Sub-part 418-2 is repealed in its entirety and a new Sub-part 418-2 is enacted and reads as follows:

Sub-part 418-2

Small Day Care Centers

418-2.1 Definitions, Enforcement and Hearings

418-2.2 Procedures for Applying for and Renewing a Registration

418-2.3 Building and Equipment

418-2.4 Fire Protection

418-2.5 Safety

418-2.6 Transportation

418-2.7 Program Requirements

418-2.8 Supervision of Children

418-2.9 Behavior Management

418-2.10 Child Abuse and Maltreatment

418-2.11 Health and Infection Control

418-2.12 Nutrition

418-2.13 Staff Qualifications

418-2.14 Training

418-2.15 Management and Administration

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 child 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 Fire Code and Building Code of New York State, or other applicable fire and building codes when the Fire and Building Code of New York State is not applicable, showing that the facility has been inspected and approved within the 12 months preceding the date of application for use as a small child day care, 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 child day care center is a permitted use under any zoning code applicable to the area in which the small child 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 program 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 indicates that an environmental hazard may be present, inspection or testing must be completed by the appropriate local official or authority to determine if such a 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 Fire Code and Building Code of New York State, or other applicable fire and building codes when the Fire and Building Code of New York State is not applicable, for use of the building as a small child 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 requirements of the Fire Code and Building Code of New York State, or other applicable fire and building codes when the Fire and Building Code of New York State is not applicable, for use of the building as a small child 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 child day care center and all adjacent areas of such building, as required in section 418-2.3(a) of this Subpart;

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

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

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

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

(15) a summary of the training and experience of the provider and any assistant, as described in section 418-2.13(a)(4) of this Subpart;

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

(17) a sworn statement by the applicant and any assistant indicating whether, to the best of the applicant's knowledge, the applicant has ever been convicted of a misdemeanor or a felony in New York State or any other jurisdiction, and fingerprint images to comply with the requirements of section 413.4 of this Title;

(18) certification, on forms provided by the Office, that the applicant is in compliance with 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 child day care center is in compliance with workers' compensation in accordance with the requirements of New York State Law;

(20) (i) the Statewide Central Register database form necessary to complete required screening by the Statewide Central Register of Child Abuse and Maltreatment to determine if the applicant, for such registration, is the subject of an indicated report of child abuse or maltreatment;

(ii) the forms necessary to check the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of Persons with Special Needs per Section 495 of the Social Services Law;

(21) when the small child 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; and

(22) a statement signed by the applicant or authorized representative of the applicant that the program is in compliance with all applicable statutes and regulations.

(b) Small child day care centers located in public school buildings currently used for elementary, middle or secondary public education programs approved by the New York State Education Department are exempt from the requirements set forth in 418-2.2(a)(2)-(9) of this Subpart. 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 pursuant to section 418-2.2(a) within 90 days after the submission of the first piece of such documentation to the Office. Applicants who fail 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 child day care center has been conducted showing compliance with the requirements of this Subpart and the relevant provisions of the Social Services Law.

(e) Renewal. 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 child day care center in conformity with applicable laws and regulations;

(2) 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;

(3) certification, on forms provided by the Office, that the program is in compliance with workers' compensation requirements in accordance with New York State Law;

(4) documentation of inspections and approvals as set forth in section 418-2.15(c) of this Subpart;

(5) documentation showing compliance with the training requirements of section 418-2.14 of this Subpart;

(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 indicates that an environmental hazard may be present, inspection or testing must be completed by the appropriate local official or authority to determine if such a 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) where a program 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 renewal, showing that the water meets 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 during the current registration period in accordance with the applicable requirements of the Fire and Building Code of New York State or other applicable fire and building codes when the Fire and Building Code of New York State is not applicable, for use of the building as a small child day care center;

(9) documentation from service personnel qualified to perform fire suppression systems testing showing that fire suppression equipment and systems have been tested and maintained during the current registration period in accordance with the requirements of the Fire and Building

Code of New York State, or other applicable fire and building codes when the Fire and Building Code of New York State is not applicable, for use of the building as a small child day care center; and

(10) 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 during the current registration period 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 for renewal;

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

(g) Small child day care centers located in public school buildings currently used for elementary, middle or secondary public education programs approved by the New York State Education Department are exempt from the requirements set forth in 418-2.2(e)(6)-(10). 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) Each applicant must submit to the Office at the time of application for registration a diagram of the proposed small day care center.

(1) The diagram must be labeled with 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 program must receive written approval from the Office prior to initiating such change(s), addition(s), or expansion(s).

(3) Child care can only be provided in the areas that have been included in the diagram and approved as child care space.

(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.

(c) A temperature of at least 68 degrees Fahrenheit must be maintained in all rooms to be occupied by children.

(d) A firm clean crib, cot, bed or washable padded mat of age appropriate size and construction must be provided for all children requiring a rest period.

(e) All cribs must be in compliance with the safety standards established by the Consumer Product Safety Commission. Stackable cribs are prohibited. Stackable cribs are prohibited.

(f) 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.

(g) Peeling or damaged paint or plaster must be repaired.

(h) Concrete floors used by the children must be covered with appropriate material.

(i) 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.

(j) Readily accessible outdoor play space which is adequate for active play must be provided. Outdoor space may include public parks, school yards or public play areas. A written diagram outlining how children will safely travel to and from this location must be developed and approved by the Office.

(k) Toilet facilities and wash basins.

(1) Convenient, adequate and sanitary toilet facilities must be provided for the children in a separate, properly ventilated room readily accessible to children.

(2) A functioning, sanitary shower or tub must be available when night care is provided.

(3) 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.

(m) All buildings used for day care centers must remain in compliance with the applicable provisions of the Fire Code and Building Code of New York State or other applicable fire and building codes when the Fire Code and Building Code of New York State is not applicable.

(n) Buildings, systems and equipment must be kept in good repair and operate as designed.

(o) The building number of the day care program shall be conspicuously displayed and visible from the street.

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.

(1) Evacuation drills must be conducted at least monthly during various hours of operation of the small child day care center.

(2) When conducting evacuation drills the exit route must be varied to ensure that all approved means of egress are practiced.

(3) When multiple shifts of care are provided, such drills must be conducted monthly during each shift of care.

(4) The program must maintain on file a record of each evacuation drill conducted, using forms furnished by the Office or approved equivalents.

(c) Fire detection, alarm and firefighting equipment appropriate to the type of building construction, size, height and occupancy must be provided, maintained and operate as designed.

(d) All fire alarm and detection systems must be inspected, tested and maintained in accordance with the applicable requirements of the Fire Code and Building Code of New York State or other applicable fire and building codes when the Fire Code and Building Code of New York State is not applicable.

(1) 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.

(2) All staff must be instructed in the function and operation of fire alarm and detection systems used in the small child day care center.

(e) All fire suppression equipment and systems must be tested and maintained in accordance with the applicable requirements of the Fire Code and Building Code of New York State or other applicable fire and building codes when the Fire Code and Building Code of New York State is not applicable.

(1) All such inspections, testing and maintenance must be conducted by service personnel qualified to perform fire suppression systems maintenance, repair and testing.

(2) All staff must be instructed in the function and operation of fire suppression equipment and systems used in the small child day care center.

(f) 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.

(1) Designated means of egress must be remote from each other.

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

(3) Exit stairways must be equipped with railings for the use of the children.

(g) 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.

(h) The provider must conduct monthly inspections of the premises to observe possible fire or safety hazards. Any such hazard must be corrected immediately.

(i) A record of all inspections and all corrections must be maintained at the program, or at a central location available for review upon request.

(j) 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.

(k) Rooms containing boilers, fuel burning furnaces or other fuel burning heating equipment must be constructed using a minimum of one-hour fire resistant materials or materials of a greater fire resistance when required by Fire Code and Building Code of New York State, or other applicable fire and building codes when the Fire Code and Building Code of New York State is not applicable.

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 Emergency Plan and Emergency Evacuation Diagram 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.

(1) The plan, as submitted with the application or changed thereafter, must be reviewed with the parents of the children in the program and all staff that work in the program.

(2)The Emergency Evacuation Diagram, as approved by the Office, must be posted in a conspicuous place in every room.

(3) The emergency plan must include the following:

(i) how children and staff will be made aware of an emergency;

(ii) a designation of primary and secondary evacuation routes;

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

(iv) a plan for the safe evacuation of children from the premises for each shift of care provided (day, evening, night);

(v) the designation of primary and secondary emergency relocation sites to be used in the case of an emergency, which prohibits re-entry to the child care premises, and how the health, safety and emotional needs of children will be met in the event it becomes necessary to evacuate to another location;

(vi) a strategy for sheltering in place, and how the health, safety and emotional needs of children will be met in the event it becomes necessary to shelter-in-place;

(vii) notification of authorities and the children's parents; and

(viii) roles of staff.

(4) Each program must hold two shelter-in-place drills annually during which procedures and supplies are reviewed. Parents must be made aware of this drill in advance.

(5) The program must maintain on file a record of each shelter-in-place drill conducted using forms provided by the Office or approved equivalents.

(6) Parents must be made aware of the primary and secondary relocation sites and any changes to the plan in advance. In the case that a program is directed to a different location by emergency services, the program must notify parents and the Office as soon as possible. In the event that relocation is required, a written notice must be placed on the main entry to the child care space unless an immediate threat precludes the program from doing so.

(7) Each program must have on site a variety of supplies including food, water, first aid and other safety equipment to allow for the protection of the health and safety of children in the event parents are unable to pick up children due to a local disaster. The plan must take into account a child's needs for an overnight stay. Food supplies must be non-perishable and of sufficient quantity for all children for an overnight stay. Programs that serve food daily and have a food supply stored on site for their daily operation or are co-located at a site with a cafeteria, pantry or

eatery of some kind are not required to store emergency food or water supplies if they can show that they have access to and permission to use those foods in a declared emergency.

(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 when the heating system is in use.

(e) Porches, decks and stairs with more than two steps 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) Barriers must exist to prevent children from gaining access to unsafe areas. Such areas include, but are not limited to, swimming pools, drainage ditches, wells, ponds, or other bodies of open water, holes, wood and coal burning stoves, fireplaces, pellet stoves and permanently installed gas space heaters or any other unsafe areas.

(g) The use of pools that have not received a Department of Health permit to operate, spa pools and all fill-and-drain wading pools are prohibited.

(1) No child shall participate in aquatic activities including, fishing, boating, swimming or any other activity on a body of water without a certified lifeguard present.

(a) The certified lifeguard can be either a staff person from the day care center, or an employee of the venue.

(b) If provided by the center, the certified lifeguard must be certified for the body of water they are supervising children in or near.

(2) No child shall participate in activities at or near a body of water, without a person who is certified in cardio-pulmonary resuscitation and first aid present.

(3) Only those swimming pools and bathing beaches that have a valid permit to operate issued from the local health department having jurisdiction for the bathing facility or those operated by a government agency may be used.

(4) The program shall develop and implement a method to keep track of the location and maintain safety for all children during swimming and other off-site activities. The program shall establish and follow a written plan which details the system of supervising and checking swimmers. This includes a plan for children who are non-swimmers. In addition, a plan for a lost swimmer must be established.

(5) All staff attending the aquatic activity must review the aquatic activity plan before departing for the activity.

(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) When swimming is included as part of the program activities each child shall have a signed statement of permission from the parent to participate.

(j) All field trips with an itinerary that includes an activity where emergency medical care is not readily available and/or an activity such as, but not limited to, wilderness hiking, rock climbing, horseback riding, bicycling, must be accompanied by a staff who possess a current first aid certificate and cardio-pulmonary resuscitation (CPR) certification.

(k) If off-site events are part of the program's activities, the child care program must develop and share with its program staff written plans that cover field trip events. The safety plan must at least include requirements set forth in 418-2.5(g), 418-2.6, and 418-2.8.

(l) Animals and Pets.

(1) Any pet or animal kept indoors or outdoors at the small child day care center must present no evidence of disease or parasites and pose no threat.

(2) All pets housed at or permitted to visit the center that require a license must be licensed.

(3) All required vaccines must be kept current.

(4) The license and record of vaccines must be available to the Office when requested.

(5) Animals posing a threat must be kept away from the small child care center.

(6) The provisions of section 418-2.5(l) also apply to those pets or animals present at the small child day care center that do not belong to the registrant, staff or volunteers of the center.

(7) Parents must be informed of pets that are regularly at the program.

(8) Reptiles and amphibians are not permitted at small child care centers.

(m) Communication.

(1) The small day care center must have immediate access to a minimum of one landline telephone for general use and emergencies. A working mobile phone(s) is permitted for the purpose of promoting children's safety and ensuring the orderly operation of the program, but its use does not remove the requirement for a designated on-site landline telephone.

(2) 911 and the poison control phone number must be posted conspicuously on or next to all small day center telephones.

(3) Devices used for purposes of caller identification or call blocking shall not be used to block in-coming calls from parents of children in care, representatives of the Office or agents of the state or local government during the hours of operation of the small day care center.

(n) Materials and play equipment.

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

(2) Play equipment 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.

(3) Play equipment must be used in a safe manner.

(4) Play equipment and apparatus may be used only by the children for whom it is developmentally appropriate.

(5) All programs that substantially modify, or install new, outside play equipment must do so in accordance with the U.S. Consumer Product Safety Commission's Public Playground Safety Handbook.

(o) Clear interior or exterior glass doorways must be marked clearly to avoid accidental impact.

(p) 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) Windows above the first floor that are accessible to children and present a fall hazard must be protected by permanent barriers or restrictive locking devices to prevent a window from opening fully thus preventing children from falling out the windows.

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

(s) Door latches, locks and covers.

(1) Every closet door latch that is accessible to children must be constructed to enable children to open the door from inside the closet.

(2) 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.

(3) Egress doors from the small day care center must be able to be opened from the inside without using a key. Child protective door knob covers may not be used on egress doors.

(t) Operating carbon monoxide detectors must be located in accordance with applicable laws, and used in all programs where children nap.

(u) The use of trampolines by day care children is prohibited, except for small one person exercise trampolines.

(v) 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.

(w) Cleaning materials must be stored in their original containers unless the product's use or the program's health care plan indicates that the product be mixed with water before use. In this case, the container used for subsequent use of the mixed product must state the name of the cleaning material contained within. Cleaning 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.

(x) Firearms, shotguns and rifles are prohibited at the child care program, except that nothing in this section shall be construed to prohibit a police officer or peace officer, as those terms are defined in section 1.20 of the criminal procedure law, or a security guard, as defined in section 89-f of the general business law, from possessing a firearm, shotgun or rifle on the premises for the protection of the child care program. Each child care program shall post signs providing notification of such prohibition that read: "No firearms, shotguns or rifles are permitted on these premises." Such signs, not less than eight and one-half inches by eleven inches, shall be posted

in a prominent manner and within reasonable distance of each entrance of the child care program. Such signs shall be distributed by the Office of Children and Family Services.

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

(z) All window and door blind cords, ropes, wires and other strangulation hazards must be secured and inaccessible to children.

(aa) 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.

(ab) High chairs.

(1) High chairs, when used, must have a sturdy and steady base and be used only for children who are able to sit up independently.

(2) A safety strap must be fastened around children who are seated in high chairs.

418-2.6 Transportation

(a) The program must obtain written consent on forms furnished by the Office or approved equivalents from the parent of the child for any transportation of the children in care at the center, provided or arranged for by the program.

(b) When transportation is provided or arranged for by the program, parents must be informed when the person who or vendor that is providing transportation changes.

(c) Parents must be informed of and agree to a transportation plan before a child can be transported by the program.

(d) A child must never be left unattended in any motor vehicle or other form of transportation. The program must develop and follow procedures to guarantee no children are left alone on a bus, vehicle or other transportation modes without adult supervision at any time, including insuring all children have departed the vehicle.

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

(f) All children must be secured in child safety seats properly installed per manufacturers recommendations, or with 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 program.

(g) Programs that offer transportation services either directly or by contract with a third party must ensure that drivers and vehicles meet all Department of Motor Vehicles and Department of Transportation requirements.

(h) Drivers must be 18 years of age or older and hold a current valid license to drive the class of vehicle they are operating.

(i) Any motor vehicle, other than a public form of transportation, used to transport children in care at the center must have a current registration and inspection sticker.

(j) Parents whose children receive transportation services must receive, at the time of enrollment of their children, a copy of the program's transportation plan. If the plan is amended, parents must receive a copy of the amended plan prior to its start date.

(k) No person transporting child care children shall operate a motor vehicle while using a mobile phone, or other electronic communication device, including hands-free devices. All communications made or received by the driver while the motor vehicle is in use for the transportation of child care children must be made from a legally permitted parked position off the road.

(l) The program must openly display its daily transportation schedules.

(m) When transportation is provided by the small day care center, the driver of the vehicle may not be included in the supervision ratio except when the only children being transported are enrolled in kindergarten or a higher grade.

418-2.7 Program Requirements

(a) The program must establish and implement a daily schedule of program activities that offers reasonable regularity in routines, including snack and meal periods, nap and rest periods, indoor activities, outdoor play time and a variety of large muscle activities throughout the day. There must be physical activity, appropriate to the ages of the children in care, every day.

(b) When care is provided to infants less than six months of age, the daily schedule must include short supervised periods of time during which the awake infant is placed on his or her stomach, back or side allowing them to move freely and interact socially, thus developing motor skills and social skills.

(c) The daily schedule must include a routine of good personal hygiene practices, and when night care is provided, this includes changing into night clothes, brushing teeth, and washing before bed in the manner to be agreed between the parent and the program.

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

(e) 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 or disabilities, which promote the children's cognitive, educational, social, cultural, physical, emotional, language and recreational development.

(f) 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.

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

(h) 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. Parents may request and programs may permit children to remain indoors during outdoor play time so long as such children will be supervised by a caregiver.

(i) 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.

(j) Children may not sleep or nap in car seats, baby swings, strollers, infant seats or bouncy seats. Should a child fall asleep in one of these devices, he or she must be moved to a crib/cot or other approved sleeping surface.

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

(l) Other than for school age children, sleeping and napping arrangements must be made in writing between the parent and the program. Such arrangements shall include: the area of the program 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, consistent with the requirements of section 418-2.8 of this Subpart.

(m) Sleeping arrangements for infants require that the infant be placed flat on his or her back to sleep, unless medical information from the child's health care provider is presented to the program by the parent that shows that arrangement is inappropriate for that child.

(n) Cribs, bassinets and other sleeping areas for infants must not have bumper pads, toys, large stuffed animals, heavy blankets, pillows, wedges or infant positioners unless medical information from the child's health care provider is presented indicating otherwise.

(o) The resting/napping places must:

(1) be located in approved day care space;

(2) be located in safe areas of the program;

(3) be located in a draft-free area;

(4) be where children will not be stepped on;

(5) be in a location where safe egress is not blocked; and

(6) allow caregivers to move freely and safely within the napping area in order to check on or meet the needs of children.

(p) Individual clean bed coverings must be available, as needed, for each child requiring a rest period.

(q) Bedding, which is the removable and washable portion of the sleeping environment, must not be shared between children.

(r) Sleeping surfaces, including bedding, which is the removable and washable portion of the sleeping environment, must not come in contact with the sleeping surfaces of another child's rest equipment during storage. Mats and cots must be stored so that the sleeping surfaces do not touch when stacked.

(s) No crib, cot, bed or mat may be occupied by more than one child, nor by a child and any adult.

(t) Children unable to sleep during nap time shall not be confined to a sleeping surface (cot, crib, etc) but instead must be offered a supervised place for quiet play.

(u) If television or other electronic visual media is used, it must be part of a planned developmentally appropriate program with an educational, social, physical or other learning objective that includes identified goals and objectives. Television and other electronic visual media must not be used solely to occupy time.

(v) Television and other electronic visual media must be turned off when not part of a planned developmentally appropriate program activity.

(w) Children must not watch television or other electronic visual media during meals.

(x) Television and other electronic visual media must be turned off while children are sleeping, and during established nap times. This is not to prohibit a program from using electronic visual media for business purposes during sleep or nap time if its use does not interfere with the supervision of children.

(y) At the time of the child's admission to the program, the program must furnish parents with appropriate instructional materials that will assist them in evaluating the program, and its caregivers. Such materials must include information concerning child abuse and maltreatment, and guidance on the steps the parent may take if they suspect their child has been abused or maltreated.

418-2.8 Supervision of Children

(a) Children cannot be left without competent supervision at any time. Competent supervision includes awareness of and responsibility for the ongoing activity of each child. It requires that all children be within a caregiver's range of vision except as provided in section 418-2.8(b) of this Subpart and that the caregiver be near enough to respond when redirection or intervention strategies are needed. Competent supervision must take into account the child's age, emotional, physical and cognitive development.

(b) Children may be outside a caregiver's range of vision only as follows:

(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 for a short period of time without direct adult supervision.

(2) With the written permission of the parents, a program may allow school-aged children to participate in activities outside of the direct supervision of a caregiver. Such activities must occur

on the premises of the small day care center. A caregiver must visually check such children every 15 minutes.

(c) Any electronic monitor or surveillance equipment used to take images, monitor or record children in day care may not be used as a substitute for competent direct supervision of children.

(d) (1) Only approved caregivers may be left unsupervised with day care children.

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

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

(f) The provider may be absent for short or long term absences under the following conditions:

(1) When the provider is absent for 3 or fewer consecutive days, the Office does not need to be notified in advance; however the program must keep a written record of the caregiver present in place of the absent provider.

(2) When the provider is absent for more than 3 consecutive days or has reason to be absent on a recurring basis, the Office must be notified in advance and the program must keep a written record of the caregiver present in place of the absent provider.

(g) With written Office approval, an approved assistant will be permitted to work in place of the provider for long-term absences for up to a total of 30 cumulative days per year.

(h) In other than emergency situations such as illness or accident, parents must be notified in writing 2 weeks prior to any long-term absence of the provider. This notice must include specific start and end dates of the absence and who will be taking the provider's place in the day care program.

(i) Supervision ratios.

(1) A provider at a small day care center may care for five children ages six weeks to twelve years or six children ages two to twelve years.

(2) Whenever a person pending approval as a caregiver is being counted in ratio for the program, the provider must be at the program and supervising this person.

(j) The use of any type of device for social or entertainment purposes, listening to music on headphones, playing screen games, using the Internet, or making personal calls by caregivers while supervising children is prohibited. Use of any devices for brief and necessary communications or purposes directly related to the child care program such as communication with parents or the Office and its representatives is allowable.

(k) Releasing children from care.

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

(2) No child can be released from the program unsupervised except upon written permission of the child's parent. Such permission must be acceptable to the program 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.

(3) When transportation is provided as a service by the program, no child can be released from the day care program directly to the child’s home or other destination without first verifying that the parent or person(s) designated by the parent to receive the child is present at that destination to receive the child.

(l) Visitor control procedures.

(1) Each small day care center shall require visitors to the program 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 program;

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

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

(2) Each small day care center shall establish written 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.

418-2.9 Behavior Management

(a) The program must establish and follow a written plan for behavior management that is acceptable to the Office. This plan must include how the program will approach challenging behaviors, help children solve problems, and encourage acceptable behaviors.

(b) The caregivers must use acceptable techniques and approaches to help children solve problems.

(c) The program must provide copies of the behavior management plan to all caregivers and parents of children in care at the program.

(d) Discipline must promote positive self-esteem in children and guide children 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.

(e) 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.

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

(g) When 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 herein is prohibited.

(h) Physical restraint is prohibited. Physical restraint is the act of using force to extremely limit a child’s body movements for a lengthy period of time. It involves holding a child against his/her will and putting pressure on the child’s chest and/or extremities in an effort to significantly

restrict his/her movement, thereby making it extremely difficult for a child to move. It may also involve holding a child flat on the ground and restricting his/her body from movement.

(i) Physical intervention is permitted. Physical intervention is the act of using bodily contact as a short- term immediate response to prevent children from incurring substantial or serious injury to themselves or injuring others. It may involve: picking a child up and moving him or her away from danger or conflict, holding the child's hands or gently touching the body to direct their movement, rocking a child to soothe them, blocking a child's path when they are about to injure themselves or others or destroy property. This technique allows the child to regain self-control as quickly and safely as possible. A consultation with a child's parent is required if the child is not receptive to physical intervention.

(j) 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, physical restraint, 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, food, hot spices, irritants or the like.

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

(l) A child may only be disciplined by a caregiver.

(m) 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 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 a caregiver, employee, volunteer or any other person. 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, caregivers 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 caregiver has reasonable cause to suspect that a child coming before them in their capacity as caregiver in a small day care center 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.

(c) The provider or registrant of the small child day care center is responsible for implementing procedures which ensure the safety and protection of any child named in a report of child abuse

or maltreatment involving a situation which occurs while the child is in attendance at the center. Immediately after making or causing to be made a report pursuant to section 418-2.10(b), the provider or registrant of the center must take such appropriate action as is necessary to ensure the health and safety of the children involved in the report and, as necessary, of any other children in the care of the center. The provider or registrant must also take all reasonable steps to preserve any potential evidence of abuse or maltreatment. Insofar as possible, any action taken under this subdivision must cause as little disruption as possible to the daily routine of the children in the center.

418-2.11 Health and Infection Control

(a) Child Enrollment Requirements.

(1) Other than children who are enrolled in kindergarten or a higher grade, no child may be accepted for care in a child care program unless the program has been furnished with a written statement signed by a health care provider verifying that the child is able to participate in child day care and currently appears to be free from contagious or communicable diseases. A child's medical statement must have been completed within the 12 months preceding the date of enrollment.

(2) The written medical 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 child day care. When the written statement from

the health care provider advises the day care program that the child being enrolled is a child with special health care needs, the day care program 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 program will obtain or develop any additional competencies that the caregivers will need to have in order to carry out the health care plan for the child.

(3)The program must keep documentation of immunizations the child has received to date, in accordance with New York State Public Health Law.

(4) Any child not yet immunized may be admitted provided the child's immunizations are in process, in accordance with the requirements of New York State Public Health Law, and the parent gives the program specific appointment dates for required immunizations.

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

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

(7) With the exception of children meeting the criteria of sections 418-2.11(a)(5) or (6) children enrolled in the child day care must remain current with their immunizations in accordance with

the current schedule for required immunizations established in the New York State Public Health Law.

(8) The program 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 program may not exclude the child from child day care, but must give the parent information on lead poisoning and prevention, and refer the parent to the child's health care provider or the local health department for a lead blood screening test.

(b) Staff and Volunteer Health Requirements.

(1) Staff and volunteers must each submit a medical statement on forms furnished by the Office or an approved equivalent from a health care provider:

(i) at the time of initial small day care center application;

(ii) before such person has any involvement in child care work.

(2) A medical statement will be required when an event or condition reasonably calls into question a caregiver's ability to provide safe and suitable child care.

(3) Initial medical statements sent in with the application or as a result of a new hire must be dated within 12 months preceding the date of application or hiring date.

(4) The medical statement must give satisfactory evidence that the individual is physically fit to provide child day care and has no diagnosed psychiatric or emotional disorder which would preclude such individual from providing child day care.

(5) All caregivers and volunteers must be free from communicable disease unless his/her health care provider has indicated that the presence of the communicable disease does not pose a risk to the health and safety of the children in care.

(6) The initial medical statement for staff and volunteers must include the results of a Mantoux tuberculin test or other federally approved tuberculin test performed within the 12 months preceding the date of the application.

(7) After the initial medical statement, tuberculin tests are only required at the discretion of the caregiver's health care provider or at the start of new employment.

(8) Consumption of, or being under the influence of alcohol by any staff person or volunteer is prohibited during child day care hours.

(9) Consumption of or being under the influence of an illegal drug by any staff person or volunteer is prohibited during child day care hours.

(10) Consumption of or being under the influences of a controlled substance by any staff person or volunteer is prohibited during day care hours, unless the controlled substance is prescribed by a health care provider is being taken as directed, and does not interfere with the person's ability to perform his or her child day care functions.

(11) Smoking in indoor or outdoor areas in use by children and in vehicles when children are occupying the vehicles is prohibited.

(12) All caregivers must have knowledge of and access to children's medical records and all emergency information.

(c) The Health Care Plan.

(1)The Registrant must prepare a health care plan on forms furnished by the Office. Such plan must protect and promote the health of children. The health care plan must be on site, followed by all caregivers and available upon demand by a parent or the Office. In those instances in which the program will administer medications, the health care plan must also be approved by the program's health care consultant unless the only medications to be administered are:

(i) over-the-counter topical ointments, lotions and creams, sprays, including sunscreen products and topically applied insect repellant; and/or

(ii) epinephrine auto injectors, diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers.

(2) The health care plan must describe the following:

(i) how a daily health check of each child for any indication of illness, injury, abuse or maltreatment will be conducted and documented;

(ii) how a record of each child's illnesses, injuries and signs of suspected abuse or maltreatment will be maintained;

(iii) how professional assistance will be obtained in emergencies;

(iv) 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;

(v) which designated caregivers will be administering medication. The plan must state that only a trained, designated caregiver may administer medications to children, except in those programs in which the only administration of medications offered will be the administration of over-the-counter topical ointments, lotions, creams, and sprays including sunscreen products and topically applied insect repellant.

(vi) the contents of the first aid kit;

(vii) that the trained designated caregiver may only administer medications to children if the designated caregiver is:

(a) at least 18 years of age,

(b) possesses a current certification in first aid and cardio-pulmonary resuscitation (CPR) appropriate to the ages of the children in care,

(c) and has completed the Medication Administration Training (MAT) pursuant to section 418-2.11(e) or in the case of administering epinephrine auto injectors, Diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers has received training on its use from the parent, health care provider or a health care consultant;

(viii) the designation of the health care consultant of record for programs, as indicated in section 418-2.11(c)(1) of this Subpart; and

(ix) when a health care consultant is required to approve a health care plan the schedule of visits by a health care consultant to programs administering medications, must occur at least once every two years and must include a review of the health care policies and procedures and a review of the documentation.

(d) Health Care Consultant.

(1) Programs must demonstrate to the health care consultant how medications are administered in the program. A program is not required to schedule a visit with a health care consultant or include a schedule of visits by a health care consultant in their health care plan when:

(i) only over-the-counter topical ointments, lotions, creams and sprays, including sunscreen products and topically applied insect repellant are administered; and/or

(ii) epinephrine auto injectors, diphenhydramine in combination with the auto injector, and asthma inhalers and nebulizers are the only medications administered in the program.

(2) 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 program, 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 registrant and the registrant must immediately notify the Office, no longer than 24 hours later. In that instance, the health care consultant may also notify the Office directly if he or she so desires.

(3) A program authorized to administer medications, which has had the authorization to administer medications revoked, or otherwise loses the ability to administer medications, must advise the parent of every child in care before the next day the program operates that the program no longer has the ability to administer medications.

(4) A program, whose health care consultant terminates his or her relationship with the program, will be granted a 60 day-grace period to hire another health care consultant, obtain approval of a health care plan from the new health care consultant and submit the plan to the office without the child care program losing the ability to administer medications as long as:

(i) the former health care consultant did not revoke his or her approval prior to terminating the relationship with the child care program;

(ii) caregivers who have been trained in medication administration are available to continue administration of medications as per the health care plan;

(iii) the child care program follows the approved health care plan, as currently written, for the 60-day period;

(iv) the child care program notifies the Office, within 24 hours, of the termination of the relationship with the health care consultant; and

(v) the child care program has the newly hired health care consultant review and approve the health care plan and sends the signed approved health care plan to the Office before the sixty-day window expires.

(5) Once the sixty-day period has expired if no health care plan approval is issued, the child care program will be issued a new registration, which will state that it is no longer able to administer medications other than over-the-counter topical medications and emergency medications.

(e) Training for the Administration of Medications.

(1) All caregivers, except those excluded pursuant to sections 418-2.11(e)(5), 418-2.11(f), and 418-2.11(h)(5) of this Subpart 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 caregiver must complete a recertification training approved by the Office in order to extend the certification for each additional three year period. Where a certification lapses, the caregiver may not be recertified unless the caregiver completes the initial medication administration training or the recertification training, as required by the office. Where enforcement action has been taken against the registrant based on a failure by the program to comply with requirements for the administration of medications set forth in 418-2.11, the Office may require retraining or may prohibit a caregiver from being involved in the administration of medications.

(2) Caregivers who will be responsible for administering medications must receive training in the methods of administering medications prior to administering any medications in a child day care setting. Upon completion of the training, the 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.

(i) In order to be trained in the administration of medications in a day care setting, a caregiver must be literate in the language or languages in which health care instructions from parents and health care providers will be received.

(ii) 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.

(3) The training in the administration of medications must be provided by a health care provider or registered nurse who has been certified by the office to administer the office approved curriculum.

(4) The training must be documented and must include, but need not be limited to the following:

(i) training objectives;

(ii) a description of the methods of administration including principles and techniques of application and dispensation of oral, topical, medication patches 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;

(iii) administering medication to an uncooperative child;

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

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

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

(c) recognition of common side effects of medications and ability to follow written directions regarding appropriate follow-up action;

(d) avoidance of medication errors and what action to take if an error occurs;

(e) understanding relevant commonly used abbreviations;

(f) maintaining required documentation including the parent's permission, written orders from health care professionals and licensed authorized prescribers, and the record of administration of medications;

(g) safe handling of medications, including receiving medications from a parent;

(h) proper storage of medications, including controlled substances; and

(i) safe disposal of medications.

(5) 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 section 418-2.11(e) of this Subpart 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.

(f) Administration of Medication.

(1) Caregivers may administer medication only in accordance with the following:

(i) All programs that choose to administer medications other than epinephrine auto injectors, diphenhydramine in combination with the auto injector, asthma inhalers and nebulizers, topical ointments, lotions, creams and sprays 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 section 418-2.11 of this Subpart.

(ii) The program 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 caregivers authorized to administer medications have the necessary professional license or have completed the necessary training.

(iii) Policies regarding the administration of medications must be explained to the parent at the time of enrollment of the child in care and when substantive changes are made thereafter. Parents must be made familiar with the policies of the day care program relevant to the administration of medications.

(iv) Nothing in section 418-2.11 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.

(v) Nothing in section 418-2.11 shall be deemed to prevent a parent, or relative within the third degree of consanguinity of the parents or step-parents of a child, even if such a person is a caregiver, employee or volunteer of the program, from administering medications to a child while the child is attending the program even if the registrant has chosen not to administer medications or if the caregiver designated to administer medications is not present when the child receives the medication.

(2) If the registrant elects not to administer medications, the caregiver must still document the dosages and time as per section 418-2.11(f)(9) of this Subpart that the medications were given to the child by the child's parent, or relative within the third degree of consanguinity of the parents or step-parents of the child.

(i) Relatives within the third degree of consanguinity administering medications to the child in day care must be at least 18 years of age, unless that relative is the parent of the child.

(ii) If the only administration of medication in a day care program is done by a parent, or relative within the third degree of consanguinity of the parents or step-parents of a child, the caregivers of the program do not have to complete the administration of medication training requirements pursuant to section 418-2.11(e).

(3) No child in care will be allowed to independently administer medications, except for those medications administered pursuant to section 418-2.11(h)(6) of this Subpart, without the assistance and direct supervision of caregivers that are authorized to administer medications pursuant to section 418-2.11 of this Subpart. Any program that elects to offer the administration of medication to children when children who attend the program independently administer medications or when children assist in the administration of their own medications must comply with all the provisions of section 418-2.11 of this Subpart.

(4) Caregivers may administer prescription and non-prescription (over-the-counter) medications for eyes or ears, oral medications, topical ointments, creams, lotions, sprays and medication patches and inhaled medications in accordance with section 418-2.11 of this Subpart.

(5) Caregivers may not administer medications by injection, vaginally or rectally except as follows:

(i) where the caregiver has been certified to administer medications in a day care setting and the parent and the child's health care provider have indicated such treatment is appropriate and received instruction on the administration of the medication; or

(ii) for a child with special health care needs, where the parent, day care program 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 license as a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse or advanced emergency medical technician.

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

(7) Permissions needed from parent and/or health care provider in order to administer medications.

(i) Over-the-counter products, including but not limited to over-the-counter topical ointments, lotions, creams, sprays, including sunscreen products and topically applied insect repellant can be administered by a caregiver for one day only, with verbal permission of the parent. If an over-the-counter product is to be administered on a subsequent day or an ongoing basis, written permission from the parent must have been provided to the caregiver.

(ii) For children less than eighteen months of age, prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays, can be administered by a caregiver for one day only, with verbal permission of the parent and verbal instructions directly from the health care provider or licensed authorized prescriber. If prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays are to be administered on a subsequent day or an ongoing basis, written permission from the parent and written instructions from the health care provider must have been provided to the caregiver prior to such administration.

(iii) For children eighteen months of age and older, prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays, can be administered by a caregiver for one day only, with the oral approval of the parent. If prescription medications, oral over-the-counter medications, medicated patches, and eye, ear, or nasal drops or sprays are to be administered on a subsequent day or an ongoing basis, written permission

from the parent and written instructions from the health care provider must have been provided to the caregiver prior to such administration.

(iv) A caregiver cannot administer medication to any child in care, if the parent's instructions differ from the instructions on the medication's packaging, until the child care provider receives permission from a health care provider or licensed authorized prescriber on how to administer the medication.

(v) The program must immediately notify the parent if the program will not administer medication due to differing instructions related to the administration of medication.

(8) Caregivers who are authorized to administer medications must administer medication as follows:

(i) to the right child,

(ii) at the right dose,

(iii) at the right time,

(iv) with the right medication, and

(v) through the right route.

(9) (i) At the time of administration, the caregiver must document the dosages and time that the medications are given to the child.

(ii) All observable side effects must be documented and communicated to the parent, and when appropriate, the child's health care provider.

(iii) Documentation must be made if the medication was not given and the reason for such a decision.

(10) The parent must be notified immediately and the Office must be notified within 24 hours of any medication administration errors. Notification to the Office must be reported on a form provided by the Office or on an approved equivalent.

(11) For all children for whom the caregivers' administer over-the-counter medications pursuant to section 418.11(f) of this Subpart, the caregiver must document that the parent or guardian gave verbal instructions and approval.

(12) Caregivers who are authorized to administer medications must be literate in the language for which the permissions and instructions for use are written.

(13) 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 program.

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

(15) Prescription and over-the-counter medications must be kept in their original bottles or containers.

(16) Prescription medication labels must include the following information or be available through the licensed authorized prescriber on the form provided by the Office or equivalent form:

(i) Child's first and last 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) Reason for medication (unless this information must remain confidential pursuant to law);

(viii) Most common side effects or reactions; and

(ix) 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.

(17) Medications must be kept in a clean area that is inaccessible to children.

(18) 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.

(19) Day care programs must comply with all Federal and State requirements for the storage and disposal of all types of medications, including controlled substances.

(20) In the case of medication that needs to be given on an ongoing, long-term basis, the authorization and consent forms for children 5 years of age or older must be reauthorized at least

once every 12 months. Any changes in the medication authorization related to dosage, time or frequency of administration shall require a program to obtain new instructions written by the licensed authorized prescriber. All other changes to the original medication authorization require a change in the prescription.

(21) In the case of medication that needs to be given on an ongoing, long-term basis, the authorization and consent forms for children under the age of 5 years of age must be reauthorized at least once every six months. Any changes in the medication authorization related to dosage, time or frequency of administration shall require a program to obtain new instructions written by the licensed authorized prescriber. All other changes to the original medication authorization require a change in the prescription.

(g) Stocking medications.

(1) A child care program may keep a supply of over-the-counter medications at a program site to be used in the event that a child in the program develops symptoms while in care that indicate the need for over-the-counter medication.

(2) Child care programs that store and administer medication that is not labeled for a specific child must have an over-the-counter stock medication policy in place before beginning to store any over-the-counter medications. The over-the-counter stock medication's policy must address the safe storage and proper administration of the stored over-the-counter medication and must address the need for strict infection control practices as they pertain to stock medication.

(3) Stock medication must be kept in a clean area that is inaccessible to children and any stock medication must be stored separate from child specific medication.

(4) Stock medications must be kept in the original container and have the following information on the label or in the package insert:

(i) Name of the medication,

(ii) Reasons for use,

(iii) Directions for use, including route of administration,

(iv) Dosage instructions,

(v) Possible side effects and/or adverse reactions,

(vi) Warnings or conditions under which it is inadvisable to administer the medication, and

(vii) Expiration date.

(5) Child care programs that stock supplies of over-the-counter medication, which are not in single dose packaging, must provide a separate mechanism to administer the medication for each

child that may need the medication. Once a device has been used for a specific child in care, that specific device must be disposed of or reused only for that specific child and must be labeled with the child's first and last name. The program must include the procedure in the over-the-counter stock medication policy for dispensing the stock medication from the container to the device, or directly administering to the child, without contaminating the stock medication.

(6) All stock medication must be administered using best practice techniques in accordance with the directions for use on the medication package.

(7) Small day care centers may not stock prescription medication.

(h) Emergency care and the Administration of Epinephrine, Diphenhydramine in combination with the auto injector, Asthma inhalers and Nebulizers.

(1) The caregivers 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 which authorizes the provider or other caregivers 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 program;

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

(iv) advise a parent or the person authorized to pick up the child that day, of any developing symptoms of illness or minor injury sustained while child is in care.

(2) The program 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, covered container or cabinet inaccessible to children.

(3) Rectal thermometers may not be used.

(4) The program must provide a child who has or develops symptoms of illness a place to rest quietly that is in the view of, and under the supervision of a caregiver until the child receives medical care or the parent or approved parental designee arrives. In the event that a child has or develops symptoms of illness, the caregiver is responsible for immediately notifying the parent.

(5) When a caregiver has not been authorized to administer medications in a day care setting in accordance with the requirements of section 418-2.11(f) of this Subpart, such caregiver may administer emergency care through the use of epinephrine auto-injector devices, diphenhydramine, when prescribed in combination with the auto injector, asthma inhaler and asthma nebulizer when necessary to prevent anaphylaxis or breathing difficulty for an individual

child but only when the parent and the child's health care provider have indicated such treatment is appropriate. In addition:

(i) A written Individual Health Care Plan must be developed for the child;

(ii) The child's health care provider must issue a standing order and prescription for the medication;

(iii) The parent must approve, in writing, the administration of the medication as prescribed by the health care provider and keep medications current;

(iv) All caregivers administering an emergency medication pursuant to section 418-2.11(h) of this Subpart, must be instructed on its use; and, the instruction must be provided by the parent, the child's health care provider or a health care consultant;

(v) A caregiver who has been instructed on the use of the auto injector, diphenhydramine, inhaler or nebulizer must be present during all hours the child with the potential emergency condition is in care;

(vi) The caregiver administering the auto-injector, diphenhydramine, asthma medication or nebulizer must be at least 18-years-old;

(vii) The caregiver must immediately contact 911 after administration of epinephrine;

(viii) If an inhaler or nebulizer for asthma is administered, a caregiver must call 911 if the child's breathing does not return to its normal functioning after its use; and

(ix) Storage, documentation of the administration of medication and labeling of the auto-injector, asthma inhaler and asthma nebulizer must be in compliance with Section 418-2.11 of this Subpart.

(6) When a program is approved to administer an inhaler to a child with asthma or other diagnosed respiratory condition, or an epinephrine auto injector for anaphylaxis, a school-aged child may carry and use these devices during day care hours if the program secures written permission of such use of a duly authorized health care provider, parental consent and completes a special health care plan for the child.

(7) The special health care plan, parental consent and health care provider consent documenting permission for a school-age child to carry an inhaler or auto injector must be maintained on file by the program.

(i) Infection Control.

(1) Caregivers and volunteers 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.

(2) Caregivers and volunteers 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.

(3) Caregivers must assist children in keeping clean and comfortable, and in learning appropriate personal hygiene practices.

(i) Children in night care shall have a routine that encourages good personal hygiene practices.

(ii) Each child shall have an individual washcloth, towel and toothbrush. When evening or night care is provided each child shall have the opportunity to change into night clothes and wash before bed. The caregiver will give each child a shower, bath, or sponge bath in a manner agreed between the parent and the program.

(iii) Either disposable towels or individual cloth towels for each child must be used. If individual cloth towels are used, they must be laundered daily.

(iv) Sharing personal hygiene items, such as washcloths, towels, toothbrushes, combs and hairbrushes, is prohibited.

(4) When soap and running water is not available, hand sanitizer may be used by children and caregivers and volunteers on visibly clean hands. Package directions must be followed including supervision of children so that ingestion does not occur.

(i) When soap and running water is not available and hands are visibly soiled, individual wipes may be used in combination with hand sanitizer.

(ii) The use of hand sanitizers on children under the age of two (2) years is prohibited.

(5) Safety precautions relating to blood must be observed by all caregivers and volunteers as follows:

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

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

(b) treating cuts that bleed;

(c) wiping surfaces stained with blood; and

(d) changing diapers where there is blood in the stool.

(ii) 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.

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

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

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

(vi) Surfaces that have been blood stained must be cleaned and then disinfected with an Environmental Protection Agency (EPA) registered product that has an EPA registration number on the label.

(6) All rooms, equipment, surfaces, supplies and furnishings accessible to children must be cleaned and then sanitized or disinfected, using an EPA registered product, as needed to protect the health of children, and in a manner consistent with the health care plan guidelines issued by the Office.

(7) Equipment that is frequently used or touched by children on a daily basis must be cleaned and then sanitized or disinfected, using an EPA registered product, when soiled and at least once weekly.

(8) The premises must be kept clean and free from dampness, odors and the accumulation of trash.

(9) The premises must be kept free of vermin.

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

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

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

(13) Thermometers and toys mouthed by children must be washed and disinfected using an EPA registered product before use by another child.

(14) Individual drinking cups or disposable cups must be provided daily. Once a drinking cup or eating utensils have been used by a child they may not be used by another child unless they are washed first.

(15) Between uses, dishes and utensils must be washed with soap and hot water and rinsed in hot running water.

(16) 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.

(17) Sanitizers and disinfectants must be used as directed on the product label.

(18) Hygiene, diapering and toileting.

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

(ii) For diapered children, caregivers and volunteers must ensure that adequate steps are taken to clean the child after each change of diaper.

(iii) Children must be kept clean and comfortable at all times. Diapers must be changed when wet or soiled. The diaper changing area must be as close as possible to a sink with soap and hot and cold running water. This area or sink must not be used for food preparation. Diaper changing surfaces must be cleaned and disinfected after each use with an Environmental Protection Agency (EPA) registered product that has an EPA registration number on the label.

(iv) The program must make arrangements with the parent to provide an adequate supply of disposable or cloth diapers. When cloth diapers are used they must be supplied by a parent or commercial diaper service.

(v) 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 inaccessible to children until outdoor disposal is possible.

(vi) 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 non-disposable diapers, soiled diapers must be placed in a securely tied plastic bag and returned to the parent at the end of the day.

(vii) Toileting equipment, such as potty chairs, appropriate to the toilet training level of the children in the group must be provided.

(viii) When more than one child in the program is being toilet trained, potty chairs must be emptied, cleaned and then sanitized or disinfected after each use with an Environmental Protection Agency (EPA) registered product that has an EPA registration number on the label.

(iv) If only one child in the program is being toilet trained, potty chairs must be emptied and rinsed after each use and cleaned and then sanitized daily with a sanitizer or disinfectant with an

Environmental Protection Agency (EPA) registered product that has an EPA registration number on the label.

(x) Potty chairs must not be washed out in a hand-washing sink, unless that sink is cleaned, then sanitized or disinfected after such use.

(19) 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 or must be washed by the program.

(j) Pesticide use.

(1) 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.

(2) 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:

(i) 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;

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

(iii) 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 Information Center 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

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

(3) Any day care program that fails to send the appropriate notice of pesticide application as set forth in section 418-2.11(j) of this Part, for a first such violation, shall be issued a written warning in lieu of penalty. For a second violation, such program shall be subject to a penalty not to exceed one hundred dollars. For any subsequent violation, such program 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 registrant with notice and an opportunity for a hearing pursuant to section 413.5 of this Title.

(4) Any finding by the Department of Environmental Conservation of a violation by the program of the requirements set forth in sections 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 section.

(5) Day care centers are prohibited from using pesticides on playgrounds, turf, athletic or playing fields except when approved by the local health department, or for a county not having a health department, such authority as the county legislature shall designate, the commissioner of health or his or her designee, the commissioner of environmental conservation or his or her designee, or, in the case of a public school, the school board. The following are not included in the definition of "pesticide" for this provision only:

(a) the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136(mm) and 136q(h)(2); or

(b) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets; or

(c) the use of non-volatile insect or rodent bait in a tamper resistant container; or

(d) the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25; or

(e) the use of boric acid and disodium octaborate tetrahydrate; or

(f) the use of horticultural soap and oils that do not contain synthetic pesticides or synergists.

418-2.12 Nutrition

(a) The program must provide sufficient and nutritious snacks to children.

(b) The program must ensure that each child in care for more than four hours a day receives a nutritious meal.

(c) Each child in care for more than ten hours a day must receive a minimum of two nutritious meals.

(d) Food must be prepared and stored in a safe and sanitary manner and served at appropriate intervals.

(e) If the program 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 inadequate or of inadequate nutritional value.

(f) Programs changing their meal policy must provide adequate notice to parents.

(g) When meals are furnished by the program, 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.

(h) When meals are furnished by the program, the servings must be in portions suitable for the size and age of the children in care, including infants. There must be a sufficient amount of food available to children to permit second helpings of nutritious foods.

(i) Children must be helped to gain independence in feeding themselves and should be encouraged to learn acceptable table manners appropriate to their developmental levels.

(j) Sufficient time, based on age and individual needs, must be allowed for meals so that children will not be hurried.

(k) Perishable food, milk and infant formula must be kept refrigerated.

(l) 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.

(m) Disposable cups, plates and utensils 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.

(n) The program must obtain a written statement, from the parent of each infant in care, setting forth the breast milk, formula and feeding schedule instructions for the infant and must be updated as changes are made.

(o) Where infant formula is required, such formula may be prepared and provided by the parent, or by a qualified, designated staff person when agreed to in writing by the parent.

(p) The program must develop a plan for introducing age-appropriate solid foods in consultation with the parent.

(q) If more than one child in the program is receiving breast milk, infant formula or other individualized food items, all containers or bottles must be clearly marked with the child's first and last name.

(r) 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.

(s) Heating infant formula, breast milk and other food items for infants in a microwave oven is prohibited.

(t) If foods for older children are heated in a microwave, the food must be stirred and allowed to reach serving temperature before serving to prevent burns from hot spots.

(u) All devices used to warm breast milk, formula or food for infants, must be kept at a low temperature not exceeding 120°.

(v) Staff and volunteer must not hold an infant while removing a bottle or infant food from a crock pot or other warming device.

(w) All devices used for warming bottles or food must be kept out of reach of children.

(x) Every effort must be made to accommodate the needs of a child who is being breast-fed.

(y) Infants six months of age or younger must be held while being bottle-fed. Infants over six months of age 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.

(z) The propping of bottles is prohibited.

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

(ab) Children may not be placed in a crib with a bottle, food or drink.

(ac) A staff person or volunteer must not force or bribe a child to eat nor use food as a reward or punishment.

(ad) Fluid milk, 100% juice and water, are the only beverages a program may provide to children in the program.

(ae) When milk is served as a beverage, low-fat or fat-free milk (1% fat or less) must be served to children two years of age or older.

(af) When provided by the parent, beverages are not subject to the regulatory beverage standards.

(ag) All children with dietary restrictions based on a child's medical condition or religious beliefs of the family are exempt from the regulatory beverage requirements, when instructed in writing by the parent to the program.

(ah) The program must share information on healthy food and beverage choices and the prevention of childhood obesity with the parent.

418-2.13 Staff Qualifications

(a) The caregivers must each meet the following qualifications:

(1) be at least 18 years old;

(2) have a minimum of either two (2) years of experience caring for children under six years of age, or one (1) 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 preschool-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;

(4) provide to the Office the names, addresses and daytime telephone numbers of at least three (3) acceptable references, other than relatives. At least one of the references must be able to attest to the employment history, work record and qualifications, if the person had ever been employed outside the home. At least one of the references must be able to attest to the character,

habits and personal qualifications to be a caregiver or substitute at a small day care center; and

(5) submit a satisfactory medical statement, as required in section 418-2.11(b).

(b) All caregivers and those volunteers with the potential for regular and substantial contact with children enrolled in the program are required to comply with the criminal history review provisions of this Subpart and Part 413 of this Title.

(c) All caregivers and volunteers hired after June 30, 2013 must comply with the background check requirements for the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of Persons with Special Needs pursuant to Section 495 of the Social Services Law.

(d) All caregivers are required to complete a State Central Register database check.

(e) A person is not approved to be a caregiver until the child care program receives written approval from the Office.

418-2.14 Training

(a) Before the Office issues an application for a small day care center registration, to a person or entity yet to hold a day care license or registration, the applicant must complete an Office approved orientation session.

(b) All staff must complete a minimum of thirty (30) hours of training every two years. 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.

(c) Fifteen (15) of the required thirty (30) hours of training must be obtained during the first six months of the program's first year of registration or during the person's first six months of employment by the program.

(1) This initial fifteen (15) hours applies toward the total thirty (30) hour minimum requirement for each two year period.

(d) The thirty (30) hours of required training must address the following topics:

(1) principles of childhood development, focusing on the developmental stages of the age groups for which the program provides care;

(i) Principles of childhood development include such things as meeting the physical, social and developmental needs of children, including those with special needs; behavior management and discipline; promoting play and physical activity; individual development variation and learning styles; infant and toddler brain development and cross cultural skills and knowledge.

(2) nutrition and health needs of infants and children;

(i) Nutrition and health needs of infants and children include such things as healthy menu planning, obesity prevention, benefits of and how to encourage breastfeeding for mothers returning to work, training in infectious diseases, cardio pulmonary resuscitation(CPR), first aid, health and safety practices, preventive techniques in sudden infant death syndrome, medication administration training.

(3) child day care program development;

(i) Child day care program development topics include such things as the benefits of continuity of care practices, supervision and coaching of caregivers, program variety and activity; infant, toddler, pre-school, and school age quality programming, promoting children's language development and social and emotional skills, and establishing nurturing, stimulating environments; rest time policies and procedures including meeting the needs of children who do not nap; hand washing; meeting the program needs of mixed age groups in a small day care program.

(4) safety and security procedures;

(i) Safety and security procedures include such things as communication between parents and caregivers, emergency preparedness and response practices and procedures, fire safety, pool and water sports safety, playground safety, supervising daily activities and family

engagement techniques.

(5) business record maintenance and management;

(i) business record maintenance and management includes such things as training in New York State and Federal requirements as a business owner and employer, child day care record keeping and documentation requirements, time maintenance, organizational skills, scheduling and coverage, supervision and coaching of caregivers.

(6) child abuse and maltreatment identification and prevention;

(i) child abuse and maltreatment identification and prevention includes such things as reporting protocol; how to make a report to the state central register; documenting incidents and daily health checks; child abuse policy/procedure including safety plan.

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

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

(i) statutes and regulations pertaining to child abuse and maltreatment includes such things as Mandated Reporter training; responsibilities of a mandated reporter; and

(9) education and information on the identification, diagnosis and prevention of shaken baby syndrome.

(e) 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 section 418-2.14(c) of this Subpart.

(f) After satisfying all of the training requirements for a two year period, an individual can carry over all training hours earned within the last 90 days of the two year period, to count toward the training requirements for the next two year period.

(g) For the thirty (30) hours of training that must be received every two years any, person 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 person from participating in training on a particular topic upon demonstration of substantially equivalent knowledge or experience related to that topic. All persons with such exemptions must still complete a minimum of thirty (30) hours of training every two years.

(h) The program must submit verification of completion of the training requirements to their program's designated registration office on forms provided by the Office.

(i) All training that counts toward the required thirty (30) hours must be approved by the Office of Children and Family Services as per Office policies regarding training and trainers.

(j) Caregivers who will be responsible for administering medications must receive training pursuant to Section 418-2.11(e) of this Part.

(k) All child day care programs must have at least one staff person, who holds a valid certificate in cardio-pulmonary resuscitation (CPR) and first aid, on the premise of the child care program during the program's operating hours.

(l) Cardio-pulmonary resuscitation and first aid certificates must be appropriate to the ages of the children in care.

(m) The staff person who holds the valid certification in cardio-pulmonary resuscitation and first aid must have their certification available for review during their working hours at the program.

418-2.15 Management and Administration

(a) General registration requirements.

(1)(i) Each small day care center must obtain a registration from the Office. No person or entity may operate a small child day care center without a registration from the Office.

(ii) Each small day care center must operate in compliance with the regulations of the Office and all other applicable laws and regulations.

(2) Each small day care center that has been issued a registration by the Office must openly display such registration, along with any restrictions, limitations and waivers to the registration, in the center for which it was issued.

(3) A new application for a registration must be submitted to the Office when there is a change in the address or owner or when a registration is sought following the 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) No registration will be issued unless the program 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.

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

(7) A registration is not transferable to any other person, entity or location.

(8) A small day care center 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.

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

(b) General operation requirements.

(1) Individual children must be cared for less than 24 hours a day. No caregiver may work more than two consecutive shifts.

(2) The registrant must make a written request to the Office before providing an additional shift of care beyond what was specified and approved in the initial registration.

(3) The registrant cannot provide an additional shift of care until the changes have been approved in writing by the Office.

(4) The staff and volunteers must be in good health and be of good character and habits.

(5) The submission of fraudulent or altered documents to the Office or its representatives is prohibited.

(6) Confidentiality.

(i) 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.

(ii) 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.

(iii) Redisclosure of confidential HIV-related information, as defined in section 360-8.1 of the Public Health Law, concerning a child receiving child day care is not permitted except in a manner consistent with Article 27-F of the Public Health Law.

(7) A small day care center may not refuse to admit a child to the program solely because the child has a developmental delay or a 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 program 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 section 418-2.11 shall be deemed to require the program to incur significant additional expenses to modify the premises and/or program to accommodate such a child.

(8) The parent of a child receiving care must have:

(i) unlimited and on demand access to such child;

(ii) 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 child day care center;

(iii) unlimited and on demand access to the registrant and caregivers whenever such child is in care or during the normal hours of operation; and

(iv) unlimited and on demand access to written records concerning such child except where access to such records is otherwise restricted by law.

(9) Electronic monitors and surveillance equipment.

(i) The parents of all children receiving care in a small day care center equipped with electronic monitoring devices or 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 staff of the small day care center must also be informed if video surveillance cameras will be used for this purpose.

(ii) All parents of children enrolled in the day care center and all staff and volunteers 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.

(iii) Small day care centers opting to install and use electronic monitoring devices or surveillance cameras must comply with all State and federal laws applicable to the use of such equipment.

(iv) Electronic monitoring devices or surveillance cameras may not be used as a substitute for competent direct supervision of children.

(v) Electronic monitoring devices or 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.

(vi) Small day care centers that use electronic monitoring devices or surveillance cameras 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.

(vii) Parents of children, staff and volunteers must be notified when electronic monitoring devices or surveillance cameras are used.

(viii) 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 small day care centers must also advise the parents having access to views of the small 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.

(10) (i) The small day care center 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. Inspectors and representatives of the Office must be given free access to the building or buildings used by the center, staff, volunteers and children and any records of the center.

(ii) 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.

(iii) A small child day care center must cooperate with local Child Protective Services' Staff conducting any investigation of alleged child abuse or maltreatment.

(iv) No staff person or volunteer may place or attempt to place an Office representative, who is performing his/her role as such, in reasonable fear of physical injury.

(v) Any intentional display of physical or verbal force, which would give an Office representative reason to fear or expect bodily harm, is prohibited.

(vi) Intentional and wrongful physical contact with an office representative is prohibited.

(11) In hiring a provider subsequent to issuance of a registration, a program:

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

(ii) must submit to the Office within 15 days of the written notification of the change in provider, the name of such person and the supporting documentation needed to complete the approval process including:

(a) 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,

(b) the forms necessary to check the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of Persons with Special Needs pursuant to Section 495 of the Social Services Law,

(c) fingerprint images necessary for the Office to conduct a criminal history review,

(d) 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, and

(e) three (3) acceptable references;

(iii) a medical statement must be submitted before the person has any involvement with children in care, as required in section 418-2.11(b) of this Subpart;

(iv) may, during the Office's review of all documentation for any proposed provider continue to operate the program; and

(v) may not leave the proposed provider in sole charge of or unsupervised with children until such time as the Office approves the person.

(12) The small day care center must report to the Office:

(i) Immediately upon learning of a change that affects those portions of the building and property in which the program is operating or which are used for the children's egress in the case of emergency;

(ii) At least thirty days in advance of any proposed changes to the area used for child care;

(iii) Immediately or no later than the next day of business of the provider's resignation or termination;

(iv) Immediately upon learning of any other change that would place the small center out of compliance with applicable regulations.

(13) All staff and volunteers of the small day care center must be familiar with the Office regulations and policies governing such programs, and the small child care center's policies. Such regulations and policies must be readily accessible to staff and volunteers for reference purposes.

(14) The program must immediately notify the parent and Office upon learning of the death, serious incident, serious injury, serious condition, communicable illness, or transportation to a hospital, of a child which occurred while the child was in care at the program or was being

transported by the program. A serious incident includes any event in which a child requires medical attention other than routine illness, is left without competent supervision for any period of time, or leaves the program without an approved caregiver or designated person.

(15) Parents must be given the opportunity to discuss issues related to their children and the care of their children with the caregivers. Such opportunities must occur at the time of enrollment of the child in the program 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 non-child care activity or other business or social purpose when children are present such that the attention of caregivers is diverted from the care of the children.

(17)(i) Within five days after receiving the initial registration and before actually commencing operation, the registrant 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 registrant 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 section 418-2.15(b)(17)(i) of this Subpart.

(18) When the Office notifies the program that such a statement is required, the program must provide a statement from the appropriate local official or authority that the building meets standards for sanitation and safety.

(19) The small child day care center must comply with all applicable State and federal laws relating to equal employment opportunities.

(20) All small day care centers that accept direct and indirect payments from a social services district, or a payment from a parent or caretaker, for providing subsidized child care must comply with all relevant requirements of the child care subsidy program and section 415.4(h) of this Title.

(21) A small day care center must give the parent, at the time of admission of a child, a written policy statement including, but not limited to:

(i) the responsibilities of the program;

(ii) the responsibilities of the parent;

(iii) the policies of the small child day care center regarding admission and disenrollment policies;

(iv) how parents will be notified of accidents, serious incidents and injuries;

(v) the behavior management policy;

(vi) a summary of the program's evacuation plan including the primary and secondary evacuation sites;

(vii) the program activities to be provided;

(viii) a summary of the program's health care policies, including the level of illness the center will accommodate;

(ix) actions the small day care center will take in the event the child is not picked up as scheduled;

(x) the meal arrangements;

(xi) instructional materials on the available procedures and legal remedies if they suspect their child has been abused or maltreated;

(xii) how to access the regulations;

(xiii) contact information for the Office including the Child Care Complaint Line;

(xiv) transportation policy; and

(xv) information on healthy food and beverage choices and the prevention of childhood obesity.

(22) The small day care center must post or display conspicuously in a place to which parents have free and daily access, the following:

(i) the Office's small child day care center regulations;

(ii) the name(s), addresses and telephone numbers of person(s) with the legal responsibility and administrative authority for the operation of the small day care center; and

(iii) the address and telephone number of the appropriate regional office of the Office which may be contacted to lodge a complaint against the small center for violations of statutory and regulatory requirements;

(23) Upon termination or resignation of the provider, an acting provider must be immediately named by the registrant. The appointment of the acting provider must be shared with the Office by the next day of business. A permanent provider must be on-site within ninety days.

(24) When a small day care center is operated by an entity other than a sole proprietor, such entity shall immediately notify the Office upon any transfer or reapportionment of stock or any change in ownership.

(25) 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.

(26) Each small day care center must be staffed to perform administrative/fiscal management functions and, during all hours of operation, program supervision functions, including developing, directing and supervising daily activity programs for children. These functions may be performed by one individual or may be shared in any combination between two or more individuals.

(27) When an agency operates multiple licensed centers, the person performing the administrative/fiscal management functions may be shared across such centers.

(28) Child day care programs must keep all records relevant to the current registration period, and the immediately preceding registration period.

(29) Mid-point requirements for four-year registration holders. At the two-year calendar date in a four year registration cycle, a program must be in compliance with the following mid-point requirements and be able to show proof of compliance to the Office when requested, as follows:

(i) proof of compliance with the training requirements of section 418-2.14;

(ii) where a program uses a private water supply, a report from a state licensed laboratory or individual, based on tests performed within the 12 months preceding the calendar date of the two-year mark in a four year registration, showing that the water meets standards for drinking water established by the New York State Department of Health;

(iii) 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 during the current registration period in accordance with the applicable requirements of the Fire and Building code of New York State or other applicable fire and building codes when the Fire and Building Code of New York State is not applicable, for use of the building as a child day care center;

(iv) documentation from service personnel qualified to perform fire suppression systems testing showing that fire suppression equipment and systems have been tested and maintained during the current registration period in accordance with the requirements of the Fire Code and Building Code of New York State, or other applicable fire and building codes when the Fire and Building Code of New York State is not applicable, for use of the building as a child day care center; and

(v) 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 during the current registration period 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 for renewal.

(30) When a program 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 program must furnish, 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, gender and age;

(ii) the extenuating circumstance necessitating the care; and

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

(c) The program 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, evacuation drills, and shelter-in-place drills conducted, on forms furnished by the Office or approved equivalents, as required in sections 418-2.4(b) and 418-2.5(b) of this Subpart;

(2) an approved health care plan on forms furnished by the Office, as required in section 418-2.11(c) 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, which must be filled out at the time a child arrives and departs, and must include arrival and departure times;

(6) children's health records, including parental consents for emergency medical treatment, child's medical statement and immunizations; any available results of lead screening; the name and dosage of any medications used by a child and the frequency of administration of such medications; and a record of their administration by caregivers; and a record of illnesses, injuries and any indicators of child abuse or maltreatment;

(7) copies of current staff and volunteer's health statements;

(8) copies of the small day care center's personnel policies and practices;

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

(10) a description of the procedure to be used to review and evaluate the background information supplied by applicants for employment and volunteer positions, as required in section 418-2.13 of this Subpart;

(11) personnel information including a list of all staff with job assignments and schedules; Statewide Central Register clearance results; Justice Center for the Protection of Persons with Special Needs background check forms; criminal history review information; staff resumes;

medical statement, acceptable references and other information required by section 418-2.13 of this Subpart;

(12) a current daily schedule documenting the arrival and departure times of each staff member and volunteer;

(13) a description of the schedule and content of training as required in section 418-2.14 of this Subpart, including use of both in-service training and outside training resources;

(14) when the small day care center registrant is an entity other than a sole proprietorship, the following additional documentation:

(i) a copy of the certificate of incorporation, partnership agreement, or articles of organization and any amendments thereto;

(ii) verification of filing of the certificate of incorporation, partnership agreement, or articles of organization and any amendments thereto with the Secretary of State;

(iii) a current list of the names of the board of directors, partners or members and their addresses, telephone numbers of the current principal officers and members, and the business and civic qualifications of all such individuals;

(15) a copy of the notification form provided to the local police and fire departments or the county sheriff as required in section 418-2.15(b)(17)(i) of this Subpart;

(16) the napping agreement for each child in care;

(17) the transportation policy and written parental permission for the transportation of each child in care;

(18) written parental permission for aquatic activities and the plan which details the system of supervising and checking children who are swimming, pursuant to section 418-2.5 of this Subpart;

(19) current cardio-pulmonary resuscitation and first aid certificates as required pursuant to section 418-2.14 of this Subpart;

(20) a sample copy of all forms used in the small day care center;

(21) all records relevant to the current registration period, and the immediately preceding registration period;

(22) documentation from the local health department or the New York State Department of Health showing that the facility has been approved in accordance with the requirements of the New York State Department of Health;

(23) a description of specific procedures which will assure the safety of a child who is reported to the Statewide Central Register of Child Abuse and Maltreatment as well as other children provided care in the small child day care center;

(24) a description of policies and practices regarding appropriate supervision of children in conformance with section 418-2.8 of this Subpart;

(25) a description of the pattern of supervision of staff by the provider or other responsible person, and procedures to assure adequate and appropriate supervision of staff and volunteers of the program;

(26) 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;

(27) where a program 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, showing that the water meets standards for drinking water established by the New York State Department of Health;

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

(29) 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 every two years during the current registration period in accordance with the applicable requirements of the Fire and Building Code of New York State;

(30) 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 every two years during the current registration period in accordance with the applicable requirements of the Fire and Building Code of New York State;

(31) documentation from the local government authority having jurisdiction for determining compliance with the Fire and Building Code of New York State showing that the facility has been inspected and approved once every 2 years during the current registration period for compliance with the applicable fire safety provisions of the Fire and Building Code of New York State; and

(32) 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 during the current registration period on all other fuel burning heating systems and equipment and boilers not subject to the New York State Department of Labor requirements.

(d) A small day care center located in a public school building currently used for an elementary, middle or secondary public education program approved or inspected by the State Education Department is exempt from the requirements set forth in sections 418-2.15(b)(29)(ii-v) and 418-2.15(c)(27-32). Such program must maintain on file copies of the current certificate of occupancy issued by the State Education Department. If a program is not issued a certificate 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, records, other than those of children currently enrolled in the small day care center, may be retained at a central administrative location. The organization of these centers must make all such records available on site upon request by the Office or its designees.