§ 390. Child day care; license or registration required. 1. Definitions. (a) (i) "Child day care" shall mean child care where a license or registration pursuant to this section is required and shall include care for a child on a regular basis provided away from the child's residence for less than twenty-four hours per day by someone other than: (1) the parent, step-parent, guardian, or relative within the third degree of consanguinity of the parents or step-parents of such child; or (2) an enrolled legally-exempt provider as such term is defined in paragraph (g) of this subdivision.

(ii) Child day care shall not refer to care provided in:

(A) a day camp, as defined in the state sanitary code;

(B) an after-school program operated for the purpose of religious education, sports, or recreation;

(C) a facility:

(1) providing day services under an operating certificate issued by the department;

(2) providing day treatment under an operating certificate issued by the office of mental health or the office for people with developmental disabilities; or

(D) a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, or after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after school program is located on the premises or campus where the elementary or secondary education is provided. Provided however, a kindergarten or a pre-kindergarten operated by a public school district shall not be considered a child day care if the kindergarten or pre-kindergarten is not located on the premises or campus where the elementary or secondary education is provided.

(b) "Child day care provider" shall mean any individual, association, corporation, partnership, institution or agency whose activities include providing child day care or operating a home or facility where child day care is provided.

(c) "Child day care center" shall mean any program or facility caring for children for more than three hours per day per child in which child

day care is provided by a child day care provider except those programs operating as a group family day care home as such term is defined in paragraph (d) of this subdivision, a family day care home, as such term is defined in paragraph (e) of this subdivision, and a school-age child care program, as such term is defined in paragraph (f) of this subdivision.

(d) "Group family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for seven to twelve children of all ages, except for those programs operating as a family day care home, as such term is defined in paragraph (e) of this subdivision, which care for seven or eight children. A group family day care provider may provide child day care services to four additional children if such additional children are of school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. There shall be one caregiver for every two children under two years of age in the group family home. A group family day care home must have at least one assistant to the operator present when child day care is being provided to seven or more children when none of the children are school age, or nine or more children when at least two of the children are school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. This assistant shall be selected by the group family day care operator and shall meet the qualifications established for such position by the regulations of the office of children and family services.

(e) "Family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for three to six children. There shall be one caregiver for every two children under two years of age in the family day care home. A family day care provider may, however, care for seven or eight children at any one time if no more than six of the children are less than school age and the school-aged children receive care primarily before or after the period such children are ordinarily in

school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session in accordance with the regulations of the office of children and family services and the office inspects such home to determine whether the provider can care adequately for seven or eight children.

(f) "School age child care" shall mean a program caring for more than six school-aged children who are under thirteen years of age or who are incapable of caring for themselves. Such programs shall be in operation consistent with the local school calendar. School age child care programs shall offer care during the school year to an enrolled group of children at a permanent site before or after the period children enrolled in such program are ordinarily in school or during school lunch periods and may also provide such care on school holidays and those periods of the year in which school is not in session.

(g) "Enrolled legally exempt provider" shall mean a person who is a caregiver or entity that is not required to be licensed or registered pursuant to this section and that is enrolled to be a caregiver and provide subsidized child care services to eligible families in accordance with title five-C of this article and the regulations of the office of children and family services.

2. * (a) Child day care centers caring for seven or more children and group family day care programs, as defined in subdivision one of this section, shall obtain a license from the office of children and family services and shall operate in accordance with the terms of such license and the regulations of such office. Initial licenses and subsequent licenses shall be valid for a period of up to four years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

* NB Effective until June 5, 2027

* (a) Child day care centers caring for seven or more children and group family day care programs, as defined in subdivision one of this section, shall obtain a license from the office of children and family services and shall operate in accordance with the terms of such license and the regulations of such office. Initial licenses and subsequent licenses shall be valid for a period of up to six years so long as the provider remains substantially in compliance with applicable law and

regulations during such period.

* NB Effective June 5, 2027

(b) Family day care homes, child day care centers caring for at least three but fewer than seven children, and school-age child care programs shall register with the department and shall operate in compliance with the regulations of the department.

(c) Any child day care provider not required to obtain a license pursuant to paragraph (a) of this subdivision or to register with the department pursuant to paragraph (b) of this subdivision may register with the department.

(d) (i) The office of children and family services shall promulgate regulations for licensure and for registration of child day care pursuant to this section. Procedures for obtaining a license or registration or renewing a license shall include a satisfactory inspection of the facility by the office of children and family services prior to issuance of the license or registration or renewal of the license.

(ii) * (A) Initial registrations and subsequent registrations shall be valid for a period of up to four years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

* NB Effective until June 5, 2027

* (A) Initial registrations and subsequent registrations shall be valid for a period of up to six years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

* NB Effective June 5, 2027

(B) After initial registration by the child day care provider, the office of children and family services shall not accept any subsequent registration by such provider, unless:

(1) such provider has met the training requirements set forth in section three hundred ninety-a of this title;

(2) such provider has met the requirements of section three hundred ninety-b of this title relating to criminal history screening;

(3) such provider has complied with the requirements of section four hundred twenty-four-a of this article; and

(4) the office of children and family services has received no

complaints about the home, center, or program alleging statutory or regulatory violations, or, having received such complaints, the office of children and family services has determined, after inspection pursuant to paragraph (a) of subdivision three of this section, that the home, center, or program is operated in compliance with applicable statutory and regulatory requirements.

(C) Where the office of children and family services has determined that a registration should not be continued because the requirements of clause (B) of this subparagraph have not been satisfied, the office of children and family services may terminate the registration. If the office of children and family services does not terminate the registration, the office of children and family services shall inspect the home or program before acknowledging any subsequent registration. Where the home or program has failed to meet the requirements of this section, the office of children and family services may reject any subsequent registration of a provider. Nothing herein shall prohibit the office of children and family services from terminating or suspending registration pursuant to subdivision ten of this section where the office of children and family services determines that termination or suspension is necessary.

(iv) Child day care providers who have been issued a license shall openly display such license in the facility or home for which the license is issued. Child day care providers who have registered with the department shall provide proof of registration upon request.

(d-1) (i) The office of children and family services shall promulgate regulations for inspections of enrolled legally exempt providers, which shall include the completion of a satisfactory inspection of the premises where care is to be provided, by the office of children and family services.

(ii) Provided however, unless a complaint is made in or as otherwise authorized such inspections shall not be required when the enrolled legally exempt provider is an individual, age eighteen or older, and who, by virtue of blood, marriage or court decree, is, to all of the children that such person is enrolled to provide subsidized child care services to in accordance with title five-C of this article:

(A) a grandparent;

(B) a great-grandparent;

(C) a sibling, provided that such sibling resides in a separate household from the child;

(D) an aunt; or

(E) an uncle.

(e) Notwithstanding any other provision of this section, where a child is cared for by a parent, guardian or relative within the third degree of consanguinity of the parent of such child and such person simultaneously provides child day care for other children, only the other children shall be considered in determining whether such person must be registered or licensed, provided that such person is not caring, in total, for more than eight children.

2-a. (a) The office of children and family services shall promulgate regulations which establish minimum quality program requirements for licensed and registered child day care homes, programs and facilities. Such requirements shall include but not be limited to (i) the need for age appropriate activities, materials and equipment to promote cognitive, educational, social, cultural, physical, emotional, language and recreational development of children in care in a safe, healthy and caring environment (ii) principles of childhood development (iii) appropriate staff/child ratios for family day care homes, group family day care homes, school age day care programs and day care centers (iv) appropriate levels of supervision of children in care (v) minimum standards for sanitation, health, infection control, nutrition, buildings and equipment, safety, security procedures, first aid, fire prevention, fire safety, evacuation plans and drills, prevention of child abuse and maltreatment, staff qualifications and training, record keeping, and child behavior management.

(b) The use of electronic monitors as a sole means of supervision of children in day care shall be prohibited, except that electronic monitors may be used in family day care homes and group family day care homes as an indirect means of supervision where the parents of any child to be supervised have agreed in advance to the use of such monitors as an indirect means of supervision and the use of such monitors is restricted to situations where the children so supervised are sleeping.

(c) No child less than six weeks of age may be cared for by a licensed or registered day care provider, except in extenuating circumstances

where prior approval for care of such children has been given by the office of children and family services. Extenuating circumstances for the purposes of this section shall include but not be limited to the medical or health needs of the parent or child, or the economic hardship of the parent.

3. (a) The office of children and family services may make announced or unannounced inspections of the records and premises of any child care provider, whether or not such provider has a license from, or is registered with, the office of children and family services. The office of children and family services shall make unannounced inspections of the records and premises of any child day care provider within fifteen days after the office of children and family services receives a complaint that, if true, would indicate such provider does not comply with the applicable regulations of the office of children and family services or with statutory requirements. If the complaint indicates that there may be imminent danger to the children, the office of children and family services shall investigate the complaint no later than the next day of operation of the provider. The office of children and family services may provide for inspections through the purchase of services.

(b) (i) Where inspections have been made and violations of applicable statutes or regulations have been found, the office of children and family services shall within ten days advise the child day care provider in writing of the violations and require the provider to correct such violations. The office of children and family services may also act pursuant to subdivisions ten and eleven of this section.

(ii) Where inspections have been made and violations of applicable statutes or regulations have been found, the office of children and family services or its designee shall, within ten days, advise the enrolled legally-exempt provider in writing of the violations and require the provider to correct such violations.

(c) (i) The office of children and family services shall establish a toll-free statewide telephone number to receive inquiries about child day care homes, programs and facilities and complaints of violations of the requirements of this section or regulations promulgated under this section. The office of children and family services shall develop a system for investigation, which shall include inspection, of such

complaints. The office of children and family services may provide for such investigations through purchase of services. The office of children and family services shall develop a process for publicizing such toll-free telephone number to the public for making inquiries or complaints about child day care homes, programs or facilities.

(ii) Information to be maintained and available to the public through such toll-free telephone number shall include, but not be limited to:

(A) current license and registration status of child day care homes, programs and facilities including whether a license or registration is in effect or has been revoked or suspended; and

(B) child care resource and referral programs providing services pursuant to title five-B of this article and other resources known to the office of children and family services which relate to child day care homes, programs and facilities in the state.

(iii) Upon written request identifying a particular child day care home, program or facility, the office of children and family services shall provide the information set forth below. The office of children and family services may charge reasonable fees for copies of documents provided, consistent with the provisions of article six of the public officers law. The information available pursuant to this clause shall be:

(A) the results of the most recent inspection for licensure or registration and any subsequent inspections by the office of children and family services;

(B) complaints filed against child day care homes, programs or facilities which describes the nature of the complaint and states how the complaint was resolved, including the status of the office of children and family services investigation, the steps taken to rectify the complaint, and the penalty, if any, imposed; and

(C) child day care homes, programs or facilities which have requested or received a waiver from any applicable rule or regulation, and the regulatory requirement which was waived.

(iv) Nothing in this paragraph shall be construed to require or permit the disclosure either orally or in writing of any information that is confidential pursuant to law.

(d) Where investigation or inspection reveals that a child day care provider which must be licensed or registered is not, the office of

children and family services shall advise the child day care provider in writing that the provider is in violation of the licensing or registration requirements and shall take such further action as is necessary to cause the provider to comply with the law, including directing an unlicensed or unregistered provider to cease operation. In addition, the office of children and family services shall require the provider to notify the parents or guardians of children receiving care from the provider that the provider is in violation of the licensing or registration requirements and shall require the provider to notify the office of children and family services that the provider has done so. Any provider who is directed to cease operations pursuant to this paragraph shall be entitled to a hearing before the office of children and family services. If the provider requests a hearing to contest the directive to cease operations, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office of children and family services. The provider may not operate the center, home or program after being directed to cease operations, regardless of whether a hearing is requested. If the provider does not cease operations, the office of children and family services may impose a civil penalty pursuant to subdivision eleven of this section, seek an injunction pursuant to section three hundred ninety-one of this title, or both.

(e) (i) Where an authorized agency is subsidizing child day care pursuant to any provision of this chapter, the authorized agency may submit to the department justification for a need to impose additional requirements upon child day care providers and a plan to monitor compliance with such additional requirements. No such additional requirements or monitoring may be imposed without the written approval of the department.

(ii) An authorized agency may refuse to allow a child day care provider who is not in compliance with this section and regulations issued hereunder or any approved additional requirements of the authorized agency to provide child day care to the child. In accordance with the plan approved by the department, an authorized agency shall have the right to make announced or unannounced inspections of the records and premises of any provider who provides care for such children, including the right to make inspections prior to subsidized

children receiving care in a home where the inspection is for the purpose of determining whether the child day care provider is in compliance with applicable law and regulations and any additional requirements imposed upon such provider by the authorized agency. Where an authorized agency makes such inspections, the authorized agency shall notify the department immediately of any violations of this section or regulations promulgated hereunder, and shall provide the department with an inspection report whether or not violations were found, documenting the results of such inspection.

(iii) Nothing contained in this paragraph shall diminish the authority of the department to conduct inspections or provide for inspections through purchase of services as otherwise provided for in this section. Nothing contained in this paragraph shall obligate the department to take any action to enforce any additional requirements imposed on child day care providers by an authorized agency.

(f) Individual local social services districts may alter their participation in activities related to arranging for, subsidizing, delivering and monitoring the provision of subsidized child day care provided, however, that the total participation of an individual district in all activities related to the provision of subsidized child day care shall be no less than the participation level engaged in by such individual district on the effective date of this section.

4. (a) The office of children and family services on an annual basis shall inspect all child day care programs and all enrolled legally-exempt providers except when such provider is determined to be exempt in accordance with subparagraph (ii) of paragraph (d-one) of subdivision two of this section. The office of children and family services may provide for such inspections through purchase of services.

(b) Any family day care home or school-age child care program licensed, registered, or certified by the department or by any authorized agency on the effective date of this section shall be deemed registered until the expiration of its then-current license or certificate unless such license or certificate is suspended or revoked pursuant to subdivision ten of this section. Family day care homes and school-age child care programs not licensed, registered, or certified on the effective date of this section shall register pursuant to

subdivision two of this section.

5. Child day care providers required to have a license from the department or to be registered with the department pursuant to this section shall not be exempt from such requirement through registration with another state agency, or certification, registration, or licensure by any local governmental agency or any authorized agency.

5-a. The office of children and family services shall provide, upon request, all applications and forms necessary to become a licensed or registered child day care provider in English, French, Polish, or any of the ten most common non-English languages spoken by individuals with limited-English proficiency in the state of New York, based on United States census data.

6. Unless otherwise limited by law, a parent with legal custody or a legal guardian of any child in a child day care program shall have unlimited and on demand access to such child or ward. Such parent or guardian unless otherwise limited by law, also shall have the right to inspect on demand during its hours of operation any area of a child day care center, group family day care home, school-age child care program, or family day care home to which the child or ward of such parent or guardian has access or which could present a hazard to the health and safety of the child or ward.

7. (a) The department shall implement on a statewide basis programs to educate parents and other potential consumers of child day care programs about their selection and use. The department may provide for such implementation through the purchase of services. Such education shall include, but not be limited to, the following topics:

(i) types of child day care programs;

(ii) factors to be considered in selecting and evaluating child day care programs;

(iii) regulations of the department governing the operation of different types of programs;

(iv) rights of parents or guardians in relation to access to children and inspection of child day care programs;

(v) information concerning the availability of child day care subsidies;

(vi) information about licensing and registration requirements;

(vii) prevention of child abuse and maltreatment in child day care programs, including screening of child day care providers and employees;

(viii) tax information; and

(ix) factors to be considered in selecting and evaluating child day care programs when a child needs administration of medications during the time enrolled.

(b) The department shall implement a statewide campaign to educate the public as to the legal requirements for registration of family day care and school-age child care, and the benefits of such registration. The department may provide for such implementation through the purchase of services. The campaign shall:

(i) use various types of media;

(ii) include the development of public educational materials for families, family day care providers, employers and community agencies;

(iii) explain the role and functions of child care resource and referral programs, as such term is used in title five-B of this article;

(iv) explain the role and functions of the department in regard to registered programs; and

(v) publicize the department's toll-free telephone number for making complaints of violations of child day care requirements related to programs which are required to be licensed or registered.

(c) The office of children and family services shall implement a statewide campaign to educate parents and other consumers of child day care programs about adverse childhood experiences, the importance of protective factors, and the availability of services for children at risk for or experiencing adverse childhood experiences as defined in paragraph (c) of subdivision one of section twenty-d of this chapter. Such statewide campaign, shall include but is not limited to, providing all licensed, registered and enrolled child care providers with educational materials developed pursuant to subdivision two of section three hundred seventy-c of this chapter. The educational materials may be made available electronically and shall be offered to parents and other consumers at the time of enrollment.

8. The department shall establish and maintain a list of all current registered and licensed child day care programs and a list of all programs whose license or registration has been revoked, rejected, terminated, or suspended. Such information shall be available to the public, pursuant to procedures developed by the department.

8-a. The office of children and family services shall not make available to the public online any group family day care home provider's or family day care provider's home street address or map showing the location of such provider's home where such provider has requested to opt out of the online availability of this information. The office shall provide a written form informing a provider of their right to opt out of providing information online, and shall also permit a provider to request to opt out through the office's website.

9. The department shall make available, directly or through purchase of services, to registered child day care providers information concerning:

(a) liability insurance;

(b) start-up grants;

(c) United States department of agriculture food programs;

(d) subsidies available for child day care;

(e) tax information; and

(f) support services required to be provided by child care resource and referral programs as set forth in subdivision three of section four hundred ten-r of this article.

10. Any home or facility providing child day care shall be operated in accordance with applicable statutes and regulations. Any violation of applicable statutes or regulations shall be a basis to deny, limit, suspend, revoke, or terminate a license or registration. Consistent with articles twenty-three and twenty-three-A of the correction law, and guidelines referenced in subdivision two of section four hundred twenty-five of this article, if the office of children and family services is made aware of the existence of a criminal conviction or pending criminal charge concerning an operator of a family day care home, group family day care home, school-age child care program, or

child day care center or concerning any assistant, employee or volunteer in such homes, programs or centers, or any persons age eighteen or over who reside in such homes, such conviction or charge may be a basis to deny, limit, suspend, revoke, reject, or terminate a license or registration. Before any license issued pursuant to the provisions of this section is suspended or revoked, before registration pursuant to this section is suspended or terminated, or when an application for such license is denied or registration rejected, the applicant for or holder of such registration or license is entitled, pursuant to section twenty-two of this chapter and the regulations of the office of children and family services, to a hearing before the office of children and family services. However, a license or registration shall be temporarily suspended or limited without a hearing upon written notice to the operator of the facility following a finding that the public health, or an individual's safety or welfare, are in imminent danger. The holder of a license or registrant is entitled to a hearing before the office of children and family services to contest the temporary suspension or limitation. If the holder of a license or registrant requests a hearing to contest the temporary suspension or limitation, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office of children and family services. Suspension shall continue until the condition requiring suspension or limitation is corrected or until a hearing decision has been issued. If the office of children and family services determines after a hearing that the temporary suspension or limitation was proper, such suspension or limitation shall be extended until the condition requiring suspension or limitation has been corrected or until the license or registration has been revoked.

11. (a) (i) The office of children and family services shall adopt regulations establishing civil penalties of no more than five hundred dollars per day to be assessed against child day care centers, school age child care programs, group family day care homes or family day care homes for violations of this section, sections three hundred ninety-a and three hundred ninety-b of this title and any regulations promulgated thereunder. The regulations establishing civil penalties shall specify the violations subject to penalty.

(ii) The office of children and family services shall adopt regulations establishing civil penalties of no more than five hundred dollars per day to be assessed against child day care providers who operate child day care centers or group family day care homes without a license or who operate family day care homes, school-age child care programs, or child day care centers required to be registered without obtaining such registration.

(iii) In addition to any other civil or criminal penalty provided by law, the office of children and family services shall have the power to assess civil penalties in accordance with its regulations adopted pursuant to this subdivision after a hearing conducted in accordance with procedures established by regulations of the office of children and family services. Such procedures shall require that notice of the time and place of the hearing, together with a statement of charges of violations, shall be served in person or by certified mail addressed to the school age child care program, group family day care home, family day care home, or child day care center at least thirty days prior to the date of the hearing. The statement of charges shall set forth the existence of the violation or violations, the amount of penalty for which the program may become liable, the steps which must be taken to rectify the violation, and where applicable, a statement that a penalty may be imposed regardless of rectification. A written answer to the charges of violations shall be filed with the office of children and family services not less than ten days prior to the date of hearing with respect to each of the charges and shall include all material and relevant matters which, if not disclosed in the answer, would not likely be known to the office of children and family services.

(iv) The hearing shall be held by the commissioner of the office of children and family services or the commissioner's designee. The burden of proof at such hearing shall be on the office of children and family services to show that the charges are supported by a preponderance of the evidence. The commissioner of the office of children and family services or the commissioner's designee, in his or her discretion, may allow the child day care center operator or provider to attempt to prove by a preponderance of the evidence any matter not included in the answer. Where the child day care provider satisfactorily demonstrates that it has rectified the violations in accordance with the requirements

of paragraph (c) of this subdivision, no penalty shall be imposed except as provided in paragraph (c) of this subdivision.

(b)(i) In assessing penalties pursuant to this subdivision, the office of children and family services may consider the completeness of any rectification made and the specific circumstances of such violations as mitigating factors.

(ii) Upon the request of the office of children and family services, the attorney general shall commence an action in any court of competent jurisdiction against any child day care program subject to the provisions of this subdivision and against any person, entity or corporation operating such center or school age child care program, group family day care home or family day care home for the recovery of any penalty assessed by the office of children and family services in accordance with the provisions of this subdivision.

(iii) Any such penalty assessed by the office of children and family services may be released or compromised by the office of children and family services before the matter has been referred to the attorney general; when such matter has been referred to the attorney general, such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the office of children and family services.

(c)(i) Except as provided for in this paragraph, a child day care provider shall avoid payment of a penalty imposed pursuant to this subdivision where the provider has rectified the condition which resulted in the imposition of the penalty within thirty days of notification of the existence of the violation of statute or regulation.

(ii) Clause (i) of this paragraph notwithstanding, rectification shall not preclude the imposition of a penalty pursuant to this subdivision where:

(A) the child day care provider has operated a child day care center or group family day care home without a license, has refused to seek a license for the operation of such a center or home, or has continued to operate such a center or home after denial of a license application, revocation of an existing license or suspension of an existing license;

(B) the child day care provider has operated a family day care home, school-age child care program or child day care center required to be registered without being registered, has refused to seek registration

for the operation of such home, program or center or has continued to operate such a home, program or center after denial of a registration application, revocation of an existing registration or suspension of an existing registration;

(C) there has been a total or substantial failure of the facility's fire detection or prevention systems or emergency evacuation procedures;

(D) the child day care provider or an assistant, employee or volunteer has failed to provide adequate and competent supervision;

(E) the child day care provider or an assistant, employee or volunteer has failed to provide adequate sanitation;

(F) the child day care provider or an assistant, employee, volunteer or, for a family day care home or group family day care home, a member of the provider's household, has injured a child in care, unreasonably failed to obtain medical attention for a child in care requiring such attention, used corporal punishment against a child in care or abused or maltreated a child in care;

(G) the child day care provider has violated the same statutory or regulatory standard more than once within a six month period;

(H) the child day care provider or an assistant, employee or volunteer has failed to make a report of suspected child abuse or maltreatment when required to do so pursuant to section four hundred thirteen of this article; or

(I) the child day care provider or an assistant, employee or volunteer has submitted to the office of children and family services a forged document as defined in section 170.00 of the penal law.

(d) Any civil penalty received by the office of children and family services pursuant to this subdivision shall be deposited to the credit of the "quality child care and protection fund" established pursuant to section ninety-seven-www of the state finance law.

(e)(i) The office of children and family services shall deny a new application for licensure or registration made by a day care provider whose license or registration was previously revoked or terminated based on a violation of statute or regulation for a period of two years from the date that the revocation or termination of the license or registration became finally effective, unless such office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of children in the center,

program or home. For the purposes of this paragraph, the date that the revocation or termination became finally effective shall be, as applicable:

(A) the date that the revocation or termination became effective based on the notice of revocation or termination;

(B) the date that the hearing decision was issued upholding the revocation or termination;

(C) the date of issuance of a final court order affirming the revocation or termination or affirming a hearing decision that upheld the revocation or termination; or

(D) another date mutually agreed upon by the office of children and family services and the provider.

(ii)(A) Such office shall deny a new application for licensure or registration made by a day care provider who is enjoined or otherwise prohibited by a court order from operation of a day care center, group family day care home, family day care home or school-age child care program without a license or registration for a period of two years from the date of the court order unless the court order specifically enjoins the provider from providing day care for a period longer than two years, in which case the office shall deny any new application made by the provider while the provider is so enjoined.

(B) Such office shall deny a new application for licensure or registration made by a day care provider who is assessed a second civil penalty by such office for having operated a day care center, group family day care home, family day care home or school-age child care program without a license or registration for a period of two years from the date of the second fine. For the purposes of this paragraph, the date of the second fine shall be either the date upon which the day care provider signs a stipulation agreement to pay the second fine or the date upon which a hearing decision is issued affirming the determination of such office to impose the second fine, as applicable.

(iii) A day care provider who surrenders the provider's license or registration while such office is engaged in enforcement seeking suspension, revocation or termination of such provider's license or registration pursuant to the regulations of such office, shall be deemed to have had their license or registration revoked or terminated and shall be subject to the prohibitions against licensing or registration

pursuant to subparagraph (i) of this paragraph for a period of two years from the date of surrender of the license or registration.

12. (a) Notwithstanding any other provision of law, except as may be required as a condition of licensure or registration by regulations promulgated pursuant to this section, no village, town (outside the area of any incorporated village), city or county shall adopt or enact any law, ordinance, rule or regulation which would impose, mandate or otherwise enforce standards for sanitation, health, fire safety or building construction on a one or two family dwelling or multiple dwelling used to provide group family day care or family day care than would be applicable were such child day care not provided on the premises. No village, town (outside the area of any incorporated village), city or county shall prohibit or restrict use of a one or two family dwelling, or multiple dwelling for family or group family day care where a license or registration for such use has been issued in accordance with regulations issued pursuant to this section. Nothing in this paragraph shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards.

(b) Notwithstanding any other provision of law, but pursuant to section five hundred eighty-one-b of the real property tax law, no assessing unit, as defined in subdivision one of section one hundred two of the real property tax law, in the assessment of the value of any parcel used for residential purposes and registered as a family day care home pursuant to this section, shall consider the use or registration of such parcel as a family day care home.

13. Notwithstanding any other provision of law, this section, except for subdivision fifteen of this section, shall not apply to child day care centers in the city of New York.

14. The office of children and family services, in conjunction with the department of health, shall be required to annually distribute informational materials related to the occurrence, transmission, birth defects, methods of diagnosis and preventive measures of Cytomegalovirus

established pursuant to subdivision six of section two hundred sixty-six of the public health law to every licensed, registered or enrolled child care provider and their staff.

15. (a) Each child day care provider, enrolled legally-exempt provider, enrolled legally-exempt group provider, and child care program permitted under the New York City health code shall establish written procedures that identify the actions the provider or program shall take if the provider or program becomes aware that the parent or guardian shall be unavailable to retrieve the child at the conclusion of the child care program hours or the child is not picked up as scheduled, and such child is in need of an alternate plan for pickup for any reason, including that the parent or guardian has been detained by federal immigration authorities.

(b) Such procedures shall be established and implemented no later than ninety days after the effective date of this subdivision, and shall be provided to families upon implementation, admission, and revision.

(c) Such procedures shall include, at a minimum, that the provider shall not contact the statewide central register for child abuse and maltreatment unless the provider has made reasonable efforts to contact all known individuals authorized by the parent or guardian to retrieve the child, and that the provider shall retain the child on the premises until such child is picked up by an individual authorized by the parent or guardian or by law.