NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

Arthur Y. Webb
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-50
[Services]

TO: Commissioners of Social Services

SUBJECT: Standards of Practice for Adoption Services

DATE: August 11, 1982

SEP 1982
LIBRARY

SUGGESTED DISTRIBUTION:
Commissioners of Social Services
Child Welfare Executives and Supervisory Staff
Child Caring Institutions
Child Placement agencies

CONTACT PERSON: Any questions regarding this release should be directed to Hanna Grossman, 212-488-8028 or to the appropriate regional adoption specialsit, Cheryl Larrier 212-488-2400, or Josephine Angello, 212 488-3072 of the Metropolitan Regional Office, Nancy Evwaraye, 518-474-1007 of the Eastern Regional Office, or Evelyn Fairwell, 716-454-4272 of the Western Regional Office.

I. PURPOSE

The purpose of this release is to advise social service officials and authorized child care agencies of the new adoption regulations, standards, and procedures which are contained in new Part 421 of the Department's regulations which repealed previous Parts 421 and 422. This regulation implements Social Services Law 372-e which become effective on April 1, 1980, and which requires the Department to promulgate regulations setting forth standards and procedures to be followed in evaluating persons who have applied to adopt a child.

II. BACKGROUND

New York State has experienced more than a decade of legislative concern with the relatively low rate of adoptions of children in foster care who cannot return home and with complaints by prospective adoptive parents regarding lack of prompt, courteous, effective services from authorized agencies with adoption services.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
		420 421 431.7	101 372 373 383 384 398 DRL 110 111		

DSS-296 (Rev. 5/78)

Among these efforts have been the Adoption Exchange (1969) which was replaced by the Photo-Listing Service (1975), legislation clarifying the process of freeing children for adoption, adoption subsidy (1968 and 1977). Section 372-e of the Social Services Law, enacted as part of the Child Welfare Reform Act of 1979, is the latest legislative effort to address the declining number of children being adopted annually and the continued applicant complaints. This Section's incorporation into the Child Welfare Reform Act clearly reflects the view that adoption is one end of a continuum of services designed to provide children with permanence; sections designed to improve and facilitate adoption for children in foster care are a logical component of an act focused on preventing unnecessary foster care by providing services to keep families together, to return children home as soon as possible, to avoid their return to foster care, and to speed their move into adoptive homes if return home is not feasible.

Specifically, SSL Section 372-e, focuses on making adoption services available to children by making them available to families, since these are a necessary resource. The law requires the promulgation by the Department of standards for adoptive applicants and for the procedures used in serving them.

This requirement was designed to overcome barriers to the development of adoptive resources in the form of sometimes arbitrary procedures and standards varying from one district and agency to another.

Further, agencies are required by Section 372-e to complete action on adoption applications within 6 months of their filing. Applicants who have not had action completed in that time frame or were rejected for adoption are entitled to a fair hearing.

Earlier Department guidelines and regulations suggested that service should be promptly initiated and completed but these were frequently not followed. The large number of persons whose initial request is for healthy young white children, of whom there frequently are none available, has caused agencies to periodically close intake, maintain long waiting lists for study, delay initial contact, and attempt to manage this flow in other ways which frequently confused and frustrated the applicants.

Department Regulation Part 422, promulgated in 1977 and repealed by new Part 421, addressed this problem by requiring agencies to provide service within certain time frames if the inquirer or applicant sought a hard-to-place child, but contained no requirements for service to other applicants. This has not proved entirely satisfactory nor clear to agencies and applicants. The new regulations, explicitly distinguishing among applicants on the basis of the kind of child they are seeking, containing time frame requirements for many steps, as well as spelling out the fair hearing rights contained in the legislation, will assure that applicants for waiting children receive prompt and complete service while others receive a clear message about the inability to serve them.

TABLE OF CONTENTS

	page #
Introduction	5
Overview	7
421.16 Adoption Study Criteria	8
General	8
Age	8
Health	9
Marital Status	10
Length of Marriage	11
Fertility	12
Family Composition	13
Sex Preference & Matching	15
Employment & Education	18
Religion & Race	18
Income	20
Employment & Geographical Stability	22
Child Care Experience	23
Socialization & Community Support	24
Inquiry of Statewide Central Register	25
Additional Factors	26
421.1 Definitions	29
421.2 Principles of Adoption Services	30
421.3 General Requirements - Policies	30
421.4 Services to Biological Parent	31
421.5 Services to Out-of Wedlock Fathers	32
421.6 Surrender	34
Acceptance of Surrender	34
Financial Responsibility of Parent	35
Surrender to Voluntary Agency	36
Statement of Religious Wishes	36
Revocability of Surrender	37
421.7 Termination of Parental Rights	38
421.8 Services on Children	38
Photo-listing	39
Subsidy	39
Medical Examinations	40
Casework Services	40
Parent Training	42
Supervision	43
Post-Adoption Service	43
421.9 Purchase of Service Contracts	44

page #

421.10 Community Relations & Recruiting 45

421.11 First Contact with Prospective Parents 47

Home Finding Unit....47
Orientation Sessions....47
Adoption Inquiry Record....51

421.12 Adoption Application 52

421.13 Application Acceptance 53

Priority Basis....53
Acknowledgement of Application....55

421.14 Waiting Lists 57

421.15 Study Process 60

Group Study....60
Required Documents....61
Contents of Study....61
Approval....62
Discontinuation....63
Rejection....63

421.16 Adoption Study Criteria pp - 27

421.17 Finding A Child - Photo-Listing 66

421.18 Special Provisions for Adoptive Placement 71

Matching Child & Family Characteristics....71
Appropriateness of Placement....71
Pre-Placement Visits....72
Adoptive Placement Agreement....72
Bound Book....72

421.19 Foster Parents 73

421.20 Records & Reports....78

421.21 Reimbursement 78

421.22 Apportioning Reimbursement....79

421.23 Claiming....79

Additionally, SSL Section 372-e requires that services to foster parents seeking to adopt avoid unnecessary duplication of study processes. New York State Department of Social Services and New York agencies have increasingly seen foster parents as adoptive resources for foster children. Since 1968 when the first adoption subsidy legislation was enacted, the proportion of children in the state adopted by their foster parents has risen from very few to over 65% of all adoptions. With the average age of legally free children now over 10, foster parents remain a critical resource. Yet, foster parents have often expressed reluctance to adopt or to go through another study, and procedures involving foster parents eager to adopt have often taken years. These regulations spell out specific steps and time frames which must be met with regard to foster parents of children who are legally free or to be freed, whether these parents do or do not apply to adopt.

III. PROGRAM IMPLICATIONS

Program implications are extensive and include:

- .wider, more active recruitment in minority communities
- .development of more explicit contractual relations between agencies and any other agency or agencies serving or potentially serving the same child
- .reorganization of the process of handling inquiries and applications
- .reorganization of waiting lists and of contact with persons on those lists
- .development of an adoption study process focused on the characteristics identified as desirable and avoiding mechanical decision making
- .establishment of record keeping regarding inquirers and review of record keepting regarding applicants
- .establishment of on-going recording during adoption study
- .review of procedures regarding notice of acceptance, discontinuation or rejection
- .review of procedures regarding foster parents with legally free children or those to be freed
- .review of procedures regarding foster parents who seek to adopt and of subsequent study, acceptance or rejection
- .review of procedures for handling photo-listing inquiries by approved applicants from within or without the agency.

IV. REQUIRED ACTIONS

The actions required are those which are needed in order to implement these regulations. Some districts and agencies will already be in compliance with large portions of these regulations. All districts and agencies must review their practices and procedures as indicated above in order to identify the areas in which changes are required and must promptly effect such changes.

The entire regulation is reproduced below with specific guidelines material interspersed following each section which appears to need it because of its novelty, complexity or similar reason.

The guidelines and text related to section 421.16 follow immediately, in order to provide special emphasis to the standards for the selection of adoptive applicants. This section is followed by the entire remainder of the regulation 421.1-421.23.

This material is followed by an Appendix containing Department required and recommended forms to be used in the adoption procedures covered herein. These include a new required Form for Religious Designation, and a recommended application form. While the application form is only recommended, section 421.12(a) requires the use of an application form approved by the Department. If you seek to use a different form please submit it for approval to Deputy Commissioner Norris Phillips by August 1, 1982.

V. EFFECTIVE DATE

Please note that the regulations discussed herein are in effect as of their date of filing, September 30, 1981. The guidelines contained in this release will be effective on August 1, 1982.

Norris P. Phillips
Deputy Commissioner
Division of Services

Attachments

Standards of Practice for Adoption Services

Introduction

These standards have been developed with a view to facilitating the adoption of those children who, having entered foster care and not being able to return home, have been freed for adoption, particularly those for whom it has sometimes been difficult to find suitable families. Finding and making such families available requires an approach to parent assessment, preparation and selection which clearly focuses on the parent's ability to meet the needs of waiting children and avoids extraneous and arbitrary bases of selection. The following remarks* of Elizabeth S. Cole represent our position:

> Our inability to define what is GOOD ENOUGH PARENTING -- This dramatically affects our work with biological, foster and adoptive families.
>
> One of the ironies of the public care of children is that THE STANDARDS EXPECTED, NOT LEAST OF THE CHILDREN THEMSELVES, ARE OFTEN BEYOND THOSE WHICH ARE PREVALENT IN ORDINARY FAMILIES. -- Yes the children and their families who need help from social services are less likely than others to be able to meet ordinary expectations of social life. Unreal expectations in the families themselves and in the community at large can foredoom failure and thrust every child and his parents - natural or substitute - into a process of failures in relationships which steadily erode whatever capacity and confidence existed initially.
>
> I believe that this lack of an accepted standard of good enough parenting causes us too frequently to overlook family resources for our children. These include a number of foster parents who would make adequate adoptive parents, and untold prospective or potential adoptive parents in the community at large.
>
> In a former incarnation I supervised a large statewide adoption program. We placed between 300-600 children a year. Part of my job required that I review the recommendations of our local office on all foster parent adoption cases and issue the consent of guardian to the adoption. In the course of my review I became aware of several things, one of which was that it took on an average of 1½ and 3 years between the time

---

*Excerpts from a speech delivered by Elizabeth S. Cole, Executive Director, North American Center on Adoption, at the State Communities Aid Association Adoption Action Institute, May 27, 1980.

a foster parent requested to adopt AN ALREADY LEGALLY FREED CHILD until the time the paper work reached my desk. While heavy caseloads and other priorities were a factor, we found there were other more substantive reasons for the delay; 1) Foster parents were compared against an idealized notion of what an adoptive parent is, and were found wanting. 2) The need of the foster parents to be relatively problem free to achieve adoptive parenthood presented an interesting contradiction. While problems were perceived to be of a high enough order to prevent or at least delay the adoption, they were not serious enough to warrant removing the child from the home. The agency created a situation where foster parents would be allowed by the agency to actually parent the child they were not allowed to adopt.

Our inability to set and agree on a standard of Good Enough Parenting also causes us to overlook people in the community who would make adequate potential adoptive parents. We overlook them by (1) not studying and approving them, and (2) not selecting them for children they'd like to parent.

Dr. Lorna Forbes is the psychiatric consultant for the Los Angeles Department of Adoptions. She suggests eight characteristics important to successful adoptive parenting:

1. the ability to work with the agency,
2. to express tenderness,
3. to arbitrate,
4. to be tolerant,
5. to live non-isolated lives,
6. to be resilient,
7. to have a healthy ego that enables them to defer gratification, and
8. to have a life style <u>reciprocal</u> to that of the child to be placed.

I would submit that these characteristics may be found in a variety of families - single, childless ones, as well as those already having 5, 6, 7, or 8 children. They may be found in homes where this may be the second or more marriage; where the wife is older than the husband; where there is some serious irremediable health problem; where there already are handicapped children; where the family only speaks Spanish or are recent immigrants - or belong to a minority group - have no religion or belong to a religion which began last week.

The next giant step must be the recognition that a scientific, precise never-fail gauge is impossible. The best, most assiduously applied professional knowledge and skill will not be enough to allow us to predict with certainty who can parent which child and in precisely what manner. We are and will be fallible.

OVERVIEW

While some parents who are not accepted for home study or who are rejected during or after home study are entitled to an appeals procedure, it is important to keep in mind at all times that the primary client of adoption is the child for whom adoption is the placement of choice. Parents must be treated fairly and humanely at each step, but they do not have rights to adoption service unless they are resources for the children waiting for adoption in New York State.

In order to obtain a pool of approved applicants for the children who have historically been left out of adoption, a system is needed to bring family resources for these children into study and to avoid expending scarce staff resources on families seeking to adopt unavailable children.

Each year the Department will certify which groups of children (by race, religion, age, sex, and other relevant categories) are most in need of adoptive homes and which groups of families shall receive first priority for study. Such certification will be based on information available through CCRS and the photo-listing service regarding characteristics of those children waiting in largest numbers and for longest periods. This will assure that agencies throughout the state are aware of and accurately respond to the changing needs of the NYS child welfare population.

The setting of priorities in recruiting and adoption study and the elimination of standards which do not have a clear relationship to parenting ability should help rationalize the adoption scene. It is also necessary to recognize that predicting family stability is not an exact science. Inappropriate exclusionary standards are often used because their very concrete rigidity appears to be a safeguard against risk. In fact they mainly reduce the pool of resources for children. Risk of instability, inherent in all placements of older children, can be minimized by perceptive knowledge of child and family, preparation for placement, and support of placement.

In no way is this discussion meant to encourage or sanction the use of "lower" standards for waiting children. Certain historical standards have no relation to parenting ability and should not be used to select adoptive parents for any children. Those standards which do relate to parenting ability are even more important for older and other waiting children whose needs may be exceptional and whose placement is often particularly challenging.

421.16 Adoption Study Criteria

(a) GENERAL STANDARDS

Regulation

An adoption study shall explore the following characteristics of applicants:

1. Capacity to give and receive affection;
2. Ability to provide for a child's physical and emotional needs;
3. Ability to accept the intrinsic worth of a child, to respect and share his past, to understand the meaning of separation he has experienced, and to have realistic expectations and goals;
4. Flexibility and ability to change;
5. Ability to cope with problems, stress, and frustrations;
6. Feelings about parenting an adopted child and the ability to make a commitment to a child placed in the home;
7. Ability to use community resources to strengthen and enrich family functioning.

Guidelines

These are the characteristics needed by all adoptive families. They may be needed more for families seeking to adopt older or handicapped children. Although the determination of the presence or absence of such characteristics cannot readily be turned into an objective hard scientific matter, a study should be able to indicate what was discussed and done in order to assess these characteristics and on what basis they were found to present or absent. The recording of such an assessment process and its findings will reduce the danger and fear of arbitrariness.

(b) AGE

Regulation

Applicants accepted for adoption study shall be at least 18 years old. The agency shall not establish any other minimum or maximum age for study or acceptance.

Guidelines

The law has always permitted adults to adopt. However, in the past agencies have often used a higher minimum age. When the age of majority in New York State was changed from 21 to 18 many agencies continued to hold 21 as the minimum age for applicants, while others required applicants to be 25 or more. Agencies have often had a higher minimum for single applicants than for couples. Since Section 110 of the Domestic Relations Law explicitly permits adults, that is, persons 18 years of age or over, to adopt, regulations may not establish a higher age as the standard.

Past regulations only prohibited arbitrariness. However, the varying minimum age standards used by agencies were in many cases arbitrary. Thus all minima, other than that called for by law, are prohibited.

It is recognized that many persons who have just reached 18 do not have sufficient personal readiness for life's tasks, including that of adoptive parenthood, but the same is true of persons who are much older. Thus, it will be necessary in every case to make the determination of unreadiness through the exploration of a study, not on the basis of chronological age alone.

Just as some but not all 18 year olds are insufficiently mature to adopt, some, but not all 50 year olds, are insufficiently flexible to successfully handle a child. Such judgements must be supported by the study process, not assumed on the basis of chronological age.

(c) HEALTH

Regulation

(1) An approved applicant shall be in such physical condition that it is reasonable to expect him/her to live to the child's majority and to have the energy and other abilities needed to fulfill the parental responsibilities.

(2) A report of a physical examination conducted not more than 6 months preceding the date of the adoption application and a written statement from a physician regarding the family's general health, the absence of communicable disease, infection, or illness or any physical condition (s) which might affect the proper care of an adopted child, shall be filed with the agency. This examination shall incluse an intradermal tuberculin test; an additional report of chest x-rays shall be required where such test is positive.

(3) Upon a finding of physical condition (s) which are likely to have negative effects upon an applicant's ability to carry out the parental role, an adoption study may be discontinued with the agreement of the applicant. If the applicant does not agree about the likelihood of such negative effects, he shall be given the opportunity to seek another medical opinion, and file another medical report, before a final decision is made.

(4) The record of a study discontinued or resulting in rejection because of present or expected effects of a medical condition must identify the condition found and effects found or expected.

Guidelines

Health is an important asset, but there are others which must also be considered. Some perfectly healthy people do not have the emotional/physical energy to supervise a child properly while others with significant health deficits are able to do so. Doctors differ in their opinion. Children differ in the kind of parenting they need. Thus, it is inappropriate to reject an applicant on the basis of a medical condition and its expected effects if the applicant does not agree that he has such a condition or that such condition limits his capacities significantly. A second medical opinion may provide a sounder basis for judgement, particularly where future prognosis is at issue. A diagnosis, or listing of a handicap, by itself, is insufficient basis for a rejection.

(d) MARITAL STATUS

Regulation

Agencies shall not consider marital status in their acceptance or rejection of applicants. However, one married partner may not adopt without the consent of the other. Agencies shall not establish policies which place single, divorced, or widowed applicants at a disadvantage.

Guidelines

The tradition that adoption was available only to married couples has been undergoing rather rapid change during the last decade. Many single persons (never married, widowed, or divorced) of both sexes have adopted successfully.

While social service workers are accustomed to perceiving families with single parents as having problems, it is important to recognize that the mature healthy individual planning a family through adoption may be in a very different situation from the parent who is unexpectedly left alone with children as a result of death, desertion, or divorce. Unlike many individuals in these situations or many women bearing and rearing children out-of-wedlock, the single applicant for adoption will usually be self-supporting and will have the opportunity and capacity to plan in advance for single parenting - for handling a child's schedule, for adequate financial resources, for appropriate housing, etc.

There is often concern that the single parent may not have sufficient social or familial support and exploration of such resources is a necessary part of any adoption study, as all parents need outside help from time to time. It is appropriate to explore in all cases what assistance the parent will have available on a day-to-day basis (child care in working hours, etc.) and in times of trouble.

(e) LENGTH OF MARRIAGE

Regulation

Agencies shall not reject applicants for study or after study on the basis of the length of time that they have been married, provided that time is at least one year.

Guidelines

Generally speaking, a period of a year is considered desirable for a couple to stabilize in a relationship with each other so that they are able to think and plan reliably about adding another member.

Most couples who seek adoption because of infertility have been married a number of years. Similarly, most couples who have biological children have been married a number of years at the time of applying to adopt.

Couples who know at the time of marriage that one is infertile or who know they wish to adopt for other reasons, may wish to apply immediately because of the well publicized waiting periods for certain groups of children. Nonetheless, agencies may require them to have been married a year at the time of application.

Agencies using such a criterion are encouraged to make an exception when applicants seek to adopt a specific child with whom one of them has already had a significant relationship.

(f) FERTILITY

Regulation

An adoptive applicant may not be rejected for adoption because of his, her, or their fertility (capacity to have biological children). An applicant couple who wish to adopt because of a belief that one or both of them are infertile shall be required to explore this belief medically, but shall not be required to provide proof of infertility. The significance of fertility and/or infertility as it relates to the desire to adopt shall always be explored in the adoption process.

Guidelines

Up through the 1950s infertility was almost the exclusive reason for non-related adoptions. Professional standards built upon this circumstance required assurance that the infertility was likely to last, in order to protect against rejection of the adopted child when biological procreation occurred. Now that many couples with children choose to enlarge their families through adoption and others who could have children choose adoption over childbirth for other reasons, this set of beliefs is less central. Requiring proof of infertility of married adoptors would discriminate vis-a-vis single applicants. Further, it would inappropriately exclude a significant resource for waiting children. It has not been found that infertility correlates with the ability to care successfully for an adopted child.

On the other hand, if infertility is the prime motive for seeking adoption, a study should explore the couple's acceptance of this circumstance. Exploration to determine whether the adopted child is likely to be resented by a parent as permanent evidence of his or her "inadequacy" is a necessary part of such an adoption study. If exploration reveals an unresolved problem in this area, the applicants should be helped with it or referred to other counseling resources and encouraged to come back at a later date.

Some applicants may have had little or no medical advice on this matter, and it may be a disservice to them and to a child to make a placement based upon the family's unexplored assumption of infertility. It is appropriate to ask the family to seek relevant medical examination where this has not been done. Such examination may of course not result in a clear diagnosis of infertility. No proof of such diagnosis is to be required.

(g) FAMILY COMPOSITION

Regulations

(1) The agency may study family size as it relates to the ability of a family to care for another child and the quality of life which will be offered to an adoptive child. Policies shall not be established which require rejection of an applicant based on family composition without determining its effect on the ability to care for a child and the quality of life which will be offered.

(2) Presence or absence of children in applicant's home regardless of their age and sex shall not be a basis for rejecting applicants.

(3) Adoptive placement which will result in there being more than two infants under the age of two in the home at the same time shall be made only after a study specifically focusing on the family's ability to care successfully for such a number of infants.

(4) If any children in an approved home are there as foster children, placement of an adoptive child shall be delayed if it would result in a family composition which violates Section 378.4 of the Social Services Law.

(5) An adoptive placement shall not be made where a child previously placed for adoption has not yet been adopted, except:

(i) Where the child to be placed is a sibling of one already in the home;

(ii) where the delay in adoption is due primarily to court delays; or

(iii) where the child to be placed is unusually hard to place and other placement resources are not available.

(6) Any exceptions pursuant to paragraph (5) of this subdivision shall be fully documented in the records.

Guidelines

This is an area in which practices were developed at a time when infants were the primary candidates for adoption and when there were more than enough resources for them. Under the circumstances, routine preference for childless families may have been justified; now, it isn't.

When toddlers and young school age children began to be placed for adoption, it was found that they often had difficulty adjusting if they were expected to behave as a mature older sibling to younger children in the home. While often true with school age and teenage children awaiting adoption this is not necessarily the most significant variable in their adjustment and must not be a basis for excluding valuable resources for them. Adjustment depends more on the characteristics and experiences of the particular child and the dynamics of the particular family than on such mechanical rules.

Many workers and agencies have felt that a family with more than 4 or 5 children is less desirable than a smaller one, and this preference has often been enforced as agency policy. There is no justificatification for such a view as there are parents who can care for and nurture many children. Numbers of children in a family may not be a basis for rejection.

Section 378 of the Social Services Law set a maximum number of six children which can be cared for in a foster home. This section contains exceptions when siblings are placed in the same home. Some workers have considered that similar or more restrictive rules should apply to adoption, so that adoption can maintain a "higher standard" than foster care. This overlooks the fact that the temporariness of foster care is a major factor in making a large group of children difficult to manage. The task of integrating the children into a unit is difficult. The children may have additional needs as they first come into care or as they prepare for return home. Many of these needs for exceptionally intensive parenting do not continue to exist in adoptive placement after the early period. The fact that they may well exist during the early period is one reason for normally requiring one adoption to be completed before starting another.

Most parents do have a family size beyond which their effectiveness and comfort will decrease. However, this trait varies greatly among families and also varies according to the characteristics of the children involved. For instance, families with easy access to open space may feel able to handle more children comfortably than tightly packed city families; families where one or both parents or another adult are at home can sometimes care for more children than where all adults work outside the home; and a number of school age children may be more workable than an equal number of toddlers.

Thus, a parent's belief that he can serve as a resource for an additional child should always be evaluated without pre-conceptions. The functioning of the family, the parents' ability to individualize children, and to serve their physical and emotional needs and to structure family life so that parents' needs can also be met must be the basis for such a decision.

(h) SEX PREFERENCE AND MATCHING

Regulation

(1) Single applicants shall not be rejected because they seek children of only the same sex (or only the opposite sex).

(2) Applicants shall not be rejected solely on the basis of homosexuality. A decision to accept or reject when homosexuality is at issue shall be made on the basis of individual factors as explored and found in the adoption study process as it relates to the best interests of adoptive children.

(3) Exploration of sexual preferences and practices of applicants, where found necessary and appropriate, shall be carried out openly with a clear explanation to the applicant of the basis for, and relevance of, the inquiry.

Guidelines

It has frequently been agency policy to place only same sex children with single applicants. This policy may have been based on a simplistic view of the needs of the children for role models and of parents' likely abilities to manage a child. Certainly children need role models of their

own sex; however, their development of gender identity and the meaning they attach to this is as much based on their personal experience with, and perception of, treatment of their sex by adults of the opposite sex, as on direct modeling. The child placed with a same sex parent would miss many of these cues if his experiences were limited to that one adult in isolation. For this and many other reasons, it is important that the parent's life style not limit the child's experiences in this way. Given a life style which permits normally varied experiences, some children may do well with a parent of the opposite sex.

Limitation of single parents to same sex children has reduced the resources for waiting children. The number of single women applicants has greatly exceeded that of single men, while two-thirds or more of the waiting children are boys. As a result, boys who could have been placed have remained waiting.

Many single parents will prefer a child of their own sex and this preference should certainly be honored, but where there is no such preference, it should not be created by agency policy. Rather, in every case, the applicant's wishes and characteristics, the resources which he/she offers, and the needs of individual waiting children should be explored in order to make a placement decision. It follows that no applicant should be rejected solely because of a preference for an opposite sex child.

Another related and sensitive issue has been the possibility that single applicants might have homosexual preferences. This concern has often placed them in a double bind, where they might be looked at negatively, whether they asked for a child of the same or of the opposite sex.

The early single adoptive applicants presented themselves as persons who had not and never would marry. While this overcame anxiety about family changes which might result in rejection of the adopted child, it often created anxiety about whether these individuals had a heterosexual orientation. This question was greatly sharpened when single men started to apply. In this society, single women have been more comfortably perceived as relatively asexual, than men. Single men were more likely to be suspected of homosexuality than of asexuality and this was considered of much greater concern. Since many workers are not comfortable discussing this subject directly, the concern led to covert questions designed to elicit a man's orientation and to covert questioning of his associates.

Many applicants, regardless of their sexual preferences, have been insulted by this approach.

The sexual orientation and practices of adoptive parents, whether married or not, are of significance in the lives of the children placed with them and are a valid issue for open exploration. The goal is meeting the adopted child's needs by considering how this orientation will affect the child. Many of the children needing placement have been subjected to sexual exploitation or to overstimulation resulting from disorganized family environments. Exploration of sexual factors which is rooted in this concern for the child can be explained to and accepted by the applicant.

Among the children waiting for adoption are teenagers who are already committed to a homosexual orientation. Family placement for teenagers is difficult to find, and they often experience difficulty bonding with a new family. If in addition the youth is homosexual, placement resources likely to prove successful are very limited. A homosexual parent living alone or in a stable liaison with an accepting partner may offer such a youth the best opportunity of supportive home life and long term bonds. New Jersey has recently experienced some success, as well as some public acceptance, in foster placement of young people identifying themselves as homosexual with single parents of the same persuasion.

A sexual preference for members of his or her own sex is thus not a sufficient basis for rejecting an adoptive applicant. There are many different ways of expressing such a preference, just as there are for exercising a heterosexual orientation. Some individuals do not express their preference in any direct sexual activity at all. In such cases, there may be question of whether their entire lives are excessively isolated and constricted. Others may have a stable liaison -- here the important question for an adoption worker would be the nature of this relationship, and what the partner's reaction to the adoption would be.

Among past concerns about homosexual adoptive applicants has been the possibility that a parent would sexually abuse a child, or that a child would be influenced to become homosexual. There is no basis for any belief that

sexual contact with children or exploitation of children under their care occurs any more frequently among homosexually oriented persons than in the case of heterosexuals. Of course, any suspicion of such an occurrence in the past should always be most carefully explored. Usually, there is more concern that role modeling will encourage a child to share the parent's homosexual orientation. Not enough is known to absolutely exclude this possibility for young children, but current belief is that children who are reaching the age of puberty have already formed their preferences in this area.

(i) EMPLOYMENT AND EDUCATION OF PARENTS

Regulation

Employment, education, or volunteer activities of applicants may not be a basis for rejection.

Guidelines

Past practices with regard to employed mothers discouraged some adoptions and caused women to quit their jobs or take prolonged leaves of absence. With so many women now able to successfully combine career and motherhood responsibilities, attention must be paid to this area. The essential question is not whether a parent works, but the amount of parental coverage. Substantial experience with even young children indicates that good day care and other activities can be beneficial to a child's growth, and that children of working mothers are not hurt by that experience. Excessively heavy career demands for travel, evening meetings, etc., could be considered a problem in a one-parent family. In a two-parent family, rejection should be considered if the parents are not able to coordinate their outside responsibilities to provide adequate time for the consistent parenting needed by all children.

(j) RELIGION AND RACE

Regulation

Race, ethnic group, and religion shall not be a basis for rejecting an adoption applicant.

Guidelines

There is widespread agreement that the preferred adoptive placement for a child is generally with a family of his own ethnic group and religion.

With regard to religion, such placement, where practicable, is required by Section 373 of the Social Services Law. It is required by Federal Law for Indian children. Up to a decade ago, placements across racial lines were very rarely made. For a few years in the late 60's and early 70's placement of young non-white children into white homes were more frequent. Since then, it has become increasingly clear that such placements reflect agency default in effective recruiting of non-white and other minority families, rather than being placements of choice for the children.

When sufficient effective recruiting of minority families for the waiting children takes place, there will be little need to place children adoptively across ethnic or religious lines since this is rarely in their best interests. Some applicants may thus have little prospect of receiving a child. Occasionally agencies have rejected applicants on the basis that no appropriate placement was likely to be made because of the lack of children matching racial or religious groups. Such rejection discriminates against applicants on constitutionally suspect grounds and is not permitted. It is, however, important to note that an approved study does not call for the placement of a child if the placement would not be in the child's best interests.

These regulations (Section 421.13) require an agency to inquire of an applicant regarding the characteristics of the children he is interested in adopting and to assign an applicant priority on the basis of those characteristics. An applicant seeking to adopt only a healthy young white child or other child with such characteristics that there are none photo-listed will be given lowest priority and may be rejected without further examination on the basis of lack of need. This, however, is based on the characteristics of the child to be adopted, not of the applicant.

The study of a non-minority family seeking to adopt a minority photo-listed child or seeking children "regardless of race" should address the question of how that family will be able to strengthen a child's own ethnic identity if different from theirs. This and other aspects of parenting a child of another group should be explored during the study process. When this subject has been addressed in the study, a letter of approval and study summary should indicate how the family will be able to strengthen a child's group identity and whether there is any limitation in the

kind of child for which the family is approved. Where it does not appear that an applicant could maintain the identity of a child of another group, this may be a cause for rejection or limitation of approval.

(k) INCOME

Regualtion

No applicant shall be rejected on the basis of low income, or because of receipt of income maintenance payments. The adoption study process shall evaluate an applicant's ability to budget his resources in such a way that a child placed with him can be reasonably assured of minimum standards of nutrition, health, shelter, clothing and other essentials. An applicant whose budgeting and money management skills appear deficient to assure such minimum standards shall be referred to any available resources which might help improve these skills.

Guidelines

At one time many agencies had a policy of requiring adoptive applicants to have an income above a certain level. Applicants were in general required to be at least middle class. This policy was integrally related to the concept of childless couples being the client as much as the child was. It also functioned efficiently to limit the number of applicants for a limited number of "perfect" babies. So long as this and similar standards were maintained, there could not be enough families to serve as resources for the many children who need permanent families other than their biological ones.

The emphasis has shifted, so that the child is the primary client and all children are seen as in need of, and deserving of, a permanent family. It is crucial that only standards which relate directly to the ability of applicants to provide the child with that essential - consistent, loving parenting, be used to select applicants. A middle class income is not such a standard. Naturally, a child should not be placed into a situation where sufficient nourishment, clothing, shelter and medical care are unlikely to be available nor into a home which is in such disrepair as to be dangerous to its inhabitants. Some applicants with very low incomes do indeed appear to offer such poor circumstances, while others with

similarly low incomes do better. This is true regardless of whether the low income comes from income maintenance, another transfer payment, or from earnings.

A family living in such poor circumstances that the child would be endangered would normally be rejected, on the basis of those circumstances, rather than of the dollar value or the source of the income. In some cases, unfortunately, earnings or income maintenance are so low in relation to family needs and local costs that with the best management the family cannot do better and may have to be rejected. In other families, even with a higher income, circumstances may be as poor, in part because of lack of management skills. In such cases the applicant should be referred to resources which can help improve these skills (debt management, homemaking, budgeting, marketing, etc.), and encouraged to complete the adoption study process after taking advantage and benefiting from such assistance or instruction.

In some cases these management difficulties appear to be rooted in emotional problems which interfere with the individual's functioning in many areas of life. Where such emotional difficulties are clear and marked, affecting interpersonal as well as other aspects of family life they, rather than the financial management symptoms, should be the basis for rejecting the application. Unless it is clear, however, that an applicant cannot benefit from a program addressing these deficiencies, he should be encouraged to try. Once referred, his ability or inability to benefit will throw a clearer light on the significance of the skill deficiency in the individual's life.

In general, a rejection should be based on refusal to accept such assistance, documented inability to benefit from it, residence in housing which violates local health and safety codes, or clear evidence that minimum nutrition, etc., could not be maintained for a child placed in this home.

A family managing adequately on very low earnings or income maintenance may have a great deal to offer a child in terms of stability and emotional sustenance. Full exploration of the possibilities of subsidy is required in every case, but may prove particularly helpful here. While other assistance such as referral for subsidized housing could also be beneficial, it is important not to turn an adoption

application into a comprehensive services search and also important not to delay approval of and placement with such a family by waiting for improved material circumstances, if the existing ones are minimally adequate.

(1) EMPLOYMENT AND GEOGRAPHICAL STABILITY

Regulation

Changes in employment and residences may be examined to determine the significance of such changes for the functioning and well being of the family and any child to be placed in the home.

Frequent changes in employment and residences shall not be a basis for rejection unless it is determined that such changes reflect an inability to provide for the well being of any child to be placed in the home.

Guidelines

These are variables which may or may not have a relationship to the ability to provide a loving consistent family life for a child. There are many valid reasons for frequent changes in employment or residence. Changes which seem to reflect an inability to hold a job are of concern and warrant further exploration, but even these do not, by themselves, justify rejection. Many persons who have difficulty in holding a job, particularly in depressed times or locations, are nonetheless good parents. If the applicant is seriously depressed or highly irritable as a result of or in conjunction with this difficulty, he or she may not be a good candidate for the additional stress of adoption.

Similarly, families move for a variety of reasons and the moves mean a variety of things to them. Families moving frequently, leaving the rent unpaid, show at least a pattern of money management difficulties which need to be addressed. On the other hand, families moving in conjunction with upward mobility may find themselves isolated by the process and may seek companionship through the adopted child, which is a tenuous basis for a sustained relationship.

Thus, the reasons for employment or residence changes should be explored, keeping in mind the likelihood that an adoption will add stress to the family system, but such instability should not by itself be seen as exclusionary.

(m) CHILD CARE EXPERIENCE

Regulation

An adoption study shall inquire into an applicant's experience with children and offer him and/or her, if feasible, the opportunity to increase his/her experience, knowledge and skills in this area. However, no applicant should be rejected solely on the basis of a lack of such experience.

Guidelines

The requirement that applicants have and demonstrate experience in caring for children in general or particular kinds of children is one that has developed as adoption moved from placing only infants to placing older children. In the past, it was assumed that nearly everyone could learn to care successfully for an infant. Many families with new babies have had to learn while doing, and this has been true of biological as well as adoptive families. While not ideal, this did not frequently create a serious problem. Most adoption practitioners have become convinced that more knowledge, experience, and skill are needed to integrate an older child into a family. One response has been to inquire into applicants' past child caring experience. Another has been to offer training or parent support groups as part of the adoption preparation process.

Such exploration of present knowledge is appropriate. However, it should be recognized that an individual's ability to work successfully with a child may equally be affected by his own recollections of treatment in childhood and his role in relation to his siblings or other relatives, as by clearly identifiable experiences as an adult. Similarly, it is important to keep in mind that experience in settings like schools, camps, or neighborhood organizations may not serve to prepare persons for the stresses of having children in their own home.

Since the effective value of experience the applicant has had is difficult to judge, such experience may not be used as a requirement. Anyone is likely to benefit from further focused experience or training and this should, to the extent possible, be offered all applicants, but approval should not normally be tied to participation in such a program. If it is offered, it should include a significant teaching role for parents who have adopted.

In the special case where there are specific reasons to be concerned about an applicant's understanding of what is involved in caring for children, participation in available programs which will provide experience may be required, if the basis for such concern is entered into the record. If no such training opportunities are known or available to the agency, such an applicant may be rejected.

(n) SOCIALIZATION & COMMUNITY SUPPORT

Regulation

The adoption study process shall include inquiry into the applicants' ability to locate and take advantage of human and organizational resources to strengthen their own capacity as parents. There shall not be any requirement for particular levels of educational achievement or kinds of organizational involvement or community recognition.

Guidelines

When applicants were required to be middle class, etc., in order to compete successfully for a rare resource - a "perfect" baby, "community standing" was sometimes considered to be a plus. "Community standing" was equated with high income and professional status as well as other concepts which do not necessarily correlate with or predict good parenting. It is still not unusual for applicants who meet the "professional" and "community standing" standards to feel themselves entitled to special consideration, a belief which may have to be rectified tactfully. In some cases, such families have such an aura about them that workers are unconsciously intimidated into overlooking serious questions about the ability of such families to care for a particular child. Caution is needed about over-valuing such characteristics just as it is about under-valuing working class or relatively non-verbal applicants. Thus, "community standing" in the sense used above, is not an important characteristic for selecting applicants. On the other hand, every person, every family needs support systems of one sort or another. Skills in inter-personal relations are important in enabling persons to utilize the various potential support systems which exist. The ability to relate to ones' neighbors, to those people with whom a child comes in contact in school, and others is very important to a child's well-being.

The ability to do more than relate, to work organizationally in the community for the achievement of goals beyond the immediate family is often

a plus, and may be of great assistance to the child who will need negotiation or advocacy to achieve optimum services and developmental opportunities. Sometimes effective community organizers and advocates are seen negatively by one section of the community and this kind of bias should be watched for.

(o) INQUIRY OF STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT

Regulation

An adoption study shall include inquiry of the New York State Department of Social Services regarding whether the applicant has been or is currently the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(1) If the applicant is the subject of such a report the agency shall determine on the basis of the information it has available whether to approve the application.

(2) If such application is approved the agency shall indicate in the record the specific reason why the person was deemed to be appropriate.

(3) If the agency rejects the applicant, giving the indicated report as a reason the applicant shall be informed of his right to a fair hearing under section 424-a of the Social Services Law. Such fair hearing would be for the purpose of deciding whether the indicated report is sustained by a fair preponderance of the evidence and if so, whether such person has been rehabilitated so that the health, safety and welfare of a child will not be endangered if such person's application for adoption is approved.

(4) If in a fair hearing under section 424-a of the Social Services Law the Department fails to show by a preponderance of the evidence that the applicant committed the act or acts upon which the report was based, or if it is shown by the applicant that the applicant has been rehabilitated, the agency shall reopen the adoption study and consider this finding and any associated information.

One factor of major concern is a history of child abuse or neglect. That a report to a child abuse registry is found to be "indicated" does not mean that it is proven, only that some credible evidence was found by a social agency in the initial investigation of a report of child abuse or maltreatment (approximately half of all reports made are found to be "indicated", the remainder are "unfounded" and removed from all records). Because a report can be considered "indicated" on the basis of a single worker's one time view of the situation, there is a procedure for requesting review and expungement (clearing) of the record.

Section 424-a of the Social Services Law requires an authorized agency to check with the Department about each adoptive (or foster care) applicant to determine whether there is an "indicated" report on such applicant. If there is such a report, and the period for requesting expungement has passed, the Department will so notify the agency. The agency may approve the applicant nonetheless but the record should show the reasoning involved. If the agency does reject the applicant for this reason, it must so inform him, also giving information about his entitlement to an additional Fair Hearing. In this hearing the applicant may be able to show that the "indicated" report was not based on a "fair preponderance" of the evidence, or that he has been rehabilitated to the point where placing a child with him would not endanger the child. Where such a hearing finds that the parent has been rehabilitated, the agency which rejected him because of the "indicated" report must reconsider, taking into consideration all information developed through the hearing.

(p) ADDITIONAL FACTORS

Regulation

(1) If the adoption study reveals a felony conviction for an offense set forth in Titles H and O of the Penal Law, where physical injury occurs to a child, the application shall be rejected.

(2) Current abuse of alcohol or other drugs shall require the rejection of an application. The record shall clearly show how the finding of such abuse was made.

(3) An applicant may not be rejected for past drug or alcohol abuse, or past psychiatric illness or treatment unless the record shows how these factors would contribute to the applicant's inability to care for an adopted child.

Guidelines

In past adoption practice, many factors have automatically defeated an application. These factors often included any criminal history, psychiatric history, history of abuse of alcohol or other drugs, as well as vague indications of anti-social or unpopular behavior. The motivation for this has been protection of children from any negative influences. Also operative was the view that permitting a childless family to adopt was such a benefit that only a nearly perfect family deserved the opportunity to adopt.

Now it is recognized that neither children nor families are perfect; that it is children who are the clients, and families should be looked at in terms of whether or not they can be a resource for a waiting child. Many families who may have experienced alcoholism, crime, bankruptcy, or emotional problems may nonetheless have the necessary ability to integrate such a child into their family and thereby provide permanency for him. Thus, each family must be looked at individually; any negative factors must be carefully evaluated as to their severity, current relevance, and likelihood of affecting family dynamics.

Any information about a criminal history calls for careful exploration as to whether this history involved any violence against a child. Any such willful physical injury of a child should result in automatic rejection. Unless there was such injury to a child, the criminal history must be carefully evaluated as to its significance in the past, present, and future life of the applicant. There would be more concern about a conviction than an arrest without conviction, about a felony than a misdemeanor, and about a violent crime than a non-violent one. It is important to consider whether the event was an isolated one or part of a pattern, whether long ago or extending to the near past or even the present. Some youthful isolated acts or even patterns of criminal behavior can have been entirely outgrown; other acts may have been the response to particular emotional, physical, or economic circumstances which are not likely to recur.

Convictions of non-violent crimes and arrests without convictions, may signal caution, but should never result in automatic exclusion. They warrant careful exploration of factors more immediately related to parenting. In the case of an individual with a recent history of arrests for violent actions, it is necessary to determine through interview with the individual, family members, and others whether resort to violence is a pattern which might affect family life. In the case of white collar crimes or ones against property, other questions about the effect on family stability should be explored. In evaluating such a history, it is helpful to recognize that urban minority youths are subject to arrest and conviction in a disproportionate degree. Youths growing up in certain settings are very vulnerable to arrest and conviction, more so than similarly engaged individuals of other groups. So many men in this community have such a record that their automatic exclusion might excessively reduce the pool of resources for waiting children.

A history of psychiatric hospitalization or treatment should not automatically exclude anyone. Exploration of the severity of the diagnosis, success of treatment, the person's current functioning and of the prognosis under stress is needed.

Alcoholism should not automatically exclude an individual. One who is now regularly drinking to excess is not a viable resource for a child. One who has recognized his illness, has undergone treatment and has been dry for many years may well be such a resource. It is hard to state a period of years of abstinence which guarantees that this illness is no longer a problem. Factors to be considered are no only the length of abstinence reported, and the reliability of the information concerning this subject, but the stability, strength and satisfaction for the individual of his current life.

Current abuse of drugs similarly would exclude an applicant and past abuse which has been overcome should not automatically do so. Information of serious past drug abuse will need to be weighed against reliable reports of long abstinence and the development of a stable satisfying life.

Since each of these factors shows that the individual at one time responded to his life circumstances in an unhealthy, antisocial, or self-destructive way, it is important to consider whether the additional stress which adoption would bring into his life would be likely to weaken his current adaptation and lead to a danger of repetition.

421.1 Definitions. For the purpose of this Part, the following definitions shall apply:

(a) Adoptive applicant means a person or a married couple who has applied to adopt or who has received agency approval for the placement of a child in his or her home for the purpose of adoption.

(b) Adoption services means assisting a child to secure an adoptive home through: counseling with biological parent or legal guardian concerning surrender of, or legal termination of parental rights with regard to a child; the evaluation of child's placement needs; pre-placement planning; the recruitment, study and evaluation of interested prospective adoptive parents; counseling for families after placement; supervision of children in adoptive homes until legal adoption; and counseling of adoptive families after legal adoption.

(c) Adoptive parent means a person with whom a child has been placed for adoption or who has adopted a child with agency approval.

(d) Adoptive placement means the child has been placed into a home for the purpose of adoption and the agency and adoptive parent or the child's foster parent have signed an adoption agreement and the facts of such placement have been recorded in a bound volume in accordance with subdivision 5 of Section 384 of the Social Services Law.

(e) Authorized agency means an organization covered by Section 371.10 (a) and (b) of the Social Services Law.

(f) Biological parent means a parent who has conceived or given birth to the child, or from whom the child was conceived, either in or out of wedlock.

(g) Foster parent means any person certified or licensed pursuant to Section 375 of the Social Services Law with whom a child, in the care, custody or guardianship of an authorized agency, is placed for temporary or long term care.

(h) Legal guardian means a person to whom or an agency to which the guardianship of the person of a child has been committed by surrender in accordance with the terms of a surrender instrument or pursuant to a court order under sections 384 or 384-b of the Social Services Law. A legal guardian may also be a person appointed as guardian of the person of a child pursuant to a duly executed will or deed as provided by section 81 of the Domestic Relations Law.

(i) Legally freed child means a person under the age of 18 years whose custody and guardianship has been transferred to an authorized agency as a result of either a surrender instrument or an order of the Family Court or Surrogate Court.

(j) Photo-listed means having placed a legally freed child's picture and description in New York State's Waiting Children books which are organized, prepared, and distributed to authorized agencies and to appropriate citizen groups by the department.

(k) Registered child means a child who has been included in the listing of legally freed children maintained by the Statewide Adoption Service (State Photo Listing Service) pursuant to the requirements of Section 420.2 of this Title.

421.2 Principles of adoption services.

(a) For each child deprived of a permanent family an adoptive family shall be sought in which he may have the opportunity for growth and development through loving care, parental guidance, and the security of a permanent home.

(b) Efforts to remove a child from the care and custody of his biological parent, adoptive parent, or legal guardian shall be undertaken only when it is clearly established that such action is in such child's best interest.

(c) The rights of children, biological parents, legal guardians, foster parents and adoptive families shall be respected and protected through responsible agency administration.

(d) Each child under care in need of adoption but not legally free for placement shall be identified as early as possible, and the pursuit of voluntary surrender or the legal process to sever those parental or guardianship rights of custody and guardianship to the child impeding his or her speedy placement in an adoptive family shall be initiated.

421.3 General requirements. Authorized agencies providing adoption services shall:

(a) have written policies and procedures governing adoption services to:

(1) biological parents, and legal guardians.
(2) children who are free for adoption, or who are not free but in need of adoptive planning.
(3) prospective adoptive parents, adoptive applicants, and adoptive parents.
(4) persons who have been adopted.

(b) make provisions for such written policies to be available to any interested party and to be provided to biological parents, adoptive applicants, legal guardians, and foster parents; and,

(c) maintain appropriate records demonstrating compliance with agency policies and applicable department regulations; maintain a written record for each child and adoptive applicant containing information which documents decisions and plans of action.

421.4 Services to biological parent or legal guardian.
Authorized agencies shall:

(a) take diligent steps to provide immediate services, either directly or by referral, to any biological parent or legal guardian coming to the agency including medical, social and case work services. Such medical, social, and case-work services shall include discussion of alternatives to adoption in making the best plan for the child and parent such as day care, job training and housing resources. There shall be referral to other agencies when indicated.

(b) offer services with the recognition of each person's inherent dignity, integrity and right to privacy, and with the assurance that discussion and exploration of personal problems shall be kept confidential within the agency.

(c) respect the right and responsibility of the biological parent or legal guardian to establish a plan for the child. The biological parent and the legal guardian shall be advised of the guardianship and custody provisions of section 384 of the Social Services Law, of the provisions for periodic family court review under section 392 of the Social Services Law and of the provisions for permanent neglect proceedings under section 611 of the Family Court Act.

(d) give definite regular appointments to biological parent or legal guardian at reasonably frequent intervals. If an appointment is not kept, the caseworker shall endeavor to contact the biological parent or legal guardian immediately, making a home visit when appropriate, and recording as a permanent part of the record the reason why the appointment was not kept, when known;

(e) if a biological parent or legal guardian is referred to another community resource for service, ascertain the outcome of the referral as soon as practicable. When a report from a medical or psychiatric resource indicates the biological parent or legal guardian failed to keep the appointment or failed to contact the community resource, the agency shall make a diligent effort to reach the biological parent or legal guardian to determine the current situation, the reason for failing to contact the resource and the need for further agency service;

(f) take diligent steps to identify the biological father of a child, whether born in or out of wedlock and determine as early as possible whether he seeks and can play a role in planning for the child, and explore the position of any putative father in accordance with paragraphs 111(1)(d) and (e) of the Domestic Relations Law and Section 5 of this Part.

421.5 Services to fathers of out-of-wedlock children.

With regard to the rights and interests of the biological father of an out-of-wedlock child, an agency shall comply with the following procedures:

(a) in all cases:

(1) take steps to identify the father and determine the extent of relationship between father and mother and between father and child;

(2) make efforts to involve the father in planning for the child;

(3) give the alleged father an opportunity to recognize or deny paternity;

(4) if father admits paternity but is unwilling or unable to plan for the child, attempt to obtain a voluntary surrender of father's rights in child when such action would be in the best interests of the child; and

(5) if the father is unwilling or unable to plan, and is also unwilling to voluntarily surrender rights, take such steps to obtain termination of the father's parental rights as are appropriate to the best interests of the child.

(b) the child shall not be placed for adoption without the father's consent or the surrender or termination of his parental rights in cases where the child being placed is not yet six months old and the unwed mother's parental rights have been surrendered or terminated, and the father has:

(1) paid or offered to pay, a fair and reasonable sum, according to his means, for medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child, and

(2) openly lived with the child or child's mother for a continuous period of six months immediately prior to the placement of the child for adoption, and

(3) openly held himself out to be the father of the child during a continuous period of six months prior to the placement of the child for adoption.

(c) the child shall not be placed for adoption without the father's consent or the surrender or termination of his parental rights in cases where the child is over six months old and the unwed mother's parental rights have been surrendered or terminated, and the father has maintained substantial and continuous or repeated contact with the child as manifested by paragraphs (1) and (2) of this subdivision.

(1) by payment of a fair and reasonable sum toward support for the child, according to the father's means, and either

(i) monthly visitations to the child when financially and physically able to do so and not prevented from doing so by actions of the agency having custody of the child or

(ii) by regular communication with the child or the person or agency having care or custody of the child, when visitation is either not financially or physically possible or has been prevented by the agency having custody of the child or

(2) a father who has openly lived with the child for a period of six months in the one year period immediately preceding the child's placement for adoption and who had openly held himself out to be the father of the child during such period shall be deemed to have maintained substantial and continuous contact with the child for the purpose of this subdivision.

(d) a written instrument executed by the biological father denying paternity or consenting to the mother's surrender of the child for adoption or consenting to the adoption of the child shall be completed in accordance with Section 111 of Domestic Relations Law.

Guidelines

This section instructs the authorized agency as to what steps and efforts must be taken with respect to the father of an out-of-wedlock child in the situation where placement for adoption is being considered. It is designed to enlist the participation of the father of an out-of-wedlock child with a possible ultimate result being the voluntary surrender or a court ordered termination of parental rights where appropriate to the child's best interests.

This section is designed to reflect and comport with the recent amendment in Section 111 of the Domestic Relations Law (Chapter 575 of the Laws of 1980) which deals with those situations where consent by the father of an out-of-wedlock child is necessary. This Chapter was enacted as the consequence of the

1979 decision of the United States Supreme Court in Caban V. Mohammed, 99 S CT. 1760, which held that the sex based distinction between unmarried mothers and unmarried fathers in the area of consenting to adopt to be violative of the 14th Amendment. In this situation, it is the consent to place for adoption that is being sought where the father's rights have not been terminated or where he has not surrendered the child and the father has taken one of the actions vis-a-vis the child set forth in this section. These factual situations must also have as a condition to placement the surrender or termination of the mother's rights.

421.6 Surrender. Authorized agencies shall comply with the following surrender procedures:

(a) When requested by the parent (s) or legal guardian of a child, the social services official shall determine, after appropriate consultation, if in his judgement, without regard to the charges of placing the child in an adoptive home, the best interests of the child will be served, by surrender, and then, if so, shall execute an agreement for the surrender of the care, custody, and guardianship of the child to the social services official.

Guidelines

There have been a number of changes in the last few years in regulations governing the acceptance of a surrender from parents. A commissioner shall accept a surrender when he feels it is in the child's best interests. If it is not deemed in the child's best interests, the surrender need not be accepted from parents, regardless of whether they are married or unmarried. However, the determination that the surrender is not in the child's best interest may not be based on any presumed or anticipated difficulty in finding an adoptive home for the child, but only on the desirability and likelihood of a positive relationship being estabilished between child and natural parent. The necessary exploration of the likelihood of establishing such a relationship should not take longer than a few weeks, if the parents remain desirous of surrendering.

(b) When such a surrender is made by the mother of a child born out of wedlock, the authorized agency shall insure that the procedures relating to the rights and interests of the father of the out-of-wedlock child, as outlined in section 421.5 of this Part, are appropriately followed.

(c) Authorized agencies shall advise applicants of the obligation of local social services districts to evaluate the obligation of parents of a child born in wedlock, and of a father of a child born out of wedlock to contribute to the support of the child as long as the child remains a public charge. In determining whether to require financial contribution the districts shall consider the best interests of the child in addition to the ability of the parent to contribute.

Guidelines

Section 101 of the Social Services Law relieves the parents of an out-of-wedlock child of financial obligations only if the child is adopted. An obligation does not continue after adoption, even if with subsidy. An agency must spell out this obligation in advance of a surrender. However, at the time a child is surrendered to a social services official, such official may, pursuant to the provisions of Section 398.5a of the Social Services Laws, determine whether and to what extent the parent is able to contribute and whether the person will be required to contribute. If such a requirement would prevent a surrender which has been determined to be appropriate, it would not be in the child's interest. If there is to be a requirement to contribute, a surrender should contain a clear statement to that effect. Making attempts to obtain such a contribution after the surrender is otherwise not appropriate if legally responsible persons are relieved of this obligation by social services officials.

(d) Voluntary agencies may accept the surrender of a child at their discretion. Acceptance of such surrender without the explicit advance approval of the social services district, in and of itself shall not obligate the social services district to provide support, care or services.

Guidelines

It is important to note that a child so surrendered to a voluntary agency is not eligible for subsidy.

(e) Before accepting a surrender, ascertain that the biological parent or legal guardian has a full understanding of the meaning thereof and of the religious faith requirements of section 373 of the Social Services Law.

(f) Obtain from the surrendering person, including an out-of-

wedlock father whose consent is required pursuant to section 421.5 of this part, a separate signed statement of the religious wishes of the surrendering person as to the placement of the child, on the state prescribed form;

(1) This statement shall advise the parent or guardian of the right to express the wish that the child be placed in a family of the same religion as the parent, or of a different religion from the parent, or with indifference to religion or with religion as a subordinate consideration;

(2) In addition, the statement shall make explicit to the surrendering person that if he or she wishes to do so, he or she may express the wish that, if no home has been found for the child within the number of months to be specified by that person, then the placement of the child shall be made without reference to these expressed religious wishes which may be impeding placement.

(3) The statement shall advise the parents that their religious wishes shall be complied with so far as they are consistent with the best interests of the child and where practicable.

(4) When the father and mother of a child born in or out-of-wedlock have signed statements of religious wishes as to the placement of the child and these wishes conflict, they shall be advised that the social services official or authorized agency may place the child according to either religious preference, based on practicability and the best interests of the child.

Guidelines

Forms and procedures used in different parts of the State in the recent past have not always spelled out all of a parent's options with regard to religious preference. Parents may not always have had full understanding that they were entitled to express a preference of their own or some other religion, that preferences could be expressed as a subordinate consideration, and that in any case, if the preference proved impracticable a placement would nonetheless be made. This means that when it becomes clear that in spite of appropriate efforts, a suitable family of the indicated religion cannot be found in a period appropriate to the child's need for permanency, the preference will be disregarded. It is important that parents fully understand this. Form DSS-857 will provide all the legal options and endeavor to communi-