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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 18. DEPARTMENT OF SOCIAL SERVICES

CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES

SUBCHAPTER C. SOCIAL SERVICES

ARTICLE 7. CERTIFICATES OF INCORPORATION; MISCELLANEOUS CORPORATE MATTERS

PART 482. APPROVAL OF CERTIFICATES OF INCORPORATION

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(Statutory authority: N.Y. Const., art. XVII, § 2; Social Services Law, §§ 20, 34, 390, 390-a, 460-a; L. 1997, ch. 436; L. 2000, ch. 416)

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CROSS REFERENCES:

Requirement of certificate or license to board children, Social Services Law § 375.

Form, duration and limitation of certificates and licenses, Social Services Law § 378.

Revocation of certificates and licenses, Social Services Law § 379.

Child day care; license or registration required, Social Services Law § 390.

Licensure, Social Services Law § 431.

Certificates of incorporation, Social Services Law § 460-a.

RESEARCH REFERENCES AND PRACTICE AIDS:

13 NY Jur 2d, Business Relationships § 60.

88 NY Jur 2d, Public Welfare and Old Age Assistance §§ 181, 245, 246.

94 NY Jur 2d, Schools, Universities, and Colleges § 379.

42 Am Jur 2d, Infants §§ 14, 15, 28.

22 Am Jur Trials 347, Child Custody Litigation.

14 Am Jur Trials 619, Juvenile Court Proceedings.

18 Am Jur Proof of Facts 2d 531, Equitable Adoption.

15 Am Jur Proof of Facts 1, Child Custody.

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18 CRR-NY 482.1

482.1 Applications.

(a) An application for department approval of a certificate of incorporation, or any amendments thereof, shall be on forms provided by the department, shall be executed and submitted in accordance with department instructions, and shall state:

- (1) the names and addresses of the persons submitting the application;
- (2) the name and address of the proposed corporation;
- (3) the territory in which its activities are principally to be conducted;
- (4) with reference to a not-for-profit corporation, the names and addresses of the proposed members of the board of directors, and such personal information as may be required in order to determine their character, experience, competency and standing in the community, with reasonable assurance of their ability to conduct the affairs of the corporation in its best interests and in the public interest;
- (5) with reference to a business corporation, the names and addresses of the board of directors, officers and stockholders, together with such personal information as may be required in order to determine that they are persons of good moral character who are competent to operate the business;
- (6) information and data with reference to the public need for the proposed facilities or programs at the time and place and under the circumstances proposed, in order to determine that there is a public need for the facility or program;
- (7) information and data with reference to the financial resources and sources of future revenue of facilities or programs to be operated by the proposed corporation, in order to determine that there are adequate finances to properly establish and conduct them;
- (8) such data and information as may be required in order to establish the fitness and adequacy of any proposed facility or program to be operated or conducted by the proposed corporation;
- (9) such data and information as may be required in order to determine the fitness and adequacy of the personnel to be engaged in the facilities or programs;
- (10) the policies to be followed by the proposed corporation in its facilities or programs;
- (11) such other pertinent information as may be required by the department.

(b) In the event that one or more of the purposes of the proposed corporation is to solicit contributions for any purpose which requires department approval, the application shall also contain such data and information as may be required to determine that it would be successful in raising funds necessary to establish the proposed facility or program within the period planned, which shall not be more than five years from the date of the department's approval.

(c) There shall be appended to the application:

- (1) the executed original and two conformed copies of the proposed certificate of incorporation;
- (2) such approval or consent by another State department or agency as may be required by statute or, pending such approval or consent, evidence that a concurrent application therefor has been made in good faith;
- (3) a statement from the governmental agency having licensing jurisdiction over any proposed facilities and programs that such agency intends to issue the requisite license or operating certificate upon approval by the department of the certificate of incorporation;
- (4) such other pertinent documents as may be required by the department.

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18 CRR-NY 482.2

482.2 Special terms and conditions.

No member of the board of directors of a not-for-profit corporation may be, either at the time of application or thereafter, the chief administrative officer, executive director, administrator, or any employee of the corporation.

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482.3 Approval of application.

The application shall be approved when it is established that the applicant has complied with the regulations of the department and all statutory and other regulatory requirements pertaining thereto, including but not limited to requirements as to public

need for the facility or program, adequate financing and qualifications of the board of directors, officers and stockholders. Upon approval, the department shall issue to the applicant a certificate of approval under the seal of the department.

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18 CRR-NY 482.4

482.4 Not-for-profit day care corporation.

(a) An applicant seeking office approval of the Office of Children and Family Services for the filing of a certificate of incorporation, amendment, merger or consolidation that would include the authority to establish or operate a child day care center or centers shall submit an application for office approval of such certificate of incorporation, amendment, merger or consolidation. If the authority to establish or operate a day care center or centers is the only purpose in the certificate that requires office approval, the applicant shall not be subject to the provisions of section 482.1, 482.2 or 482.3 of this Part.

(b) The following documents and information must be submitted in support of the application for approval:

- (1) the name(s) and address(es) of the person(s) submitting the application;
- (2) the name and address of the proposed corporation;
- (3) the address of the proposed facility or facilities, if known;
- (4) a description of the community, including the county or counties, to be served;
- (5) the approximate number and ages of the children each facility plans to serve;
- (6) the planned hours of operation of each facility; and
- (7) a statement:

(i) setting forth the names and addresses of the proposed members of the board of directors, and the occupation, employer and civic and philanthropic activities of each such member; and

(ii) that service on the board of directors by any person who is employed by the State of New York or any of its political subdivisions does not violate the Public Officers Law or the General Municipal Law of the State of New York or any locally adopted code of ethics.

(c) The certificate of incorporation, amendment, merger or consolidation:

- (1) must specify that a purpose of the corporation is to establish and operate a day care center or centers;

(2) may be required to include a provision limiting the duration of the existence of the corporation or of its power to establish and operate day care centers if the office becomes aware of information that raises issues as to the viability of the program, operations or management of the corporation. Any such limit will be established by the office. If such a provision is required, it shall be to the effect that the duration of the corporation (or of the authority to establish or operate day care centers) shall be for a period (to be fixed by the office) from the date that the certificate is filed in the office of the Secretary of State and that such duration shall not be extended without the prior written approval of the office; and

(3) must set forth the county or counties within the State in which the corporation will initially operate a day care center or centers. The certificate of incorporation may authorize the corporation to establish and operate day care centers anywhere in the State but if it does so, the certificate must specify the county or counties of initial operation.

(d) The office will review the materials submitted. If the office finds that the materials are incomplete or inadequate, the office may disapprove the filing of the certificate or withhold approval until the materials are complete and demonstrate compliance with the regulations.

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482.5 Business day care corporation.

(a) An applicant seeking office approval for the filing of a certificate of incorporation, amendment, merger or consolidation that would include the authority to operate a day care center or centers is subject to and must comply with all the requirements of section 482.4 of this Part, except for section 482.4(b)(7) of this Part. In addition to those requirements, the following information must be submitted:

(1) the name, address and occupation of each shareholder holding 20 or more percent of the stock of the corporation, member of the board of directors and officer; and

(2) the number of shares of each class of stock owned by each shareholder holding 20 or more percent of the stock of the corporation.

(b) The certificate of incorporation must contain a provision stating that no certificate of amendment, merger, consolidation or dissolution shall be filed without the prior written approval of the office.

(c) The office will review the materials submitted. If the office finds that the materials are incomplete or inadequate, the office may disapprove the filing of the certificate or withhold approval until the materials are complete and demonstrate compliance with the regulations.

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