



Office of Children and Family Services

Andrew M. Cuomo
Governor

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Administrative Directive

Transmittal:	20-OCFS-ADM-12
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Child Care Services
Date:	July 29, 2020
Subject:	Guidance on Child Care Subsidy Eligibility and Breaks in Activities During the COVID-19 Emergency Period
Suggested Distribution:	Directors of Social Services Directors of Services Directors of Temporary Assistance Supervisors of Day Care Supervisors of Temporary Assistance Child Care Assistance Staff
Contact Person(s):	Child Care Subsidy Program questions: <ul style="list-style-type: none"> Maryellen DeCicco, OCFS Division of Child Care Services: 518-408-3395, Maryellen.DeCicco@ocfs.ny.gov Claiming Questions <ul style="list-style-type: none"> Regions 1-5 Lauren Horn: 518-474-7549 otda.sm.Field_Ops.I-IV@otda.ny.gov Region 6 (NYC) Michael Simon: 212-961-8250 Michael.Simon@otda.ny.gov Welfare Management System (WMS) Services questions: <ul style="list-style-type: none"> ocfs.sm.WMS@ocfs.ny.gov
Attachments:	None

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
05-OCFS-ADM-03		18 NYCRR Parts 404 and 415	410-w		

I. Purpose

The purpose of this Administrative Directive (ADM) is to direct local social services districts (LSSDs) on how to treat Pandemic Unemployment Compensation (PUC) and fluctuating income during the pandemic caused by the novel coronavirus, SARS-CoV-2 (COVID-19), when determining eligibility for child care services that are provided under the New York State Child Care Block Grant (NYSCCBG). This ADM also provides guidance to LSSDs on continuing payments for breaks in activities as regions reopen.

II. Background

On March 7, 2020, Governor Andrew M. Cuomo issued Executive Order (EO) 202, declaring a disaster emergency for the entire State of New York due to COVID-19. On March 12, 2020, Governor Cuomo issued EO 202.1. Under EO 202.1, section 410-w of the Social Services Law and NYCRR Title 18, sections 404.1, 404.7, 415.2, 415.3, and 415.6 were waived insofar as the statute and regulations establish financial eligibility standards, reimbursement requirements, and set timeliness requirements for the provision of services, including payment for absences due to the coronavirus abatement processes.

On March 20, 2020, Governor Cuomo issued EO 202.8. Under EO 202.8, effective March 22, 2020, at 8 p.m., all businesses and not-for-profit entities were instructed to use any telecommuting or work-from-home procedures to the maximum extent possible and reduce the in-person workforce at any work locations by 100 percent except for essential businesses.

On May 11, 2020, Governor Cuomo released the “NY Forward: A Guide to Reopening New York and Building Back Better” plan for reopening the state. This plan divided the state into 10 separate regions for reopening. Each region must meet seven criteria related to the pandemic: a decline in total hospitalizations, a decline in deaths, fewer than two new hospitalizations per 100,000 residents, 30 percent availability of hospital beds, 30 percent availability of intensive care beds, a diagnostic testing capacity of 30 tests per 1,000 people per month, and contact tracing capacity. When a region meets all seven criteria, a phased reopening may begin, prioritizing businesses considered to have a greater economic impact and inherently low risks of infection to workers and the public. The phased reopening plan includes four distinct phases.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provides additional unemployment insurance (UI) assistance to workers impacted by COVID-19. This law provides Pandemic Unemployment Assistance, including extended eligibility for individuals who were traditionally ineligible for UI benefits such as self-employed workers and independent contractors. This law also provides Pandemic Emergency Unemployment Compensation, which allows an additional 13 weeks of UI benefits, beyond the regular 26 weeks already provided, allowing individuals to receive up to a total of 39 weeks of coverage. Finally, the CARES Act provides Pandemic Unemployment Compensation (PUC) assistance to all UI recipients in the amount of \$600 per week, in addition to any regular UI benefits.

III. Program Implications

Neither disaster relief payments nor the PUC may be included in the calculation of a family's monthly gross income. The New York State Office of Children and Family Services (OCFS) has temporarily waived certain regulations across New York State in order to continue to support child care programs and families impacted by the COVID-19 pandemic. Due to the current state of emergency, social distancing guidelines, and the widespread nature of this crisis, all families in New York State are impacted by the COVID-19 pandemic. At this time, OCFS has waived 18 NYCRR 415.3(a), which requires applications to be in the form and manner prescribed in Part 404. As such, 18 NYCRR 404.5(b) and 18 NYCRR 404.5(c) requirements related to income eligibility and exclusions will not be applied to the requirements of 18 NYCRR 415.3(a) for the duration of PUC. The importance of this decision is that both disaster relief payments and PUC will be excluded from the calculation of a family's monthly gross income.

Additionally, LSSD must amend processes to accommodate the changes to breaks in activity rules under executive order 202.1, New York State Social Services Law (SSL) section 410-w and section 415.2(c)(1) and (2) of Title 18 of the New York Codes, Rules and Regulations (NYCRR) provide that families receiving subsidy can receive child care for breaks in activities for a period of up to two weeks. Such child care may be authorized for a period of up to one month if child care arrangements shall be lost if not continued, and the program or employment is scheduled to begin within such period. These limitations have been suspended by EO 202.1. As a result, families who are experiencing a break in activity remain eligible and LSSDs must keep such cases open. *This remains in effect only so long as EO 202.1 remains in effect.* As long as families are still eligible, LSSDs have the option to pay for absences based upon their approved waiver or Children and Family Services Plan, as applicable.

Exclusion of certain types of earned income

In an effort to support families who have worked during this crisis, and to support their continued employment, the following types of earned income must be excluded when calculating a family's monthly gross income:

- Hazard pay
- Employment bonuses due to the COVID-19 pandemic
- Any other additional compensation directly related to the COVID-19 pandemic
- Voluntary or mandatory overtime compensation, regardless of the rate of pay

These types of fluctuating employment income must be excluded during eligibility determinations and redeterminations, and when calculating the family share. COVID-19-related extra earned employment income will not be counted for a period of up to six months after a region begins Phase One of reopening. This exclusion applies to all families receiving child care assistance under the NYSCCBG except those families whose eligibility for child care assistance is based on being eligible for Temporary Assistance (Temporary Assistance cases and child care in lieu of Temporary Assistance).

Exclusion of PUC

In an effort to encourage families to return to work and remove child care as a barrier from returning to work, LSSDs must exclude PUC benefits when calculating a family's monthly gross income. PUC must be excluded during eligibility determinations and

redeterminations, and when calculating the family share. PUC benefits must be excluded for the period through which it is authorized under the CARES Act. Traditional UI benefits will continue to be included in the calculation of a family's monthly gross income. This exclusion applies to all families receiving child care assistance under the NYSCCBG except those families whose eligibility for child care assistance is based on being eligible for Temporary Assistance (Temporary Assistance cases and child care in lieu of Temporary Assistance).

Breaks in activities due to being deemed a non-essential worker

As a result of the COVID-19 pandemic, many non-essential workers have been furloughed or become otherwise unemployed and have experienced a break in activities. If a family has a break in activity longer than allowed under section 415.2(c)(1) or (2) of Title 18 of the NYCRR, EO 202.1 extends the family's eligibility for subsidy. While this executive order remains in effect, families who are experiencing a break in activities remain subsidy eligible and LSSDs must keep such cases open, unless the family voluntarily chooses to have its case closed. However, because such families experiencing a break in activities during the COVID-19 pandemic are available to provide care, their children may have been absent from child care to reduce the spread of COVID-19.

If the children of subsidy recipients who are experiencing a break in activities have not attended child care during the COVID-19 pandemic, LSSDs must pay for these absences from care according to the limitations specified in their approved Children and Family Services Plan or their approved absences waiver, as applicable. The waivers granted by OCFS to LSSDs, as outlined in 20-OCFS-ADM-06, *COVID-19 Guidance for Child Care Subsidy*, have allowed LSSDs to continue to pay absences to the child care providers that these families experiencing breaks in activities were using prior to the pandemic. This is considered a critical support to the child care community, and one which OCFS hopes has helped the child care system weather the reduction in the number of children in care while New York was on Pause. Once a family experiencing a break in activities has reached the maximum number of absences that are allowed under the LSSD's approved waiver or Children and Family Services Plan, as applicable, the LSSD may not pay for additional absences. However, in this scenario, the family's case would remain open.

IV. Required Action

LSSDs must reevaluate all cases closed or denied due to excess income since March 16, 2020, to determine if such cases would have been eligible for child care assistance under the new guidelines. LSSDs must also recalculate the family share for all cases in which the family share calculation included the now excludable income. LSSDs must reimburse the family the difference if an underpayment has occurred, either through a direct refund or through an adjustment of benefits.

The New York State Office of Temporary and Disability Assistance (OTDA) currently counts hazard pay, bonuses, overtime, and PUC for the purposes of determining income eligibility for Temporary Assistance. However, when a family is deemed *ineligible* for Temporary Assistance under OTDA's rules, OCFS income eligibility rules control for calculating eligibility for transitional or low-income child care. If such cases are eligible for transitional or low-income child care, the LSSD must transfer the case and change the claiming as appropriate and follow its standard operating procedures. The determination that the family

is no longer eligible for Temporary Assistance satisfies the requirement that a family is no longer financially eligible for Temporary Assistance, even if, following the OCFS income guidelines, the family's gross income falls below the state income standard. For the purpose of determining eligibility for child care in lieu of Temporary Assistance, OTDA income guidelines must be followed, meaning that certain types of earned income and PUC will be included by OTDA when making a determination related to financial eligibility for child care in lieu of Temporary Assistance.

NYSCCBG expenditures for child care subsidies for families receiving Temporary Assistance are claimed on Schedule H, *Non-Title XX Services for Recipients* (LDSS-4283), line 2 (Day Care Services for Children), Column 16 (Day Care Block Grant 75%). NYSCCBG program expenditures for child care subsidies for all other eligible families are claimed on Schedule H, line 2, column 15 (Day Care Block Grant 100%). Please refer to the *Fiscal Reference Manual*, Volume 2, Chapter 3 for detailed instructions for completing Schedule H.

NYSCCBG child counts and expenditures also must be reported on the Schedule G-2, *Summary of All Payments for Day Care* (LDSS-2109EL). Expenditures made under the services types allowed must be reported on the Schedule G-2, via the Automated Claiming System. The BICS Schedule G-2 report provides the information needed to file the report. Please refer to the *Fiscal Reference Manual*, Volume 2, Chapter 3 for Schedule G-2 instructions.

The *Fiscal Reference Manual* (FRM) is available here:

FRM Vol. 2 – http://otda.state.nyenet/bfdm/finance/FRM_Vol2_Manual.asp

FRM Vol. 3 – http://otda.state.nyenet/bfdm/finance/FRM_Vol3_Manual.asp

V. Systems Implications

There are no systems implications as a result of this release.

VI. Effective Date

The effective date of this release is upon issuance.

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

Issued by:

Name: Janice M. Molnar, Ph.D.

Title: Deputy Commissioner

Division/Office: Division of Child Care Services