

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



CESAR A. PERALES
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 83 ADM-42
 [Family and Children Services]

TO: Commissioners of Social Services

SUBJECT: Procedures for the Investigation of Reports of Suspected Child Abuse or Maltreatment in Foster Care, Day Care, and Day Services Settings

DATE: September 7, 1983

SUGGESTED DISTRIBUTION: All Children's Services Staff, Child Protective Staff, Day Care Staff

CONTACT PERSON: Any questions concerning this release should be directed to Betty Flynn, Sr. Social Services Program Specialist at 1-800-342-3715 ext. 4-3166

I. Purpose

The purpose of this Administrative Directive is to cancel 78-ADM-87 and to advise local social services districts of the revised procedures for investigating reports of suspected child abuse or maltreatment in foster care and day care settings as a result of the enactment of Chapter 600 of the Laws of 1982.

II. Background

Chapter 480 of the Laws of 1980 officially authorized the State Central Register to accept reports of suspected child abuse or maltreatment involving children being cared for in a home or facility operated or supervised by an authorized agency. Section 424-b of the Social Services Law, added by the Chapter, mandates that such reports be referred by the State Central Register to the social services district wherein such home or facility is located for the purposes of conducting an investigation.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
78-ADM-87	78-ADM-87	Part 432	Article 6 Title 6, SSL	Bulletin 192	

DSS-296 (REV. 8/82)

Chapter 600 of the Laws of 1982 expanded the definition of a "subject of the report" to include an operator of or employee or volunteer in a home or facility operated or supervised by an authorized agency, the division for youth, or an office of the department of mental hygiene or in a family day care home, a day care center or a day services program. The major implication of this legislation is that it requires the State Central Register to accept reports of suspected child abuse or maltreatment involving children in day care and day services settings and to transmit them to the local child protective service for investigation. Pursuant to section 424-b, of the Social Services Law, the division for youth and offices of the department of mental hygiene are responsible for conducting their own investigations on reports referred to them by the State Central Register.

The Federal Regulations under Public Law 93-247 mandate that a separate outside child protective investigation is required where there are reports of suspected abuse or maltreatment which are alleged to have occurred in facilities certified or operated by local social services districts. The purpose of this requirement is to ensure that an adequate, impartial, and objective investigation is conducted. This directive combines this Federal requirement with the requirements of Section 423.1 of the Social Service Law which mandates local Child Protective Services investigations.

78-ADM-87 outlined two separate procedures for conducting investigations. One was for reports involving facilities or homes certified or licensed by the State Department of Social Services where the sole responsibility for conducting the investigation is with the local child protective service. The other procedure was for reports involving facilities or homes certified or licensed by the local social services district. In this latter situation, it is the responsibility of both the local child protective service and the State Regional Office for the Division of Family and Children Services to conduct the investigation and make independent determinations. State Regional Office involvement is necessary to meet the federal requirement for a separate investigation. These procedures are reiterated in this Administrative Directive. For investigation purposes, a report of child abuse or maltreatment in any facility only applies to a specific person named as a subject of the report and not to the facility itself.

III. Program Implications

The expansion of the definition of the "subject of the report" by Chapter 600 of the Laws of 1982 will increase the number of reports received by the State Central Register. This will increase the number of investigations conducted by local child protective staff and Division of Services Regional Office staff.

As a result of the amendment to the definition of the "subject of the report" contained in Section 412 of the Social Services Law, the State Central Register is now able to inform authorized agencies, pursuant to Section 424-a of the Social Services Law, whether an applicant for the status of foster parent, adoptive parent, or for employment with child caring responsibilities had abused or

maltreated a child while acting in the capacity of an operator of, employee of, or a volunteer in the facilities set forth in the above-referenced definition. Prior to this amendment, because these persons acting in that capacity were not persons legally responsible, they were not identified as subjects of a report. However, a day care facility is not considered to be an authorized agency by this Department pursuant to the definition of an authorized agency contained in Section 371.10(a), (b) or (c) of the Social Services Law. Therefore, day care facilities cannot screen prospective employees through the State Central Register.

IV. Required Action

A. General Requirements for the Investigation of Reports Alleging Abuse or Maltreatment of Children Foster Care, Day Care, and Day Services Settings

The definitions of abuse and maltreatment contained in Section 412 of the Social Services Law must be applied to incidents involving a child at a foster care, day care, or day services setting. An abused child is defined as "a child under eighteen years of age defined as an abused child by the family court act". A maltreated child is "a child under eighteen years of age defined as a neglected child by the family court act or who has had serious physical injury inflicted upon him by other than accidental means". In making an indicated determination of the existence of abuse or maltreatment, the evidentiary standard of some credible evidence must be used.

Parents or guardians of a child alleged to be abused or maltreated at a foster care, day care or day services setting are subjects of the report in addition to the child and the foster care, day care, or day services person alleged to be the perpetrator of the alleged abuse or maltreatment. As such, both the parents or guardians and the foster care, day care, or day services person are to be notified in writing of the existence of the report and of their rights with regard to amendment or expungement pursuant to Section 424.6 of the Social Services Law. The notification letter to the parents or guardians must utilize the specific language set forth in Appendix A and the one to the foster care, day care, or day services person must utilize the specific language set forth in Appendix B. In addition, if the report is "indicated," both the parents or guardians and the foster care, day care, or day services person are to be notified of this determination and of their right to request that the report be amended or expunged pursuant to Section 422.8 of the Social Services Law and Departmental Regulation 432.3(j). This notification letter to the parents or guardians must utilize the specific language set forth in Appendix C and the one to the foster care, day care, or day services person must utilize the specific language set forth in Appendix D.

For those situations involving a child placed in foster care outside of the local district having custody of the child, the local district responsible for conducting the investigation must notify the Commissioner of the local district having custody of the child that the child is a subject of a report of abuse or maltreatment. In addition, the findings

of the investigation should be shared with the local district having the custody of the child. For those foster care cases having a court order which precludes the natural parents from visiting their child and/or having contact with the child's foster parents, the names and address of the foster parents may be omitted from the notification letter to the parents (Appendix A), if the natural parents' knowledge of such information would be detrimental to the safety of the foster parents. In addition, the State Central Register should be notified in writing of the existence of such court order and the need to maintain the confidentiality of the names and address of the foster parents in the event that the natural parents request copies of the reports pursuant to section 422.7 of the Social Services Law.

Under the provisions of Section 422.4 of the Social Services Law, a day care official is not authorized to have access to confidential CPS reports and information involving day care facilities which the official operates unless the individual official is either named as the subject of the report, obtains the report voluntarily from the day care employee named as the subject of the report or any other subject of the report or submits a written release, signed by the subject of the report, to the State Central Register which authorizes the Department to release the report to the operator. However if the source of the report was from the day care facility, the person in charge of that day care facility may request and receive a summary of the findings of and action taken by the child protective service in response to the report pursuant to Section 422.4 of the Social Services Law. Nevertheless, nothing precludes conferring with the person in charge of the day care facility for the purpose of evaluating the environment of the child named in the report as part of conducting an appropriate investigation pursuant to Section 424.6 of the Social Services Law.

B. Specific Investigation Procedures

1. Type I - Investigation procedures for reports involving children who reside in or attend State Department of Social Services licensed or certified institutions, foster homes, group homes, day services programs, day care centers or day care homes.
 - (a) Upon receiving a report of suspected child abuse or maltreatment in a New York State Department of Social Services licensed or certified foster care or day care setting, the State Central Register will immediately transmit the report to the local Child Protective Services and will also notify the appropriate State Regional Office for the Division of Family and Children Services that a report has been made involving a specific person at a foster care institution/home or day care center/home which has been licensed or certified by the State.
 - (b) It will be incumbent upon the local Child Protective Service and the Regional Office to discuss the factors at hand regarding the conducting of an investigation. An evaluation of the circumstances will dictate whether the discussion is to be done by phone or in person, and also whether the circumstances require that the

Regional Office staff member accompany the Child Protective Service person to the institution. It is recognized that the responsibility for conducting an investigation remains with the local Child Protective Service. The Regional Office staff member will play a contributory role. An investigation shall be initiated within 24 hours after receipt of the initial oral report by the local Child Protective Service. The local Child Protective Service must submit a report of its preliminary investigation within seven (7) days of the initial report and make a determination (Indicated or Unfounded) within 90 days of the initial report.

- (c) There must be ongoing contact and cooperation between the local Child Protective Service and the Regional Office of the Division of Family and Children Services. All findings must be shared including the notification of an indicated or unfounded determination.
- (d) When the child's welfare and protection has been assured, and where necessary, an acceptable plan developed for corrective action, the local Child Protective Service will terminate its involvement with the case.

Insofar as follow-up reports are concerned, the local Child Protective Service will remain responsible for the proper submission of required forms to the State Central Register.

The above procedures also apply to any institutions, foster homes, group homes, day services programs, day care centers, or day care homes which do not possess an operating license or certificate but which are otherwise subject to the jurisdiction of a governmental entity responsible for the certification or licensure of such a program. Pursuant to section 390 of the Social Services Law, day care which is subject to the program regulations of the Department is considered to be the care of three or more children away from their homes by other than the parents or relatives within the second degree of the parents of a child.

The Type I investigation procedures also apply to day care facilities licensed by the New York City Department of Health and family day care homes certified by an authorized agency other than a local social services district.

- 2. Type II - Investigation procedures for reports involving children who reside in or attend local social services district certified or operated foster homes, group homes, or family day care homes.
 - (a) Upon receipt of a report of suspected child abuse or maltreatment in a local social services district certified or operated foster care or day care setting, the State Central Register will immediately transmit the report to the local Child Protective Service and will also notify the appropriate State Regional Office for the Division of Family and Children Services that such a report has been received.

- (b) Regional Office staff will then contact the local Child Protective Service to discuss the known facts as they relate to the conduct of their respective investigations. The persons from the two agencies responsible for the investigation will come to an agreement on how contacts will be made with the local social services district certified or operated facility. Both workers will be expected to submit their own "Preliminary Report of Investigation" (7-day report) and "Follow-up Report" (90-day determination).
- (c) There must be on-going contact and cooperation between the local Child Protective Service and the Regional Office of the Division of Family and Children Services including the sharing of all findings. However, it is required that the individual workers make independent determinations and each submit their findings to the State Central Register on separate DSS - 2233 forms. In the event that these determinations do not coincide, consultation between supervisory staff at the local Child Protective Service and at the Regional Office of the Division of Family and Children Services will be required. If no agreement on a determination can be reached after this process, the different determinations are to be reviewed by the appropriate monitoring staff of the SCR, who will offer assistance in resolving the disagreement. In the event that a satisfactory resolution cannot be effected through this means, the matter will be decided jointly by the Director of the Bureau of State Operations and the Director of the appropriate Regional Office of the Division of Family and Children Services. In situations where the local child protective services and Regional Office are in disagreement, no notification letters of an indicated determination are to be sent to the subjects of a report prior to resolution of the disagreement.
- (d) When the child's welfare and protection has been assured and where necessary, an acceptable local plan for corrective action developed, the local Child Protective Service and the Regional Office will terminate involvement in the case.

DSS-2222 and DSS-2233 forms completed by Regional Office Staff will be included in the State Central Register file and will be expunged with the entire State Central Register record if the case is unfounded.

C. Corrective Action

The primary objective for any plan of corrective action for an indicated report should be to ensure the safety and protection of the child. This should include taking whatever actions are necessary to effect this result. However, it should be noted that the remedies of Article 10 of the Family Court Act do not apply to foster care or day care incidents of abuse or maltreatment. Notwithstanding, if the best interests of the child require criminal court action, a referral should be made to the appropriate district attorney pursuant to section 424.10 of the Social Services Law.

If the circumstances or condition of the child is such that continuing to remain in the foster care or day care setting presents an imminent danger to the child's life or health, the child may be removed from the setting. For those children in foster family care, this may be done pursuant to Departmental regulation 431.10 which allows a child to be removed immediately when the health and safety of the child requires it. For children removed from day care settings, an attempt must immediately be made to ascertain the whereabouts of the child's parents or guardians and to contact them for the purpose of having them assume responsibility for the care and well-being of their child.

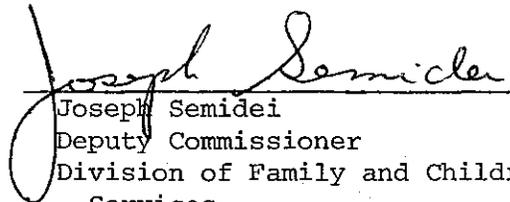
The primary role of the local Child Protective Services should be an advocacy one on behalf of the child. This should include information and referral to services and programs which are needed by the child. In day care or day services situations, the local child protective service should assist the child's parents or guardians in obtaining necessary services and/or remedies.

A disciplinary action taken by the foster care or day care facility against a child care or day care employee should be considered a separate matter from the child protective one. Furthermore, the standard of proof required in union grievance proceedings for disciplinary matters may be higher than that of some credible evidence which is required to indicate a child abuse or maltreatment report.

In the case of day care or foster care programs which are unlicensed or uncertified, a referral should be made to the appropriate licensing or certification agent. In addition, if a program deficiency is viewed as contributing to the occurrence of an abuse or maltreatment incident in a licensed or certified day care or foster care program, the appropriate licensing or certification agent should be notified.

V. Effective Date

Chapter 600 of the Laws of 1982 became effective July 22, 1982 and the requirements of this release are effective immediately. The regulation implementing the legislation is attached for your information.



Joseph Semidei
Deputy Commissioner
Division of Family and Children
Services

Attachment



Appendix A

Dear

RE: NYS Registry #

This is to inform you that your child, _____ has been named
Name
as a subject of a report of suspected child abuse or maltreatment which has been received by the New York State Child Abuse and Maltreatment Register (State Central Register) on _____. The suspected child abuse or maltreatment is alleged to have occurred at the following day care, day services, or foster care setting.

Name:

Address:

Pursuant to section 412 of the Social Services Law, as the parent(s) or guardian(s) of the above named child, your name(s) has/have been included on the report as a subject(s) of the report in addition to the name of the person alleged to be responsible for causing the abuse or maltreatment.

This report has been transmitted to the local Child Protective Service for commencement of an investigation and evaluation of the report as provided by the New York State Child Protective Services Act. The Law allows the local Child Protective Service 90 days from the time of the receipt of the report to make a full investigation of the allegations contained in the report as well as an evaluation of the care being provided to your child at the day care or foster care setting. You will be notified in writing of the findings of the investigation.

If the report is determined to be "unfounded", meaning that there is no credible evidence (i.e., evidence worthy of belief), all information which would identify you or other persons named in the report will be expunged (destroyed) from the State and local register. If the report is determined to be "indicated" (there is some credible evidence that the children have been abused or maltreated), the information will remain in the State Central Register.

This report is confidential and can only be released to certain authorized persons under the provisions of Section 422.4 of the Social Services Law. As the subject of the report, you have a right to request a copy of all information contained in the State Central Register. However, the Commissioner of the New York State Department of Social Services may withhold information identifying the person making the report or cooperating in the subsequent investigation where the Commissioner reasonably determines that the release of this information would be detrimental to that person's safety or interests.

After the investigation is completed and if the report is determined to be "indicated," you also have the right to request the Commissioner of the New York State Department of Social Services to amend (change) or expunge (destroy) the information which is contained in the record if you believe that it is inaccurate.

Appendix A (contd.)

If you wish to receive a copy of the information contained in the State Central Register, please write to:

New York State Department of Social Services
Child Abuse and Maltreatment Register
40 North Pearl Street
Albany, New York 12243

This written request should include your full name, the full name(s) of the child(ren) named in the report, your address, and the New York State Register number given in the upper right-hand corner of this letter.

CASEWORKER

COMMISSIONER

TELEPHONE NUMBER

DIRECTOR or SUPERVISOR of
CHILD PROTECTIVE SERVICES

Appendix B

Dear

RE: NYS Registry #

This is to inform you that you are the subject of a report of suspected child abuse or maltreatment received by the New York State Child Abuse and Maltreatment Register (State Central Register) on _____.

This report alleges that you are responsible for causing the suspected abuse or maltreatment of _____ at the following day care, day services, or foster care setting.

Name of Child

Name:

Address:

This report has been transmitted to your local child protective service for commencement of an investigation and evaluation of the report as provided by the New York State Child Protective Services Act. The Law allows your local Child Protective Service 90 days from the time of the receipt of the report to make a full investigation of the allegations contained within the report as well as an evaluation of the care being provided to the child(ren) named in the report at the day care or foster care setting. You will be notified in writing of the findings of the investigation.

If the report is determined to be "unfounded" meaning that there is no credible evidence (i.e., evidence worthy of belief), all information which would identify you or other persons named in the report will be expunged (destroyed) from the State and local register. If the report is determined to be "indicated" (there is some credible evidence that the children have been abused or maltreated), the information will remain in the State Central Register.

This report is confidential and can only be released to certain authorized persons under the provisions of Section 422.4 of the Social Services Law. As the subject of the report, you have a right to request a copy of all information contained in the State Central Register. However, the Commissioner of the New York State Department of Social Services may withhold information identifying the person making the report or cooperating in the subsequent investigation where the Commissioner reasonably determines that the release of this information would be detrimental to that person's safety or interests.

After the investigation is completed and if the report is determined to be "indicated," you also have the right to request the Commissioner of the New York State Department of Social Services to amend (change) or expunge (destroy) the information which is contained in the record if you believe that it is inaccurate.

Appendix B (cont.d)

If you wish to receive a copy of the information contained in the State Central Register, please write to:

New York State Department of Social Services
Child Abuse and Maltreatment Register
40 North Pearl Street
Albany, New York 12243

This written request should include your full name, the full name(s) of the child(ren) named in the report, your address, and the New York State Register number given in the upper right hand corner of this letter.

CASEWORKER

COMMISSIONER

TELEPHONE NUMBER

DIRECTOR or SUPERVISOR of
CHILD PROTECTIVE SERVICES

Appendix C

Dear

RE: NYS Registry #

On _____, you were notified that your child had been named as a subject of a report of suspected child abuse or maltreatment which had been received by the New York State Child Abuse and Maltreatment Register (State Central Register) and that such abuse or maltreatment was alleged to have occurred at a day care, day services, or foster care setting. At that time, you were informed of the investigation process which would be conducted by the local child protective services and your rights in regard to this matter as the parent(s) or guardian(s) of your child and therefore, subject(s) of the report.

We must now inform you that this report has been determined to be "indicated." This means that some credible evidence has been found to support the determination that your child was maltreated or abused in a day care or foster care setting. If necessary, your local child protective service will be developing a plan for corrective action to address this matter.

Since the report on your child has been determined to be indicated, it will remain in the State Central Register. As you were previously informed in your notification letter, you are entitled to request a copy of all information contained in the State Central Register. However, the Commissioner of the New York State Department of Social Services may withhold information identifying the person making the report or cooperating in the subsequent investigation where the Commissioner reasonably determines that the release of this information would be detrimental to that person's safety or interest.

If, after receiving a copy of all information contained in the State Central Register, you believe that it is inaccurate, you have the right to request the Commissioner of the New York State Department of Social Services to amend (change) or expunge (destroy) information contained in the report. The Commissioner must take action and notify you of that action within 30 days from your request. As a result of your request, a complete review of information contained in the report would take place. Upon completion of this review, you would be notified by the New York State Department of Social Services in writing of the decision made in response to your request and the reasons for it. If you are not satisfied with the decision made by the Commissioner with respect to your request at that time, you may request a fair hearing to determine whether the record of the report should be amended or expunged.

Appendix C (contd.)

If you have not yet requested a copy of the information contained within the State Central Register and desire such information, please do so before making a request to amend or expunge the record of the report. These requests should be made in writing to:

New York State Department of Social Services
Child Abuse and Maltreatment Register
40 North Pearl Street
Albany, New York 12243

This written request should include your full name, the full name(s) of the child(ren) named in the report, your address, and the New York State Register number given in the upper right-hand corner of this letter.

CASEWORKER

COMMISSIONER

TELEPHONE NUMBER

DIRECTOR or SUPERVISOR of
CHILD PROTECTIVE SERVICES

Appendix D

Dear

RE: NYS Registry #

On _____, you were notified that you were the subject of a report of suspected child abuse or maltreatment which had been received by the New York State Child Abuse and Maltreatment Register (State Central Register) and that such abuse or maltreatment was alleged to have occurred at a day care, day services, or foster care setting. At that time, you were informed of the investigation process conducted by the local child protective services and your rights in regard to this matter.

We must now inform you that this report has been "indicated." This means that some credible evidence has been found to support the determination that the child(ren) named in the report were abused or maltreated in a day care or foster care setting. In addition to this letter, your local child protective services caseworker will discuss in more depth the reasons for this determination and, if necessary, will develop a plan for corrective action to address this matter.

Since your report has been determined to be indicated, it will remain in the State Central Register. As you were previously informed in your notification letter, you are entitled to request a copy of all information contained in the State Central Register. However, the Commissioner of the New York State Department of Social Services may withhold information identifying the person making the report or cooperating in the subsequent investigation where the Commissioner reasonably determines that the release of this information would be detrimental to that person's safety or interest.

If, after receiving a copy of all information contained in the State Central Register, you believe that it is inaccurate, you have the right to request the Commissioner of the New York State Department of Social Services to amend (change) or expunge (destroy) the record of the report. The Commissioner must take action and notify you of that action within 30 days from your request. As a result of your request, a complete review of the record and the factors upon which an "indicated" determination was made would take place. Upon completion of this review, you would be notified by the New York State Department of Social Services in writing of the decision made in response to your request and the reasons for it. If you are not satisfied with the decision made by the Commissioner with respect to your request at that time, you may request a fair hearing to determine whether the record of the report should be amended or expunged.

Appendix D (contd.)

If you have not yet requested a copy of the information contained within the State Central Register and desire such information, please do so before making a request to amend or expunge the record of the report. These requests should be made in writing to:

New York State Department of Social Services
Child Abuse and Maltreatment Register
40 North Pearl Street
Albany, New York 12243

This written request should include your full name, the full name(s) of the child(ren) named in the report, your address, and the New York State Register number given in the upper right-hand corner of this letter.

CASEWORKER

COMMISSIONER

TELEPHONE NUMBER

DIRECTOR or SUPERVISOR of
CHILD PROTECTIVE SERVICES

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f) and 412(4) of the Social Services Law, I, Arthur Y. Webb, Acting Commissioner of Social Services, do hereby amend paragraph (d) of Section 432.1 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective immediately upon filing with the Secretary of State.

Date:

Signed: _____

Acting Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on amending paragraph (d) of Section 432.1 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on

Dated:

Signed: _____

Acting Commissioner

Paragraph (d) of Section 432.1 is amended to read as follows:

(d) Subject of the report means any child reported to the central register of child abuse or maltreatment and his or her parent, guardian [or], other person legally responsible also named in the report or an operator of or employee or volunteer in a home or facility operated or supervised by an authorized agency, the division for youth, or an office of the department of mental hygiene or in a family day-care home, a day-care center or a day services program.

(Deleted material [brackets]; new material underlined).