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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 91 LCM-97

Date: May 28, 1991

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 352.3(d)
Filed Regulation 352.33(a)(e)
Filed Regulation Part 408
Filed Regulation 442.17

ATTACHMENTS: Attachment I - 352.3(d) (available on-line)
Attachment II - 352.33(a)(e) (available on-line)
Attachment III - Part 408 (available on-line)
Attachment IV - 442.17 (available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 352.3(d) relating to section 8 housing.
The final rule - Filed: 5/21/91 - Effective: 10/1/91.

18 NYCRR 352.33(a)(e) relating to the deeming of sponsor's income and resources.
The final rule - Filed: 5/20/91 - Effective: 6/5/91.

18 NYCRR Part 408 relating to the per diem for residential domestic violence programs.
The final rule - Filed: 5/20/91 - Effective: 6/5/91.

18 NYCRR 442.17 relating to the increase capacity of mother/baby facilities.
The final rule - Filed: 5/22/91 - Effective: 6/12/91.

Michael J. McNaughton
Director, Local District
Policy Communications

Subdivision (d) of section 352.3 is amended to read as follows:

(d)(1) Public housing projects. An allowance for rent [shall] must be made for recipients who are tenants of city, State or federally aided public housing projects in accordance with the following schedule except when a modified allowance is approved by the department for a specific housing authority:

Apartment size	Monthly rent
"0" Bedrooms	\$ 65
1 Bedroom	77
2 Bedrooms	90
3 Bedrooms	101
4 Bedrooms	107
5 Bedrooms	110

When recipients of public assistance are residing with an SSI tenant of record or a non-legally responsible, [a nonpublic] non-public assistance tenant of record, the rent allowance [shall be] is the above rent schedule or modified rent schedule for the number of persons who are recipients of public assistance. However, for any household for which the amount of rent is determined by a federally aided housing authority as a percentage of either gross or adjusted gross

income, the applicable shelter allowance [shall be] is the amount so calculated up to the maximum allowance for the given household size found in subdivision (a) of this section.

(2)(i) Section 236 Rental Assistance Program, Section 8 Housing Vouchers, Section 8 Housing Program (non-certificate). The rent allowance for tenants of housing subsidized under the Section 236 Rental Assistance Program or the Section 8 Housing Assistance Payments Program, except as provided in clause (ii) of this paragraph, is the amount of rent actually paid (exclusive of the subsidy) but not more than the amount in the applicable schedule in subdivisions (a) and (b) of this section.

(ii) Section 8 Existing Housing Program (certificate). The rent and fuel for heating allowance for recipients whose housing payments of rent are subsidized under the Section 8 Existing Housing Program who hold a certificate of family participation is the amount in the applicable schedule in clause (iii) or clause (iv) of this paragraph. Such amount will not be adjusted in accordance with the actual cost of shelter and utilities. Subdivisions (a) and (b) of this section and subdivision (a) of section 352.5 do not apply; provided, however, that allowances hereunder may not exceed the applicable amount under subdivision (a) of this section. Shelter and fuel allowances pursuant to this subdivision are not subject to proration under section 352.32(e)(2)(ii) of this Part unless the members of each assistance unit in the household reside together as a single economic unit subject to

proration of the basic monthly allowance, the home energy allowance and the supplemental home energy allowance under section 352(e)(2)(i) of this Part. Any amounts by which the rental obligation of the tenant is reduced below the amounts in the applicable schedule in clause (iii) or clause (iv) of this paragraph as an allowance for payment of utilities and any amounts remitted to the tenant or to a vendor for payment of utilities as a result of participation in the section 8 program are deemed to be an actual payment for housing by the tenant for the purposes of this clause. No such utility allowance or reimbursement constitutes income for purposes of determining eligibility for or the amount of public assistance.

(iii)

LOCAL AGENCY MAXIMUM MONTHLY SECTION 8

RENT ALLOWANCES

By Family Size

(No recipient having earned income which is or may be exempt under Section 352.19 of this Part)

Number of Children under 18	Number of Persons Receiving Assistance in Household								
	1	2	3	4	5	6	7	8	Each Additional Person
0	\$59	\$94	\$125	\$161	\$198	\$229	\$260	\$291	\$31
1	\$42	\$77	\$108	\$144	\$181	\$212	\$243	\$274	
2		\$60	\$91	\$127	\$164	\$195	\$226	\$257	
3			\$74	\$110	\$147	\$178	\$209	\$240	
4				\$93	\$130	\$161	\$192	\$223	
5					\$113	\$144	\$175	\$206	
6						\$127	\$158	\$189	
7							\$141	\$172	
								\$155	

For each additional dependent child in the household under the age of 18 years, subtract \$17.

(iv)

LOCAL AGENCY MAXIMUM MONTHLY SECTION 8

RENT ALLOWANCES

By Family Size

(At least one recipient having earned income
subject to disregard as a work expense)

Number of Child- ren under 18	Number of Persons Receiving Assistance in Household								
	1	2	3	4	5	6	7	8	Each Additional Person
0	\$98	\$133	\$164	\$200	\$237	\$268	\$299	\$330	\$31
1	\$81	\$116	\$147	\$183	\$220	\$251	\$282	\$313	
2		\$99	\$130	\$166	\$203	\$234	\$265	\$296	
3			\$113	\$149	\$186	\$217	\$248	\$279	
4				\$132	\$169	\$200	\$231	\$262	
5					\$152	\$183	\$214	\$245	
6						\$166	\$197	\$228	
7							\$180	\$211	
								\$194	

For each additional dependent child in the household under the age of 18 years, subtract \$17.

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

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), 131(1), and 355(3) of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services do hereby amend subdivisions (a) and (e) of Section 352.33 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective immediately upon filing with the Secretary of State.

Dated: May 17, 1991

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on May 17, 1991 amending subdivisions (a) and (e) of Section 352.33 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on December 12, 1990

Dated: May 17, 1991

Signed: _____

Commissioner

Subdivisions (a) and (e) of section 352.33 are hereby amended to read as follows:

(a) For all sponsored aliens applying for public assistance on or after October 1, 1981, the earned and unearned income and resources of a sponsor and the sponsor's spouse, if living with the sponsor, [shall] must be deemed to be the unearned income and resources of the sponsored alien for three years following [such] the alien's entry for permanent residence into the United States, except for those aliens exempted under section 349.3(b) of this Title when the sponsor or sponsor's spouse are receiving ADC, HR or SSI.

(e) Any individual who is an alien, and whose sponsor was a public or private agency, [shall be] is ineligible for public assistance during the period of three years after the alien's entry for permanent residence into the United States, unless [such] the sponsor either no longer exists or has become unable to meet [such] the alien's needs. A sponsoring agency [shall] will be presumed capable of meeting the alien's needs unless it submits to the [local] social services district an affidavit to the contrary based upon the fact that the sponsoring agency has no funds budgeted or funds otherwise free and available for such purpose. The [local] social services district [shall] must maintain a copy of the affidavit in the case record.

A new Part 408 is added to read as follows:

Part 408

STANDARDS FOR ESTABLISHING
PER DIEM RATES AND SOCIAL SERVICES
DISTRICT PAYMENT RESPONSIBILITY
FOR RESIDENTIAL PROGRAMS FOR
VICTIMS OF DOMESTIC VIOLENCE

Section 408.1 Scope

Section 408.2 Definitions

Section 408.3 Availability of a residential program for victims of domestic violence

Section 408.4 Program eligibility

Section 408.5 Financial eligibility

Section 408.6 Length of stay in a residential program for victims of domestic violence

Section 408.7 Establishing per diem rates for residential programs for victims of domestic violence

Section 408.8 Contract requirements

Section 408.1 Scope. The provisions of this Part apply to per diem rates payable by social services districts to residential programs for victims of domestic violence, as defined in Parts 452-455 of this Title.

Section 408.2 Definitions. The following definitions apply to this Part:

(a) Alternative housing means a transitional service program as defined in 408.2(h) of this Part or permanent housing that reasonably assures the victims' safety.

(b) Approved per diem rate means a daily rate of reimbursement established by a social services district for a residential program for victims of domestic violence located in that district. This rate will be payable by such district and any other social services district whenever a victim of domestic violence who is eligible for public assistance and care receives temporary shelter, emergency services and care at such a program. An approved per diem rate must be based upon the reasonable operational expenses of the residential program and must be reviewed and approved by the department as part of the social services multi-year services plan and annual implementation report approval process.

(c) Domestic violence safe dwelling means a self-contained residence which is owned, leased, rented or otherwise under the direct control and supervision of a domestic violence program sponsoring agency; meets the daily living needs of the residents; has a capacity of nine or fewer persons including adults and children; is secured as specified in section 455.8 of this Title; has been designated by the domestic violence program sponsoring agency to provide temporary shelter exclusively to victims of domestic violence; and has been approved by a domestic violence

program sponsoring agency pursuant to the standards contained in Part 455 of this Title.

(d) Established rate means the daily rate of reimbursement a social services district negotiates with a residential program pursuant to section 131-u(2) of the Social Services Law.

(e) Resident means any victim of domestic violence, as defined in 408.2(i) of this Part, who receives temporary shelter, emergency services and care in a residential program.

(f) Residential program for victims of domestic violence means any residential program approved by the department and operated by a not-for-profit organization for the purpose of providing temporary shelter, emergency services and care to victims of domestic violence. Residential programs include:

(1) domestic violence shelters which are congregate residential facilities with a capacity of 10 or more persons, including adults and children, organized for the exclusive purpose of providing temporary shelter and emergency services and care to victims of domestic violence and their minor children, if any. Domestic violence shelters are approved by the department in accordance with Parts 452 and 453 of this Title;

(2) domestic violence programs which are facilities which would meet the definition of domestic violence shelters, except that victims of domestic violence and their minor children, if any, constitute less than 100 percent but at least 70 percent of the clientele of such programs. The

remaining 30 percent of the clientele of such programs may only consist of persons who will not be disruptive of the provision of services and will not jeopardize the safety and well-being of the residents. Domestic violence programs are approved by the department in accordance with Parts 452 and 453 of this Title;

(3) safe home networks which are organized networks of private homes offering temporary shelter and emergency services to victims of domestic violence and their minor children, if any, and are coordinated by a not-for-profit organization and approved by the department in accordance with Parts 452 and 454 of this Title; and

(4) domestic violence program sponsoring agencies which are not-for-profit organizations offering temporary shelter at a domestic violence safe dwelling and emergency services and care to victims of domestic violence and their minor children, if any. Domestic violence program sponsoring agencies are approved by the department in accordance with Parts 452 and 455 of this Title.

(g) Safe home means a self-contained private residence which is owned, leased, rented, or otherwise under the direct control of a single person or family or two or more unrelated persons which has been approved by a safe home network for the purpose of providing temporary shelter to victims of domestic violence and their minor children, if any.

(h) A transitional service program is temporary housing for victims of domestic violence which provides:

(1) an independent living arrangement in a congregate facility or a self-contained unit with a length of stay requirement of more than 90 consecutive days; and

(2) housing assistance and other support services designed to prepare residents for permanent housing.

(i) Victim of domestic violence means any person 16 years of age or older, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of an act which would constitute a violation of the Penal Law, including, but not limited to acts constituting disorderly conduct, harassment, menacing, reckless endangerment, kidnapping, assault, attempted assault, or attempted murder; and

(1) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and

(2) such act or acts are, or are alleged to have been, committed by a family or household member.

(j) For purposes of subdivision (i) of this section, "Family or household members" means the following individuals:

(1) persons related by blood or marriage;

(2) persons legally married to one another;

(3) persons formerly married to one another regardless of whether they still reside in the same household;

(4) persons who have a child in common regardless of whether such persons are married or have lived together at any time;

(5) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; or

(6) unrelated persons who have had intimate or continuous social contact with one another and have access to one another's household.

Section 408.3 Availability of a residential program for victims of domestic violence.

(a) A social services district must offer and provide temporary shelter and emergency services and care at a residential program, to the extent such programs are available, to victims of domestic violence deemed eligible pursuant to sections 408.4 and 408.5 of this Part.

(b) A residential program for victims of domestic violence is available under the following circumstances:

(1) when a victim of domestic violence goes directly to any residential program located within the State, regardless of whether there is a contract between the social services district and the residential program pursuant to section 408.8 of this Part;

(2) when a victim of domestic violence goes to any residential program located within the State by transportation arranged or provided by the residential program, regardless of whether there is a contract between the social services district and the residential program; or

(3) when a victim of domestic violence goes directly to a social services district seeking temporary shelter and:

(i) there is a residential program within that social services district which has a bed or beds available; or

(ii) there is a residential program in a contiguous social services district which has a bed or beds available; or

(iii) when there is no residential program for victims of domestic violence in a contiguous social services district, a social services district must consider as available the residential program located closest to that district; or

(iv) when there is a residential program for victims of domestic violence available within the social services district in which the victim was residing at the time of the domestic violence incident and in a contiguous social services district, the victim may seek temporary shelter at the residential program located within the district or in the contiguous district.

(c) When a victim of domestic violence goes directly to a social services district seeking temporary shelter and, pursuant

to paragraph (3) of subdivision (b) of this section, a bed in a residential program is not available, the social services district must offer and provide such victim with another form of emergency shelter and assistance. When a bed in a residential program becomes available, the social services district must offer and arrange for a referral to such residential program to any victim who continues to be programmatically and financially eligible for a residential program.

Section 408.4 Program eligibility. (a) General requirements. (1) Persons will be eligible for admission to a residential program for victims of domestic violence when:

- (i) such person is seeking temporary shelter; and
- (ii) such person is a victim of domestic violence.

(2) A former resident of a residential program will be eligible for re-admission to a residential program if such person meets the requirements specified in subparagraph (1) of this subdivision as a result of the occurrence of a new domestic violence incident after the victim had departed from the previous residential program.

(b) Method of determining eligibility pursuant to 408.4 of this Part.

(1)(i) A person will be deemed eligible for admission to a residential program for victims of domestic violence when such person provides information that he or she is a victim of domestic violence as defined by section 408.2(i) of this Part and is seeking temporary shelter, emergency services and care. The

person may provide verbal or documentary information to establish such eligibility. Once information establishing that the person is a victim of domestic violence and is seeking temporary shelter, emergency services and care is provided as required in this subparagraph, the social service district may not require the provision of any additional information for the purpose of determining eligibility.

(ii) When a person goes directly to a residential program, the residential program will be responsible for determining the person's initial eligibility.

(iii) When a person goes directly to a social services district, the district will be responsible for determining a person's initial eligibility or for referring the person to a residential program for an eligibility determination.

(2) Persons deemed eligible for admission to a residential program must also meet any additional admission criteria established by the residential program.

(c) Notification of eligibility determinations.

(1) When a residential program makes a determination that a person is eligible for admission and admits such person into the program, it must provide notice by telephone of such admission to the social services district where the person resided at the time of the domestic violence incident if such person is in receipt of public assistance or planning to apply for public

assistance while residing in the residential program for victims of domestic violence. Such notice must be given on or before the first working day following admission. If the residential program is not located in the social services district in which the domestic violence occurred, the person may submit his or her application for public assistance and care to the district in which the program is located. In such a case, notice by telephone of admission must also be given to the social services district in which the residential program is located on or before the first working day following such admission.

(2) Each social services district must designate a representative to receive notice of admissions made by residential programs pursuant to paragraph (1) of this subdivision and to serve as the liaison to the residential programs on any payment or program issues relating to the admission of eligible persons.

(3) When a social services district receives notice that a person who is a victim of domestic violence for whom it is financially responsible pursuant to section 408.5 of this Part has been admitted into a program located in another social services district, the social services district in which the domestic violence incident occurred must inform the person of any bed available in a residential program located within such district,

regardless of whether a contract exists between such district and the residential program. The person may choose whether or not to return to the social services district in which the domestic violence incident occurred in order to obtain services from a residential program within that district.

Section 408.5 Financial eligibility. (a) General requirements.

(1) In order for a social services district to be financially responsible for payment to a residential program for victims of domestic violence, a person must be eligible for admission to such program pursuant to section 408.4 of this Part. Such person also must be financially eligible for public assistance and care under one of the following programs:

(i) emergency assistance to needy families, pursuant to section 350-j of the Social Services Law;

(ii) aid to dependent children, pursuant to section 349 of the Social Services Law;

(iii) home relief, pursuant to sections 157 and 158 of the Social Services Law; or

(iv) any other form of public assistance and care pursuant to sections 131 and 131-a of the Social Services Law.

(2) The social services district in which the victim of domestic violence was residing at the time of the

domestic violence incident will be responsible for determining financial eligibility pursuant to paragraph (1) of this subdivision and for the cost of temporary shelter, emergency services and care.

(b) Application process to determine financial eligibility for public assistance and care.

(1) (i) Persons who are eligible pursuant to 408.4 of this Part for admission to a residential program for victims of domestic violence and wish to have their financial eligibility for public assistance and care determined must make an application for public assistance and care pursuant to Part 350 of this Title. Eligibility will be determined pursuant to Parts 351, 352 and 369 or 370 or 372 of this Title.

(ii) If a victim of domestic violence is in a residential program located in a social services district other than the one in which he or she resided at the time of the domestic violence incident, he or she may apply for public assistance and care in the social services district in which the residential program is located. The social services district to which such application is submitted must forward the completed application, within five days of its receipt, to the district in which the victim resided at the time of the domestic violence incident.

(2) Persons who are receiving public assistance pursuant to subdivision (a) of this section at the time of entry into a

residential program for victims of domestic violence must notify the social services district providing such assistance of their change in circumstances and request an additional allowance to pay for the cost of temporary shelter, emergency services and care at the residential program.

Section 408.6 Length of stay in a residential program for victims of domestic violence.

(a) General requirements. A resident's authorized length of stay at a residential program for victims of domestic violence and continuing eligibility must be based upon the individual safety and service needs of the resident or the resident's children and, with the exception of those provisions contained in subdivision (d)(1) of this section, may not exceed 90 consecutive days in one or more residential programs for victims of domestic violence.

(b) Method of determining length of stay.

(1) For eligible residents, the length of stay will be authorized as follows:

(i) if there is no contract between the residential program and the social services district financially responsible for the resident at the time of admission, a resident's length of stay will be authorized for a period of up to 90 days depending upon the length of stay requirements of the particular residential program. Subsequent to such authorization, the residential program will be responsible for assessing the resident's continuing eligibility for admission pursuant to the standards set forth in this subdivision.

(ii) if there is a contract between the social services district and the residential program pursuant to section 408.8 of this Part, the length of stay may be authorized for a period of up to 90 days. If length of stay is authorized for 90 days, the resident's continuing eligibility will be determined by the residential program. If the length of stay is authorized for a period of less than 90 days, the resident's eligibility will be re-determined before the end of such period by the social services district. The district must consult with the residential program in making this re-determination. In either case, continuing eligibility within the 90 day period will be determined pursuant to the standards set forth in this subdivision.

(2) Continuing eligibility must be assessed pursuant to the following standards:

(i) the resident must continue to be in need of temporary shelter, emergency services and care provided directly by the residential program pursuant to sections 453.4, 454.7 or 455.6 of this Title because alternative housing, as defined in section 408.2(a) of this Part, is not available;

(ii) the resident must continue to meet the admission criteria of the residential program pursuant to section 452.9(a) and, where applicable, sections 454.6 and 455.5 of this Title, and

(iii) the resident must continue to abide by the rules of the residential program.

(3) When there is no contract between the residential program and the social services district financially responsible for a resident, a residential program which limits a resident's length of stay to a period of less than 90 days must notify the district of this limitation at the time of admission of the resident. When a resident continues to be in need of a residential program beyond the stay permitted by the residential program, the program must notify the district that the resident needs a referral to another residential program. The district will be responsible for approving the resident's referral to another residential program, to the extent there is such a program within the district that has a bed or beds available or there is a residential program available in a contiguous social services district.

(c) Assessment of service needs.

(1) General requirements. (i) During the period of stay at a residential program, each resident's need for temporary shelter, emergency services and care, including the individual safety and service needs of a resident and the resident's children must be assessed at regular intervals to ensure the provision of necessary and appropriate services to a resident and his/her children. At a minimum, such assessment must include an evaluation of the need for services provided directly by a residential program and any services provided directly by a social services district. Unless there is a

contract between the residential program and the district pursuant to section 408.8 of this Part, the social services district financially responsible for the resident will determine the procedures for conducting such assessments.

(ii) To ensure that a resident's temporary shelter, emergency services and care needs assessment identifies all the service needs of the resident and his/her children, including those services offered and provided directly by a social services district, a residential program must provide the social services district financially responsible for the resident with relevant information concerning the resident's temporary shelter, emergency services and care.

(2) Frequency of assessments. The frequency at which a resident's temporary shelter, emergency services and care needs must be assessed by a residential program must be determined by the social services district financially responsible for the resident, unless there is a contract between such district and the residential program, in which case the frequency will be determined pursuant to the terms of the contract.

(d) Extension. A resident's length of stay may be extended for up to 45 days beyond the maximum 90 day period if neither the resident, the social services district nor the residential program is able to secure alternative housing, as defined in section 408.2(a) of this Part, for the resident and such housing is necessary.

(1) The periods within which notification of the need of an extension must be given and the responsibility for locating alternative housing may be determined pursuant to a contract authorized under section 408.8 of this Part. Where there is no contract between the residential program and the social services district, the residential program must notify the social services district financially responsible for the resident on or before the 75th day of residence that the resident's length of stay will be extended for up to 45 days. Notice may be given after the 75th day only if emergency circumstances made the need for such an extension unforeseeable before the 75th day. In such a case, notice of the extension must be given immediately. Whenever a resident's length of stay is extended, the social services district financially responsible for the resident must assist the resident in obtaining alternative housing before the close of the extension period.

(2) When a resident is unable to secure alternative housing and is deemed eligible to remain in the residential program for an additional 45 days, the social services district financially responsible for the resident must pay the per diem rate for the residential program for the period of such extension.

Section 408.7 Establishing per diem rates for residential programs for victims of domestic violence.

(a) General requirements. (1) A social services district must establish a per diem rate of reimbursement for each

residential program for victims of domestic violence located within the social services district. This rate will apply to any social services district financially responsible for a victim of domestic violence residing in the program. The per diem rate of reimbursement must be:

(i) based upon the reasonable operating expenses of the residential program including the costs of complying with the standards set forth in Parts 452-455 of this Title; and

(ii) reviewed and approved by the department as part of the social services multi-year services plan and annual implementation report approval process.

(2)(i) A social services district must establish a per diem rate of reimbursement for each residential program for victims of domestic violence located within such district at the time such program is issued an operating certificate. When a social services district receives notification from a residential program located within such district that such program has submitted an application for an operating certificate to the department, the social services district must request from the program the information necessary to establish a per diem rate. Upon request, the department must provide the social services district with information regarding the status of the application for an operating certificate.

(ii) On an annual basis and in accordance with subdivision (b) of this section, a social services district must evaluate and,

where appropriate, modify the per diem rate of reimbursement for any residential program located within such district. When establishing the per diem rate of reimbursement, the social services district must use a methodology based upon either historically-based program operating expenses or program operating expense budget projections.

(iii) A social services district must begin rate negotiations regarding the per diem rate of reimbursement for a residential program located within the district when such program provides written notification documenting that the program cannot comply with the applicable provisions of Parts 452, 453, 454 and 455 of this Title due to the occurrence of an unforeseeable catastrophic circumstance, such as the failure of heating or plumbing equipment and that the residential program is unable to reverse or correct the circumstance without an increased per diem rate. The social services district must redetermine the per diem rate within 30 days of receipt of the notification.

(b) Rate approval process.

(1) Each per diem rate of reimbursement for a residential program for victims of domestic violence established pursuant to subdivision (a) of this section must be included in the social services district's consolidated services plan and is subject to the requirements set forth in section 34-a of the Social Services Law. Disapproval of a per diem rate of reimbursement will apply only to the domestic violence

services component of the district's consolidated services plan and will not render the entire plan invalid.

(2)(i) For purposes of establishing a per diem rate, the fiscal year for a residential program located in a social services district outside of New York City is January 1 - December 31 and July 1 - June 30 for a residential program located in New York City. By July 1st of each year, a residential program must submit to the social services district in which the program is located its tax return for the prior fiscal year or an audit report for such year prepared by a certified public accountant. Program-specific expenditures must be submitted on the forms prescribed by the department. When a residential program has been in operation for less than six months and a tax return or audit report is not available, the program may submit projected program costs.

(ii) Each year, as part of the consolidated services planning process, a per diem rate of reimbursement for each residential program located in the social services district as well as the rate justification documentation must be submitted by the district to the department for review and approval.

(iii) Notwithstanding subparagraph (i) of this paragraph, if a new per diem rate of reimbursement is established after October 1st because a new residential program becomes licensed or catastrophic circumstances occur causing an increase in costs for a licensed program, the social services district must submit a consolidated services plan amendment or annual

implementation report to the department for review and approval. Such amendment must be submitted at the time the new per diem rate of reimbursement is established.

(3) Upon receiving the rate component of the consolidated services plan, or an amendment to the consolidated services plan affecting such per diem rates, the department will review the rates and will either approve or disapprove each rate based upon the criteria set forth in subdivision (c) of this section. The department must provide written notification to the social services district of such approval or disapproval. A notice of disapproval must indicate the reasons the per diem rates of reimbursement were disapproved and must include suggested methods for correcting the deficiencies. In addition, the department must notify the residential program that the established per diem rate has been disapproved.

(4) Within 30 days of receiving a notice of disapproval, a social services district must submit a revised rate in accordance with the suggested methods for correcting the deficiencies. During this period, the district must consult with the department if it does not concur with the suggested methods for correcting the deficiencies.

(5) When a revised rate is approved by the department pursuant to this Part, the revised rate will be effective retroactive to the beginning of the residential program's fiscal year.

(6) Prior to approval of the revised rate by the department, residential programs will continue to receive the current reimbursement rate established by the social services district.

(c) Rate methodology.

(1) An approved per diem rate payable to a residential program for victims of domestic violence must be reasonable.

(2) Only the following items, as described in forms and instructions provided by the department, are allowable costs for purposes of determining an approved per diem rate:

(i) Salary expenses:

(a) Administrative

(b) Program/Support

(c) Maintenance

(ii) Fringe benefits and payroll taxes:

(a) Social Security

(b) Insurance - Life/Health

(c) Pension and Retirement

(d) Workers' Compensation/Unemployment/NYS Disability

(e) Vacation accruals

(iii) Property expenditures

(a) Rental leases (including furnishings, equipment and vehicles)

(b) Utilities

(c) Supplies and equipment

(d) Repair and maintenance of plant, equipment and vehicles

- (e) Use charges (depreciation of capital expenditures)
- (f) Taxes
- (iv) Management expenditures
 - (a) Telephone
 - (b) Postage
 - (c) Dues/Licenses/Permits
 - (d) Office supplies
 - (e) Subscriptions/Publications
 - (f) Conference expenses
 - (g) Administrative expenses
 - (h) Staff development
 - (i) Publicity
 - (j) Audit/Legal and Advisory fees
 - (k) Insurance
 - (l) Interest expenses
 - (m) Charges from parent organization
- (v) Other
 - (a) Transportation and staff expenses
 - (b) Recreational and social activities for children
 - (c) Purchase of services
 - (d) Food
 - (e) Clothing
 - (f) Bedding/linen

(3) The approved per diem rate must take into account occupancy rates for both public assistance recipients and non-public assistance recipients.

(4) The following revenues from other funding sources must be included when determining an approved per diem rate:

(i) government grants including department maintenance grants awarded to a residential program pursuant to Article 6-A of the Social Services Law; and

(ii) private funding designated for any of the allowable per diem costs.

(5) Optional services provided pursuant to Parts 454 and 455 of this Title and staffing levels which exceed the minimum standards set forth in Parts 453, 454 and 455 of this Title may be included in the calculations when determining an approved per diem rate.

(6)(i) The reasonableness of the allowable costs will be determined by the department which will take into account factors including, but not limited to:

(a) a comparison of costs incurred by similar programs; and

(b) an evaluation of historical program operating costs incurred by the program.

(ii) The reasonableness of property costs will be limited as follows:

(a) Related party transactions. Actual costs for rentals of land, building and equipment and other personal property owned or controlled by organizations or persons affiliated with the residential program or owned or controlled by members, directors, trustees, officers or other key personnel of such residential program or their families either directly or

through corporations, trusts or other similar arrangements in which they hold more than 10 percent interest in such land, building and equipment or an interest valued at \$1,000 or more, whichever is less, are allowable only to the extent that such costs do not exceed the costs the residential program would have incurred had legal title to the rented items or facilities been vested in it.

(b) Actual charges in the nature of rent between or among organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance and maintenance; provided that no part of such costs duplicate any other allowed costs.

(c) Non-related party transaction. Rental costs of land, building and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area; the type, life expectancy, condition and value of the facilities leased; options available; and other provisions of the rental agreement. Applications of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the costs which the residential program would have incurred had it owned the facilities.

(d) Sales/leaseback transactions. Rental costs specified in a sale and leaseback agreement incurred by a residential program by selling facilities to an investment organization,

such as an insurance company, associate institution or private investor and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the costs which the residential program would have incurred had it retained legal title to the facilities.

Section 408.8 Contract requirements. (a) Separate and apart from the social services district's responsibility to establish per diem rates of reimbursement pursuant to section 408.7 of this Part, the district must negotiate and enter into a contract with at least one residential program located within the district or within a contiguous district. In addition to any contract with a residential program with a length of stay policy of less than 30 days (safe home networks), the social services district must also negotiate and enter into a contract with a residential program with a length of stay policy of 30 days or more (domestic violence shelters, domestic violence programs, and/or domestic violence sponsoring agencies), to the extent there is such a residential program for victims of domestic violence located within the social services district or within a contiguous social services district. Contract negotiations must be carried out in good faith. Any contract entered into by a social services district and a residential program may not abrogate the obligation of the social services district to offer and provide temporary shelter, emergency services and care to victims of domestic violence pursuant to Section 408.3 of this Part.

(b) Each contract between a social services district and a residential program must:

- (1) remain in effect for no more than 12 months;
- (2) include all the terms of the contract in one instrument, be dated and executed by an authorized representative of each party to the contract prior to the date of implementation;
- (3) have a definite effective and termination date; and
- (4) specify the following:
 - (i) the approved per diem rate established by the district in which the residential program is located pursuant to subdivision (a) of section 408.7 of this Part;
 - (ii) whether, at the time of the initial determination of eligibility, victims of domestic violence will be authorized to stay for either 90 days or a period of less than 90 days; if the length of stay is initially authorized for a period of less than 90 days, the intervals at which eligibility will be redetermined must be specified in the contract, pursuant to Section 408.6(b) of this Part;
 - (iii) the frequency of the assessments of need for temporary shelter, emergency services and care and the responsibility of the social services district and the residential program to conduct such

assessments, pursuant to section 408.6(c) of this Part; and

(iv) the time frames within which a residential program must notify a social services district of an extension of a resident's stay beyond the 90 day maximum length of stay and the responsibility of the district and the residential program to assist such resident in securing alternative housing, pursuant to section 408.6(d) of this Part.

(c) The terms of such contract will only apply to those residents who meet the financial eligibility provisions of section 408.5 of this Part.

(d) The terms of such contract cannot require disclosure of identifying information regarding safe home providers, including the information specified in section 454.11(b) of this Title, or on-site access by social services districts or their agents to a safe home. However, nothing herein precludes a local child protective service from having access to a safe home or other residential program for victims of domestic violence pursuant to section 452.10 of this Title to investigate a report of suspected child abuse or maltreatment involving a safe home provider or a resident of a safe home named as a subject of the report.

(e) When a not-for-profit organization, as defined in section 452.2(b) of this Title, operates more than one residential program for victims of domestic violence, a social services district may enter into one contract with such not-for-profit organization

rather than entering into a separate contract with each of the residential programs. However, such contract must specify a separate per diem rate established in accordance with the requirements of subdivision (a) of section 408.7 of this Part for each such residential program.

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), and 462 of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby add subdivision (g) to section 442.17 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective upon publication of the Notice of Adoption in the New York State Register.

Dated: May 20, 1991

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on May 22, 1991 adding subdivision (g) to 18 NYCRR 442.17 of the Official Regulations of the State Department of Social Services, the express terms of which were published in the New York State Register on December 12, 1990

Dated: May 20, 1991

Signed: _____

Commissioner

Subdivision (g) is added to Section 442.17 to read as follows:

(g) Increased capacity. (1) If a facility wishes to provide care and maintenance to more than 10 mothers and 10 babies of such mothers, the facility must first submit a written request for an increase in capacity to the appropriate office of the department, and receive the department's written approval.

(2) Approval of such a request is subject to both an assessment of the need for the mother and baby facility to care for additional residents and the ability of the facility to maintain the health and safety standards set forth in this section and to meet such other requirements of this section and this Part which the department deems appropriate.