.

418-2.11 Health and infection control

(a) The provider must prepare a health care plan on forms furnished by the office, or approved equivalents. Such plan must protect and promote the health of children in a manner consistent with the health care plan guidelines issued by the office. The guidelines describe practices to promote the health of children and for centers that provide care for such children special considerations for the care of mildly ill children. The health care plan must be on site and available upon demand by a parent or guardian or the office. The health care plan must be followed by the caregivers and, for programs offering the administration of medications, must be approved by the program's health care consultant. Should the health care consultant determine after a visit to the day care program that the approved health care plan is not being reasonably followed by the provider, the health care consultant may revoke his or her approval of the plan. If the health care consultant revokes his or her approval of the health care plan, the health care consultant must immediately notify the provider and the provider must immediately notify the office. In that instance, the health care consultant may also notify the office directly if he or she so desires. The health care plan must describe the following:

- (1) how a daily health check of each child for any indication of illness, injury, abuse or maltreatment will be conducted;
- (2) how a record of each child's illnesses, injuries and signs of abuse or maltreatment will be maintained;
- (3) how professional assistance will be obtained in emergencies;
- (4) the advance arrangements for the care of any child who has or develops symptoms of illness or is injured, including notifying the child's parent;
- (5) when mildly ill children will be accommodated, how the provider will achieve consistency with those sections of the Office's health care plan guidelines which apply to mildly ill children;
- (6) which staff members are certified to administer medications. The plan must state that only a trained, designated staff person may administer medications to children, except in those programs where the only administration of medications offered will be the administration of over-the-counter topical ointments, including sunscreen lotion and topically applied insect repellent pursuant to paragraph (12) of subdivision (i) of this section. The designated staff person may only administer medications to children if the designated staff person is at least 18 years of age, possesses a current certification in

first aid and cardiopulmonary resuscitation (CPR), and has completed the administration of medication training pursuant to paragraph (14) of subdivision (i) of this section;

(7) the designation of the health care consultant of record for programs offering the administration of medications, except in those programs where the only administration of medications offered will be the administration of over-the-counter topical ointments, including sunscreen lotion and topically applied insect repellent pursuant to paragraph (12) of subdivision (i) of this section; and

(8) the scheduling of visits by a health care consultant to programs offering the administration of medications, except in those programs where the only administration of medications offered will be the administration of over-the-counter topical ointments, including sunscreen lotion and topically applied insect repellent pursuant to paragraph (12) of subdivision (i) of this section.

(b) The provider and alternate provider must each submit a statement from a health care provider at the time of application for registration and renewal of registration. Such statement must give satisfactory evidence that the individual is physically fit to provide child day care, has no diagnosed psychiatric or emotional disorder which would preclude such individual from providing child day care, and is free from communicable disease. The medical statement also must include the results of a Mantoux tuberculin test on the applicant or alternate provider which has been performed within the 12 months preceding the date of the application.

(c) Consumption of, or being under the influence of, alcohol or controlled substances by staff of the child day care center is prohibited. Smoking in indoor areas, in outdoor areas in use by children and in vehicles while children are being transported is prohibited.

(d) Other than children who are enrolled in kindergarten or a higher grade, no child may be accepted for care in a small day care center unless the provider has been furnished with a written statement signed by a health care provider stating that the child is able to participate in child day care, currently appears to be free from contagious or communicable diseases and is receiving health care, including appropriate health examinations, in accordance with the American Academy of Pediatrics schedule of such care and examinations. The written statement from the health care provider must also state whether the child is a child with special health care needs and, if so, what special provisions, if any, will be necessary in order for the child to participate in day care. Where the written statement from the health care provider advises the day care provider that the child being enrolled is a child with special health care needs, the day care provider must work together with the parent and the child's health care provider to develop a reasonable

health care plan for the child while the child is in the child day care program. The health care plan for the child must also address how the day care provider will obtain or develop any additional competencies that the day care provider will need to have in order to carry out the health care plan for the child. The provider must also be furnished with documentation stating that the child has received age-appropriate immunizations in accordance with New York State Public Health Law.

(1) Any child not yet immunized may be admitted provided the child's immunizations are in process, in accordance with the requirements of the New York State Department of Health, and the parent gives the provider specific appointment dates for subsequent immunizations.

(2) Any child who is not immunized because of the parent's genuine and sincere religious beliefs may be admitted if the parent furnishes the provider with a written statement to this effect.

(3) Any child who is missing one or more of the required immunizations may be admitted if a physician licensed to practice medicine in New York State furnishes the provider with a written statement that such immunizations may be detrimental to the child's health.

(4) With the exception of children meeting the criteria of paragraph (2) or (3) of this subdivision, children enrolled in the small day care center must remain current with their immunizations in accordance with the current schedule for immunizations established by the New York State Department of Health.

(e) (1) The caregiver must obtain emergency health care for children who require such care and also must:

(i) obtain written consent at the time of admission from the parent or guardian which authorizes the provider or other caregiver to obtain emergency health care for the child;

(ii) arrange for the transportation of any child in need of emergency health care, and for the supervision of the children remaining in the small day care center; and

(iii) in the event of an accident or illness requiring immediate health care, secure such care and notify the parent or guardian.

(2) Where a provider or caregiver has been certified to administer medications in a day care setting in accordance with the requirements of paragraph (14) of subdivision (i) of this section, such caregiver may administer emergency care through the use of epinephrine auto-injector devices when necessary to prevent anaphylaxis for an

individual child but only when the parent or guardian and the child's health care provider have indicated such treatment is appropriate.

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

(g) When a child has or develops a level of illness that is not accommodated in the provider's approved health care plan, the child must be provided with a place to rest quietly that is in view of, and under the supervision of, the caregiver until the child is seen by a health care provider or is removed from the small day care center. In the event that a child has or develops any symptoms of illness, the caregiver is responsible for immediately notifying the parent.

(h) The provider must try to obtain a copy of a lead screening certificate for each child under the age of six years. If the parent does not have one, the provider may not exclude the child from the small day care center, but must give the parent information on lead poisoning and prevention, and refer the parent to their health care provider or the county health department for a lead blood screening test.

(i) The small day care centers' caregivers may administer medication or treatment only in accordance with the following:

(1) Policies regarding the administration of medications must be explained to the parent or guardian at the time of enrollment of the child in care. Parents or guardians must be made familiar with the policies of the day care provider relevant to the administration of medications.

(2) Nothing in this section shall be deemed to require any caregiver to administer any medication, treatment, or other remedy except to the extent that such medication, treatment or remedy is required under the provisions of the Americans with Disabilities Act.

(3) Nothing in this section shall be deemed to prevent a parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of a child, even if such a person is an employee of the program, from administering medications to a child while the child is attending the program even if the provider has chosen to not administer medications or if the staff person(s) designated to administer medications is not present when the child receives the medication. If the provider elects not to administer medications, the day care provider or an employee must still document the dosages and

time that the medications were given to the child by the child's parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of the child. If the only administration of medication in a day care program is done by a parent(s), guardian(s) or relative(s) within the third degree of consanguinity of the parents or step-parents of a child, the provider and employee(s) of the program do not have to complete the administration of medication training requirements pursuant to paragraph (14) of subdivision (i) of this section.

(4) All providers who choose to administer medications to children must have a health care consultant of record and must address the administration of medications in the health care plan in accordance with the requirements of subdivision (a) of this section. The provider must confer with a health care consultant regarding the program's policies and procedures related to the administration of medications. This consultation must include a review of the documentation that all staff authorized to administer medications have the necessary professional license or have completed the necessary training.

(5) Caregivers may administer prescription and non-prescription (over-the-counter) medications for eyes or ears, oral medications, topical ointments and medications, and inhaled medications in accordance with the provisions of this subdivision. Caregivers may not administer medications by injection, vaginally or rectally except as follows:

(i) in accordance with the provisions of paragraph (2) of subdivision (e) of this section;

(ii) for a child with special health care needs, where the parent, day care provider and the child's health care provider have agreed on a plan pursuant to which the caregiver may administer medications by injection, vaginally or rectally; or

(iii) where the caregiver has a valid New York State license as a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse or advanced emergency medical technician.

(6) A day care provider who agrees that the day care provider or another caregiver in the small day care center will administer medications to a child must do so, unless they observe the circumstances specified by the health care provider, if any, under which the medication must not be administered. In such instances, the day care provider or caregiver must contact the parent or guardian immediately.

(7)(i) Except as described in paragraphs (11), (12) and (13) of this subdivision, medication may be administered only upon written permission of a parent or guardian and written instructions from a health care provider in a language in which the day care provider or caregiver who will administer the medications is literate stating that the child

day care provider or caregiver may administer such medication or prescription and specifying the circumstances, if any, under which the medication or prescription must not be administered. Medication must be returned to the parent or guardian when it is no longer required by the child or, with the permission of the parent or guardian, be properly disposed of by the provider.

(ii) Where the day care provider has received written permission of the parent or guardian and written instructions from the health care provider authorizing administration of a specified medication if the day care provider observes some specified condition or change of condition in the child while the child is in care, the day care provider may administer the specified medication without obtaining additional authorization from the parent or guardian or health care provider.

(8) To the extent that such information is not included on the medication label pursuant to paragraph (9) of this subdivision, written instructions by the licensed authorized prescriber on the form provided by the Office or an equivalent form, must include the:

(i) Child's name;

(ii) Licensed authorized prescriber's name, telephone number, and signature;

(iii) Date authorized;

(iv) Name of medication and dosage;

(v) Frequency the medication is to be administered;

(vi) Method of administration;

(vii) Date the medication shall be discontinued or length of time, in days, the medication is to be given;

(viii) Reason for medication (unless this information must remain confidential pursuant to law);

(ix) Most common side effects or reactions; and

(x) Special instructions or considerations, including but not limited to possible interactions with other medications the child is receiving or concerns regarding the use of the medication as it relates to a child's age, allergies, or any pre-existing conditions.

(9) Medications must be kept in the original labeled bottle or container. Over-the-counter medication must be kept in the originally labeled container and be labeled with the child's

first and last name. Prescription medications must contain the original pharmacy label that lists:

- (i) Child's name;
- (ii) Authorized prescriber's name;
- (iii) Pharmacy name and telephone number;
- (iv) Date prescription was filled;
- (v) Name of the medication;
- (vi) Dosage;
- (vii) How often to give the medication; and
- (viii) Date the medication shall be discontinued or length of time, in days, the medication is to be given.

(10) In the case of medication that needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized at least once every six months. Any changes in the original medication authorization shall require a provider to obtain new instructions written by the licensed authorized prescriber and a change in the prescription.

(11) If a parent or guardian requests that the day care provider or caregiver administer a prescription or orally administered over-the-counter medication but does not furnish the day care provider or caregiver with written instructions from a health care provider or licensed authorized prescriber, the day care provider or caregiver may administer such medication or prescription with the oral approval of the parent or guardian and upon obtaining verbal instructions directly from the health care provider or licensed authorized prescriber for that day only. The day care provider or caregiver must document that the health care provider or licensed authorized prescriber gave verbal instructions and that the health care provider or licensed authorized prescriber was asked to send written instructions to the day care provider or caregiver. If the medication is to be administered on subsequent days, written instructions must have been provided to the day care provider or caregiver from the health care provider.

(12) The day care provider or caregiver may administer over-the-counter topical ointments, including sunscreen lotion and topically applied insect repellent, upon the written instructions of the parent or guardian. Such administration must be consistent with any directions for use noted on the original container, including but not limited to

precautions related to age and special health conditions. With such written instructions, day care providers and caregivers may administer over-the-counter topical ointments and sunscreen lotion without receiving the training in administration of medications otherwise required pursuant to paragraph (14) of this subdivision.

(13)(i) If an infant develops symptoms which indicate a need for over-the-counter topical ointment while in care at the program, such ointment may be given under verbal instructions from the parent or guardian for that day only if the instructions received from the parent or guardian are consistent with any directions for use of the medication or ointment noted on the original container, including but not limited to precautions related to age and special health conditions.

(ii) If a child other than an infant develops symptoms which indicate a need for over-the-counter medication, including topical ointments, while in care at the program, such medication or ointment may be given under verbal instructions from the parent or guardian for that day only if the instructions received from the parent or guardian are consistent with any directions for use of the medication or ointment noted on the original container, including but not limited to precautions related to age and special health conditions.

(iii) For all children for whom the day care provider or caregiver administers over-the-counter medications pursuant to this paragraph, the day care provider or caregiver must document that the parent or guardian gave verbal instructions and approval. If the medication is to be administered on subsequent days, written instructions from the parent or guardian and, in the case of orally administered medications, a health care provider or licensed authorized prescriber, must be obtained.

(14) All day care providers and caregivers, except those excluded in subparagraph (iii) of this paragraph and except as provided in paragraphs (3) and (12) of this subdivision, who have agreed to administer medication must complete the office-approved medication administration training or an office-approved equivalent before administering medications to children in day care. The certification of training in the administration of medications to children in day care shall be effective for a period of three years from the date of issuance. The provider or caregiver must complete a recertification training approved by the office in order to extend the certification for each additional three year period. If, however, the provider or caregiver ceases to work in a day care program for a continuous period of one year, the certification shall automatically lapse. Where a certification lapses, the provider or caregiver may not be recertified unless the provider or caregiver completes the initial medication administration training or the recertification training, as required by the office. Where enforcement action has been taken against the provider

based on a failure by the provider or caregiver to comply with requirements for the administration of medications set forth in this section, the office may require retraining or may prohibit the provider or caregiver from being involved in the administration of medications.

(i) Providers or caregivers who will be responsible for administering medications must receive training in the methods of administering medications prior to administering any medications in a day care setting. In order to be trained in the administration of medications in a day care setting, a provider or caregiver must be literate in the language or languages in which health care instructions from parents and health care providers will be received. Upon completion of the training, the provider or caregiver must receive a written certificate from the trainer that indicates that the trainee has successfully completed this training program, as required, and demonstrated competency in the administration of medications in a day care setting. Persons who receive training in the administration of medications in day care settings pursuant to this section may not otherwise administer medications or represent themselves as being able to administer medications except to the extent such persons may be able to do so in accordance with the relevant provisions of the Education Law.

(ii) The training in the administration of medications must be provided by a health care provider who has been certified by the office to administer the office-approved curriculum. The training must be documented and must include, but need not be limited to, the following:

(a) training objectives;

(b) a description of the methods of administration including principles and techniques of application and dispensation of oral, topical, and inhalant medication, including the use of nebulizers, and the use of epinephrine auto-injector devices when necessary to prevent anaphylaxis in emergency situations with respect to the various age groups of children;

(c) administering medication to an uncooperative child;

(d) an evaluation of whether the trainee demonstrates competency in:

(1) understanding orders from the health care professional or licensed authorized prescriber;

(2) the ability to correctly carry out the orders given by the health care provider or licensed authorized prescriber;

- (3) recognition of common side effects of medications and ability to follow written directions regarding appropriate follow up action;
- (4) avoidance of medication errors and what action to take if an error occurs;
- (5) understanding relevant commonly used abbreviations;
- (6) maintaining required documentation including the parent or guardian's permission, written orders from health care professionals and licensed authorized prescribers, and the record of administration of medications;
- (7) safe handling of medications, including receiving medications from a parent or guardian;
- (8) proper storage of medications, including controlled substances; and
- (9) safe disposal of medications.

(iii) A person who can produce a valid New York State license as a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse or advanced emergency medical technician will not be required to attend the training required by this paragraph in order to administer medications in a day care program. Documentation establishing the person's credentials in one of the above fields will be required and a copy of the documentation must be provided to the Office.

(15) Medications must be kept in a clean area that is inaccessible to children. If refrigeration is required, the medication must be stored in either a separate refrigerator or a leak-proof container in a designated area of a food storage refrigerator, separated from food and inaccessible to children. Day care programs must comply with all Federal and State requirements for the storage and disposal of all types of medications, including controlled substances.

(16) At the time of administration, the day care provider or caregiver must document the dosages and time that the medications are given to the child. All observable side effects must be documented and shared with the parent, guardian and, when appropriate, the child's health care provider. Documentation must be made if the medication was not given and the reason for such a decision. The parent or guardian must be notified immediately and the Office must be notified by the close of the following business day of any medication administration errors. Notification to the Office must be reported on a form provided by the Office or on an approved equivalent.

(17) No child under the care of a small day care center will be allowed to independently administer medications without the assistance and direct supervision of staff that are certified to administer medications pursuant to this section. Any program that elects to offer the administration of medications to children where children who attend the program independently administer medications or where children assist in the administration of their own medications must comply with all the provisions of this section.

(j) Caregivers must thoroughly wash their hands with soap and running water at the beginning of each day, before and after the administration of medications, when they are dirty, after toileting or assisting children with toileting, after changing a diaper, before and after food handling or eating, after handling pets or other animals, after contact with any bodily secretion or fluid, and after coming in from outdoors.

(k) Caregivers must ensure that children thoroughly wash their hands or assist children with thoroughly washing their hands with soap and running water when they are dirty, after toileting, before and after food handling or eating, after handling pets or other animals, after contact with any bodily secretion or fluid, and after coming in from outdoors. For diapered children, caregivers must ensure that adequate steps are taken to clean the child after each change of diaper. Caregivers must assist children in keeping clean and comfortable, and in learning appropriate personal hygiene practices.

(1) Safety precautions relating to blood must be observed by all staff coming into contact with blood, as follows:

(1) Disposable gloves must be immediately available and worn whenever there is a possibility for contact with blood, including but not limited to:

(i) changing diapers where there is blood in the stool;

(ii) touching blood or blood-contaminated body fluids;

(iii) treating cuts that bleed; and

(iv) wiping surfaces stained with blood.

(2) In an emergency, a child's well-being must take priority. A bleeding child must not be denied care because gloves are not immediately available.

(3) Disposable gloves must be discarded after each use.

(4) If blood is touched accidentally, the exposed skin must be thoroughly washed with soap and running water.

(5) Clothes contaminated with blood must be placed in a securely tied plastic bag and returned to the parent at the end of the day.

(6) Surfaces that have been blood stained must be cleaned and then disinfected with a germicidal solution.

(m) Sufficient and suitable clothing must be available so that children who dirty or soil their clothing may be changed. All such clothing must be returned to parents for washing.

(n) Infants must be kept clean and comfortable at all times. Diapers must be changed whenever wet or soiled. The diaper changing area must be as close as possible to a sink that is used exclusively by staff for diaper changing. This area or sink must not be used for food preparation. Soap and hot and cold running water must be available. The diaper changing area must be washed and disinfected with a germicidal solution after each use.

(o) The provider must use disposable diapers or arrange with the parent(s) or a commercial diaper service to provide an adequate supply of cloth diapers.

(1) When disposable diapers are used, soiled diapers must be disposed of immediately into an outside trash disposal, or placed in a tightly covered plastic-lined trash can in an area inaccessible to children until outdoor disposal is possible.

(2) Non-disposable diapers must not be laundered in the small day care center, and must be stored in a securely covered receptacle until returned to the diaper service. When parents provide nondisposable diapers, soiled diapers must be placed in a securely tied plastic bag and returned to the parent at the end of the day.

(p) Toilet facilities must be kept clean at all times, and must be supplied with toilet paper, soap and disposable towels accessible to the children.

(1) Toileting equipment, such as potty chairs, appropriate to the toilet training level of the children in the group must be provided. When more than one child in the center is being toilet trained, potty chairs must be emptied and sanitized with a germicidal solution after each use. If only one child in the center is being toilet trained, potty chairs must be emptied and rinsed after each use and sanitized with a germicidal solution daily. Potty chairs must not be washed out in a handwashing sink, unless that sink is washed and disinfected after such use.

(2) Either disposable towels or individual cloth towels for each child must be used. If individual cloth towels are used, they must be laundered daily. Sharing personal hygiene items, such as washcloths, towels, toothbrushes, combs and hairbrushes, is prohibited.

(q) All rooms, equipment, surfaces, supplies and furnishings accessible to children must be cleaned and disinfected as needed to protect the health of children, and in a manner consistent with the health care plan guidelines issued by the Office. The premises must be kept free from dampness, odors, vermin, and the accumulation of trash.

(1) Equipment that is frequently used or touched by children on a daily basis must be cleaned and disinfected when soiled and at least once weekly.

(2) Carpets contaminated with body fluids must be spot cleaned.

(3) Extensive cleaning, such as shampooing carpets or washing windows and walls, must occur when children are not present.

(4)(i) Any application of pesticides (as the term pesticide is defined in section 33-0101 of the Environmental Conservation Law) shall be completed in accordance with the requirements of section 390-c of the Social Services Law and sections 33-1004 and 33-1005 of the Environmental Conservation Law.

(ii) In addition to the requirements of section 390-c of the Social Services Law, each day care facility must send a notice home with each child or otherwise provide notification to the parent of each child not less than forty-eight hours prior to the application of pesticides. Such notice must include:

(a) the location and specific date of the application of pesticides and may include two alternate dates in the event that an outdoor application cannot be made due to weather conditions;

(b) the pesticide product name and pesticide registration number assigned by the United States Environmental Protection Agency;

(c) the following statement: "This notice is to inform you of a pending pesticide application at this facility. You may wish to discuss with a representative of the day care facility what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product or products being applied, including any warnings that appear on the label of the pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticide Telecommunications Network Information line at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info Line at 1-800-458-1158"; and

(d) the name of a representative of the day care facility and contact number for additional information.

(iii) Any day care provider that fails to send the appropriate notice of pesticide application as set forth in subparagraph (ii) of this paragraph shall, for a first such violation of this subdivision, be issued a written warning in lieu of penalty. For a second violation, such provider shall be subject to a penalty not to exceed one hundred dollars. For any subsequent violation, such provider shall be subject to a penalty not to exceed two hundred fifty dollars for each violation. No penalty may be assessed by the Commissioner without affording the provider with notice and an opportunity for a hearing pursuant to section 413.5 of this Article.

(iv) Any finding by the Department of Environmental Conservation of a violation by the provider of the requirements set forth in section 33-1004 or 33-1005 of the Environmental Conservation Law shall be deemed a safety hazard to children in care and a violation of this subdivision.

(5) Garbage receptacles must be covered, and cleaned as needed after emptying.

(6) Thermometers and toys mouthed by children must be washed and disinfected before use by another child.

(7) Individual drinking cups, disposable paper cups or bubbler drinking fountains of the angle jet type must be provided. The use of shared drinking cups is prohibited.

(8) Linens, blankets and bedding must be cleaned at least weekly and before use by another child. Cribs, cots, beds, mats and mattresses must be cleaned thoroughly between uses by different children and at least monthly.

(9) After use, dishes and all utensils must be washed with soap and hot water, and rinsed in hot running water.

418-2.12 Nutrition

(a) The small day care center must provide plentiful and nutritious snacks to children. The center must ensure that each child in care for more than four hours a day receives a nutritious meal. Each child in care for more than ten hours a day must receive a minimum of two nutritious meals. Food must be prepared and stored in a safe and sanitary manner and served at appropriate intervals.

(1) If the small day care center does not furnish meals, there must be adequate supplemental food available in the event that no meal is provided by the parent or if the meal provided by the parent is of inadequate nutritional value.

(2) Centers changing their meal policy must provide adequate notice to parents.

- (b) Where meals are furnished by the small day care center, food preferences for personal, religious or medical reasons may be accommodated. If resultant meal patterns or serving sizes will not meet the child's nutritional needs, a medical statement must be obtained documenting the appropriateness of the variation.
- (c) Where meals are furnished by the small day care center, the servings must be in portions suitable for the size and age of the children in care. There must be a sufficient amount of food available to children to permit second helpings.
- (d) Children must be helped to gain independence in feeding themselves and should be encouraged to learn acceptable table manners appropriate to their developmental levels.
- (e) Sufficient time, based on age and individual needs, must be allowed for meals so that children will not be hurried.
- (f) Perishable food, milk and formula must be kept refrigerated.
- (g) Safe drinking water must be available to children at all times and must be offered at intervals that are responsive to the needs of the individual children.
- (h) Disposable cups and plates may be used if discarded after use. Plastic eating utensils may be used if such utensils are not easily broken by young children and are discarded after use. Styrofoam cups may not be used for infants or toddlers.
- (i) Providers must obtain a written statement from the parent of each infant in care setting forth the formula and feeding schedule instructions for the infant.
- (j) Where formula is required, such formula may be prepared and provided by the parent, or by the provider when agreed to in writing by the parent.
- (k) If more than one child in the small day care center is receiving formula, breast milk or other individualized food items, all containers or bottles must be clearly marked with the child's complete name.
- (1) Unused portions of bottles or containers from which children have been spoon-fed must be discarded after each feeding or placed in a securely tied plastic bag and returned to the parent at the end of the day.
- (2) Heating formula, breast milk or other food items for infants in a microwave oven is prohibited.
- (l) Every effort must be made to accommodate the needs of a child who is being breast-fed.

(m) Infants six months of age or younger must be held while being bottle-fed. Other infants must be held while being bottle-fed until the infant consistently demonstrates the capability of holding the bottle and ingesting an adequate portion of the contents thereof. The propping of bottles is prohibited.

(n) Each infant and toddler must be removed from the crib, playpen or cot and held or placed in an appropriate chair for feeding.

418-2.13 Staff Qualifications

(a) The provider and alternate provider must each meet the following qualifications:

(1) be at least 18 years old;

(2) have a minimum of two years experience caring for children under six years of age, or one year of experience caring for children under six years of age plus six hours of training or education in early childhood development. The phrase "experience caring for children" can mean child-rearing as well as paid and unpaid experience caring for children. The term "training" can mean educational workshops and courses in caring for pre-school-age children.

(3) be capable of providing, and agree to provide, safe and suitable care to children which is supportive of the children's physical, intellectual, emotional and social well-being; and

(4) provide to the Office the names, addresses and day time telephone numbers of at least three references, other than relatives. At least one of the references must be able to attest to the provider's or alternate provider's employment history, work record and qualifications, if the provider or alternate provider has ever been employed outside the home. At least one of the references must be able to attest to the provider's or alternate provider's character, habits and personal qualifications to be a small day care center provider or alternate provider.

(b) Alternate providers are required to comply with the criminal history review provisions of this Part and Part 413 of this Article.

418-2.14 Training

(a) Each provider and alternate provider must complete a minimum of thirty (30) hours of training every two years. Fifteen (15) hours of such training must be completed during the first six months of the program's first year of registration. Any person who becomes an alternate provider after the initial registration of the center must complete a minimum of fifteen (15) hours of training during the first six months after becoming an alternate provider. In either case, this initial fifteen (15) hours applies toward the total thirty (30)

hour minimum requirement for each registration period. Such training requirements shall also apply to any volunteer in a small day care center program who has the potential for regular and substantial contact with children. Training must address the following topics:

(1) principles of early childhood development, including the appropriate supervision of children, meeting the needs of children enrolled in the program with physical or emotional challenges and behavior management and discipline;

(2) nutrition and health needs of children;

(3) child day care program development;

(4) safety and security procedures, including communication between parents and staff;

(5) business record maintenance and management;

(6) child abuse and maltreatment identification and prevention;

(7) statutes and regulations pertaining to child day care; and

(8) statutes and regulations pertaining to child abuse and maltreatment.

(b) Training received after the application has been submitted but before the application has been approved and the registration granted may be counted towards the initial fifteen (15) hours required in subdivision (a) above.

(c) For the thirty (30) hours of training that must be received every two years after the first year of registration, any provider or alternate provider who can demonstrate basic competency in a particular topic to the Office may determine in which of the specified topics he or she needs further study. The Office also may exempt any provider or alternate provider from participating in training on a particular topic upon demonstration of substantially equivalent knowledge or experience related to that topic. All providers with such exemptions must still complete thirty (30) hours of training during each registration period.

(d) Each provider and alternate provider must submit verification of completion of the training requirements to their program's designated registration office on forms provided by the Office.

(e) At the time of admission, the provider or alternate provider must furnish parents with appropriate instructional materials that will assist them in evaluating the facility and caregivers. Such material must include information concerning child abuse and

maltreatment, and guidance on the steps they may take if they suspect their child has been abused or maltreated.

418-2.15 Management and Administration

(a) Small day care centers must comply with the following standards:

(1) Each small day care center must register with the Office and must operate in compliance with the regulations of the Office and all other applicable laws and regulations. No person or entity may operate a small day care center unless registered with the Office;

(2) Providers who have registered with the Office must provide proof of registration and information concerning any waivers that have been approved by the Office upon request;

(3) A new application for registration must be submitted to the Office when there is a change in the name, address or operator; when the operator will be providing an additional shift of care; when reinstatement of a withdrawn application is sought; or when a registration is sought following the Office's revocation of, or denial of an application to renew, a registration;

(4) The provisions specified on the registration are binding and the small day care center must operate in compliance with the terms of the registration. The number and age range of children specified thereon are the maximum number and age range of children who may be in the care of the small day care center at any one time;

(5) If a small day care center will provide care 24 hours a day, there must be more than one provider. Individual children must be cared for less than 24 hours a day. No caregiver may work more than two consecutive shifts;

(6) The caregivers must be in good health and be of good character and habits;

(7) Information relating to an individual child is confidential and cannot be disclosed without written parental permission to anyone other than the Office, its designees or other persons authorized by law. Information relating to an individual child may be disclosed to a social services district where the child receives a day care subsidy from the district, where the child has been named in a report of alleged child abuse or maltreatment, or as otherwise authorized by law. Redislosure of confidential HIV-related information, as defined in section 360-8.1 of this Title, concerning a child receiving child day care is not permitted except in a manner consistent with article 27-F of the Public Health Law;

(8) A small day care center may not refuse to admit a child to the program solely because the child is a child with a developmental delay or disability or has been diagnosed as

having human immunodeficiency virus (HIV), HIV-related illness or acquired immune deficiency syndrome (AIDS). Each such child must be evaluated by the provider to determine whether the child could be accommodated in the program if reasonable modifications are made to the premises and/or program. Nothing contained in this paragraph shall be deemed to require the provider to incur significant additional expenses to modify the premises and/or program to accommodate such a child;

(9) (i) The parent of a child receiving care must have: unlimited and on demand access to such child; the right to inspect all parts of the building used for child day care or which could present a hazard to the health or safety of the child whenever the parent requests at any time during the hours of operation of the small day care center; unlimited and on demand access to the caregivers whenever such child is in care or during the normal hours of operation; and unlimited and on demand access to written records concerning such child except where access to such records is otherwise restricted by law;

(ii)(a) The parents of all children receiving care in a small day care center equipped with video surveillance cameras installed for the purpose of allowing parents to view their children in the day care setting by means of the internet must be informed that cameras will be used for this purpose. All alternate providers and employees of the small day care center must also be informed if video surveillance cameras will be used for this purpose.

(b) All parents of children enrolled in the small day care center and all alternate providers and employees of the small day care center must be made aware of the locations of all video surveillance cameras used at the small day care center.

(c) Small day care centers opting to install and use video surveillance equipment must comply with all State and federal laws applicable to the use of such equipment.

(d) Video surveillance cameras may not be used as a substitute for competent direct supervision of children.

(e) Small day care centers opting to allow parents to view their children in the day care setting by means of the internet must use and maintain adequate internet security measures at all times. Such measures include but are not limited to: frequent changes of passwords; filtering measures that prohibit public access to or viewing of day care activities via the internet; and immediate corrective action in response to any report of abuse of the system or inappropriate access. Such centers must also advise the parents having access to views of the day care center through the internet of the importance of security in regard to such viewing and of the importance of the privacy rights of other children who may be viewed.

(f) Video surveillance cameras are permitted to transmit images of children in common rooms, hallways and play areas only. Bathrooms and changing areas must remain private and free of all video surveillance equipment.

(g) Small day care centers that use video surveillance equipment must allow inspectors and other representatives of the Office to have access to such equipment and to have viewing privileges as required by the Office.

(10) Small day care centers must admit inspectors and other representatives of the Office onto the grounds and premises at any time during the hours of operation of the center. Such inspectors and representatives must be given free access to the building or buildings used by the center, staff and children and any records of the center. A small day care center must cooperate with inspectors and other representatives of the Office in regard to any inspections or investigations that are conducted by the Office or its representatives. A small day care center also must cooperate with local Child Protective Services' Staff conducting any investigation of alleged child abuse or maltreatment;

(11) In selecting alternate providers subsequent to issuance of a registration, a provider:

(i) must notify the Office immediately in writing when there is any change of alternate providers;

(ii) must submit to the Office within 15 days of the written notification, an application for any new alternate provider and the supporting documentation for the alternate provider. Each such applicant must also complete and submit with the application the forms necessary for the Office to inquire whether the applicant is the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment, a completed fingerprint card necessary for the Office to conduct a criminal history review, and a sworn statement indicating whether, to the best of the applicant's knowledge, he or she has ever been convicted of a misdemeanor or felony in New York State or any other jurisdiction;

(iii) may, during the Office's review of all documentation for any new alternate provider, continue to operate the small day care center with any individual who is identified on the list required by paragraph (16) of subdivision (c) of this section; and

(iv) may not leave the new alternate provider in sole charge of children until such time as the Office's review of all documentation for such alternate provider is completed.

(12) The small day care center must report to the Office: any change affecting, or which reasonably might be expected to affect, those portions of the building in which the

program is located or which are used for the children's egress in the case of an emergency; and any other change that would place the center out of compliance with applicable regulations;

(13) The caregivers must be familiar with the regulations governing such programs. Such regulations must be readily accessible to the caregivers for reference purposes and must be made available for review to a parent of a child in care upon request by a parent;

(14) The caregiver must immediately notify the Office upon learning of the death, serious injury or infectious illness of an enrolled child which occurred while the child was in care at the center or was being transported by a caregiver;

(15) Parents must be given the opportunity to discuss issues related to their children and care of their children with the provider or alternate provider. Such opportunities must occur at the time of enrollment and as frequently as needed thereafter, but at least annually;

(16) The indoor and outdoor areas of the small day care center where the children are being cared for must not be used for any other business or social purpose when children are present such that the attention of the caregiver is diverted from the care of the children. When a small day care center is located in a multi-use building, those portions of the building designated for the care of children must be used exclusively for child day care during the hours that children are present;

(17) When a provider proposes to care for a child under the age of six weeks, prior approval must be obtained from the Office. In seeking such approval, the provider must furnish, either verbally or in writing, the following:

(i) identifying information related to the specific child who would receive care, including the parent's name and address, and the child's name, sex and age;

(ii) the extenuating circumstance necessitating the care; and

(iii) a description of what the provider will do to achieve consistency with the Office's guidelines for the care of children under the age of six weeks;

(18) (i) Within five days after receiving the initial registration and before actually commencing operation, the provider must, using a form specified by the Office for that purpose, notify the local police and fire departments of the municipality within which the small day care center is located of the following:

(a) the address of the small day care center;

(b) the maximum capacity of the small day care center;

(c) the age range of children that will be in care; and

(d) the hours during which children will be in care.

(ii) If the local municipality does not have a police or fire department, the sheriff of the county within which the small day care center is located must be notified instead. The provider must notify the local police and fire departments or the county sheriff, as appropriate, if there is any change in any of the information required to be provided pursuant to subparagraph (i) of this paragraph.

(b) Conditions which apply to small day care center registration are as follows:

(1) No registration will be issued unless the provider is in full compliance with the regulations of the Office and all other applicable laws and regulations except where a waiver of one or more requirements of this Subpart has been approved in writing by the Office in accordance with section 413.5 of this Title;

(2) The effective period of the initial registration for a small day care center and any subsequent registrations will be up to two years so long as the provider remains in compliance with applicable laws and regulations during such periods;

(i) If a provider or alternate provider has not met the training requirement specified in section 418-2.14 of this Subpart, a subsequent registration may be issued for a period of up to one year following the completion of an acceptable inspection of the small day care center; and

(ii) No more than one such limited renewal may be issued in succession;

(3) A registration is not transferable to any other provider or location;

(4) Small day care centers required to be registered with the Office will not be exempt from this requirement through registration with another State agency or certification, registration or licensure by any local governmental agency or authorized agency; and

(5) Before denial of an application for registration or renewal of license, the provider is entitled to a hearing before the Office pursuant to Part 413 of this Title.

(c) The provider must maintain on file at the small day care center, available for inspection by the office or its designees at any time, the following records in a current and accurate manner:

- (1) a copy of the evacuation plan, as required in section 418-2.5 of this Subpart, specifying alternate means of egress;
- (2) an approved health care plan on forms furnished by the Office or approved equivalents, as required in section 418-2.11 of this Subpart;
- (3) the name, address, gender, and date of birth of each child and each child's parents' names, addresses, telephone numbers and place(s) at which the parents or other persons responsible for the child can be reached in case of an emergency;
- (4) the names and addresses of persons authorized to take the child(ren) from the small day care center;
- (5) daily attendance records;
- (6) children's health records, including parental consents for emergency medical treatment; evidence of health examinations and immunizations; any available results of lead screening; the name and dosage of any medications used by a child, the frequency of administration of such medications and a record of their administration by child day care center staff; and a record of illnesses, injuries and any indicators of child abuse or maltreatment;
- (7) health statements for the provider and alternate provider completed within the 12 months preceding the date of the application for registration or renewal, as required in section 418-2.11 of this Subpart;
- (8) a description of program activities offered to meet the needs of children, as required in section 418-2.7 of this Subpart;
- (9) when the small day care center is incorporated, the following additional documentation:
 - (i) a copy of the certificate of incorporation and any amendments thereto;
 - (ii) verification of filing of the certificate of incorporation and any amendments thereto with the Secretary of State; and
 - (iii) a current list of the names of the board of directors and their addresses, telephone numbers of the current principal officers and members, and the business and civic qualifications of all such individuals;

(10) when the small day care center is owned by an individual, corporation, partnership or other entity using a business or assumed name, a copy of the certificate of doing business under an assumed name obtained from the county clerk;

(11) documentation from service personnel licensed by the New York State Department of State to perform fire alarm systems maintenance, repair and testing which shows that the fire alarm and detection systems have been inspected, tested and maintained in accordance with the applicable requirements of the New York State Uniform Fire Prevention and Building Code;

(12) documentation from service personnel qualified to perform fire suppression systems maintenance, repair and testing showing that fire suppression equipment and systems have been tested and maintained during the current registration period in accordance with the applicable requirements of the New York State Uniform Fire Prevention and Building Code;

(13) documentation from the local government authority having jurisdiction for determining compliance with the New York State Uniform Fire Prevention and Building Code showing that the facility has been inspected and approved once every 12 months for compliance with the applicable fire safety provisions of the New York State Uniform Fire Prevention and Building Code;

(14) documentation showing inspection and approval of any steam or hot water boilers performed in accordance with the requirements of the New York State Department of Labor

and service performed once every 24 months on any other fuel burning heating system and equipment and boilers not subject to the New York State Department of Labor requirements;

(15) where a provider uses a private water supply, a report from a state licensed laboratory or individual, based on tests performed within the 12 months preceding the date of application for registration or renewal, showing that the water meets standards for drinking water established by the New York State Department of Health;

(16) a list of alternate providers and substitutes who are available to care for the children in the small day care center when the provider must be absent;

(17) documentation of training sessions attended in accordance with section 418-2.14 of this Subpart;

(18) a copy of the notification form provided to the local police and fire departments or the county sheriff as required in paragraph (18) of subdivision (a) of this section; and

(19) a copy of the certification that the building, its property and premises, and the surrounding neighborhood and environment are free from environmental hazards, as required in paragraph (6) of subdivision (a) and paragraph (4) of subdivision (e) of section 418-2.2 of this Subpart.

(d) Small day care centers located in public school buildings currently used for an elementary, middle or secondary education program approved or inspected by the State Education Department are exempt from the requirements set forth in paragraphs (11)-(15) of subdivision (c) of this section. Such small day care centers must maintain on file copies of the current certificates of occupancy issued by the State Education Department. For those centers not issued such certificates of occupancy, the appropriate local equivalent, acceptable to the State Education Department, must be maintained on file.

(e) Where multiple sites are operated by one organization or provider, records, other than those of children currently enrolled in the small day care center, may be retained at a central administrative location. The operators of these centers must make all such records available on site upon request by the Office or its designees.