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.: 84 ADM-4
[Family & Children Services]

TO: Commissioner of Social Services

SUBJECT: Local Social Services District Implementation of Title IV-E - Foster Care Adoption Assistance (FCAA)

DATE: February 10, 1984

SUGGESTED DISTRIBUTION: Child Welfare Executives and Staff
Public Assistance Staff
Medical Assistance Staff

CONTACT PERSON: Any Title IV-E eligibility questions regarding this release should be directed to Veronica Lynch, Bureau of Program Assistance by calling (800)342-3715, extension 4-9452. Systems questions should be directed to Gerald Seeley, Bureau of Services Information Systems at (800)342-3715, extension 4-1787. Questions concerning Medicaid should be directed to Hariette Meizner at (800)342-3715, extension 4-9141 or the New York City Office at (212)587-4853. Claiming questions should be directed to the Bureau of Local Financial Operations: Metropolitan Office, Anthony Funigiello at (212)488-4516; Upstate Office, Richard Radzyminski at (800)342-3715, extension 4-0192.

I. PURPOSE

The purpose of this directive is to advise local social service districts of the requirements of Title IV-E of the Social Security Act. While districts have previously received information and technical assistance concerning these requirements, no prior systematic statement of the requirements of Title IV-E has been presented either by the Department of Health and Human Services or by the State Department of Social Services.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
81 ADM-55 82 ADM-49 75 ADM-85 81 ADM-10 82 ADM-6 82 ADM-79	Letters to Commissioner Oct. 1, 1982 Oct 13, 1982 Oct 14, 1982	Part 347, Part 352 Sections 352.2, 352.22, 369.1, 369.2, 369.3, 369.4, 369.5, 369.6, 369.8, Part 372, 385.1 Part 400, 420, 421, 428,430	Title IV-E of the Social Security Act; & Sections 101, 101-a, 358-a, 366, 384-a, 384-b, 392, 409-a, 409-f, 442 & Title 9 of Art. 6 of the Social Services Law	Bulletins 134 and 143b, Chapter 1064 Bulletin 198	GIS IM Source Book VIII-U

DSS-296 (REV. 8/82)

II. BACKGROUND

On June 17, 1980, Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980 became effective. The primary focus of that law was on the foster care system. A variety of new requirements were placed upon the states in order to ensure that foster care would be used only when there was no alternative to the disruption of the family, that children did not become lost in the foster care system, and that the length of time children spent in foster care was not unnecessarily extended. The mechanism designed to achieve these goals require preplacement preventive services, reunification services, case recording requirements, a single state-wide computer system for tracking children in care, federal participation in adoption subsidies, and state specified goals regarding the number of children remaining in care more than two years.

Both the goals of P.L. 96-272 and the mechanisms designed to achieve these goals make the similarities with New York's Child Welfare Reform Act of 1979 readily apparent. It is due to these similarities that no major programmatic changes are required for New York State's implementation of the federal law. The changes that have taken place are limited to those that are procedural in nature and/or related to reimbursement categories. New York's application to become a Title IV-E state as of April 1, 1982, was accepted and the effective date of Federal approval has been established as of April 1, 1982.

The major changes made by P.L. 96-272 can be broadly described under two headings. The first was the elimination of the ADC-FC Program, under Title IV-A. That section of the law was replaced by Title IV-E, with little change in the most salient features of the statute, as it relates to foster care. Eligibility for Title IV-E foster care is still related to eligibility for Title IV-A (AFDC); however, some requirements unrelated to eligibility that were related to Title IV-A no longer apply at the federal level.

The second broad heading has to do with the most innovative part of Title IV-E, adoption assistance. For the first time, federal funding is available for SSI and ADC eligible children who may receive adoption subsidies, if they meet the federal criteria for children "with special needs". Along with that participation goes the provision of medical assistance which means that children who are eligible to receive IV-E adoption assistance will also receive Medicaid. In addition, since Medicaid is a federal program, additional reimbursement is available to the state for handicapped children or hard-to-place children who meet the IV-E criteria. For those handicapped or hard-to-place children who are not IV-E eligible, the state reimbursed adoption and medical subsidies continue to be available.

III. ORGANIZATION AND CONTENTS OF THIS ADMINISTRATIVE DIRECTIVE

The program and policy changes presented in this directive cover a variety of categorical, financial, and programmatic factors in the areas of foster care, adoption assistance, and medical assistance.

To facilitate use of this administrative directive, the following index should guide users to the appropriate sections.

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IV. PROGRAM IMPLICATIONS

A. FOSTER CARE

1. DEFINITIONS

a. Foster Care and Adoption Assistance (FCAA) is the State's program implementing P.L. 96-272, Title IV-E of the Social Security Act and relates to only those children eligible for or in receipt of foster care or adoption assistance which is subject to Federal reimbursement.

b. Non-Voluntary (Court Ordered) Placements means those placements of children which are ordered by a court of competent jurisdiction through Article 3 (Pursuant to Chapter 920 of the Laws of 1982, juvenile delinquency proceedings are now contained within Article 3 of the Family Court Act), 7, or 10 of the Family Court Act, or Section 358-a and Section 384-b of the Social Services Law.

c. Voluntary Placement means an out-of-home placement of a child under 18 years of age, by or with the participation of the local social services district, after the parents or guardians of the minor have requested the assistance of the district and have signed a voluntary placement agreement. Federal reimbursement for voluntary placements is time limited and may not exceed 180 days (and only between 4/1/82-9/30/84). Because of the 358-a provision of the Social Services Law, few children will be voluntary placements.

d. Foster Care Maintenance Payments means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

e. Family or Child Counseling/Treatment (Code 08) - Those direct client interactive services which are carried out during individual counseling sessions with the child, family or foster family to ameliorate or remedy personal problems, behavior or home conditions.

f. Foster Care Children (Eligibility) (Code 98) - Determining and Redetermining Eligibility - means those activities related to the initial determination of eligibility and the periodic review of continuing categorical eligibility including activities such as: client and collateral interviews, collection of documentation, completion of necessary forms to establish a case record (manual and automated), making a final disposition, the authorization of both basic and special needs for eligibility cases and the maintenance of the eligibility case record.

g. Foster Care - Children (Management) (Code 88) - Case Management - means those activities related to the overseeing of all aspects of a case to assure that: eligibility and authorization functions are accomplished on a timely basis; procedural safeguards are in place and accomplished to assure

protection of the rights of the parents and child; care, maintenance, and services are appropriate to the child's needs; voluntary agreements and appropriate judicial proceedings are timely, the UCR (initial assessment and updated plan) is completed and data in WMS/CCRS is accurate.

2. CATEGORICAL/FINANCIAL ELIGIBILITY

Although the foster care maintenance program is no longer administered under Title IV-A (AFDC), as of April 1, 1982, the basic categorical eligibility factors remain unchanged under the Title IV-E program. The foster care child's family relatedness to the Aid to Dependent Children (ADC) program must be determined in accordance with relevant sections of Departmental Regulation 369.8 as follows:

"(4) Receipt of Aid to Dependent Children (ADC). (i) If court proceedings were initiated prior to January 1, 1968, the child or minor shall have been in receipt of ADC after April 30, 1961, in and for the month in which such court proceedings leading to the judicial determination were initated.

(ii) If court proceedings were initiated on or after January 1, 1968:

(a) the child or minor shall have been in receipt of ADC in or for the month in which such court proceedings leading to the judicial determination that resulted in removal from the home were initiated; or

(b) the child or minor would have received ADC if application had been made for such assistance in or for the month in which such court proceedings leading to the judicial determination that resulted in the removal from the home were initiated; or

(c) the child was receiving ADC, or would have received ADC if application had been made in the month, or within six months prior to the month, in which court proceedings for removal were initiated.

(iii) For purposes of this subdivision, the 'initiation of court proceedings' refers to the filing of a petition in a court of competent jurisdiction, including petitions filed by social services districts or other agencies or individuals."

NOTE: If a child is found to be ineligible for IV-E foster care at the time of the initial determination, IV-E foster care eligibility cannot be derived at any point in the future for that particular placement.

The following discussion of the additional factors which determine a Foster Care case will specify the necessary areas of financial and categorical eligibility.

a. Categorical Relationship

An applicant for or a recipient of FCAA (Foster Care and Adoption Assistance) must meet the same categorical requirements as those previously mandated when foster care was under the Title IV-A AFDC program. See Departmental Regulation, Sections 369.1(b), 369.2(c), 369.2(e), 369.2(g), and 369.8.

b. Income and Resources

In determining initial eligibility for FCAA, the income and resources of the child's family must be evaluated for ADC eligibility. The income and resources allowed shall be computed acccording to the public assistance standards contained in Part 352 of Department Regulations and Bulletin 134.

c. Documentation

Documentation requirements for IV-E Foster Care remain unchanged from the ADC-FC program. All conditions of eligibility must be conformed with and documented.

d. Social Security Numbers

Any child who is an applicant for or recipient of Title IV-E services must have a social security number. This is both a federal and state requirement and the only exception to this requirement under IV-E is for children whose eligibility for IV-E adoption assistance payments is based on meeting the requirements of the Supplemental Security Income program (SSI).

Evidence of either the social security number itself or documentation that a number has been applied for must be contained in the case record of every foster care child and adopted child receiving Title IV-E adoption assistance payments with eligibility derived from the ADC program.

3. PERIODIC REDETERMINATION

Not less frequently than each six months an FCAA foster care case must be reevaluated for continuing eligibility. In redetermining eligibility, three distinct components must be reviewed and documented: 1) programmatic, 2) categorical, and 3) financial eligibility. Programmatic redetermination of eligibility is addressed in Section 3 (B) (page 12) and relates to the requirements of a periodic review of continuing services need.

a. Categorical Redetermination

Once initial eligibility has been determined, only one categorical factor must be reviewed each six months, namely the continuation of parental deprivation. Rather than repeat the State definition for deprivation of parental support or care, you are referred to Departmental Regulation 369.2(g) which should be read to understand

the full impact of the requirements in redetermining continuing deprivation each six months. As a first rule, the deprivation factor for continued ADC eligibility must be measured in relation to the home from which the child was removed. Deprivation based on the death of one or both parents, of course, becomes a constant as opposed to other forms of deprivation which are subject to change and require redetermination each six months. Similarly, while a court order for termination of parental rights cannot be used in establishing initial eligibility, the existence of such an order may be used to verify deprivation of the child for continued eligibility.

With respect to reviewing the home situation from which the child was removed, the following three examples should clarify this concept.

1) Example: A child removed from the home of his parents would continue to be eligible as long as deprivation of parental support by virtue of absence, physical or mental incapacity, or unemployment continues to exist. If it is determined that deprivation no longer exists in the parent's home, the child will no longer be eligible for FCAA reimbursement.

2) Example: If a child was removed from the home of a relative such as an aunt, it is the aunt's home which is reviewed at redetermination to establish whether or not deprivation continues to exist. Since deprivation is based on the status of the parents, deprivation would continue if both parents were not there in the household of the aunt.

   NOTE: Although the FCAA case may be rendered ineligible if a parental deprivation factor no longer exists, the case may regain FCAA claiming status if in the future a parental deprivation factor is found to take place in the child's family.

   The deprivation factor which reoccurs does not have to be the original factor which established FCAA eligibility:

3) Example: FCAA eligibility for a child was initially based on an absent father. At redetermination, it is learned that the father has returned to the home and the case then is no longer FCAA eligible based on deprivation due to the father's absence (although if the father returned and the family was in receipt of ADC-U, the child's FCAA eligibility would continue). Subsequently, if the father dies, the case once again is eligible for FCAA reimbursement.

b. Financial Redetermination

Once initial eligibility has been determined, the parents and the foster child are treated as two distinct case records in financial redetermination. That is, increased earnings or resources of the ADC household do not impact on the FCAA child's status, unless some of that income is made available to support the child in foster care. Conversely, increased income or resources available to the child do not affect the ADC household.

NOTE: A district is required to determine the income and resources actually available to the child for support through Section 398.6(d) of the Social Services Law which requires that a district shall: "Ascertain the financial ability of the parents of children who become public charges and collect toward the expense of such child's care such sum as the parents are able to pay."

(1) Unearned Income - Unearned income of a child (child support, OASDI, VA, etc.) must be applied against the foster care need standard which includes all foster care maintenance costs and special expenses. If unearned income exceeds the foster care need standards, then a change in status from IV-E Federal reimbursable (FP) to Federal non-reimbursable (FNP) must be made.

(2) Earned Income - Earned income of a part-time or full-time student who is not employed full-time should be disregarded in a IV-E foster care redetermination.

Earned income of any foster child who is not a student (or who is employed full-time) must be applied against the foster care need standard. All earned income disregards should be applied before available income is measured against the foster care need standard. In addition to Bulletin 134, reference to Departmental Regulation 352.20 should be made in determining the application of earned income. For instructions on how to budget earned income, refer to 81 ADM-55 and 82 ADM-49.

Unless otherwise exempt, a foster child who is over the age of 16 and is not a student must be registered with the WIN program (Departmental Regulation Part 388) in WIN districts or the State Employment Service (Departmental Regulation Part 385) as appropriate.

(3) Resources - Resources determined to be available for support of the child (i.e., the child's resources) are to be utilized to eliminate or reduce the need for foster care payments. Utilization of such resources are defined in Departmental Regulation 352.23.

c. Documentation

The case factors which must be documented for FCAA foster care redetermination are: age, income, resources, parental deprivation, judicial determination, services, and foster care placement (see Section V.A.4).

Documentation of all redetermination factors must be contained in each child's case record.

Parental deprivation must be reviewed and documented in the case record: examples - if the child is from an ADC household, continuation of the case with reference to the open ADC case number would document ongoing deprivation; documentation of receipt of SSI or Social Security benefits based on disability or blindness of a parent is proof of incapacity.

4. PROGRAMMATIC ELIGIBILITY

Consistent with P.L. 96-272 and CWRA, the Department is firmly committed to preserving a child's place within his/her family, and it is only as a last alternative that a child may be placed in foster care.

Prior to a child's placement in foster care certain casework activities must take place and the necessity of such placement must be documented. Attempts to avoid foster care placement through the provision of preventive services, or efforts to place children with relatives, must first be made and documented in the UCR.

The utilization of the Uniform Case Record (Part 428 of Departmental Regulations) ensures that these criteria are complied with throughout New York State. It further ensures that once a child does enter foster care, all requirements are met in order to guarantee appropriate care and services, and to expedite either the child's return home to his or her family, or a permanent placement.

a. Federal Requirements for Reimbursement

Through the requirements and safeguards of the Uniform Case Record, New York State complies with the programmatic eligibility criteria for IV-E foster care as outlined in Section 471 of the Social Security Act.

There are three major components:

- Efforts to Prevent Placement
- Case Plan
- Case Review System/Redetermination of Programmatic Eligibility

1. Efforts to Prevent Placements and Return Children Home

Section 471(a)(15) of the Social Security Act provides that effective October 1, 1983 each state must have a Title IV-E State Plan which provides that reasonable efforts will be made in each case "...(A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home..."

Section 472(a)(1) of the Act provides in part that each state with an approved Title IV-E Plan shall make foster care maintenance payments with respect to a child whose removal from his home was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of the child and that reasonable efforts described in Section 471(a)(15) of the Act had been made.

NOTE: Based upon existing federal guidelines concerning the procedures to be followed to implement the above-referenced provisions of Section 472(a)(1) beginning on October 1, 1983, this Department is at this time instructing social services districts to continue to comply with appropriate provisions of the Child Welfare Reform Act of 1979 and the implementing regulations. Should federal guidelines change concerning the procedures to be used to implement Section 472(a)(1) of the Act, the social services districts will be notified by the Department.

2. Case Plan

Section 417(16) of the Social Security Act requires the development of a case plan for every child. A case plan is defined in Section 475(1) as "a written document which includes at least the following: A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with Section 472(a)(1); and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan."

3. Case Review System

Section 471(16) of the Social Security Act also requires a case review system for each child. The case review system is defined in Section 475(5) as "a procedure for assuring that -

(A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child;

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review...in order to determine the continuing necessity for and the appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating causes necessitating placement in foster care, and to project a likely date by which the child may be returned home or placed for adoption or legal guardianship; and

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing (Note: See Section IV 5.d [p. 18] regarding Court Redetermination) to be held in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents."

b. State Requirements

Programmatic eligibility requirements in New York State preceded, and are consistent with, federal requirements for each of the three areas listed above.

(1) Efforts to Prevent Placements and Return Children Home

New York State requires certain activities prior to the placement of any child in foster care. These requirements are outlined in Departmental Regulation 430.10(b) regarding Utilization Review. This Department Regulation includes standards for the provision of preventive services to the family and child prior to placement in an attempt to ameliorate the need for placement and attempts to locate adequate alternative living arrangements for the child if placement outside of the child's home is determined to be necessary. For a child who is in placement, certain activities are required to assure that they receive appropriate care while placement is necessary. In addition, activities are required to expedite a return to the natural family or to achieve a permanent adoptive home for each child. Required casework activities including contacts with the natural family are outlined in 76 ADM-100 and Departmental Regulation 430.12, of the "Diligence of Effort" section of the Utilization Review regulations.

Also, in certain instances, the provision of mandated preventive services is required by Departmental Regulation 430.9(e) to expedite the return of children in care to their families.

(2) Case Plan

Each child placed in foster care or considered for placement, all children who are receiving a preventive service, and any child legally freed for adoption must have a Uniform Case Record (UCR) maintained or approved by the local district. The UCR requirements are outlined in Departmental Regulation Part 428 and state that the case record:

(a) contain information that is relevant, useful, factual, and objective;

(b) contribute to the district's understanding of a child's or family's major problems;

(c) make an early assessment of the problems, strengths and needs of the child and the family receiving or applying for family and children's services to assure valid decision-making and planning and to assure that major decisions affecting the safety and well-being of children will be supported by a careful, comprehensive and timely review and evaluation of all relevant material;

(d) contain the service goals for each child and family who receives one or more direct family and children's services from the district; or for whom the district purchases such services; and

(e) reflect district compliance with the Department's standards for family and children's services.

Within thirty days of the tracking date (date of application, placement, or court order - whichever occurs first) an assessment and initial services plan must be completed. Departmental Regulation Sections 428.6 and 428.7 outline the required considerations and documentation.

(3) Case Review System

The Uniform Case Record requirements found in Departmental Regulation Part 428 require that a service plan review be completed within ninety days of the tracking date, again within six months of the tracking date and every six months thereafter. The Service Plan review includes an updated assessment which considers continued necessity of placement and evaluates progress towards alleviating causes necessitating continued placement. Departmental Regulation Part 428.9 outlines the specific requirements and purposes of this review.

c. Relationship of State Requirements to Federal Reimbursement Requirements

The similarities between the Federal and State requirements are readily apparent. Since the Child Welfare Reform Act had already been

implemented prior to the enactment of P.L. 96-272, few essential programmatic changes are necessary for New York State. The required changes which New York has implemented are: the holding of a dispositional hearing within 18 months of the original foster care placement, the participation of a third party at all service plan reviews, and written notice to parents notifying them of the review.

NOTE: See Department Regulation 428.9(a) regarding service plan review.

Each of the three major programmatic components required for federal reimbursement will be met by compliance with the Utilization Review and Uniform Case Record requirements.

5. PLACEMENT

a. Court Placements

Requirements for Federal Reimbursement

A judicial determination by a court of competent jurisdiction establishing that placement in foster care is in the best interest of the child is required before Federal reimbursement under Title IV-E may be claimed. (However, federal reimbursement for certain voluntary placements made between April 1, 1982 and September 30, 1984 may be claimed as described later in this ADM). Once it is determined by the court that such placement is in the best interest of the child, the responsibility for placement and care of such child must reside with the State agency (local district) administering foster care or with another public agency with which the New York State Department of Social Services has made an agreement (Division for Youth).

NOTE: A temporary order removing a child from the home meets the requirement of a judicial determination, providing that the order specifies that it would be contrary to the welfare of the child for him to remain in the home.

(1) Placements Made Pursuant to Articles 3, 7, and 10 of the Family Court Act

In order to receive Federal reimbursement as a court placed child, the responsibility for care and placement must be explicitly imposed on a social services official or a public agency. If it is a public agency, a contract must exist between the New York State Department of Social Services and the public agency. With respect to Article 3, Article 7, and Article 10 placements, Federal reimbursement may begin from the first day of the month in which the court order was issued, assuming that the child has been determined to be ADC related and the placement is in an appropriate foster care setting.

(2) 358-a Placements

Section 358-a of the Social Services Law provides for voluntary placements for periods of time less then thirty days, after which, the placements must become court supervised placements. This thirty day period was established in the law to permit a period of time for the parents or guardians to evaluate the decision to transfer the care and custody or guardianship of the child to a social services official. In addition, the agency accepting the child has an equal opportunity to evaluate the decision to place the child and if it is determined that the child should remain in care beyond 30 days, a petition must be initiated within thirty days of this determination.

Federal reimbursement is permitted beginning from the first day of the month that the court order is issued, assuming the ADC relatedness of the child and the placement is in an appropriate foster care setting.

(3) 384-a Placements

Finally, a child who is in care as a result of a transfer of custody to the social services official under the provisions of Section 384-a may, if ADC relatedness exists and placement is in an approved foster care setting, have the cost of care federally reimbursed from the first day of the month that the court order is issued.

(4) Timeliness of Court Orders

Federal reimbursement for court-approved foster care placements may be claimed from the first day of the month in which the Court issued an order approving the placement. If the Court delays in issuing such an order after a petition to review the appropriateness of a foster care placement is filed, the ability of the State to claim the maximum amount of Federal reimbursement for the cost of the placement could be jeopardized. Because of this it is essential that each local social services district, both program and legal staff, work closely with the Family Court in order to ensure that court orders shall be expeditiously issued. Each local social services district must take whatever steps necessary in order to avoid any delay in the issuance of such orders. These steps may include the modification of internal programmatic and legal practices. They may also include a more cooperative working arrangement with the court.

b. Voluntary Placements

With the passage of P.L. 96-272, it became possible for a state to receive reimbursement for the cost of care for children who have been voluntarily placed in foster care prior to the issuance of a court order.

It should be noted that provision for such reimbursement is automatically repealed October 1, 1984. Therefore, unless this particular provision is extended in federal law, no federal reimbursement will be available for the voluntary placement expenditures incurred after September 30, 1984.

(1) Requirements for Federal Reimbursement

In addition to the establishment of a child's eligibility as an ADC related child, a voluntary placement agreement must be signed by both the parents or guardians and the local district. As defined in Section 472(f) of the Social Security Act, a voluntary placement "means an out-of-home placement of a minor, by or with the participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement."

The term voluntary placement agreement "means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child, which specifies at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child and the agency while the child is in placement." Provision must also be made for the parents or guardians to request the return of the child. In the event such request is made, the agreement is considered revoked unless the local district requests and obtains a judicial determination that the return of the child to such home would be contrary to the child's best interest.

(2) Duration of Federal Reimbursement

Federal reimbursement may be claimed for up to 180 days of care, beginning from the date of original placement. If a judicial determination is made within the 180 days that continued placement is in the best interests of the child, the child's placement then becomes court-ordered and can be reimbursed beyond the 180 days. However, it must be remembered that New York State requirements of 358-a (i.e., petitioning the court within 30-60 days of placement) must be met. Hence, we anticipate almost all placements in New York State will be non-voluntary (court-ordered) placements.

NOTE: Consecutive voluntary placements (agreements) are not to be used to avoid the judicial process. The use of voluntary placements is appropriate only for 180 days after the original voluntary foster care placement.

c. Placements Resulting from Emergencies

In all instances when a child is placed before a court order is issued, a determination should be made as to the appropriateness of the use of the Emergency Assistance to Families (EAF) category as discribed in Part 372 of Department Regulations.

The eligibility requirements for reimbursement under Title IV-A EAF are:

Services for families with children requiring emergency assistance to deal with crisis situations threatening the family and to meet urgent needs resulting from a sudden occurrence or set of circumstances demanding immediate attention shall be provided by a social services district to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living if:

1. the child is (or within 6 months prior to the month in which such assistance is requested, has been) living with a parent or other relative specified in Department Regulations 369.1 (a) in a place of residence maintained by one or more of those relatives as his or their own home;

2. the child is without resources immediately accessible to meet his needs and these needs cannot be met by an allowance under Department Regulations, Part 352, Standards of Assistance;

3. emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him in a home; and

4. his destitution or need for living arrangements did not arise because he or such relatives refused without good cause to accept employment or training for employment.

Services may be authorized only during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet service costs which arose before such 30-day period, or are for such service which extends beyond the 30-day period. The period of authorization must be reflective of individual case circumstances, and should not extend beyond the issuance of a court order, at which time the temporary foster care placement becomes a court-ordered placement.

NOTE: A temporary order removing the child from the home meets the requirement of a judicial determination, providing that the order specifies that it would be contrary to the welfare of the child for him to remain in the home.

d. Court Redetermination

(1) Federal Requirements to Receive Reimbursement

P.L. 96-272 provides that a dispositional hearing must be held no later than eighteen months after the original placement and periodically thereafter during the continuation of foster care. The Federal government has mandated that these hearings be held within the 18 months.

(2) State Requirements

Section 392 of the Social Services Law and Departmental Regulation Section 430.1 establish procedures for periodic court reviews. Chapter 141 of the Laws of 1983 amended Section 392.3 has been amended (effective 5/23/83) to require that when an authorized agency determines that a child will remain in foster care for a continuous period of eighteen months, a petition to review the child's foster care status "...shall be filed in the appropriate family court at least sixty days prior to the end of the month which would constitute the eighteenth month of continuous foster care placement."

In addition, Chapter 141 amended Section 392.5 of the Social Services Law to require that the initial hearing to review a child's foster care status shall take place within eighteen months of the date of the original foster care placement.

The foster care status of the child must be reviewed at least every twenty-four months after the initial eighteen month review.

(3) Implication of Federal Requirements to Receive Federal Reimbursement

Section 392.3 of the Social Services Law provides that a petition to review a child's foster care status is to be filed when the child has been in care for a continuous period of 16 months. In order to receive Federal reimbursement, the hearing must be held before the expiration of the 18th month.

All subsequent petitions are to be filed in accordance with the provisions of Section 392.10 of the Social Services Law.

6. STAFFING RESPONSIBILITIES

ADC-FC had formerly been administered jointly by the Division of Services and the Division of Income Maintenance. With the establishment of Title IV-E of the Social Security Act, the Foster Care and Adoption Assistance (FCAA) program in New York State is now being administered

solely by the Division of Services. While both the eligibility and programmatic aspects of FCAA are fully under the Division of Services at the state level, local social services districts have been advised that at this time they may continue to process IV-E foster care eligibility through either Income Maintenance or Services. When the systems are changed to support IV-E, including MA, on the Services side of WMS (effecting an interface between WMS Services and MMIS), Services staff will be able to fully process, at local option, all IV-E foster care and adoption assistance cases.

During this interim, local social services districts may maintain their current processing of FCAA eligibility as was done for ADC-FC, either by Income Maintenance staff, or these functions may be transferred entirely to Services staff. These changes should be evaluated in terms of impact upon a districts' cost allocation procedures to ensure that elements of cost are charged to appropriate categories and functions.

For those districts who are accomplishing all Title IV-E activities within their services unit, cost allocation will be achieved through the SSRR system (upstate) or Random Moment Study (for NYC). But, those districts which are accomplishing the determination of ADC relatedness through the use of Welfare Examiners in their Income Maintenance Division, are required to establish a cost allocation procedure which ensures that appropriate Title IV-E costs are identified.

7. AUTHORIZATION

The document used for authorizing all aspects of foster care including maintenance, care, and services is the services authorization document -DSS 2970 in WMS Districts or approved State form in New York City (until implementation is completed in NYC).

A duly signed authorization document is required on initial case openings, and on redetermination of continuing financial and programmatic eligibility not less frequently than each six months.

Authorization for Title IV-E claiming can begin from the day of placement providing that the child has met all IV-E eligibility criteria.

8. MEDICAL ASSISTANCE

Children in receipt of FCAA Foster Care payments are automatically eligible for medical assistance since the eligibility for Federal reimbursement is derived from an ADC relationship.

Non-IV-E eligible children in foster care (FNP cases) are not automatically eligible for medical assistance and MA eligibility must be established on an individual basis. Separate MA Only applications must be processed for each child. For purposes of the MA eligibility determinations, the child is considered as a household of one. The determination is then made on the basis of income and resources of the child only as outlined in 81 ADM-10.

9. ALLOCATION OF ADMINISTRATIVE COSTS

The transition from ADC-FC to FCAA results in the need to identify related administrative activities to be reimbursed under Title IV-E.

P.L. 96-272 allows Federal reimbursement for administrative activities/costs. In order to capture the required cost allocation information, services/activities were added to SSRR (upstate) and RMS (NYC) to identify appropriate costs. Activities reported for FCAA foster care case related case management (code 88), and eligibility (code 98), are reimbursable under Title IV-E. Foster care service (code 08) continues to be reimbursable only under Title XX.

It is important to note that code 08 activities will no longer identify foster care costs that are shiftable to another Federal entitlement program (i.e., Title IV-A). With the limitation of funding under Title XX, it is very important that all foster care activities reimbursable under Title IV-E be coded and claimed correctly so that they are not reimbursed with limited Title XX funds. Therefore, local districts must emphasize these changes to services workers.

10. TITLE IV-E/TITLE IV-D RELATIONSHIP

Title IV-A (ADC/FC) required states to make child support collections. Under Title IV-E (FCAA), there are no specific provisions for the assignment of support rights nor requirements to make child support collections as a condition of eligibility. However, Sections 101 and 101-a of the Social Services Law (also see page 9, paragraph (b) regarding Section 398.6 (d) of the Social Services Law) require exploration and pursuit of available resources of responsible relatives to be used to reduce or eliminate the need for foster care maintenance payments. Thus, referral to the Child Support Unit must continue to be made for all children in foster care regardless of claiming category. A DSS 2521 (Application for Child Support Service) should be filed with the local IV-D unit in order to pursue child support or paternity proceedings for a foster child.

Such referrals shall also be done for the purpose of pursuing the availability of medical support and third party health insurance benefits.

B. ADOPTION ASSISTANCE

1. DEFINITIONS

a. The federal definition of a child "with special needs", Section 473 (c) of the Social Security Act, is as follows:

"(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical,

mental, or emotional handicaps) because of which it is reasonable to conclude that such a child cannot be placed with adoptive parents without providing adoption assistance, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section."

The New York State definitions (see Section 451 of the Social Services Law and Departmental Regulation 421.24(a)) are as follows:

(1) Handicapped Child - A child who possesses a specific physical or emotional condition or disability of such severity or kind which, in the opinion of the New York State Department of Social Services, would constitute a significant obstacle to the child's adoption.

This child has been diagnosed as having:

- a medical or dental condition which will require repeated or frequent hospitalization, treatment or follow-up care;
- a physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury, or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation, as provided in the Education Law (Section 4044), or which makes or may be expected to make a child handicapped as provided in the Public Health Law (Section 2851);
- a substantial disfigurement, such as the loss or deformation of facial features, torso, or extremities;
- a diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his peers and/or authority figures, including mental retardation or developmental disability;

(2) Hard-to-Place Child - A child, other than a handicapped child who possesses or presents one of the attributes listed in this subparagraph and which present an obstacle to the child's adoption, notwithstanding that the child has been freed for adoption and is in the guardianship and custody of the social services official for less than six months.

- is one of a group of two or more siblings (including half-siblings) and it is considered necessary that the group be placed together;
- is 10 years old or older;

- is a child over eight years of age who is a member of a minority group which is substantially over-represented in New York State foster care in relation to the percentage of that group to the state total population;

- the child is hard-to-place with a parent(s) other than his present foster parent(s) because he has been in care with the same foster parent(s) for eighteen months or more and has developed a strong attachment to his foster parent(s) while in their care such that separation from them would adversely affect the child's development.

- children freed for 6 months or more.

NOTE: New York State's own hard-to-place definition for purposes of state funded adoption subsidies is broader than the federal definition, i.e., those children who have been freed for six months or more and have not been placed are considered to be "special needs" children by this state, but do not meet the federal definition.

b. Adoption Assistance Agreement - Section 475 (3) of the Social Security Act defines this agreement as "a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the amounts of the adoption assistance payments and any additional services and assistance which are to be provided as part of such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective."

Clause B is effective for adoption assistance payments entered into after September 30, 1983. However, Section 457 of the Social Services Law requires that adoption subsidy payments be made even if the child and his adoptive parents move from New York State.

c. Adoption Assistance Payments - means those adoption assistance payments to IV-E eligible children under the FCAA program which are subject to Federal reimbursement.

d. Adoption Services - means assisting a child to secure an adoptive home (through counseling with biological parent(s) concerning surrender of child for adoption); assisting a parent(s) unwilling or unable to care for a child to surrender such child for adoption or instituting legal procedures to separate a child from his parent or parents under appropriate circumstances and arranging for and providing legal services to accomplish this purpose; the recruitment, study and evaluation of interested prospective adoptive parents; training for prospective and approved adoptive parents, evaluation of placement need, pre-placement planning, selection and placement of available

children; counseling for families after placement; supervision of children in adoptive homes until legal adoption is completed, supervision of a child and family for up to twelve months following legal adoption including counseling of the child, adoptive parents, and biological parents during the period.

e. Adoption Assistance Code 81 - are those activities directly related or considered necessary for the administration of the Federal adoption assistance or the State subsidy program for a child who has been legally freed for adoption. Those activities which are considered to be directly related to the administration of these programs are the determination of eligibility of the child and the adoptive parents to receive adoption assistance or subsidy payments, negotiation and review of the adoption agreement with the adoptive parents, post placement management of the payments if requested by the parents, participation in any fair hearing or appeal process and other directly related/administrative activities. In order to carry out efficient and appropriate administration of the adoption assistance or subsidy program, certain other activities are considered necessary such as development of a case plan, recruitment of adoption home, home studies, placement of a child in an adoptive home, case reviews, case management or supervison occurring during the period between placement and the final adoption decree and referral activities to receive services.

2. CATEGORICAL/FINANCIAL ELIGIBILITY

a. Categorical Relationship

IV-E reimbursement will be available as of April 1, 1982, for care and maintenance payments for those children who are adopted with subsidy on or after October 1, 1980, (were still receiving the subsidy as of April 1, 1982), and were also eligible for either the SSI or AFDC program at the time when the adoption petition was filed. Additionally, these children must meet the criteria of a child with "special needs" (see B.1 Definitions). Only if a child meets all the above conditions can IV-E adoption assistance be available.

Although a child may be identified at the time the adoption petition is filed as being eligible for adoption assistance payments, these federally reimbursable subsidies cannot be authorized until the adoption is finalized (See Initiation of Subsidy on page 26).

SSI or AFDC relatedness of the child must be reviewed at the time when the adoption petition is filed. Although a redetermination for FCAA foster care may have been done within six months prior to the filing of the adoption petition, a specific review for SSI or AFDC must be completed at this point. Eligibility for either program must be documented in the child's case record.

It should be noted that eligibility for FCAA adoption assistance can also be established through a child's relationship to the SSI program.

b. Financial Eligibility

1. Income - Adoptive Parent

There is not a means test for the adoptive parents to determine eligibility for FCAA adoption assistance payments. Departmental Regulation 421.24 established the procedure for application of income in determining the amount of subsidy to be granted.

In those instances when adoptive parents elect to receive adoption assistance payments in an amount less than specified by Departmental Regulation 421.24(b)(6), a signed and certified agreeement must be executed stating that they voluntarily agree to accept the lesser amount.

2. Income - Child

At the time the adoption petition is filed, it must be shown that the child is needy through their eligibility for either the ADC or SSI program.

c. Documentation

In the child's case record (post-finalization record), the child's relatedness to ADC or SSI must be noted. Also, the "Special Needs" of the adopted child which qualify him/her for the IV-E adoption assistance must be documented.

A copy of the adoption assistance agreement shall be retained so as to permit, if requested by the adopting person(s), pursuant to Departmental Regulation 421.24(b)(14), "a review of the agreement and/or a change in the amount paid under the agreement", or a change by a local social services official in the amount of payment with the consent of the parents.

3. PROGRAMMATIC ELIGIBILITY

Federal Requirements - With the enactment of Public Law 96-272, Federal funds are now available for ADC or SSI eligible children who have been adopted. These children may receive such subsidies if:

- they have been determined to be children with "special needs", and
- adoption assistance payments are made pursuant to an adoption assistance agreement.

a. "With Special Needs"

Section 473(c) of the Social Security Act provides that in order for a child to be considered a child "with special needs" they must meet certain requirements (see definition of "special needs" on page 21).

b. Adoption Assistance Agreement

An adoption assistance agreement is required in each case in order to receive federal reimbursement (see definition on page 23).

It is also required that the amount of the adoption assistance payments is to be determined through the agreement with consideration given to the circumstances of the parents adopting and the needs of the child being adopted. This may be adjusted periodically depending on changes in circumstances. The adoption assistance payments may not exceed the foster care maintenance payments that would have been paid had the child been in a family foster home.

The only exception to adoption payments exceeding the foster care board rate is contained in Section 453.3 of the Social Services Law which provides that under certain circumstances, a maintenance rate which exceeds the board rate by up to seventy-five percent may be paid for a period not to exceed ninety days following the date of the order of adoption.

Any maintenance subsidy payments paid pursuant to this provision (that is above 100% of the foster care board rate) would not be subject to federal reimbursement.

c. State Requirements

New York State's adoption subsidy program has existed for some time and it allows monthly payments for the child's care and maintenance (i.e., subsidy) to the person with whom the child has been placed out for adoption. There must be a written agreement with the adoptive parents, and the child must meet the definition of "handicapped" or "hard-to-place" (see B.1 Definition). Departmental Regulation 421.24(b)(2) outlines the requirements for the adoption assistance agreement.

It should be noted that according to Section 453.2 of the Social Services Law, all adoption subsidy agreements are subject to Department approval.

d. Relationship of State Requirements to the Federal Requirements

The similarities between the State and Federal requirements are readily apparent. Therefore, no essential programmatic changes are required in order to implement the Federal statute. Eligibility for an adoption subsidy is more broadly defined by New York State than the Federal government which makes it necessary to distinguish between the two and identify the limits of Federal participation.

There are three areas that require focus:

- age of child
- initiation of subsidy

o special needs versus hard-to-place.

Federal reimbursement is available as of April 1, 1982, for eligible children adopted after October 1, 1980. The State adoption subsidy program will continue to reimburse local districts for expenditures made for children that are eligible for State subsidies adopted prior to October 1, 1980, or after October 1, 1980, who do not meet Federal eligibility requirements.

(1) age - Federal participation is allowed up to the eighteenth birthday and it may be continued only if it is determined that the handicapping condition warrants continuation and then only to the child's twenty-first birthday.

Section 424.24(b)(4) of the Department's Regulations provides for State participation up to age twenty-one for a child in receipt of subsidy where the child continues to be financially dependent on the parent. In cases where Federal reimbursement is lost at age eighteen as a result of the handicapping condition not warranting continued payment to age twenty-one, a State reimbursement subsidy must be authorized until the child attains the age of twenty-one, if they were eligible at the time of the adoption.

(2) initiation of subsidy - Federal participation for eligible children begins only after an adoption assistance agreement has been signed and there has been a court order finalizing the adoption. The New York State regulations permit subsidies to begin at the time of the adoptive placement. As a result, a child adopted by a non-foster parent may be eligible for only state reimbursement prior to becoming eligible for such federal participation.

NOTE: In those cases where the foster parent is to become the adoptive parent, FCAA foster care payments must be continued up to the time of finalization.

(3) Special Needs - In order to receive federal reimbursement, a child must be determined to have "special needs" (See p. 21). Children meeting the State's definition of a handicapped or hard-to-place child (Departmental Regulation 421.24(a)(2) and (3)) may also be eligible for Federal reimbursement. However, those children receiving a subsidy solely on the basis of having been freed for six months without being placed (Departmental Regulation 421.24(a)(3) i and ii) are not subject to federal participation.

4. ANNUAL REVIEW

The Social Services district shall determine on an annual basis that the adoptive parents continue to be legally responsible for the child's support, and that the child is in fact in receipt of support from the parents. The annual review must document in the case record: legal responsibility for support of the child, and actual receipt of support.

If the adoptive parents are no longer legally responsible for the support of the child or the child is no longer receiving any support from such parents, no payments may be made (§ 453(1)(c) of the Social Services Law, as added by Chapter 97 of the Laws of 1983).

NOTE: This is not a review for income eligibility or subsidy changes.

5. AUTHORIZATION

The services authorization document DSS 2970 will be used to authorize both Adoption Assistance and Adoption Services expenditures.

An authorization may only be generated for a six month time period (due to present system limitations). However, once eligibility has been established neither the categorical relationship nor the financial eligibility need to be redetermined. If it is determined on the annual review that the adoptive parents are no longer legally responsible or the child no longer is in receipt of support from the parents, the payments should be discontinued. The conditions for continuation of the FCAA subsidy should be reviewed prior to an authorization.

6. MEDICAL ASSISTANCE

A child who is eligible for and in receipt of FCAA adoption assistance payments is automatically eligible for medical assistance coverage and for the purpose of eligibility for medical assistance is deemed to be a recipient of AFDC. Since the MA eligibility is based on an AFDC relationship, there must be a cash payment under adoption assistance in order to receive the Federally reimbursable medical assistance.

When an FCAA payment is authorized, Federal law and regulation requires that medical assistance must be provided for the adopted child. State law also requires provision of medical assistance for IV-E children (§ 453(1)(b) of the Social Services Law, as added by Chapter 97 of the Laws of 1983).

It should be noted that under the State medical subsidy program (see DR 421.24 (c) and (d)), Section 454 of the Social Services Law, (for which there is no federal reimbursement) such subsidy may be given without a cash payment being made as an adoption subsidy. However, since federal reimbursement is available for medical assistance, eligibility for Medicaid should be determined in all instances where a child would qualify for a medical subsidy, and if the child is MA eligible, the medical subsidy should not be given. However, if the child loses MA coverage before age 21, then the medical subsidy should be authorized up to age 21, if the child was eligible at the time of adoption.

7. ALLOCATION OF ADMINISTRATIVE COSTS

The main consideration relative to cost allocation requirements for adoption is the need to identify and differentiate those elements of Adoption Assistance which are IV-E eligible from the Adoption Services activities only claimable under the Social Services Block Grant or from state and local 75/25 funding. This has been acccomplished through the use of an additional code (Code 81) to identify Adoption Assistance from Adoption Services (Code 01). These changes have been effected in the WMS system including SSRR. They have also been included in the modification to the Random Moment Sample (RMS) procedures for NYC. Manual Bulletin 143b should be referenced for additional specifics on cost allocation procedures.

V. REQUIRED ACTION

A. FOSTER CARE

1. ELIGIBILITY PROCESS

The following actions are necessary to determine the eligibility status for all children being placed in foster care:

a. An application must be made by the child's parents, other relatives, or by an authorized representative of the agency having the care and custody of the child.

The DSS 2921 (WMS Common Application Form) must be completed and the DSS 2984 (Eligibility Workbook for Public Assistance, Medical Assistance, and Food Stamps) must be filled out in accordance with IM/WMS procedures (except in New York City prior to implementation of WMS).

The children who meet the following FCAA requirements as found in Departmental Regulation 369.8 are eligible for federal reimbursement:

(1) The child must meet the age requirements specified in Departmental Regulation 369.2(c). FCAA eligibility is limited to children under 18 and to children under 19 years of age who are full-time students expected to complete a program of secondary school or the equivalent level of vocational or technical training before reaching age 19. Beyond 19 years of age, a child's foster care expenses are FNP.

(2) The child was removed from his home pursuant to a judicial determination (or, for the period of 4/1/82-9/30/84 only, pursuant to a voluntary placement agreement as allowed by P.L. 96-272).

(3) Responsibility for care and placement was voluntarily given to or imposed by court order on the social services official or the Division for Youth.

(4) Care is provided in a certified or licensed setting (Departmental Regulation 369.8(a)(5)).

(5) The child must have a relationship to ADC (see page 7, section 2).

b. A personal interview must be conducted with the child's eligible relative or an authorized representative of the agency having care and custody of the child. This face-to-face interview is required to establish eligibility.

c. Eligibility must be established by the local department of social services within 30 days of the date of application.

2. ADC-FC TRANSFER CASES

All children who were eligible for ADC-FC under Title IV-A are assumed to be eligible for IV-E foster care.

All ADC-FC children who are now FCAA eligible are subject to all redetermination requirements for foster care under FCAA. These requirements are in Section IV A.3. Thus, redeterminations for all transferred ADC-FC cases must be accomplished every six months.

3. PROCESSING OF DIVISION FOR YOUTH CASES

The State Department of Social Services and the Division for Youth have an Interagency Agreement which provides for the submission of FCAA applications to the local social services districts. The local social services districts should continue to process these cases and render eligibility decisions to the Division for Youth. Division for Youth FCAA cases are also subject to the foster care redetermination requirements.

4. REDETERMINATIONS

FCAA foster care cases must be reviewed for the following criteria every six months:

a. AGE - The child must continue to meet the age qualifications as specified in section VA 1a(1) (page 29).

b. JUDICIAL DETERMINATION - The court order placing the child in the care and custody of the social services official or a public agency must remain in effect.

In the case of 358-a placements, the petition must be reviewed by a court of competent jurisdiction and a determination must have been made by the court that continued placement would be in the best interests of the child.

c. FINANCIAL ELIGIBILITY - Only the child's income shall be considered in a redetermination for FCAA. Under IV-E, the child's net income must not exceed the applicable foster care need standard (see Section IV A.3.b).

NOTE: The 150% test of the standard of need (see 81 ADM-55) is not applicable in redeterminations for FCAA eligibility.

d. PARENTAL DEPRIVATION - A parental deprivation factor must exist and be documented for both the initial determination and each redetermination thereafter.

Any change in parental status which affects eligibility must be reviewed. If the child no longer meets the deprivation requirement, the case is no longer eligible for FCAA and a case status change must occur. If on subsequent redeterminations of eligibility a deprivation factor is found to exist, the case should revert back to a federal reimbursement status under FCAA.

e. SERVICES - A written case plan must be reviewed not less frequently than every six months and must be part of the child's case record (Departmental Regulation Part 428.3(c)(7)).

f. FOSTER CARE PLACEMENT - The child must be placed in a certified or licensed foster family home or be receiving foster care in a non-profit private child care institution or an authorized public child care institution which accomodates no more than 25 children and which is a state licensed facility but not a facility operated primarily for the detention of children who are determined to be delinquent.

Included as FFP eligible foster care placements are Division for Youth foster homes, and facilities under Youth Support, Inc. (YSI), namely DFY group homes and Youth Development Centers (YDCS).

If all criteria are not met when cases are redetermined for continuing FCAA foster care eligibility, the case status must revert to state/local funding within 30 days of such change in eligibility.

NOTE: If a child ceases to be eligible for FCAA, the worker should then review the case to determine if the child could be considered for the Supplemental Security Income (SSI) program. If there are conditions which may render the child eligible for SSI, the child's case should then be referred for an SSI determination.

5. AUTHORIZATION

In the previous section (p. 20) on authorization, it was stated that the services authorization document serves as the basis for authorizing all aspects of foster care. However, to provide Medicaid to these

children, it is currently necessary to establish either an ADC-FC or an MA Only case according to instructions contained in Section V.A.6 of this directive (see below). Initial determinations should be made on-line utilizing the WMS Workbook (DSS 2984) documents to effect the MMIS interface and also to serve as the basis for eligibility of the services cases. Redeterminations can be done either on-line utilizing the workbook approach or off-line with the resulting determination outcome being entered onto the system.

Once the WMS services system has been modified to interface with MMIS, there will no longer be the need to open a corresponding non-services case in WMS. Districts will be notified when this interface is operational.

6. MEDICAL ASSISTANCE

As discussed in Section IV A.8. (p. 20), those foster children who meet the requirements of FCAA (previously ADC-FC) are automatically eligible for medical assistance.

For all other children in foster care, eligibility for medical assistance is to be determined in accordance with the instructions contained in Administrative Directives 81 ADM-10 and 75 ADM-85.

7. WMS/MMIS INSTRUCTIONS

At present it is necessary to establish a non-services case to provide medical assistance to foster care individuals in a Service Case.

When children meet Title IV-E criteria, data entry forms DSS 3030 - Registration Worksheet and DSS 3028 - Full Data Entry Worksheet may be used for registration and full data entry of the case. Case Type 13 should be used for children who meet the Title IV-E foster care criteria.

When children do not meet the Title IV-E criteria, full financial determination of eligibility for medical assistance (with federal participation under Title XIX) is necessary. This requires use of the DSS 2921-Application and DSS 2984-Eligibility Workbook for registry and full data entry. (These children would be Case Type 20).

8. SERVICES SYSTEMS INSTRUCTIONS

1. Case Opening processing - Cases and individuals are registered in WMS via the Application Registration process. The clearance Report is evaluated for current or previous ADC eligibility. Individuals currently in receipt of ADC or who were in receipt of ADC within the six months prior to the month, in which the petition was filed, meet the ADC eligibility requirements. The circumstances for a child who would have been eligible for ADC if application has been made within the previous six months must be documented in the case record.

Individuals determined Title IV-E eligible (reference section 2, page 7, and section 4, page 10 of this directive) will be encoded with an eligibility code of 02 on the Services Application.

Individuals eligible for Title IV-E are automatically Title XIX eligible and must have a corresponding Non-Services case (ADC-case type 13 or MA-case type 20) opened for purposes of medical assistance coverage. In those districts where Income Maintenance or Medical Assistance staff are responsible for the Non-Services processing, Services staff should make referrals for processing using current procedures. In districts where Services staff are responsible for processing the Non-Services cases, the corresponding ADC-case type 13 or MA-case type 20 should be opened.

Individuals who do not meet Title IV-E eligibility requirements need an appropriate Services eligibility determination. Non-IV-E eligible children must have a separate MA Only application processed for determination of eligibility for Title XIX (MA). If the child is MA eligible, open the MA case and encode the Services Application with an eligibility code of 08-MA. If the child is not Title XIX eligible, a Services Income Eligibility determination should be made.

Complete case processing with Full Data Entry (FDE), Services Financial Eligibility Display/Turnaround (SFED/T) completion, and supervisory review and approval.

Each child receiving foster care must be tracked via the CCRS Supplemental Registration process. All appropriate Assessment Service Plans, movement and legal activities must be reported.

2. Social Services Reporting Requirements (SSRR) - Foster Care reporting of SSRR time by upstate counties and via the Random Moment Study in New York City must be reported as appropriate to one of the following activities: Family or Child Counseling/Treatment - code 08 (Title XX funded), Case Management - code 88 (Title IV-E funded) and Determining/Redetermining Eligibility - code 98 (Title IV-E funded). Definitions of these activities can be referenced on page 6 of this directive or in the Integrated Services Information Systems (ISIS) Manual, section eleven.

3. Recertification/Redetermination - Individuals who continue to be Title IV-E (FCAA) eligible would be recertified in the prescribed manner. Individuals who are no longer Title IV-E eligible must be recertified with an appropriate eligibility code of other than 02 (FCAA). These requirements can be referenced in Section IV-A 3 on page 8 (Periodic Redetermination), of this directive.

B. ADOPTION ASSISTANCE

1. ELIGIBILITY PROCESS

a. Cases Opened on or after 4/1/82

(1) Financial

Relatedness to either the SSI or ADC program must be established at the time that the adoption petition is filed. Although the last FCAA redetermination may have been completed less than six months prior to the adoption petition being filed, nevertheless, the case must be reviewed again to confirm ongoing relatedness to either the ADC or SSI program.

Federal remibursement for adoption assistance payments is not available until after the adoption is finalized.

(2) Programmatic - The following criteria must also be met in determining initial and continuing eligibility for FCAA adoption assistance:

(a) The child in accordance with Departmental Regulation 421.24 was determined to have a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed without adoption assistance, or that the child was adopted by his foster parents after having been with that family at least eighteen months. If the child is not placed with foster parents and he receives a subsidy solely on the basis of having been freed for six months without being placed, he is not programmatically eligible for a Federal subsidy.

(b) That at the time the adoption petition is filed the child met the AFDC relationship requirement specified in Section IV (page 24) which includes receipt of FCAA foster care or that the eligibility requirements of the Supplemental Security Income program (SSI) were met. When attempting to ascertain an SSI relationship, a referral must be made for a disability review to determine if a child meets the categorical requirements of the SSI program. Bulletin 198 contains further information on disability reviews.

(c) The requirements of SSL 372-c have been met, i.e., registration with the Statewide Adoption Service and, when required, the child has been photo-listed.

(d) An adoption agreement has been executed prior to the final decree of adoption.

(e) The child shall not have attained the age of 18, or 21 if it is determined by the local social services department that the child has a mental or physical handicap which warrants continuation of assistance. It shall be noted that subsidy under the state program continues to the age of 21.

(f) The adoptive parents must continue to be legally responsible for the support of the child and the child continues to receive support.

(3) Review

Once eligibility for adoption assistance payments under FCAA is established, annual reviews are necessary. The only issue in these reviews is to verify that the adoptive parents continue to be legally responsible for the support of the child, and that the child continues to receive such support. This is not a review for income eligibility or subsidy change.

b. Placements from 10/1/80 to 4/1/82

(1) Financial and Programmatic - Children who were adopted with subsidy on or after 10/1/80, are eligible to receive FCAA adoption assistance after 4/1/82, providing that, on review, they meet the following financial and programmatic criteria:

(a) Age under 18 or under age 21 if physically or mentally handicapped to the extent that continued subsidy is warranted.

(b) Eligible for AFDC or SSI at the time the adoption petition was filed.

(c) Adopted after October 1, 1980, and was receiving a subsidy on April 1, 1982.

(d) Has been determined to have special needs (see definition on page 21) at the time the adoption petition is filed.

(e) Adoption subsidy agreement entered into and signed prior to finalization of the adoption.

(2) Review - the FCAA adoption assistance cases must be reviewed annually to assure that the parent continues to be legally responsible for the support of the child and the child continues to receive such support.

2. MEDICAL ASSISTANCE

Only those adopted children who meet the requirements of FCAA are automatically eligible for medical assistance and are to be provided with Medicaid coverage. Families of children who are not eligible for FCAA should be advised of the availability of the medical assistance program and given the option to apply for Medicaid if they choose.

Those children determined to be ineligible for medical assistance may qualify to receive a medical subsidy in accordance with Section 454 of the Social Services Law. It is important to note that medical assistance is federally reimbursable while the medical subsidy is not. Therefore, a child shall not receive a medical subsidy unless an eligibility determination for medical assistance has been done, and the child found to be ineligible for MA.

State participation in the cost of medical care furnished to those children who receive the state medical subsidies, should be claimed in accordance with instructions from the Bureau of Local Financial Operations. (Chapter 1064 - Instructions Reimbursement Claim for Child Care Expenditures).

For those children who are receiving cash adoption subsidies outside of the requirements of the FCAA, eligibility for medical assistance is to be determined in accordance with the instructions contained in Administrative Directive 82 ADM-6. That is, the child's eligibility shall be based upon a household size consisting of himself, his adoptive parents as legally responsible relatives and any other family members who may be applying, with all the income and resources of the applicants and responsible relatives, including the adoption subsidy, considered in this determination. Of course, the family is to be given the option of choosing who shall apply for assistance so as to make the choice most beneficial to the family.

When determining medical assistance eligibility only for the child who is adopted by a public assistance family, he is to be considered a household of one, and all of his income/resources, including the adoption subsidy, are to be considered.

3. WMS/MMIS INSTRUCTIONS

At present it is necessary to establish a non-services case to provide medical assistance to adoption assistance individuals in a Service Case.

When children meet Title IV-E criteria, data entry forms DSS 3030 - Registration Worksheet and DSS 3028 - Full Data Entry Worksheet may be used for registration and full data entry of the case. Case Type 20 should be used for children who meet the Title IV-E adoption criteria.

When children do not meet the Title IV-E criteria, full financial determination of eligibility for medical assistance (with federal participation under Title XIX) is necessary. This requires use of the DSS 2921 - Application and DSS 2984 - Eligibility Workbook for registry and full data entry. (These children would be Case Type 20.)

NOTE: Only those children eligible for medical assistance are to be included in the MMIS files and are assigned an MA ID card.

4. SERVICES SYSTEMS INSTRUCTIONS

(a) Case Opening processing - The process for opening a case for adoption assistance depends on whether the case was opened prior to or subsequent to finalization.

(1) Processing a subsidy prior to finalization - The child, as a family (case) of one, would be opened in the Services component of the Welfare Management System. The eligibility of the child will depend upon the foster care status of the child. If the adoptive parents are certified foster parents and the child is Title IV-E eligible, eligibility code 02 (FCAA) should be entered on the Services Application and the corresponding Non-Services case (ADC or MA) should be opened for medical assistance coverage. In this instance, maintenance and administrative costs would be Title IV-E foster care fundable. If the adoptive parents are not certified foster parents or the child is not Title IV-E eligible, the child must have a separate MA Only application processed for determination of eligibility for Title XIX (MA). If the child is MA eligible, open the MA case and encode the Services Application with an eligiblity code of 08 (MA). If the child is not Title XIX eligible, a Services income eligibility determination should be made and if Income Eligible, the Services Application encoded with an eligibility code of 14 - Income Eligible.

Complete case processing with Full Data Entry (FDE), completion of the Services Financial Eligibility Display/Turnaround (SFED/T) authorizing the adoption subsidy as a purchase of service and supervisory review and approval. Each child receiving adoption assistance must be tracked via the CCRS Supplemental Registration process. All appropriate Assessment Service Plans, movement, adoption, and legal activities must be reported.

(b) When the adoption is finalized, the WMS Services case is closed. Use reason code 573 - Adoption Subsidized or code 574 - Adoption Not Subsidized. The corresponding Non-Services case (ADC or MA) must also be closed.

(c) Processing a subsidy subsequent to finalization - the child, as a family of one, would be opened in the Services component of the Welfare Management System using a new case number, the child's adoptive name and a new client identification number.

If the child is Title IV-E eligible, enter 02 as the eligibility code. If Title IV-E eligible, open the Non-Services case (ADC or MA) for medical assistance coverage.

If the child is not Title IV-E eligible, use the appropriate eligibility code.

No CCRS Supplemental Registration is required.

(d) Recertification/Redetermination - Processing for Title IV-E eligible children prior to finalization should be accomplished as described in the services system instructions in section 8, on page 32 of this directive.

Recertification of children subsequent to finalization will be done every six months in the Welfare Management System. In the future, the recertification period will be extended to one year.

(e) Social Services Reporting Requirements - Adoption Assistance reporting of SSRR time for upstate counties and via the Random Moment Study for New York City must be reported to the appropriate activities of Adoption/Casework Counseling - code 01 (Title XX funded) and Adoption Assistance - code 81 (Title IV-E funded). Definitions of these activities can be referenced on pages 23 and 24 of this directive or in the Integrated Services Information Systems (ISIS) Manual, section eleven.

Refer to the Integrated Services Information Systems Manual for specifics on case processing.

VI. EFFECTIVE DATE

This Administrative Directive is effective April 1, 1982.

Joseph Semidei

Joseph Semidei
Deputy Commissioner
Division of Family
and Children Services