

**§443.1 and §443.7 of Part 443 is amended to read as follows:**

**§443.1 Definitions**

**(a) Authorized agency.**

The term *authorized agency* refers to an entity defined in paragraphs (a) and (b) of subdivision 10 of section 371 of the Social Services Law.

**(b) Certificate.**

A certificate to board permits an individual to receive remuneration from an authorized agency for the care and board of a child under the age of 18 years, or under the age of 21 years if a student attending a school, college or university, or regularly attending a course of vocational or technical training designed to fit him/her for gainful employment, and who entered foster care prior to his/her 18th birthday. Such a certificate may be issued by the public or private authorized agency purchasing such care.

**(c) [Reserved]**

**(d)** A *letter of approval* or *approval* permits a relative [within the second or third degree of the parent(s) or stepparent(s)] of a foster child as defined in subdivision (h) of this section, to receive remuneration from an authorized agency for the care and board of a child under the age of 18 years, or under the age of 21 years if a student attending a school, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment, and who entered foster care prior to his/her 18th birthday. Such a letter of approval shall be issued by the local commissioner of social services or by an authorized agency, only if the home has been approved by the authorized agency as required by this Part.

**(e) Foster family home care.**

*Foster family home care* is temporary or long-term care of a child whose care and custody or guardianship and custody have been transferred to an authorized agency pursuant to the provisions of section 383-c, 384 or 384-a of the Social Services Law or who has been placed with a social services official pursuant to article 3, 7, 10, 10-B or 10-C of the Family Court Act and who is cared for away from his or her home 24 hours a day in a family home with a foster parent duly certified or approved by an authorized agency, or certified or approved by a social services commissioner.

**(f) Approved home.**

An *approved home* is a home in which temporary or long-term care is provided to a child whose care and custody or guardianship and custody have been transferred to an authorized agency pursuant to the provisions of section 383-c, 384 or 384-a of the Social Services Law or who has been placed with a social services official pursuant to article 3, 7, 10, 10-B or 10-C of the Family Court Act and who is cared for 24 hours a day in a family home with a foster parent who is a relative [within the second or third degree to the parent(s) or stepparent(s) of the child] as defined in subdivision (h) of this section and who is duly approved by an authorized agency as required by this Part.

**(g) Approved emergency relative foster home.**

An *approved emergency relative foster home* is a home in which foster care is provided to a child placed with an authorized agency who is cared for 24 hours a day in a family home with a foster parent who is a relative [within the second or third degree to the parent(s) or stepparent(s) of the child] as defined in subdivision (i) of this section and which is duly approved by an authorized agency in accordance with section 443.7 of this Part.

**[(h) Certified emergency foster home.**

A *certified emergency foster home* is a home in which foster care is provided to a child placed with an authorized agency who is cared for 24 hours a day in a family home with a foster parent who is either a relative other than one who is within the second or third degree to the parent(s) or stepparent(s) of the child or is a nonrelative with a significant prior relationship with the child's family and which is duly certified by an authorized agency in accordance with section 443.7 of this Part.]

**[(i) Relative within the second or third degree.**

A *relative within the second or third degree* to the parent(s) or stepparent(s) of a child refers to those relatives who are related to the parent(s) or stepparent(s) through blood or marriage either in the first, second or third degree in the kinship line. A relative within the second or third degree of a parent includes the following:

- (1) grandparents of the child;
- (2) great-grandparents of the child;
- (3) aunts and uncles of the child, including the spouses of the aunts or uncles;
- (4) siblings of the child;
- (5) great-aunts and great-uncles of the child, including the spouses of the great-aunts or great-uncles;
- (6) first cousins of the child, including the spouses of the first cousins;
- (7) great-great grandparents of the child; and
- (8) an unrelated person where placement with such person allows half siblings to remain together in an approved foster home, and the parents or stepparents of one of the half siblings is related to such person in the second or third degree.]

**(h) Relative.**

For the purposes of this part, a *relative* is an (1) adult who is related to the parent(s) or stepparent(s) of a child through blood, marriage or adoption to any degree of kinship; (2) an adult with a positive relationship to the child or child's family including but not limited to a child's godparent, neighbor, family friend; or (3) an unrelated person where placement with such person allows half -siblings to remain together in an approved foster home, and the parents or stepparents of one of the half -siblings is a relative of such person.

**[(j)]** *Foster family boarding home* means a residence owned, leased or otherwise under the control of a single person or family who has been certified or approved by an authorized agency to care for no more than six children, including all children under the age of 13 whether or not they are received for board except that up to two additional children may be cared for only if such children are siblings, or are siblings of a child living in the home, or are children freed for adoption and placed for adoption with the person(s) who have been certified or approved as foster parents. Such a home may exceed these limits only to receive for board a child or children returning to that foster family boarding home pursuant to section 443.6 of this Part.

### **§443.7 Agency procedures for approving potential emergency relative foster homes**

**(a)** [A potential foster home or] [t]The home of a relative as defined in 443.1(h) of this Part of a foster child may be [certified or] approved as an emergency foster home under the following allowable circumstances:

(1) Allowable circumstances:

(i) a child is removed from his or her own home pursuant to section 1021, 1022, 1024, or 1027 of the Family Court Act or a child is removed and placed into foster care pursuant to article 3, 7, 10, 10-B or 10-C of the Family Court Act section 384-a of the Social Services Law; or

(ii) a child currently placed in a foster care setting needs to be placed in a foster home and the social services district documents within the uniform case record a compelling reason why such home needs to be [certified or] approved on an emergency basis;

(2) [an eligible] The relative [or non-relative], identified in section 443.1 [(g) and] (h) of this Part, is identified by the child, child's parent(s) or stepparent(s), the court, a representative of the local district or other interested party, as potentially appropriate to provide foster care to the child or such [person or] relative volunteers to provide foster care to the child. [For the purposes of this section, an *eligible non-relative* may include, but is not limited to, a child's godparent, neighbor, family friend, or an adult with a positive relationship with the child.]

**(b)** Before placing a foster child with a [potential caretaker] relative [or eligible relative] on an emergency basis the authorized agency must:

(1) secure a signed and dated statement from the [potential caretaker or eligible] relative indicating the exact relationship to the child and the child's parent(s), that the [potential caretaker or eligible] relative is willing to provide foster care for the child and an assurance that the [potential caretaker or eligible] relative understands that the child is in the legal custody of the commissioner of social services and that by accepting responsibility for providing foster care for the child, [potential caretaker or eligible] the relative agrees to comply with foster care requirements, including, but not limited to those involving the role and authority of the [certifying or] approving authorized agency and the social services district with legal custody of the child to supervise the placement.

(2) perform a home study of the [potential caretaker's or eligible] relative's home and family on an expedited basis which assesses the [potential care taker's or eligible] relative's home to ensure that there is no apparent risk to the health and safety of the child;

(3) perform a home study of the [potential caretaker's or eligible] relative's home and family on an expedited basis which assesses the [potential care taker's or eligible] relative's family, focusing on the following factors:

(i) the family's relationship with the child and the child's parent(s) or step-parent(s);

(ii) the care provided to other children in the home by the [potential caretaker or eligible] relative;

(iii) the [potential caretaker's or eligible] relative's knowledge of the circumstances and conditions that led to the need for the child's foster care placement;

(iv) the past role of the [potential caretaker or eligible] relative in helping and/or protecting the child from and/or preventing occurrences of abuse or maltreatment of the child; and

(v) the present ability of the [potential caretaker or eligible] relative to protect the child placed in its home from abuse or maltreatment and the [potential caretaker's or eligible] relative's ability to understand the need to protect the child from abuse or maltreatment;

(4) explain to the [potential caretaker or eligible] relative the agency's role and authority to supervise the placement;

(5) obtain information necessary to contact character references pursuant to this Part; and

(6) review agency records to determine whether or not the [potential caretaker(s) or eligible] relative(s) have a prior history of abuse or maltreatment.

**(c)** If the home is found suitable after the requirements of subdivision (b) of this section have been completed, it will be [certified or] approved as an [emergency foster home or an] emergency relative foster home for 90 days from the date of placement of the child in the home.

**(d)** The [potential caretaker or eligible] relative must execute an agreement with the authorized agency within seven days of placement that provides that the [potential caretaker or eligible] relative will comply with provisions of this Part.

**(e)** Within seven days of placement, the authorized agency must obtain:

(1) a completed Statewide Central Register database check form, and submit such form to the Office of Children and Family Services pursuant to section 424-a of the Social Services Law and section 443.2(b)(7) and (8) of this Part;

(2) if the applicant or other person 18 years of age or older who resides in the home of the applicant resided in another state at any time during the five years preceding the emergency approval [or emergency certification] issued pursuant to this section, the documentation necessary to enable the agency to request child abuse and maltreatment information maintained in the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence; and

(3) a completed form to check the register of substantiated Category 1 cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs, and submit such form to the Justice Center for the Protection of People with Special Needs pursuant to section 495 of the Social Services Law and section 443.2(b)(7) and (8) of this Part.

**(f)** On the date of the foster child's placement in the [certified or] approved emergency relative foster home or within one business day thereof, the authorized agency must provide a sufficient number of blank fingerprint cards for the foster parent(s) and each person over the age of 18 currently residing in such home and a description of how the completed fingerprint cards will be used upon submission to the authorized agency by the foster parent(s). The foster parent(s) must submit the completed fingerprint cards to the authorized agency no later than two weeks following receipt of such cards for the purpose of a criminal history record check performed by both the Division of Criminal Justice Services and the Federal Bureau of Investigation.

**(g)** Emergency [foster homes and emergency] relative foster homes [certified or] approved on an expedited emergency basis for 90 days, may continue to provide foster care beyond the 90th day of placement if [they are finally] final [certified or] approv[ed] al was given on or before the end of the 90th day or if the provisions of subdivision (h) of this section apply. For an emergency relative foster home to receive final [certification or] approval, all requirements for [certification or] approval as a foster home as set forth in this Part must be met within 90 days from the date of placement.

**(h) Continued placement.**

(1) An emergency relative foster home [certified or] approved on an emergency expedited basis for 90 days in accordance with this section may continue to provide foster care beyond the 90th day of [certification or] approval as an emergency relative foster home when the foster parent has otherwise satisfied all of the requirements for final [certification or] approval as an [certified or] approved foster home except for the completion of the Statewide Central Register of Child Abuse or Maltreatment database check process in accordance with section 443.2 of this Part, or

the completion of the process to check the Justice Center's register of substantiated Category 1 cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs in accordance with section 443.2 of this Part, or the completion of the criminal history record check process in accordance with section 443.8 of this Part where the [certified emergency foster parent or] approved emergency relative foster parent has otherwise complied with the requirements of subdivisions (e) and (f) of this section.

(2) Such [certified emergency foster parent or] approved emergency relative foster parent may continue to provide foster care until the completion of the Statewide Central Register of Child Abuse and Maltreatment check process as set forth in section 443.2 of the Part, the check of the Justice Center's register of substantiated Category 1 cases of abuse or neglect as set forth in section 443.2 of this Part and the criminal history record check process as set forth in section 443.8 of this Part or unless the [certification or] approval is otherwise revoked by the authorized agency for cause in accordance with this Part.

(3) Upon receipt of the result(s) of the Statewide Central Register of Child Abuse and Maltreatment and the criminal history record check(s) from the Office of Children and Family Services and the check of the register of substantiated Category 1 cases of abuse or neglect from the Justice Center for the Protection of People with Special Needs, the authorized agency must make a decision whether to grant final[ly] [certify or] approval of such emergency foster parent within 60 days of the receipt of such results. If, once the Statewide Central Register of Child Abuse and Maltreatment database check process, the Justice Center's register of substantiated Category 1 cases of abuse or neglect check process, and criminal history record check process are completed, and the authorized agency determines that the home should continue to be [certified or] approved, a final [certification or] approval must be issued for the home.

**(i) Failure to meet the requirements for [certification or] approval of the foster home.**

Except as set forth in this section, if the emergency relative foster parent(s) [or the relative foster parent(s)] fails to meet all requirements for approval pursuant to this Part within 90 days from the date of placement, the authorized agency must:

(1) provide notice to the relative foster parents [or relative foster parent(s)] within the first 90 days of placement if such requirement(s) for [certification or] approval as a foster home have not been or cannot be met. For any continuation of placement as described in subdivision (h) of this section, s[S]uch notice must be provided no later than 20 days prior to the expiration date of the [emergency certification or approval] continuation of placement and must identify the particular problem(s) that constitute a barrier to [certification or] approval as a foster home;

(2) revoke a foster parent(s) [or a relative foster parent(s) certification or] approval pursuant to section 443.12 of this Part if all requirements for approval are not met within the first 90 days from the date of placement;

(3) upon revocation of an approval [or certification], remove the child from the home of the [relative or] relative foster parent, place such child in a suitable certified foster home or an approved relative foster home, and inform the relative of the right to request a hearing in accordance with the provisions of section 400 of the Social Services Law; and

(4) remove the child from the home of the [foster parent or] relative pursuant to section 400 of the Social Services Law and section 443.5 of this Part when health and safety risks to the child warrant such removal and place the child in a suitable certified foster home or an approved relative foster home. At the time the child is removed from the home, the [relative or caretaker] relative foster parent must be informed of the right to request a fair hearing in accordance with the provisions of section 400 of the Social Services Law.