

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
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 Acting 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.: 82 ADM-42
 [Services]

TO: Commissioners

SUBJECT: Utilization Review

DATE: July 20, 1982

SUGGESTED DISTRIBUTION: Child Welfare Executives and Staff
 Accounting Executives and Staff
 Child Placement Agencies
 County Youth Boards
 Other Family and Youth Services Agencies

CONTACT PERSON: All inquiries regarding this Directive should be directed to Gerry Magnes at 1-800-342-3715, extension 131-5011 or Michael Marks at 1-800-342-3715, extension 4-9579.

- I. Purpose: The purpose of this Directive is to advise district and agency staff of the standards that are to be used in the Department's Utilization Reviews for foster care and preventive services cases after April 1, 1982.
- II. Background: Section 398-b of Social Services Law, enacted as part of the Child Welfare Reform Act, mandated the State Department of Social Services to establish standards which would be used to determine the answers to four questions for any given foster care or preventive services case. These questions are:
 - Whether preventive services have been provided in accordance with Department regulations;
 - Whether the placement of a child in foster care is necessary;
 - Whether the types or level of a child's foster care placement is appropriate; and
 - Whether diligent efforts have been exercised toward the discharge from care of the child.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
76-ADM-100 81-ADM-53		Part 428 Sections 430.8- 430.13	SSL 153 SSL 398-b SSL 409-b SSL 409-e SSL 409-f SSL 409-h		Chapter 611 of the Laws of 1979

DSS-296 (Rev. 5/78)

While these questions have often been asked in the course of making casework decisions, no standards have previously been available which would insure statewide uniformity in application. Because of the complexity of the task and the desire to extract input from authorities in child welfare as well as to minimize disruption, the Department chose to implement these provisions of the law in a phased, incremental way. During the State Fiscal Year 1981-82, rather elemental standards have been in effect, standards that were designed primarily to support the full implementation of the Uniform Case Record. Now that the Uniform Case Record and most of the other new initiatives of the Child Welfare Reform Act are operating, the Department is implementing new utilization review standards, which will provide one of the major forces for a reduction in the foster care caseload through the elimination of inappropriate placements and will assist in the delivery of necessary services to children in need.

In approaching the development of these standards, a number of procedural constraints had to be reconciled with the basic principles guiding the Department's supervision of foster care and preventive services. These constraints and principles can be seen in the following table:

<u>Procedural Constraints</u>	<u>Department Principles</u>
o Feasibility of Enforcement	o Sustaining Family Relationships
o Minimum Burden on Caseworkers	o Protection of Each Child's Interest for Sound and Permanent Relationships
o Avoidance of Labeling	o Provision of Appropriate Services

The following discussion elaborates first on the constraints and then on the principles and the way in which the standards reflect the interaction of the two.

A. Procedural Constraints

1. Feasibility of Enforcement: Another way in which the express this constraint would be to speak of measurability or objectivity. There should be as little room as possible for disagreement as to whether any given case is or is not in compliance with each standard. On the procedural side the statute establishes a right to a fair hearing for any district or agency aggrieved by the imposition of a sanction for non-compliance, and if there are genuine grounds for dispute about whether a particular case is in compliance with one or another standard, the standard cannot be enforced. On the programmatic side it is to be expected that the standards will be used as intake criteria for foster care placements, but lack of clarity in the standards may cause different judgements to be made at intake than are made by those auditing for compliance. The bottom line, therefore, is that every standard must be sufficiently clear that a caseworker can determine unambiguously whether or not his decision conforms to the standard.

2. Minimum Burden on Caseworkers: In part this constraint is satisfied by the development of clear, objective standards. On the other hand, any standard requires documentation and that by itself imposes some burden on the worker. In effect, what this constraint imposes is the necessity of requiring no more recording than is already required by the combination of the case planning requirements of the Uniform Case Record and the documentation necessary for the worker to show that he is carrying out the activities required of him.
3. Avoidance of Labeling: Quite obviously, one of the criteria that will be included in the standards will relate simply to consistency. Given a particular problem or type of problem, certain types of services must be planned and delivered. The focal point here is the problem that has caused or threatens to cause the child's placement. The minimum burden would be placed on the caseworker, if a particular, well-defined physical, mental, or emotional problem could be cited as a reason for placement and/or a reason for placement at a particular level of care. Yet this could reduce case recording to a matter of pigeon-holing children and their parents which is merely another way of ignoring individual differences and unique service needs.

From a different perspective this constraint also implies that the standards should not be so rigid that cases in need cannot be served through the normal casework channels. Excluding children from foster care who, due to peculiar circumstances, actually need foster care, provides an incentive to seek court placements, thus skirting some utilization review standards. Court placements bring with them a labeling of either the child as a JD or PINS or of the parent as abusive or neglectful.

B. Department Principles

1. Sustaining Family Relationships: This is the Department's highest priority in providing services to families and children. This priority means that the preferred service alternative is always one which permits the family members to remain together, unless this would result in harm to the children in the family. It also reaffirms the Department's commitment to providing the services necessary to strengthen family relationships so that more children can remain with their families in a healthy, nurturing environment. The utilization review standards express this principle by requiring that preventive services be offered to the family before any placement is considered, except in situations in which the danger to the child is so serious and so imminent, that immediate removal from the home is necessary.

Efforts to sustain the family relationship do not stop, however, when the child is removed from the home and placed in foster care. The fact that the home is not presently an adequate environment for the child does not mean that the child can no longer benefit from close contact with his parents and/or siblings. The standards express this idea in terms of the proximity of the child's placement to his home, in terms of the frequency with which visits between the child and his parents should take place, and in terms of the criteria for placing siblings together in foster care.

2. Protection of each child's interests for sound and permanent relationships:

This principle is similar to the previous one, but it covers a broader range of situations. Promoting the child's interests for long-term relationships includes fostering relationships which lie outside the family. Consideration must be given to continuity for the child with his religion, his ethnic group, his neighborhood, and his school when the decision to place the child is made. Even prior to placement, efforts must be made to place the child with relatives or family friends, so that the child's environment remains as stable as possible.

This principle also expresses a strong commitment to improving the use of adoption services, so that children who cannot return to their homes can benefit from the care, stability, and intimacy of a new family. Specific standards define when a decision must be made that a child should be freed for adoption, when the efforts to free the child should be completed, and how soon thereafter a home should be found for the child.

3. Provision of Appropriate Services: This principle is perhaps the most difficult of all to implement because its implications are so broad. From one perspective it implies that every child should be placed in a setting that provides the maximum continuity with the child's familial life style simply because the setting itself has a significant impact on the child's functioning and preparation to return to his family. From a practical standpoint, however, the less structured and less restrictive family settings often provide fewer services to the child, and it is absolutely essential that children with special physical, mental or emotional needs receive the services that will address those needs.

The standards focus on this principle in a variety of ways. The principal ways can be stated in the following manner:

- a) There must be an overall consistency in the delivery of the services. Service needs identified in the assessment which have led to a foster care placement or which threaten to lead to such a placement must be addressed by the services plan, and the services which are planned must be delivered.
- b) Placement in a setting other than a foster family home may occur only when the need for a number of specialized services has been identified and when these cannot be provided in a foster home. If the placement is solely a result of the parents' behavior or inability to provide the normal care given by parents to their children, the placement must be in a foster family home.
- c) The younger the child, the more stringent are the standards that must be met to justify placement outside a foster family home. Likewise, the more restrictive the placement, the more stringent are the standards for justifying the placement, regardless of the age of the child.
- d) The services which must be provided to children in foster care must not only relate to the service needs when the child came into care, but also to the permanency goal for that child. These are most likely to be different in cases where return to the parents is not feasible. Included in these standards are the actions which must be taken to assist children whose permanency goal is either discharge to own responsibility or discharge to adult residential care. Previously, no standards existed in this area.

III. Program Implications

Before describing each of the individual standards, a general point needs to be made that has to do with the relationship between utilization review standards and casework standards. Clearly, the two overlap in a large number of ways, and, just as clearly, they cannot be permitted to contradict one another. On the other hand, the two types of standards are not identical. Casework decision-making is based on professional judgments on individual cases, while utilization review demands a set of uniform standards which must be measurable. The standards that are presented here, therefore, are minimal standards in many ways. They leave certain decisions to the caseworker, even though in most cases a particular choice would clearly be preferred. The standard does not always mandate the preferred decision because for some cases a different approach may be more appropriate. In what follows, a determined effort is made to distinguish between those decisions which are covered by the standards and those that have been left to the discretion of the caseworker.

A. Appropriate Provision of Preventive Services

One of the goals in the design of the Uniform Case Record was the development of an instrument which would be used for making program choices, i.e., for combining intake for the various services. This is particularly appropriate for foster care and preventive services, since these two services are designed to serve much the same population. The standards that are outlined here reflect this overlap by showing almost identical standards for the appropriate provision of mandated preventive services and for the necessity of placement in foster care. All of the standards on preventive services deal with eligibility for mandated preventive services. The provision of non-mandated preventive services is a district option, and these cases will not be subject to utilization review. In large part this is merely an acknowledgement that far more families can be included in the non-mandated population than in the mandated population, according to the statutory definitions. The fact that no utilization review of the non-mandated cases will take place does not, however, relieve the districts of the responsibility for doing case planning for these families. The case management reviews under section 153-d of Social Services Law will continue to monitor compliance with the Uniform Case Record requirements.

Two further points should be made here, First, although the standards are written as eligibility standards and therefore often appear exclusionary, it should be emphasized that preventive services are mandated for clients eligible under these standards. This will become clearer in the section on necessity of placement when the standard is discussed which requires the provision of preventive services before foster care placement occurs. Those eligible should therefore, be identical with those served, except where the client refuses services.

The second point has to do with the nature of the change in the eligibility rules for mandated preventive services that these standards represent. During the current year the eligibility rules have required a prediction that the child would enter care within 60 days if not provided with preventive services or that the child could leave care within 90 days if given preventive services. Both of those judgments are insufficiently measurable to serve as the basis for a utilization review standard. Therefore the standards below will be used for

determining eligibility for mandated preventive services, and new regulations for preventive services will be published in the near future which will reflect this change.

The utilization review standards for preventive services are divided into several parts. These are:

- 1) general requirements,
- 2) standard for the provision of mandated preventive services to clients at risk of placement,
- 3) standard for the provision of mandated preventive services to clients at risk of re-placement in foster care,
- 4) standard for the provision of mandated preventive services to return children to their parents,
- 5) court orders, and
- 6) standard for the recertification of mandated preventive services.

Parts 2), 3) and 4) deal only with the initial decision to provide a family with preventive services. The standard for recertification covers all cases in which continuing eligibility is determined.

1) General Requirements

The general requirements are relatively simple. The major one is that all documentation must be done on the Uniform Case Record. For each eligibility standard there is a documentation requirement that states where the documentation is to be found which justifies the classification of this case as a mandated preventive services case. In general, the particular form chosen for each standard would seem to be the most logical place for the documentation. It is, however, clear that different workers may have somewhat different styles in filling out the case record, and therefore provision is made for variations. If the worker has given the same information elsewhere in the case record, the only thing required for documentation of the standard on that form that is specified is a cross-reference. For instance, if abuse of a child as a reason for placement is to be documented in the Assessment Summary, but the worker has already provided documentation of the abuse in the Assessment History, the worker need only fill out the Assessment Summary in the way he/she would normally do and add a cross-reference for utilization review purposes which points to the Assessment History.

While such a system may not be a perfect method for providing for documentation, it is necessary to have an identifiable place for the reviewers to look for the appropriate evidence of compliance with the standard. Without documentation the reviewer must assume that the standard has not been met. After all reviews there will be an opportunity

for the district to show that appropriate documentation was present in the record, even though not in the prescribed place and not cross-referenced. Because the eligibility standards and the utilization review standards are identical, experience in doing intake according to these standards may ultimately lead to an automatic documentation in the places specified by the standards, so that cross-references will become less frequent. There is, however, no requirement in the regulations for this to occur.

The other general requirement is simply that, although there are a variety of circumstances in which any case can be eligible for mandated preventive services, the regulations require that only one of these be documented for utilization review purposes. If a child has been abused and is in danger of further abuse and his parents are also trying to place him in foster care, one may document either the abuse and the danger of further abuse or the parents' unwillingness to maintain the child in the home. Naturally, good casework practice would require that both conditions be documented, and this will be particularly important for determining which services should be provided to the family. Utilization review, however, will only try to determine whether any one qualifying standard or circumstance has been met.

2) Standard for the Provision of Mandated Preventive Services to Clients at Risk of Placement

The standard itself, as defined in the regulations, states that preventive services are mandated "when such services are essential to improve family relationships and prevent the placement of a child into foster care". If the services are not provided to prevent the child's placement, they do not qualify as mandated preventive services.

Stated only in the above way, application of the standard would clearly be subjective and could be subject to debate with respect to any individual case. Therefore, six circumstances have been defined in regulation in which preventive services shall be considered essential for the purposes of improving family relationships and preventing foster care placement. These six are defined and explained below.

a) Health and Safety of the Child

The regulation on this standard reads as follows:

Circumstances: One or more children in the family has been subjected by the parents or caretakers within the twelve month period prior to the date of application for services to serious physical injury by other than accidental means, or to the risk of serious physical injury by other than accidental means, or to a serious impairment or risk of serious impairment of their physical, mental, or emotional condition as a result of the failure of the parents or caretakers to exercise a minimum degree of care.

Documentation: The first Assessment Summary required after the date of authorization for preventive services shall describe, in the section designed to describe risk to the child, instances within the twelve months immediately prior to the date on which the program choice "Preventive" is chosen when the child has been harmed emotionally or physically. The record shall describe the type of harm which has resulted or shall indicate that at the time of application for service, conditions existed which placed the child or siblings in danger of serious emotional or physical harm and describe the type of physical or emotional harm which would have been likely to result from these conditions.

The language of this standard was drawn substantially from the Family Court Act's definitions of abuse and neglect. Clearly, one of the primary target groups for preventive services is the group of children who have been abused or neglected. On the other hand, preventive services are designed to prevent foster care placement and the majority of the children who have been the victims of abuse and neglect are not at risk of foster care. Therefore, documentation that abuse or neglect has occurred is not sufficient by itself to justify either the foster care placement or the provision of mandated preventive services. What must also be shown is that there is a current risk of further serious harm to the child. When such risk is present, the risk of foster care placement may be assumed. The occurrence of abuse or neglect within the twelve months prior to application is understood here to be part, but not all, of the substantiation required to show the current risk to the child. The other factors which lead the worker to believe that the abuse or neglect may continue and is likely to be serious should be documented, as well.

It may be helpful to understand why the legal language defining abuse and neglect was used, but the words themselves were omitted, as were all references to reports and indications. The main concern here was with confidentiality. Because children in imminent danger are often at risk of placement before indication occurs, it was not feasible to require indication as part of the documentation. On the other hand, requiring that a pre-indicated report be part of the documentation would seriously violate the family's confidentiality rights by placing that documentation in the foster care case record. Therefore, what must be documented here is the past harm and the current risk to the child. However, it should be stressed that the omission of references to reports in this standard does not relieve the caseworker of the responsibility to ensure that a report has been made to the State Central Register.

b) Parental Refusal

The regulatory language for this standard is straightforward.

Circumstance: The parents or caretakers have refused to maintain the child in the home or have expressed the intention of surrendering the child for adoption.

Documentation: The first Assessment Summary required after the date of authorization for preventive services shall describe, in the section designated to describe risk to the child, the actions taken by the parents or caretakers which indicate a refusal to maintain the child in the home or shall describe the date and circumstances of the parents' or caretakers' verbal refusal or expression of intent to surrender the child.

What is intended here is clearly not a situation in which a parent makes an off-hand remark about giving the child up. Again, there must be a genuine risk of foster care placement. If the parents have locked the child out of the house on occasion so as to pose a danger to the child, that is clearly a refusal to maintain the child in the home. Likewise, if the parents bring the child to the district office in order to place the child in foster care or surrender him for adoption, this is also a reason to provide mandated preventive services. Essentially, mandated preventive services are appropriate for this type of case, if foster care is one of the reasonable program choices.

On the other side of the issue, if placement is being considered for a child because of a parental refusal, preventive services must be offered before placement occurs, and these services must be provided, unless the parents refuse them. As will be discussed further in the section on the necessity of placement, a foster care placement made due to a parental refusal will be considered unnecessary if preventive services have not been provided prior to the placement.

c) Parent Unavailability

The regulations define four broad circumstances in which this standard will apply.

Circumstance: The child's parents or current caretakers have become unavailable due to

- (a) hospitalization, or
- (b) arrest, detainment or imprisonment, or
- (c) death, or
- (d) the fact that their whereabouts are unknown.

Documentation: The first Assessment Summary required after the date of authorization for preventive services shall describe, in the section designated to describe risk to the child, the reason for the parents' or caretakers' absence if the parents or caretakers are living and their whereabouts known. In the event of the death of the parents or caretakers or in cases in which their whereabouts are unknown, the section of the Assessment Summary designated to describe the family's ability to

benefit from preventive services shall indicate the likelihood of finding a new permanent caretaker or the previous caretaker and an estimated time in which that will be accomplished.

This standard should require little explanation. It may, however, appear strange to offer preventive services to cases in which the parents have died or disappeared. Nevertheless, there are services available which could help to prevent foster care placements even in these cases. Provision of a 24-hour homemaker or other in-home caretaker may prevent foster care long enough to find a relative or family friend willing to take the child on a permanent basis. It may also be possible, with a variety of supportive services, to find a relative who will care for the child for a brief time until a more permanent arrangement can be made. The ultimate goal for children in these situations, as in other foster care related situations, is to find a permanent home, and if that can be done without first removing the child from the people and surroundings with which he is most familiar, a major gain will have been accomplished.

d) Parent Service Need

Many of the cases falling under this standard may be similar to cases of neglect. The difference is that in these cases there is some identifiable condition of the parent that is resulting in the risk to the child. The regulatory language reads as follows:

Circumstance: The child is placed at risk of serious physical or emotional harm due to an emotional, mental, physical, or financial condition of the parent or caretaker which seriously impairs the parent's or caretaker's ability to care for the child.

Documentation: The first Assessment Summary required after the date of authorization for preventive services shall describe, in the section designated to describe risk to the child, the type of emotional, physical, or mental condition which is impairing the parent's functioning, the functions which are impaired, and instances in which the impairment has seriously harmed the child emotionally or physically or has placed the child in danger of such harm; or the first Assessment Summary shall describe in the same section what financial needs, including a lack of adequate housing, impairs the parents' or caretakers' ability to care for the child adequately and what specific risk to the child exists, if such needs are not met.

There are two parts to this standard. First, it must be shown that the parent has some condition which impairs his/her ability to care for the child. This may include alcoholism, drug abuse, mental illness, or any other physical, mental, or emotional impairment which hinders the person's ability to parent. The existence of such a condition, however, is not sufficient to establish the need for mandated preventive services. The second thing that must be shown is that the child is placed at risk of serious physical or emotional harm due to the parent's condition. As with the previous standards, mandated preventive services is only appropriate if the problem is sufficiently serious that foster care would be a reasonable program choice at the present time or in the immediate future.

e) Child Service Needs

The regulatory language for this standard encompasses a variety of situations.

Circumstance: The child has special needs for supervision or services which cannot be adequately met by the child's parents or caretakers without the aid of intensive services and this results in the child being at risk of foster care placement without such services. This need for services is the result of one of the following:

- (1) the child has a diagnosed or diagnosable physical, mental, or emotional condition which severely impairs the child's ability to carry out daily, age appropriate activities, or
- (2) the child's behavior, although not dangerous, results in severe management problems in the home, the school, or the community, or
- (3) the child's behavior presents a serious danger to other people or to the child himself.

Documentation: The first Assessment Summary required after the date of authorization for preventive services shall show the services which are to be provided to the child and/or other family members which will prevent the child's placement in foster care and assist in alleviating the behavior or condition or assist the parents or caretakers in dealing with the child's behavior or condition. In addition, such Assessment Summary shall, in the section designated to describe risk to the child,

- (1) describe behavior patterns or limitations which illustrate a serious impairment of the child's ability to carry out everyday activities at an age appropriate level. A diagnosis by a licensed psychiatrist or psychologist, including a permanently certified school psychologist, or by a certified social worker other than the case manager or case planner shall be deemed appropriate documentation for this subparagraph, or
- (2) describe repeated instances of behavior within the twelve months immediately prior to the date on which the program choice "Preventive" is chosen in which the child has exhibited behaviors leading to severe management problems in the home, school, or community, or
- (3) describe instances within the twelve months immediately prior to the date on which the program choice "Preventive" is chosen in which the child has intentionally harmed or attempted to harm other persons or himself, or indicate that a licensed psychiatrist or psychologist, including a school psychologist with a Master's degree in psychology, or a certified social worker other than the case manager or case planner has stated in writing that the child presents a serious danger to himself or others.

As the standard indicates, the primary thing that must be shown in this case is that the child has a need for services or supervision which cannot be met by his parents in the absence of supporting services. That means that the Assessment Summary which is completed thirty days after the application for services must show which services are required to assist the parent in meeting the child's needs. These may be services given directly to the child or services given to the parents which better equip them to deal with the child's needs. The close connection in the regulatory language between the need for services and the prevention of foster care placement should also be noted.

An essential part of documenting the need for service is documentation of the child's behavior or condition which necessitates the services. Three situations are outlined in the standard. The first involves dangerous behavior, including danger either to the child himself or to other persons. The documentation permits either descriptions of recent instances of such behavior or a statement from a qualified professional that the child is likely to engage in such behavior. The descriptions of behavior are preferred, and therefore a diagnosis by the caseworker is not permitted since that presumes the caseworker has the information on specific incidents.

The second type of behavior involves what the Uniform Case Record has called "severe management problems." This means that the child is not literally dangerous, but that he does engage in disruptive or anti-social behavior to the extent that placement outside his home may be necessary, unless the behavior can be contained. Examples of such behavior might include vandalism, petty thefts, or a pattern of drug abuse. PENS & JD's clearly fall under this category.

The third situation in which this standard may apply involves a physical, mental, or emotional impairment of the child. Clearly, many children who are mentally retarded, mentally ill, or otherwise impaired can be maintained in their homes, even without the provision of special services to the parents. Many more of these children might be able to remain in their own homes, if the services available to them in institutional care were made available in non-residential settings, or if additional services were made available to their parents to help the parents themselves to meet the child's needs.

Many of the children who are eligible for mandated preventive services under this standard may not be at risk of placement within the social services foster care system. Because of the types of behaviors and conditions listed here, they may be at much greater risk of placement in Division for Youth, Office of Mental Hygiene, or Office of Mental Retardation and Development Disabilities facilities. However, the worker is not asked to make these kinds of distinctions in determining the risk of foster care placement. If any out-of-home placement is a reasonable program choice for the child involved, preventive services are mandated.

As a point of clarification, a permanently certified school psychologist is a school psychologist with a Master's degree in psychology with at least two years certification. Because those who are only provisionally certified may have only a Bachelor's degree, diagnoses of mental or emotional conditions are not permitted from provisionally certified school psychologists.

f) Teenage Pregnancy

Young mothers and mothers-to-be are often placed in foster care during and after the births of their children because they are unable to care for the child without assistance. In order to prevent more of these placements, the regulations on utilization review for mandated preventive services include the following standard.

Circumstance: A woman is pregnant or has given birth and has shown an inability to provide adequate care for her unborn or infant child.

Documentation: The first Assessment Summary required after the date of authorization for preventive services shall indicate, in the section designated to describe risk to the child, whether the woman is pregnant or has given birth and shall include a description of the parental functions which the woman is unable to perform. In addition, the Assessment Summary shall show that services are to be delivered to the woman which will assist her in performing these functions.

This is the only case in which preventive services may be offered in which there is no child in the family. If the mother is at least 18 years of age and had no children, there are, by regulatory definition, no children in the family, until the birth occurs. Nevertheless, the clear risk of foster care for the new-born child makes the provision of preventive services important to these clients.

The six circumstances discussed above encompass all of the situations in which preventive services are mandated for children who have never been in foster care. In all cases, the standard requires a clear risk of foster care placement, such that foster care is a reasonable program choice either at the time of application or in the immediate future. When such risk is present, preventive services must be offered.

3) Standard for the Provision of Mandated Preventive Services to Clients at Risk of Re-Placement in Foster Care.

For children who were previously in foster care but are currently living in their own homes, the risk of re-placement is often greater than the risk of placement for children who have never been in foster care. The utilization review regulations provide that these children must receive mandated preventive services when they meet any of the criteria listed above for children who have never been in care, but three additional standards are also established which relate only to children at risk of re-placement. This means that mandated preventive services must be given in a broader range of situations to children at risk of re-placement. Special note should be made that this applies not only to children who were returned to their parents, but also to children who were discharged to adoptive homes. Again, only one circumstance needs to be met in order for the preventive services to be mandated, although proper case recording requires documentation of all needs.

The three additional conditions listed in the regulations for children at risk of re-placement are the following:

a) Family Court Contact

Circumstance: The child is the subject of a Juvenile Delinquency or Persons in Need of Supervision petition, or has been determined by the Family Court Intake or Family Court Probation Service to be at risk of being the subject of such a petition.

Documentation: The first Assessment Summary required after the date of authorization for preventive services shall, in the section designed to describe the risk to the child, include a description of the child's previous placement, and a description of the petition or other disposition by the Family Court, including the date of the petition or disposition.

b) Unplanned Discharge

Circumstance: The child has been discharged from foster care within the two years immediately prior to the date of application for services and that discharge took place at least three months prior to the anticipated discharge date and without the achievement of all the client goals set forth in the Initial or Comprehensive Service Plan and being pursued at the time of discharge.

Documentation: The first Assessment Summary required after the date of authorization for preventive services shall, in the section designed to describe the risk to the child, describe the child's previous placement, including the dates during which the child was in foster care, show the anticipated discharge date at the time of discharge, and describe which client goals could not be met due to the early discharge. If no service plan had been completed during the previous placement, information in the Progress Notes shall be used to the extent possible.

c) Recurrence of Reason for Placement

Circumstance: The child or the parents or caretakers have exhibited a pattern of behavior or a condition which is substantially similar to one or more of the behaviors or conditions which contributed to the child's previous placement in foster care and which is likely to lead to the necessity of re-placement of the child.

Documentation: The first Assessment Summary required after the date of authorization for preventive services shall, in the section designated to describe risk to the child, describe the child's previous placement, including the dates

and reason for placement, describe the behavior or circumstances occurring at the time of application for services which are similar to the factors contributing to the original placement, and provide reasons why this behavior or condition is likely to become serious.

The family court contact standard is very straightforward. In essence, it says that for utilization review purposes the only documentation required in this situation to justify the provision of mandated preventive services is documentation of the court contact and of the previous placement. This does not absolve the worker of the responsibility for fulfilling the other requirements of the Uniform Case Record, but it does limit the documentation required for utilization review purposes.

The unplanned discharge is similar in the degree of its objectivity, but in this case no precipitating event is required for services to be initiated. In fact, it is probably appropriate that most children and their families coming under this standard be provided mandated preventive services immediately upon discharge from care. The primary instance in which this would not occur would involve an initial refusal by the family to accept services.

The third standard in this section attempts to address problems which may not appear serious at the time of the application for services, but which may be predicted to lead to a risk of placement because of the child's and the family's previous history. This standard refers to the previous section, in that any of the six standards established for determining eligibility for mandated preventive services for children who have never been in care may serve as a qualification in this case, but at less serious levels, if the child was placed for the same reason. For example, if the child had been placed previously because of behavioral problems, and the services leading to the current application has to do with alcoholism of one of the parents, the risk of replacement is not necessarily greater than it would be for a child who had never been in foster care, unless the child's behavioral problem also recurs.

4) Standards for the Provision of Mandated Preventive Services to Return Children to Their Parents.

The Child Welfare Reform Act provided that preventive services be given not only to avert a child's foster care placement, but also to abbreviate the length of a child's placement. This means that there are some cases in which preventive services are mandated for families with children who are already in care. Unlike the standards for children currently residing with their families, the utilization review regulations require that all of the first three of the standards in this section be met, before a child in care receives mandated preventive services. The fourth standard will be discussed separately.

a) Progress on Goals and Objectives

Condition: At least one client goal or objective set forth in the Initial or Comprehensive Service Plan has been achieved during the child's foster care placement, and this goal or objective is directly related to the reason for the child's placement in foster care.

Documentation: The most recent Goal and Objective Review for either the family or the child shall show at least one goal and objective which addresses the service needs establishing the necessity of placement to have been achieved.

b) Service Appropriateness

Condition: The preventive services provided shall be directly related to one or more of the reasons the child is in foster care.

Documentation: The most recent Assessment Summary shall show only preventive services to be delivered to the child and family which relate to one or more documented reasons establishing the necessity of the child's placement.

c) Discharge Plan

Condition: Discharge of the child from foster care shall be anticipated within six months, and the current anticipated discharge date shall be at least three months earlier than the anticipated discharge date before preventive services were offered, or there are reasons why the child cannot be discharged at the anticipated time without the provision of preventive services.

Documentation: The Comprehensive Service Plan - Child shall show the anticipated discharge dates to be in conformance with this condition and the case record shall include a Discharge Plan consistent with the Comprehensive Services Plan - Child. If the discharge date is not at least three months earlier than anticipated in the previous Initial or Comprehensive Service Plan, the Assessment Summary shall show, in the section designed to show the family's ability to benefit from preventive services, what factors will prevent discharge at the anticipated date, unless preventive services are offered.

The basic premise behind providing mandated preventive services to families with children in care is that the child will be able to return home more quickly than would be possible if foster care services alone were offered. The provision of preventive services is not intended, however, to replace the foster care services that are required for every child and family. Therefore, the first standard here requires that some progress be made on the client goals and objectives through the provision of foster care services before a child is eligible for mandated preventive services. Specifically, at least one client goal or objective must be achieved. In addition, the second standard requires that the service which is provided be directly related to the reason for which the child is in care. In many cases a child or family has service needs in addition to those precipitating the placement. Because the purpose of mandated preventive services for these children is to abbreviate the length of stay in foster care, these services may not be used to deal with service needs unrelated to the placement.

There is also a supposition in the regulations that discharge should be near before preventive services are mandated. The third standard addresses this issue. Discharge must be anticipated before the next recertification date, i.e., within six months, and that anticipated discharge date should show an acceleration in the discharge of at least three months.

The date to be used for comparison purposes should be the anticipated discharge date in the previous service plan. If an acceleration of the discharge cannot be demonstrated, then the worker must show what factors would prevent the discharge from occurring at the previously anticipated date.

d) Service After Discharge

Condition: The preventive services are provided after the child has been discharged from foster care and the discharge occurs at least three months earlier than had previously been planned.

Documentation: The Discharge Plan shall show that preventive services are to be provided after the child's discharge from foster care and that the actual discharge date is at least three months prior to the anticipated discharge date, as shown in the Initial or Comprehensive Service Plan completed before the development of the Discharge Plan.

This standard provides for the provision of preventive services after discharge from foster care as a means of abbreviating the foster care placement. The provision of mandated preventive services are not, therefore, subject to the same requirements in this case as in cases where the child is currently in care, although there is some overlap in the requirements.

5) Court Orders

It is possible for a court to mandate preventive services, and when this occurs the case shall be considered a mandated preventive services case, both for utilization review purposes and for reimbursement purposes. It is not necessary that the court specify "preventive services" by name. The mandate applies whenever the court specifies the provision of any services included in the definition of preventive services and which do not require removal of the child from his home. In addition, there will be cases in which the district appeals a court order to place a child in foster care (see the next section on necessity of placement). If the court order is stayed or overturned, the district is mandated to provide the child and his family with preventive services. In either of these court-related cases, the only documentation required for utilization review is the documentation of the court actions.

6) Standard for the Recertification of Mandated Preventive Services

All of the above sections have dealt with the initial determination that preventive services are mandated. Once the mandate has been established, it is not necessary to document the same factors repeatedly with each recertification. What is required is that the Goal and Objective Review show either that one or more of the client goals which is being pursued and which is related to the initial mandate for preventive services has not yet been met, or that the removal of services at the present time would lead to a deterioration of the progress made. In effect, the district is required to continue the preventive services until the case plan has been achieved.

It should also be noted here that no family may receive mandated preventive services for more than 12 months during a single foster care placement for the purpose of returning the same child home. For children in care mandated preventive services are designed to be a short-term strategy to return the child home quickly.

B. Necessity of Placement

As has been noted, the standards for preventive services and those for the necessity of placement are similar in many ways. There is one conceptual difference, however, that will appear in a variety of the details of the standards and should, therefore, receive mention at this point. This is simply that foster care placement is the choice of last resort. This will be reflected in the actions that are necessary before placement may occur, as well as in more stringent requirements for establishing the continuing necessity of each placement. The restrictiveness of the standards in this regard is a direct implementation of the Department's principle of sustaining family relationships as outlined in the background section of this directive.

There are four major parts to the standards defining the necessity of placement:

- 1) general requirements,
- 2) standard for necessary activities prior to placement,
- 3) standard for placement, and
- 4) special provisions.

1) General Requirements

The general documentation requirements are the same for necessity of placement as they are for preventive services: documentation must be on the Uniform Case Record, cross-references are permitted, and compliance with any one eligibility standard is sufficient to establish the necessity of the placement. The details of the documentation requirements which do differ from those for preventive services are presented with the various standards.

2) Standard for Necessary Activities Prior to Placement

This requirement reflects the Department's preference for maintaining the child in his home rather than placing him in foster care. The regulations express these requirements in the following way:

For each foster care placement, the district shall:

- (a) provide preventive services to the family and child prior to placement, unless the offer of preventive services has been refused or the placement is the result of a court order or due to the circumstance described as health and safety of the child as defined in paragraphs (4) and (3)(a) of this Section or unless the parents or caretakers are dead, their whereabouts unknown, or their absence is anticipated to be longer than six months, and
- (b) attempt prior to the placement of a child in foster care to locate adequate alternative living arrangements with a relative or family friend which would enable the child to avoid foster care placement, unless the child is placed as a result of a court order or surrender agreement as defined in paragraphs (4) and (3)(b) of this Section, and
- (c) document in the first Assessment Summary required after the date of authorization for foster care services that preventive services have been offered and the reasons why they were not able to avert the placement, except when the placement is the result of a court order or due to the circumstance described as health and safety of the child, as defined in paragraphs (4) and (3)(a) of this Section, or when the child's parents or caretakers are dead, their whereabouts are unknown, or their absence is expected to last longer than six months, and that no adequate alternative arrangements are available except in placements resulting from court orders or surrender agreements, as defined in paragraphs (4) and (3)(b) of this Section.

These requirements make clear the Department's commitment to try every option before foster care placement occurs. It should be emphasized that these requirements are not merely paper requirements;

the standards do not say that alternative living arrangements and preventive services must be considered before placement occurs. Rather, they say that attempts must be made to find alternate living arrangements and preventive services must be provided, unless the parents refuse those services. In other words, concrete steps must be taken to locate relatives and family friends and those identified must be approached regarding the possibility of caring for the child. In addition, the family must be offered preventive services as an alternative to placement. Thus, unless the child is in serious danger, has been placed in foster care under a surrender for adoption, or has been ordered into placement by a court, a simple statement that alternative living arrangements or preventive services are not in "the best interests" of the child, will not suffice.

It should be noted that if alternative living arrangements have been found but are deemed to be inadequate for the proper care of the child, the child should be placed in foster care. The intent of these requirements is not to avoid foster care placement at all costs, but rather to ensure that real efforts are made to avoid placement when other appropriate options may be available.

The regulation also permits the district to place a child in foster care without the offer of preventive services, if the parents or caretakers are dead or missing. Suggestions were made in the discussion of the preventive services standards for providing in-home caretakers for such a children, and the omission of these children from this requirement does not alter the preference for these services. Instead, it is simply a recognition that these services are often not available. This is one of the points, therefore, on which the utilization review standards are less stringent than case-work standards might be. It should be emphasized, however, that these children are subject to the requirement to find alternate living arrangements.

3) Standard for Placement

Whereas the standards for establishing the mandate to provide preventive services treated the initial certification separately from the recertifications, the standard defining necessity of placement is the same for both situations. Documentation is different in the two cases, in part so that no duplication is required, and in part because the Uniform Case Record requirements involve different forms.

In all cases the initial placement is justified by the first Assessment Summary which is after the authorization of foster care services. For cases entering care on Day 1, this will be the 30-day assessment. For cases entering care between Day 30 and Day 90, it will be the 90-day assessment or re-assessment, and for all other cases, it will be the assessment done in conjunction with the next service plan that is due. Until one of these forms is due, no documentation is required for justifying the placement. The same applies to the preventive standards discussed earlier.

The continuing necessity of placement is generally documented in the Goal and Objective Review (see below for specific applications), and this documentation is required when the second service plan is due after authorization of the service, as well as when all subsequent service plans are due. Thus, if the child enters care on Day 1, initial necessity has been justified with the 30-day forms and continuing necessity with the 90-Day forms. If the child enters care after Day 30, continuing necessity is documented with each six-month service plan.

This distinction between the initial necessity of placement and the continuing necessity of placement has one further implication. In all cases what will be examined is the current status of the child. If the child was placed with good reason, but at the present time there is no reason among the standards listed below for which the child should continue in placement, a sanction will be imposed. Likewise, if the initial placement was not justified, but the child now needs foster care, no sanction will be imposed. The intent of utilization review is to ensure that all cases are currently in compliance with statutory and regulatory requirements, and it is in that spirit that past actions are not examined in the following placement standards.

a) Health and Safety of Child

The regulations show a standard identical in wording to that used in the preventive services standards, with what differences there are occurring in the documentation requirements for continued necessity of placement.

Circumstance: The child or a sibling has been subjected by the parents or caretakers within the twelve months immediately prior to the date on which the program choice "Placement" is selected, to serious physical injury by other than accidental means, or to risk of serious physical injury by other than accidental means, or to serious impairment of their physical, mental, or emotional condition as a result of the failure of the parents or caretakers to exercise a minimum degree of care.

Documentation:

- (1) The first Assessment Summary required after the date of authorization for foster care services shall describe, in the section designated to describe risk to the child, instances within the twelve months immediately prior to the date on which the program choice "Placement" is selected in which the child has been harmed emotionally or physically and the type of harm which has resulted, or shall indicate that at the time of placement conditions existed which placed the child or siblings in danger of serious emotional or physical harm which would have been likely to result from these conditions.

- (2) If the child has continued in placement beyond the date the first service plan review is required, the most recent Assessment Summary shall indicate that conditions persist which, if the child were to be returned home, would continue to place the child in danger of serious physical or emotional harm. In order to establish a continuing danger to the child, the Assessment Summary shall cite one or more of the following factors: the parents' or caretakers' willingness to maintain regular contact with the child, their behavior during visits, their response to services offered or provided by the district or other involved agencies, their expressed willingness to take the child home and to plan for his or her welfare, the present status of environmental or any other factors which contributed to the original problems which necessitated the placement, and the overall progress of the parent toward the accomplishment of goals and objectives established in the Initial or Comprehensive Services Plan.

Because both the wording and the intent of the standard and the first part of the documentation are the same as in the preventive services standards, no further comment should be required on those features. An explanation of the second part of the documentation may, however, be helpful.

In order to determine whether the child should remain in care, the caseworker will need to assess the progress made to date in achieving the goals of the case plan. In part that will include an assessment of the current, continuing service needs of the child and the family. It is within this context that the specific factors listed as appropriate documentation were chosen. Once the full assessment of the child and family has been completed, it is not necessary to repeat all the factors that precipitated and justified the placement. It is, however, necessary to show the degree to which the same needs for service persist, and once those service needs have abated to the point that the child is no longer in danger at home, his placement is no longer necessary.

b) Parental Refusal or Surrender

In contrast to the utilization review standards for preventive services, the regulations on necessity of placement for this standard assume that, at least in some cases, a surrender for adoption is not merely being considered but rather has already taken place.

Circumstance: The parent or caretakers refuse to maintain the child in the home or have voluntarily surrendered the child for adoption.

Documentation: The first Assessment Summary required after the date of authorization for foster care services shall, in the

section designed to describe the family's ability to benefit from preventive services, show that prior to the placement, the local social services district attempted without success to persuade the parents or caretakers to maintain the child in the home, and offered services to assist in maintaining the child in the home and that these services were refused. The most recent Goal and Objective Review shall show that the district continues to make such efforts, and that these efforts continue to fail and/or be refused for as long as the child's discharge objective is "return to parents," or until the parents have signed a surrender agreement.

If a surrender has been completed, the Assessment Summary shall also:

- (a) include a copy of the surrender agreement, or a description of the date and conditions of the agreement, and
- (b) indicate whether the agreement of any other putative parent is necessary before the child can be adopted, and
- (c) the Goal and Objective Review shall document efforts beginning within 30 days of the date of the surrender agreement to locate and assess the suitability to care for the child of any other putative parent whose agreement is necessary before the child can be adopted, and
- (d) the Goal and Objective Review shall show efforts, if the parent is suitable, to place the child with the parent, if the other parent is unsuitable to obtain a surrender agreement from this person, or as soon as legally appropriate, to initiate an action to terminate this person's parental rights pursuant to Section 384-b of the Social Services Law, or if the parent's whereabouts are not known and efforts to locate him or her are unsuccessful, to initiate an action to terminate this parent's rights on the basis of abandonment once he or she has failed to maintain contact with the child or the child's caretakers for a six-month period, pursuant to Section 384-b of the Social Services Law.

The initial documentation for this standard, and the continuing documentation in cases of parental refusal, involves documenting the efforts made to persuade the parents to take the child back into the home, including the offer of preventive or other supportive services.

Obviously, getting the parents to accept the child back will be one of the primary goals for cases of parental refusal, and this means that the efforts to achieve that goal and the offers of services to assist in making the goal feasible must persist as long as the child's permanency planning goal is to return him to his parents.

In cases of surrender additional requirements must be met, if only one parent has signed the surrender agreement. If both parents have signed the documentation need only register the fact of the surrender, as described in paragraph 2a) of the documentation requirements above. When only one parent has surrendered, however, some closure must be reached on the status of the child's relationship to the other parent. Therefore, steps must be taken to locate the other parent, assess his/her suitability to care for the child, and then to either return the child to that parent or free the child for adoption. Without these steps permanency planning for the child is simply not possible.

c) Parent Unavailability

As with the corresponding preventive standard, the regulations are straightforward on this standard.

Circumstance: The child's parents or caretakers are unavailable due to:

- (a) hospitalization, or
- (b) arrest, detainment, or imprisonment, or
- (c) death, or
- (d) the fact that their whereabouts are unknown.

Documentation:

- (a) The first Assessment Summary required after the date of authorization for foster care services shall, in the section designated to describe risk to the child, describe the reason for the absence of the parents and the expected duration of that absence if the parents or caretakers are living and their whereabouts known, and, in the section designated to describe the alternatives to placement which were tried, describe the efforts to find an alternative living arrangement for the child, as defined in subsection (2) of this Section.
- (b) If the parents or caretakers are living and their whereabouts known, and if the child has continued in placement beyond the date the first service plan review is required, the most recent Assessment Summary shall indicate whether any change has occurred in the reason for the parents' or caretakers' absence or in the expected duration of that absence. For parents or caretakers whose whereabouts are unknown,

the most recent Assessment Summary shall indicate what progress has been made in attempting to locate them. When parental rights have been terminated, no further documentation is required to establish necessity of placement.

Little needs to be added to the explanation of this standard to what was said in the section dealing with preventive services. The basic requirement for documentation of the continued necessity of placement is that the progress of the chances for reuniting the child with his parents is monitored. It should also be noted that the earlier discussion of the exemption from the requirement to provide preventive services to children whose parents have died or disappeared does not apply to children whose parents are absent due to hospitalization or detainment, unless that absence is anticipated to last longer than six months.

d) Parent Service Needs

With one exception, this standard repeats requirements which have previously been discussed in the section on preventive services.

Circumstance: The child is placed at risk of serious physical or emotional harm due to an emotional, mental, or physical condition of the parents or caretakers, which seriously impairs the parents' or caretakers' ability to care for the child.

Documentation:

- (a) The first Assessment Summary required after the date of authorization for foster care services shall, in the section designed to describe the risk to the child, describe the specific type and degree of parental impairment and describe instances in which the parental impairment seriously harms the child emotionally or physically or has placed the child in danger of such harm.
- (b) If the child has continued in care beyond the date the first service plan review is required, the most recent Goal and Objective Review shall show that the impairment persists and that it would continue to pose a risk of serious emotional or physical harm to the child if he or she were to return home. In order to establish a continuing danger to the child, the Goal and Objective Review shall cite one or more of the following factors: the parents' or caretakers' willingness to maintain regular contact with the child, their behavior during visits, the adequacy of and their response to services offered or provided by the district or other involved agencies, their expressed willingness to take the child home and to plan for his or her welfare, the present status of the condition which

necessitated the placement, and the overall progress of the parent toward the accomplishment of goals and objectives established in the Initial or Comprehensive Services Plan.

The difference between this and the corresponding part of the preventive service standards is that financial need qualifies a family for mandated preventive services but not for foster care placement for a child. While it is clear that inadequate money, food, or housing may exacerbate other family problems, they are not deemed to be sufficient reasons for disruption of the family. When such need exists, they should be part of the assessment of the family's service needs, but if no other needs are present, foster care placement may not be made.

All other aspects of this circumstance have been discussed in the preventive section and, in the case of continuing necessity of placement, in previous parts of this section. No further explanation should be needed here.

e) Child Service Needs

The regulation on this standard shows only a few wording changes from that given in the preventive services standard to take account of the fact that foster care is the service under consideration here. The major difference lies in the wording of the severe management problems part of the description. The documentation requirements may appear more imposing, but that is due to the inclusion of documentation for continued necessity of placement.

Circumstance: The child has special needs for supervision or services which cannot be adequately met by the child's parents or caretakers, even with the aid of intensive services in the home. This need for services is the result of one of the following:

- (a) The child has a diagnosed or diagnosable, physical, mental, or emotional condition which severely impairs the child's ability to carry out daily, age appropriate activities and which presents treatment needs which are too extensive or specialized for the child's parents to be able to maintain the child in the home.
- (b) The child's behavior, although not dangerous, cannot be managed in the home, the school, or the community, even with extensive support to the parents and child, or
- (c) The child's behavior presents a serious danger to other people or to the child himself.

Documentation: The Initial Services Plan or the most recent Comprehensive Services Plan - Child shall show the services which are to be provided to the child which will assist in alleviating the child's behavior or condition.

- (a) The first Assessment Summary required after the date of authorization for foster care services, in the section designated to describe the risk to the child, shall:
 - (1) describe behavior patterns which inhibit the child's ability to carry out everyday activities in school, home or community; diagnosis by a licensed psychiatrist or psychologist, including a permanently certified school psychologist, or by a certified social worker other than the case manager or case planner shall be deemed appropriate documentation for this subparagraph, or
 - (2) describe repeated instances of behaviors which cannot be managed in the home, the school, or the community, and efforts to ameliorate these problems through the provision of extensive support services, or
 - (3) describe instances within the twelve months immediately prior to the date on which the program choice "Placement" is chosen in which the child has intentionally harmed or attempted to harm other persons or himself, or indicate that a licensed psychiatrist or psychologist, including a permanently certified school psychologist, or a certified social worker other than the case manager or case planner has stated, in writing, that the child presents a serious danger to himself or others.
- (b) If the child has continued in placement beyond the date at which the service plan review is required, the most recent Goal and Objective Review - Child shall indicate that the behavior or condition continues at the present to require services at a level sufficient to justify continued placement, including:
 - (1) examples or a description of the child's recent behavior which illustrates that the child continues to require the provision of an extensive set of services and that without these services his behavior would be cause for placement, and
 - (2) the reasons why necessary services or supervision still cannot be provided in the child's home.

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- (c) If the behavior which led to the placement has stopped or greatly diminished over a six month period, the most recent Goal and Objective Review - Child shall show which services needed by the child to prevent or diminish the behavior cannot be provided in the home and the reasons why they cannot be provided.

The clause in the standard which requires that the service need cannot be met in the home even with the aid of intensive services is designed to take into account the requirement that preventive services be offered prior to placement. It is also linked, however, to the documentation required to establish the continued necessity of placement. Placement should not continue until all service needs have been eliminated; rather, the child should be returned home as soon as sufficient progress has been made that in-home services can be used to deal with the remaining service needs.

One other change in the standard from that presented for preventive services has to do with severe management problems. The child must not only present "management problems;" the parents must be unable to manage him. This means that more serious behavior must be exhibited than is required for the mandated preventive standard. One example of the difference would be persistent truancy. By itself, that might require preventive intervention; it would not justify placement.

f) Teenage Pregnancy

This standard is similar to the corresponding standard for preventive services.

Circumstance: A woman is pregnant or has given birth, and foster care placement would enable the mother and child to remain together and would significantly aid the mother in preparing to assume responsibility to care for her child or in making a decision to surrender the child for adoption.

Documentation: The first Assessment Summary required after the date of authorization for foster care services shall, in the section designated to describe the risk to the child:

- (a) indicate whether the woman is pregnant or has given birth, and
- (b) describe the parental functions which the woman is unable to perform as well as the availability of the woman's parents or other relatives as resources.

It should be noted here that if the woman is at least eighteen years of age at admission to the facility, and she has not yet given birth, no foster care service is being provided, in the strictest sense, until the child is born. Even at that point, the mother is not considered to be in

foster care, only the child. This is simply because no one may enter foster care after his/her eighteenth birthday. Of course, if the mother enters the facility before her eighteenth birthday, both she and the child, when born, are considered to be in foster care and necessity of placement is established for both of them under this criterion.

The only difference in the documentation required for this standard, in comparison to the corresponding standard for preventive services, is the requirement that the resources be examined which would permit the mother and child to remain in the community. As with most foster care placements, preventive services must be offered before placement occurs.

(4) Special Provisions

Two special provisions are attached to the standards for the necessity of placement. The first permits placement of the child in care for the purpose of diagnostic evaluation for no longer than 90 days. Since the purpose of the evaluation is to determine the service needs of the child, there is no point in duplicating the assessment process. However, some documentation is required even here. The initial Assessment Summary must indicate what questions are to be answered by the evaluation, provide examples of the child's behavior or problems which necessitate this type of evaluation, the reasons why the evaluation could not be completed while the child remained at home, and, when they become available, a description of the results of the evaluation. This last point may have to be documented in the second Assessment Summary, if the results are not ready prior to the completion of the first one.

The second special provision has to do with court placements. No district will be sanctioned on a case for not meeting the necessity of placement standards if a court has ordered the child into placement. This does not mean that the district is not required to do anything. First, it must include either a copy of the court order in the case file, or a description in the Assessment Summary of the date and conditions of the order. Second, if a utilization review occurs at any time during the child's placement and a determination is made by the State that the case does not meet any of the necessity of placement standards, the district must file a petition for a re-hearing of the case within 30 days of the notification of that finding. The utilization review finding should be used as part of the documentation for the court review.

C) Appropriateness of Placement

In this section and the next one, the utilization review standards move to decisions about the kinds of services children will receive once they have been admitted into care. From a case flow perspective, preventive services have presumably been tried and they have failed to avert the placement of the child. The decision to place the child has been made and the necessity of the placement established. At this point two further questions emerge: What specific services do the child and his family need?, and What foster care setting will best provide those services?

The standards on appropriateness of placement answer the second of these questions, at least in general items.

There are two aspects of the question of the best setting: one dealing with the level of placement and one with the specific setting itself. The latter is clearly subordinate to the former, since the level of the setting will determine the nature of the services and supervision the child is to receive. The specific setting is not unimportant, however, and the utilization review standards address that question as well.

There are five broad categories of standards for appropriateness of placement:

- 1) general requirements,
- 2) continuity in the child's environment,
- 3) standards for appropriate level of placement,
- 4) court orders, and
- 5) exceptions.

1) General Requirements

These are the same as in the previous sections. Documentation must occur in the specified places of the Uniform Case Record, but cross-references are permitted. In this case, however, all applicable standards must be met. Generally, that will mean that all cases must meet the requirements under continuity in the child's environment, as well as one standard in the group defining the appropriate level of placement.

2) Continuity In the Child's Environment

The principles outlined in the background section of this directive lay great emphasis on maintaining each child's relationships not only with his family but also with all those persons and institutions with whom the child had contact while he was living at home. The standards in this section implement that principle and also provide the broad standards for selecting a particular setting for the foster care placement. Although the decision is logically made after the level of placement has been chosen, the standards for continuity are presented first because they all apply to every case, whereas the standards for appropriate level of placement are each applicable only to specified cases.

The regulations specify a standard in this case that states the broad principle to be achieved, and the documentation requirements provide the details on the specific aspects of the placement setting that must be considered.

Standard: Whenever possible a child shall be placed in a foster care setting which permits the child to retain contact with the persons, groups, and institutions with which the child was involved while living with his parents, or to which the child will be discharged. It shall be deemed inappropriate to place a child in a setting which conforms to this standard only if the child's service needs can only be met in another available setting at the same or a lesser level of care.

Documentation: The Uniform Case Record, as described in Part 428 shall:

- (a) show in the first Assessment Summary required after the child's placement in his current setting that the child has been placed in a setting which enables him or her to maintain ties to his or her previous school, neighborhood, peers and family members, or show the reasons why such placement was not practicable or in the best interests of the child; and
- (b) show in the first Visitation Plan required after the child's placement in his current setting that bi-weekly visits with the parents or significant others are possible or the reasons why a placement was chosen which made such visits impossible; and
- (c) in the first Assessment Summary required after the child's placement in his current setting that the child is placed under the supervision of a person or persons of a religious faith the same as that of the child or is placed with an agency, association, corporation, society or institution which is under the control of an incorporated or unincorporated church, as defined in Article One of the Religious Corporation Law, representing a religious faith the same as that of the child, or, if that is not possible, show that the child's religious faith will be protected, and preserved in the current setting, or show the reasons why such placement was not practicable or in the best interests of the child; and
- (d) if the setting is a foster family home or agency boarding home, in the first Assessment Summary required after the placement of the child in the current setting that the child is placed under the supervision of a person or persons of the same racial or ethnic background as that of the child, or show the reasons why such placement was not practicable or in the best interests of the child.

The requirement for a possibility of bi-weekly visits brings into focus the importance of maintaining contact between the child and his family. The emphasis in this case is not on distance but rather on accessibility. Any distance standard would be likely to have different impacts in large urban areas and in sparsely populated rural counties. For this reason the requirement is stated here directly in terms of the desired impact, i.e., in terms of the degree of accessibility the child has to his parents. If the first standard is met, this one will also be met in most cases.

The third and fourth standards relate to continuity with broader groups and institutions, namely, the child's religion and his racial or ethnic backgrounds. Preservation of the child's religion is a statutory mandate, but preservation of his ties to his ethnic background are also important. Due to the difficulty in defining ethnicity for institutions and due to the need to avoid segregated institutions, the ethnicity standard applies only to foster family homes and agency boarding homes.

It should be noted that there is no priority established among these requirements. Depending on the individual child's particular needs, one or another requirement may be more important. Whenever possible, all four requirements should be met, but when services are not available which would permit this, the best interests of the child should dictate the priority.

3) Standards for Appropriate Level of Placement

Given the current definitions of different levels of care in New York State, defining the appropriate level of care may be done in a variety of ways. The one that has been chosen here is the same as that used in the Institutional Review Project, and it provides for greater flexibility than would be possible with a different standard for each legally defined level of care. Only four categories are used here: family foster home/agency boarding home, group home/group residence, institutions, and supervised independent living. Although group residences are technically institutions, their size is limited, and it therefore seemed inappropriate to subject them to the same restrictions as apply to institutions.

The tenor of the standards defining the appropriate level of placement is set in one sentence from the regulations: The most appropriate level of placement for each child will always be considered to be the least restrictive and most homelike setting in which the child can be maintained safely and receive all services specified in his or her service plan. This is operationalized in the standards in the way indicated earlier in the background section of this Directive. The more restrictive the placement, the more stringent are the requirements that must be met to justify the placement.