§ 410-bb. Grants to not-for-profit facilities providing day care for children for employee salary and benefit enhancements. 1. The legislature finds and declares that a crisis exists in the availability and quality of child day care in New York state and that this crisis poses a danger both to the welfare and safety of the children and to the productivity of this state's workforce; that inadequate salaries and in many cases nonexistent benefit packages have substantially contributed to the existing crisis by precluding day care centers from recruiting and retaining necessary teaching and supervisory staff; that an extremely high turnover rate has interfered in many instances with the ability of day care centers to comply with regulatory requirements and to properly serve the children in their care; and that because of these extraordinary circumstances New York state must intervene and provide assistance for recruitment and retention of child care workers. The legislature recognizes that a long-term solution to this crisis will require cooperative efforts among the business community, local and state governments and families.

2. Within amounts appropriated specifically therefor, and after deducting funds as specified in subdivision three of this section the commissioner shall allocate funds to local social services districts for grants to eligible not-for-profit day care centers for retention and recruitment of teaching and supervisory staff, as follows:

(a) a city social services district with a population in excess of one million shall be allocated a portion of such funds based on an equal weighting of:

(i) its proportion of the state population of children aged five and under, and

(ii) its proportion of total claims for reimbursement received by the department by May thirty-first, nineteen hundred eighty-eight for the low income, transitional and teen parent day care programs authorized by chapter fifty-three of the laws of nineteen hundred eighty-seven.

(b) all other eligible local social services districts shall be allocated the remaining portion of funds based on each district's proportionate share of licensed not-for-profit day care capacity relative to the total capacity of all such other eligible districts.

3. Five percent of the funds appropriated for such recruitment and retention purposes shall be reserved for administration of the program and allocated as follows:

(a) each local social services district shall be allocated an amount equivalent to five percent of the funds it receives under paragraphs (a) and (b) of subdivision two of this section, provided that no district shall receive an amount less than twenty-five hundred dollars nor greater than one hundred fifty thousand dollars, and

(b) remaining funds shall be allocated to the department. In the event that a not-for-profit child care resource and referral agency or the department distributes funds in an eligible district, as provided herein, such agency or department may retain the amount that otherwise would be available to the eligible district.

4. Not later than thirty days following the effective date of this section, the commissioner shall notify local social services districts of the amounts allocated to each district and provide forms for the collecting of information pursuant to this section.

5. For the purposes of this section, an eligible district shall mean a local social services district that is providing, as of the effective date of this section, or which shall agree to provide in such written form and by such date as shall be acceptable to the department, subsidized day care services under the special day care services program authorized by chapter fifty-three of the laws of nineteen hundred eighty-eight.

6. Eligible districts may apply on or before the ninetieth day following the effective date of this section to receive such allocated funds by submitting to the department a plan on forms provided by the department. Such plan shall be developed by the local social services commissioner in consultation with directors of participating eligible day care centers, as such term is defined herein. Such plan shall include: methods to increase the amount of day care provided for families having an income at or below two hundred percent of the federal proverty level in such district; proposed steps to be taken to sustain gains in recruitment and retention of staff achieved by funds provided

herein; information specified in paragraph (c) of subdivision seven of this section; and a proposed allocation of funds to eligible day care centers based on the following factors:

(a) forty percent of the funds allocated to such district shall be distributed to each eligible center based on such center's share of the total full time equivalent teaching and supervisory staff of such centers in the district as a whole;

(b) forty percent of the funds allocated to such district shall be distributed to each eligible center based on such center's share of the number of children from families having an income at or below two hundred percent of the federal poverty level receiving day care services in all such centers in the district, regardless of whether such children are receiving subsidized care; and

(c) notwithstanding any other provision of this subdivision, twenty percent of the funds allocated to such district shall be distributed to some or all eligible centers in a manner to further improve recruitment and retention of qualified staff. Distributions under this paragraph shall be based on factors including, but not be limited to seniority; educational qualifications; worker income; benefit levels, vacancy and turnover rates; or enhancement of distributions pursuant to paragraph (a) or (b) of this subdivision.

The commissioner shall make copies of proposals available to the public upon request.

7. For the purposes of this section, an eligible day care center means a not-for-profit center which provides services for children in single or double sessions for six or more hours per day for five or more days per week and holds a permit or certificate issued pursuant to (i) the provisions of section three hundred ninety of this article, or (ii) the New York city health code as authorized by section five hundred fifty-eight of the New York city charter; provided, however, that:

(a) a center whose permit has been denied, suspended or revoked, or which is found in any twelve month period preceding or following the date of the allocation of funds made pursuant to subdivision two of this section to be in violation of section three hundred ninety of this article after a hearing conducted as provided therein or after decision

by any court of competent jurisdiction, shall not be eligible to receive funds pursuant to this section;

(b) the existence of a current contract for purchase of day care services between an eligible district and a center may not be required as a precondition to receive such funds, but such center shall agree to accept children subsidized by the district in the next available space after receipt of a request from the district to place a child in such center;

(c) each such center must provide to the local social services district the following information on forms provided by the department:

(i) child care capacity, by ages of children;

(ii) the number of children in such center, by ages, whose families have incomes at or below two hundred percent of the federal poverty level, regardless of whether such children are receiving subsidized care;

(iii) the number of children specified in subparagraph (ii) of this paragraph receiving subsidies and the type of subsidy;

(iv) a schedule of fees charged for services;

(v) the total annual revenue from all sources, including fees, donations, grants, revenue from local governments and revenue from state agencies;

(vi) the total annual expenditures for rent or mortgage payments; equipment, property, liability and other insurance; utilities; food; supplies and materials; and

(vii) total annual expenditures for salaries and benefits, including the number, title, qualifications and salary levels of existing staff and types and amounts of benefits; and

(d) each eligible day care center must agree, to the maximum extent feasible, to enhance its future revenues to sustain the level of staff salary and benefits as provided herein.

8. Should an eligible district not apply for such funds, the commissioner may contract with a not-for-profit child care resource and referral agency as such term is defined in title five-B of this article which is serving such district to distribute such funds allocated to the district in the same manner as is required of an eligible district in accordance with the other provisions of this section. If two or more

not-for-profit child care resource and referral agencies are serving such district, preference shall be given to the agency or agencies with existing contracts with the commissioner. If such agency does not exist or declines to participate, the department shall disburse funds in the manner as is required of an eligible district pursuant to this section.

9. A plan developed and submitted to the department pursuant to the provisions of this section shall be considered approved unless, within thirty days of the receipt of such plan, the department notifies the eligible district or agency that the plan is not approved and specifies in writing the basis for such disapproval. The commissioner shall make allocated funds and administrative funds available as advances to eligible districts whose plans have been approved pursuant to this section.

10. Eligible districts shall make allocated funds available as advances to eligible day care centers in accordance with the plan approved by the department. Such districts shall notify the department when all such funds have been disbursed but all such funds must be disbursed not later than October first, nineteen hundred eighty-nine.

11. Any funds allocated to eligible districts or day care centers which cannot be used in the manner as provided herein shall be reallocated among other eligible districts as provided in paragraph (b) of subdivision two of this section.

12. Funds received by eligible day care centers shall be used solely for employee benefits and salary enhancements for teaching and supervisory staff, and shall not be used to supplant or substitute for any other funding available for day care services, or to provide services which eligible day care centers are required to provide pursuant to contracts with the state, local social services districts, authorized agencies, individuals or other organizations.

13. Nothing contained herein shall prevent an eligible district, or any other person or entity, at its discretion, from contributing funds, including administrative funds received pursuant to subdivision three of

this section, to the program established pursuant to this section.

14. The department shall: (a) provide or cause to be provided, to the maximum extent feasible, technical assistance to eligible day care centers and districts concerning employee benefit options, long-term planning, management of funds, responsibilities required pursuant to this section, maximization of the use of available subsidy funds including Title XX and Title IV-A of the Federal Social Security Act and such other matters as may be helpful to sustain the level of staff salary and benefits as provided herein;

(b) annually examine cost data concerning rates of payment for day care and establish appropriate recommended fee schedules as guidelines for use by local social services districts in developing comprehensive annual social services program plans;

(c) promulgate regulations not later than July first, nineteen hundred eighty-nine, to establish a maximum rate of payment for day care centers which shall reflect adjustments in the cost of care since the establishment of the maximum rate in effect on January first, nineteen hundred eighty-six. Such maximum rate shall be calculated by applying thereto increases in the cost of living since January first, nineteen hundred eighty-six, updated by the department through December thirty-first, nineteen hundred eighty-nine, and also to the extent possible and based on the availability of such information, factors such as changes in the costs of insurance, rent, utilities and labor and benefits and such other factors the department shall deem appropriate, which exceed such increases in the cost of living, as updated through December thirty-first, nineteen hundred eighty-nine; provided, however, that:

(i) actual payment for day care services rendered shall not exceed the actual cost of such care;

(ii) nothing contained herein shall prevent the department from establishing a rate of payment for day care centers greater than that required pursuant to this subdivision;

(iii) approved rates of payment in excess of the rate established pursuant to this paragraph in effect prior to July first, nineteen hundred eighty-nine shall be continued;

(iv) nothing contained herein shall prevent the department from

approving exceptions to the rate of payment established herein to meet specific identified needs of a local social services district;

(v) such regulations may include a higher maximum rate of payment for infant care, or care of children with special needs.

d. Notwithstanding any other section of law to the contrary, by April first, nineteen hundred eighty-nine, the department shall develop guidelines and may, with the approval of the director of the division of the budget grant to local districts for one year waivers to income eligibility standards established pursuant to law for subsidized day care under the special day care services program. Such waivers shall be granted to increase eligibility standards up to twenty-five percent of the federal poverty level above the income eligibility standard established by law as a percentage of the federal poverty level. Waivers shall be granted only upon the submission of documentation establishing that:

(i) the local social services district is serving substantially all eligible families with incomes at or below the established income eligibility standard. A district shall be deemed to be serving substantially all eligible families if it meets the following two criteria: (a) the percentage of eligible children served in the district meets or exceeds the percentage of eligible children served statewide under the special day care services program and (b) the district has provided day care services to any additional children whose families have been identified in such district's outreach program as described in subparagraph (ii) of this paragraph as eligible for and desiring subsidized day care services;

(ii) the local district has established a district-wide outreach program which identifies eligible families who are not receiving subsidized child day care under the special day care services program, and informs all such families of their availability, and assists such families desiring subsidized services to obtain them;

(iii) a family receiving a subsidy under the district's waiver provisions shall be required to contribute a greater amount towards the cost of care than a family eligible under the established income eligibility standard;

(iv) the local district has included an estimate of the number of

children who will be served under the waiver provisions;

(v) the local district has submitted claims to income eligible day care expenses under Title XX of the federal Social Security Act;

(vi) the district has available to it a higher allocation in the current fiscal year than the amount of reimbursement received by such district in the previous fiscal year for subsidized care under the special day care services program.

(e) submit a report to the governor and to the chairmen of the senate finance committee and the assembly ways and means committee not later than December thirty-first, nineteen hundred eighty-nine on the program established pursuant to this section, including the number, amount and recipients of grants in each eligible district; the purposes and uses of such grants; an evaluation of any resulting improvements in recruitment and retention of qualified staff, current local eligibility standards, any use of the waiver process, state cost of increasing the eligibility standards established by law up to twenty-five percent and fifty percent of the federal poverty level on a county by county basis for subsidized day care under the special day care services program and recommendations for long-term solutions to the problems of recruitment and retention of teaching and supervisory staff.