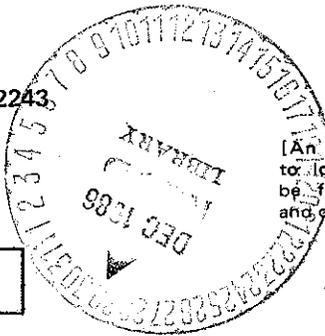


NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



JESAR 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

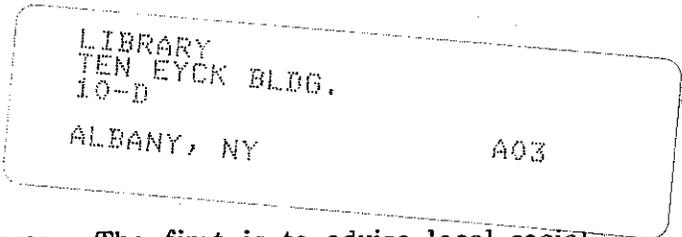
TRANSMITTAL NO.: 86 ADM-48
 (Family & Children's Services)

TO: Commissioners
 SUBJECT: Foster Care/Preventive Services Utilization Review
 DATE: December 26, 1986

SUGGESTED DISTRIBUTION:
 Child Welfare Executives and Staff
 Accounting Executives and Staff
 Child Placement Agencies
 County Youth Boards
 Other Family and Youth Services Agencies
 Foster Care Agencies
 Preventive Services Agencies
 Staff Development Coordinators

CONTACT PERSON:
 Any questions regarding this release should be directed to the appropriate Regional Office Director:

Karen Schimke, Buffalo Regional Office - (716) 883-4091
 John O'Connor, Eastern Regional Office - 1-800-342-3715, ext. 31095
 Fred Cantlo, Metropolitan Regional Office - (212) 488-3484
 Frank Petrus, Western Regional Office - (716) 454-4272



I. PURPOSE

This directive has two purposes. The first is to advise local social services districts that the Department plans to resume the utilization review of foster care and preventive services programs in each local district in accordance with the procedures established by NYCRR Section 430.13. The Department's utilization review activity is scheduled to begin January 1, 1987.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
82 ADM 42 81 ADM 53	76 ADM 100	Part 428 DR 430.8 430.13	SSL 153 398-b 409-b 409-e 409-f 409-h		

DSS-296 V. 8/82

The second purpose is to facilitate agency preparation for utilization review by describing program implications and the required actions that are related to the utilization review policy.

II. BACKGROUND

With the passage of Section 398-b of the Social Services Law (SSL) the Department was required to establish a process for utilization reviews of foster care and preventive services in each local social services district. Since the passage of the law, two utilization reviews have been conducted, one in July 1982 and the second in October of 1984. Because of significant changes in the case recording process resulting from the implementation of revisions in the Uniform Case Record, it was determined by the Department that it was not feasible to conduct another utilization review during 1985. Another factor in delaying the utilization review was certain regulatory changes in 1984 related to case contacts; sufficient time had to be allowed to permit districts to meet the changed requirements before a review was again initiated. It is anticipated that by October, 1986 districts will have had sufficient time to have converted all records to assure that the documentation subject to review is recorded on the new forms.

III. PROGRAM IMPLICATIONS

The statute requires utilization reviews to be performed on the basis of a selected sample of cases to review conformity to regulatory standards. Additionally, in those instances where standards were not met a denial of reimbursement is mandatory. These requirements were, as provided by the statute, promulgated into regulations. The regulations pertaining to procedures are incorporated in the following section.

1. General Procedures

The general procedures governing the conduct of utilization reviews are found in 18 NYCRR Section 430.13(g)(i). This particular section reads as follows:

"(i) The department may review individual case records of children in care or in receipt of preventive services, and may review any other relevant data and information compiled or maintained by the Child Care Review Service, social services districts and authorized agencies from which districts purchase foster care or preventive services, to determine compliance with all or part of the standards specified in sections 430.8-430.12 of this Part. The department shall deny reimbursement in accordance with the provisions of paragraphs (2) and (3) of this subdivision for any case where care or services have been provided in violation of the standards specified in such sections.

(ii) The department shall, in accordance with generally recognized statistical sampling methods, review a sample of individual case records of children in care or in receipt of preventive services to determine whether foster care or

preventive services have been provided in accordance with the standards set forth in sections 430.8-430.12 of this Part. If the department finds, in a portion of the sample cases, that care or services have been provided in violation of such standards, it shall deny reimbursement thereon in accordance with the provisions of paragraphs (2) and (3) of this subdivision."

When conducting the reviews, the department uses as the universe of cases for selecting its sample, district specific caseload data drawn from the Child Care Review Service (CCRS). Since not all districts are reviewed simultaneously, the CCRS monthly tape which is nearest to the district audit initiation date is utilized. The latest case record documentation reviewed is dated 30 days prior to the date of presentation of the sample to the district. This period of time has been established to assure that the case record contains all necessary documentation for the reviews as established by Part 428 of the Department Regulations. For preventive services cases a utilization review will not commence prior to May 1, 1987 to permit New York City to complete loading preventive cases on CCRS.

Because the statute limits the denial of reimbursement to reimbursement under Sections 153 and 409-b of the Social Services Law, children who are adjudicated juvenile delinquents (JDs) and persons in need of supervision (PINS) under a currently effective court order are not subject to review and when identified are eliminated from the sample. Refugee children in foster care will be left in the sample, as Federal policy calls for those cases to be reviewed and reimbursement to be denied for failure to comply with utilization review standards.

2. Denial of Reimbursement

When a case has been found to be in error by not meeting required standards the statute provides that reimbursement for that case must be denied. This requirement is promulgated in 18 NYCRR Section 430.13(g)(2) as follows:

"(2) Denial of reimbursement. The department shall deny reimbursement for any case where care or services have been provided in violation of the standards set forth in sections 430.8-430.12 of this Part, for the time periods during which such violations exist, as specified in subparagraphs (i)-(iii) of this paragraph.

(i) General standard for commencement and termination of sanctions for individual cases. Except as provided in subparagraph (ii) of this paragraph, all violations of the standards set forth in sections 430.8-430.12 of this Part shall be deemed to have occurred 60 days prior to the date of the audit, unless the district provides evidence that the violation occurred at a later date.

Violations of standards specified in sections 430.8-430.12 of this Part, for individual cases reviewed, shall be deemed to continue to exist until the department determines, upon submission of evidence by the district, that appropriate corrective action has occurred pursuant to paragraph (5) of this subdivision.

(ii) Specific standards for commencement of sanction for individual cases.

(a) For those cases where care and services have been provided in violation of section 430.10(b) of this Part, the violation shall be deemed to have occurred 90 days prior to the date of this audit, unless the child remains in care less than 90 days or unless the district can show that the case was out of compliance with such standard for less than the 90-day period.

(b) For cases found out of compliance with section 430.12(c)(3) and (d)(1) of this Part, the date that the violation shall be deemed to have started shall be identified such that the number of days out of compliance is the same percentage of the period covered by the audit as the missing visits or casework contacts are to the number required for a 12-month period according to section 430.12 of this Part. For the purpose of this paragraph, the period covered by the audit shall be 90 days, except for cases found out of compliance with the casework contacts involving the child's parents or relatives for children with a permanency planning goal other than discharge to parents or relatives. In this latter case, the period covered by the audit shall be 60 days.

(c) For cases found out of compliance with section 430.12(c)(2)(i) of this Part, the violation shall be deemed to have occurred 30 days prior to the date of

the audit where an administrator or other person not responsible for the case management or delivery of services did not participate in the service plan review.

(iii) Restoration of reimbursement for individual cases. Notwithstanding paragraph (3) of this subdivision, any sample case remaining out of compliance with the standards specified in sections 430.8-430.12 of this Part shall be denied reimbursement until that particular case is brought into compliance according to paragraph (5) of this subdivision."

3. Extrapolation

In addition to denying reimbursement for individual cases under review found to be out of compliance with the regulatory standards, the statute provides that when there are violations in a portion of the sample in excess of 7.5 percent of the total number of cases in the sample, that portion of the sample in violation which exceeds 7.5 percent shall be attributed to the entire caseload not included in the sample and reimbursement shall be denied on the portion attributed. This requirement is promulgated in department regulation 18 NYCRR 430.13(g)(3) which is as follows.

"(3) Extrapolation to populations. (i) If the department finds that care or services have been provided in violation of the standards set forth in sections 430.8-430.12 of this Part, in a portion of the sampled case records, which portion exceeds 7.5 percent of the entire sample, the department shall attribute that portion of the violation which exceeds 7.5 percent of the entire sample to the entire foster care or preventive services caseload not included in the review, and the department shall deny reimbursement thereon; provided, however, that the sample was chosen in accordance with generally recognized statistical sampling methods. Reimbursement shall be denied under this paragraph for a period equal to the average of the number of days prior to the day of the audit for which violations have been deemed to occur in the sample cases.

(ii) If reimbursement is denied under this paragraph, the social services district may perform such audits of agency records and other reviews as may be appropriate for the

purpose of determining whether such loss of reimbursement may be attributed to another agency in accordance with subdivision (c) of this section."

During the recent utilization review a number of districts raised a question related to the potential for imposition of sanctions under both section 153-d and 398-b of the Social Services Law. This issue has been carefully researched. As a result of our review we find that our practice and interpretation of the law precludes fiscal sanctions from being applied more than once to a case. The following explains our process in applying sanctions for jointly sanctionable cases under Section 153-d and 398-b of the Social Services Law.

On review of Sections 153-d and 398-b of Social Services Law, we find no provision for excluding a case from a sanction because it was sanctioned under the other section. The consequence of failing to meet the respective regulatory standards is that for the periods of non-compliance the State shall not reimburse the local district. Our rule in applying this requirement is rather simple, in that we do not withhold reimbursement twice for the same period. This is accomplished by a cooperative effort between this Division and staff of Audit and Quality Control who review findings to determine those cases sanctioned under the separate regulatory standards and make necessary adjustments to the sanction schedules, assuring that reimbursement is withheld only once for any given period of time.

With respect to the impact of cases sanctionable under Section 153-d against the seven and one half percent in Section 398-b we find that if a case is otherwise sanctionable under our utilization review standards (Section 398-b SSL) then it must apply against the percentage irrespective of Section 153-d. The question is whether or not a case complies with Section 398-b standards when determining whether or not the extrapolation point has or has not been exceeded. We find no basis in Section 398-b to exclude any case from the universe of children in care or to exclude any case which is also sanctionable under Section 153-d from the computation to arrive at the extrapolation percentage.

We find, after review of Section 153-d and Section 398-b standards, that when a case violates either or both, the State must deny reimbursement. Each statute is insular in that the sanction is triggered by a violation of standards specifically attached to that particular statute. The reimbursement to be withheld by the sanction is accomplished by determining the period of non-compliance which is established by 18 NYCRR Sections 430.7 and 430.13, respectively, and to the extent to which they are concurrent, only a single 100% loss of reimbursement is imposed. The standards which control the calculation of the percentage of extrapolation are solely the UR standards based on

the requirements of Section 398-b.

4. Corrective Action

During the conduct of the utilization review certain cases which are sanctioned may be liable for an ongoing sanction until such time as the district takes necessary action to correct the existing situation which led to the sanction. On discovery of a case requiring corrective action, the auditor will verbally advise the district to enable them to initiate corrective action at the earliest practical time to minimize the extent of the time period when the sanction continues. The pertinent regulation governing corrective action (18 NYCRR 430.13(5)) is as follows:

"(5) Corrective Action. (i) General. Cases where care or services have been provided in violation of the standards set forth in sections 430.8-430.12 of this Part, shall have reimbursement restored, in accordance with the provisions of paragraph (2) of this subdivision, at the time of the audit date unless specific corrective action in accordance with subparagraphs (5)(ii)-(v) of this subdivision is required.

(ii) Corrective action for cases in violation of section 430.9 of this Part. For any case in violation of section 430.9 of this Part, reimbursement shall be denied, in accordance with the provisions of paragraph (2) of this subdivision, until the date of corrective action as evidenced by either (a) sufficient documentation existing in the uniform case record to show that the case is no longer in violation of the standards, or (b) mandated preventive services are discontinued for cases found not eligible for such services.

(iii) Corrective action for cases in violation of section 430.10 of this Part. For any case in violation of section 430.10 of this Part, except subdivision (b) of such section, reimbursement shall be denied, in accordance with the provisions of paragraph (2) of this subdivision, until the date of corrective action as evidenced by either (a) sufficient documentation existing in the uniform case record to show that the case is

no longer in violation of the standards, or (b) foster care services are discontinued for cases where the necessity of the child's placement cannot be documented pursuant to section 430.10 of this Part.

(iv) Corrective action for cases in violation of section 430.11 of this Part. For any case in violation of section 430.11 of this Part, reimbursement shall be denied in accordance with the provisions of paragraph (2) of this subdivision, until the date of corrective action as evidenced by either (a) sufficient documentation existing in the uniform case record and, where required, in the child care review service, to show that the case is no longer in violation of the standards, or (b) the local district placing such child into an appropriate foster care setting pursuant to section 430.11 of this Part.

(v) Corrective action for specific diligence of effort standards. (a) For a case to no longer be in violation of section 430.12(e)(1) of this Part, a petition to free a child for adoption must be filed or the child must be freed for adoption. If a petition has been filed later than required by department regulation but prior to the audit date, the case shall be deemed corrected at the time that the petition is filed and would be subject only to retroactive sanctions pursuant to subparagraph (2)(i) of this subdivision.

(b) For any case in violation of the standards set forth in subparagraph (d)(2)(iii), paragraphs (e)(2)-(3), paragraph (f)(1) of this section or section 430.12(g)(1) of this Part, reimbursement shall be denied, in accordance with the provisions of paragraph (2) of this subdivision, until corrective action is affirmed by the department such that:

(1) for a case to no longer be in violation of section 430.12(d)(2)(iii) of this Part, it must be documented in the uniform case record and, where required, in the child care review service, that the child has returned

home, that an exception has been granted by the department or local district commissioner with the advice of a review panel, or that the permanency planning goal has changed;

(2) for a case to no longer be in violation of section 430.12(e)(2) of this Part, it must be documented in the uniform case record and, where required, in the child care review service, that the child has been placed into an adoptive placement, that an exception has been granted by the department or local district commissioner with the advice of a review panel, or that the permanency planning goal has changed;

(3) for a case to no longer be in violation of section 430.12(e)(3) of this Part, it must be documented in the uniform case record and, where required, in the child care review service, that the child's adoption has been finalized, that diligent effort towards working with the adoptive parents toward finalization has occurred, or that a child is moved to another adoptive home;

(4) for a case to no longer be in violation of section 430.12(f)(1) of this Part, it must be documented in the uniform case record that the court has refused, after a hearing, to free the child for adoption, or that the goal of independent living has been approved by the department or local district commissioner with the advice of a review panel, or that the permanency goal has changed, or that the child is placed in a foster home with a relative of the second degree or closer, or is 14 years old or older;

(5) for a case to no longer be in violation of section 430.12(g)(1) of this Part, it must be documented in the uniform case record that alternative permanency goals were considered

before the goal of adult residential care was chosen, and that the Director of Social Services has reviewed and approved the establishment of this goal."

5. Procedures

- (a) A sample of cases will be selected from CCRS.
- (b) An entrance conference will be scheduled with the local district commissioner. A list of the cases to be reviewed by the Department will be provided to this district. Any review involving more than 50 cases will be divided into increments of 50 cases.

A separate schedule shall be maintained for each increment.

- (c) The audit date for the first fifty cases selected by the Department shall be the date of the entrance conference. The audit date for any other case shall be the date the written list containing that case is given to the local district by the Department.
- (d) Within two working days of the relevant audit date, the local district shall retrieve the original, uniform case record for each case identified in the list of cases provided by the Department. The uniform case record shall include the documentation identified at 18 NYCRR Section 428.3(b)(1). Such records shall be made available to the Department for review. By the end of this second day, 80% of such records shall be made available to the Department for review. The remaining 20% of such records shall be made available to the Department by the end of the third day.
- (e) Within ten working days of the relevant audit date, the local district shall retrieve the original supporting documentation and any other documentation available for each case identified in the list of cases provided by the Department. The original supporting documentation shall include the documentation identified at 18 NYCRR 428.3(b)(3) and (4).
- (f) Notwithstanding any other provision to the contrary, documents prepared by the district after the relevant audit date shall not be accepted as evidence of compliance with 18 NYCRR 430.8-12.
- (g) Upon receipt of the written documentation provided by the local district pursuant to paragraphs (d) and (e) herein, the Department's Division of Audit and Quality Control shall review such documentation to determine compliance with 18 NYCRR 430.8-12.

- (h) Any documents not submitted to the Department by the district within ten (10) days of the relevant audit date will be accepted for review up until the date the Department's Audit and Quality Control staff complete their initial review of the cases in the relevant increment.
- (i) The district shall be given oral notice by the Department's Division of Audit and Quality Control, as soon as possible, regarding any case which may be subject to ongoing daily sanctions. Written notice shall be given regarding any case determined to be out of compliance with 18 NYCRR 430.8-12. Within five (5) working days of receipt of such notice, the district may respond to the Department's findings by submitting additional documentation, as identified in paragraphs (d) and (e) of this section.
- (j) At the request of the local district, any case determined to be out of compliance by the Department's Audit and Quality Control staff shall be reviewed by the Department's regional office program staff. Regional office program staff shall issue a final determination regarding any such case.
- (k) After completion of any review done by the Department's regional office staff, any case still determined to be out of compliance with 18 NYCRR 430.8-12 by the Department shall be identified in a written draft report, which shall be issued to the local district and shall set forth the name of any case determined to be out of compliance, the regulatory provision violated and the number of days out of compliance. Where more than one increment of cases was reviewed by the Department, the Department may issue a single draft report combining all of the relevant increments or a separate draft report for each increment.
- (l) Any district wishing to contest the findings set forth in the draft report shall submit a written response to the Department. Such response shall be submitted to the Department no later than thirty (30) working days after the issuance of the draft report. No documentation or response shall be accepted after the expiration of this period.
- (m) Additional documentation submitted to the Department pursuant to paragraphs (h),(i) and (l) herein shall be limited to original records identified at 18 NYCRR 428.3(b). Such records must have pre-existed the relevant audit date. It shall be the burden of the local district to establish that such documents were prepared prior to the relevant audit date.
- (n) Upon expiration of the thirty (30) day response period, the Department shall review any additional documentation

submitted by the district and shall issue a final report. No further documentation shall be accepted after issuance of the final report.

- (o) Any district wishing to dispute the findings set forth in the final report will have sixty (60) days to request a hearing pursuant to 18 NYCRR 430.13(a). Hearing requests shall be in writing and shall specifically identify each case and the reasons why such case is considered to be in compliance with 18 NYCRR 430.8-12.

B. Findings

Once the review of all case records has been completed an exit conference with the local district commissioner will be held at a mutually convenient time by Audit and Quality Control staff. If, after this exit conference, it has been found that the district disputes the findings on a specific case(s) the case(s) will be submitted to the appropriate regional office of the Division of Family and Children Services for review prior to preparation of the draft audit report. The review by the Regional Office will be concluded within thirty days of receipt of the case. In order to accomplish the review Audit staff will submit its findings and the local district may submit documentation; provided it was in the case record by the conclusion of the review of the cases in the increment including the case in question, they believe was not reviewed or inadvertently omitted at the time of the review to the Regional Office.

The findings of the Regional Office will be transmitted to Audit and Quality Control staff for incorporation as appropriate in the draft audit report. On receipt of the draft audit report the district has thirty days in which to respond by commenting on the draft report.

At the close of the thirty day comment period all comments received will be considered and as appropriate included in the final audit report. On the expiration of the comment period no further comments furnished by the district will be considered in determining whether or not a case is sanctionable. Districts which continue to believe that all issues have not been resolved regarding a particular sanction(s) may within 60 days of the final audit report, request a fair hearing in accordance with 18 NYCRR Section 430.13(a) which follows:

"430.13 Procedures relating to utilization review. (a) Expenditures by a social services district for the care and maintenance of a child outside his own home, and the administration thereof, and for the provision of preventive services and

the administration thereof, shall not be subject to reimbursement by the State, pursuant to section 153 or 409-b of the Social Services Law, when the provision of such care or services violates the standards set forth in sections 430.9-430.12 of this Part. The reviews by which the department determines whether a district is in compliance with these regulations may be either scheduled or unscheduled.

(b) A determination by the department denying reimbursement to a social services district for the provision of foster care or preventive services pursuant to the provisions of this section shall not relieve such district, or any agency from which the district has purchased foster care or preventive services, from its statutory or contractual obligations to continue to provide such care or services for the child or other children in its care or for the child and his family in receipt of such services.

(c) All social services districts which purchase foster care or preventive services from other agencies are required to charge any loss of reimbursement pursuant to this section to such agencies, to the extent that such loss is attributable to such agencies, except that loss allocable to local district administrative costs may not be charged. Every agreement by a social services district to purchase foster care or preventive services from another agency shall be deemed to include the provisions of this subdivision.

(d) A social services district aggrieved by the denial of State reimbursement pursuant to this section is entitled to a fair hearing to appeal such denial. Such fair hearing must be requested within 60 days of the date the written notice that reimbursement will be denied is sent.

(e) Any authorized agency aggrieved by the determination of a social services district to charge loss of reimbursement pursuant to subdivision (c) of this section is entitled to a fair hearing to appeal such

determination. Such fair hearing must be requested within 60 days of the date the written notice that loss of reimbursement will be charged to such authorized agency is sent.

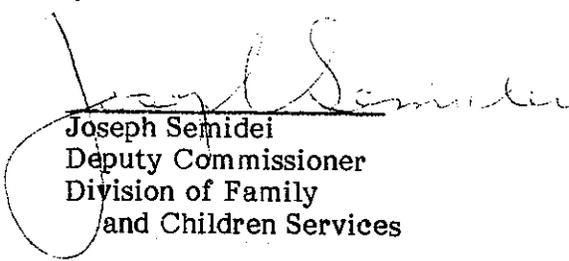
(f) The department shall conduct fair hearings required by this section in accordance with section 22 of the Social Services Law and article 3 of the State Administrative Procedure Act."

IV. REQUIRED ACTION

On receipt of this Administrative Directive, districts should take necessary steps to ensure that case records as required by Department Regulation Part 428 are maintained on a contemporaneous basis. For the purpose of utilization review contemporaneous documentation is any that documentation prepared by the case worker pursuant to 18 NYCRR Section 428.3 prior to the audit date. This period is considered sufficiently long enough to ensure that required activities subject to review are completed and documented in the case record.

V. EFFECTIVE DATE

This directive is effective on December 31, 1986.


Joseph Semidei
Deputy Commissioner
Division of Family
and Children Services