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

CESAR A. PERALES
Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 85 ADM-23
[Family & Children Services]

TO: Commissioners of Social Services
Authorized Child Caring Agencies

SUBJECT: Implementation of Chapter 872 of the Laws of 1984: Pre Placement Preventive Efforts

DATE: June 5, 1985

SUGGESTED DISTRIBUTION:

Executive Directors of Authorized Agencies
Director of Social Services
All Child Welfare Staff
Legal Staff

CONTACT PERSON: Questions concerning this directive should be directed to Michelle Rafael, Bureau of Policy Planning, Division of Family and Children Services, 1-800-342-3715, extension 4-6512.

I. PURPOSE

This directive advises social services districts and other authorized agencies of recent amendments to Section 358-a of the Social Services Law and Section 1052(b) of the Family Court Act. These amendments require that before a court can approve the placement of a child into foster care pursuant to the above noted sections, it must determine that reasonable efforts were made to prevent the placement of the child into foster care. The directive also advises social services districts and other authorized agencies of the actions which are necessary in order to comply with the reasonable efforts requirements.

II. BACKGROUND

Section 358-a of the Social Services Law and section 1052(b) of the Family Court Act were amended by Chapter 872 of the Laws of

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
84 ADM-4		Part 430.10	SSL 358-a 384 et seq. 398-b 409-a et seq. Family Court Act 1052(b) 1055 Title IV-E Social Security Act 472(a)(1)		

(REV. 8/82) DSS

1984. The amendments parallel the requirements of Title IV-E of the Social Security Act, specifically Section 472(a)(1) of such Act.

This Section provides that a child is eligible for federally reimbursable foster care maintenance payments if, among other things, the child's removal from his home was the result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and that reasonable efforts were made prior to the placement of a child in foster care to prevent or eliminate the need for removal of the child from his home and reasonable efforts will be made to make it possible for the child to return to his home.

Even prior to the enactment of Chapter 872 of the Laws of 1984, the provisions of the Child Welfare Reform Act of 1979 and its implementing regulations required that reasonable efforts be made to prevent or eliminate need for removal from the home prior to the placement of a child into foster care and that once placed into foster care, reasonable efforts be made to facilitate the return of the child to his home.

Various provisions of the Social Services Law promote the concept of keeping families together unless removal of the child from the home would be in the child's best interests. Several of these provisions include:

- Section 358-a: If the judge is satisfied that the parents or guardians of a child would be unable to make adequate provision for the care, maintenance and supervision of a child in the home, the judge may find and determine that the best interest and welfare of the child would be promoted by removal of the child from the home.

- Section 384-b: The State's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home.

- Section 398-b: The Department of Social Services shall promulgate standards to determine whether preventive services have been provided to a child and his family; if foster care services are provided the agency providing such care must make diligent efforts, where appropriate, toward the discharge from care of the child either to his own family or to an adoptive home.

- Sections 409-a, 409-d and 409-e: A social services official shall provide preventive services in accordance with a child's service plan and a social services district's child welfare services plan upon a finding that the child will be placed or or continued in foster care unless such services are provided and such services will enable the child to remain with or be returned to his family.

With regard to which forms of documentation will be acceptable for supporting a determination that reasonable efforts were made to keep a child out of foster care, the uniform case record (UCR) and any supporting records, which are deemed adequate by the Family Court in which the proceeding is initiated, may be appropriate. It is important to note that the sufficiency of any language offered in these proceedings and the form it should take is always a matter for individual judges to determine in each case.

For the purpose of establishing programmatic eligibility under Title IV-E of the Social Security Act for foster care maintenance payments, cases will be deemed to be in compliance when the eligibility criteria specified in 84 ADM-4 are met. These criteria include "reasonable efforts" activities.

IV. REQUIRED ACTION

1. For foster care placements which are reviewed by a court pursuant to Section 358-a of the Social Services Law after the release of this directive, an authorized agency must state in it's petition "...the efforts which were made, prior to the placement of the child into foster care, to prevent or eliminate the need for removal of the child from his home and the efforts which were made prior to the filing of the petition to make it possible for the child to return to his home. If such efforts were not made, the petition shall set forth the reasons why these efforts were not made."

2. A district claiming Title IV-E reimbursement for foster care placements which are court approved pursuant to Section 358-a of the Social Services Law or court ordered pursuant to Section 1055 of the Family Court Act must retain the dispositional order in the case record. The order should contain a finding concerning "reasonable efforts", as required by Chapter 872.

V. Effective Date

The directive is effective October 8, 1984, the same date on which Chapter 872 of the Laws of 1984 became effective. A copy of the legislation is attached for your information.

Joseph Semidei
Deputy Commissioner
Division of Family and
Children Services

Attachment

STATE OF NEW YORK

9780

IN SENATE

June 5, 1984

Introduced by Sen. GOODHUE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the social services law and the family court act, in relation to the foster care of children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions one and two of section three hundred fifty-
2 eight-a of the social services law, subdivision one as amended by chap-
3 ter six hundred ten of the laws of nineteen hundred seventy-nine and
4 subdivision two as amended by chapter seventy-eight of the laws of
5 nineteen hundred seventy-eight, are amended to read as follows:
6 (1) Initiation of judicial proceeding. (a) A social services official
7 who accepts or proposes to accept the custody and guardianship of a
8 child by means of an instrument executed pursuant to the provisions of
9 section three hundred eighty-four of this chapter, or the care and
10 custody of a child as a public charge by means of an instrument executed
11 pursuant to the provisions of section three hundred eighty-four-a of
12 this chapter, and the division for youth which accepts or proposes to
13 accept a child for placement in one of its facilities by means of an in-
14 strument pursuant to section five hundred two of the executive law,
15 shall determine whether such child is likely to remain in the care of
16 such official or division for a period in excess of thirty consecutive
17 days. If such official or division determines that the child is likely
18 to remain in care for a period in excess of thirty consecutive days,
19 such official or division shall petition the family court judge of the
20 county or city in which the social services official has his office, or
21 in which the parent or guardian of a child placed with the division
22 resides, to approve such instrument upon a determination that the
23 placement of the child is in the best interest of the child [and], that
24 it would be contrary to the welfare of the child for him to continue in
25 his own home and, that where appropriate, reasonable efforts were made
26 prior to the placement of the child into foster care to prevent or elim-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 inate the need for removal of the child from his home and that prior to
2 the initiation of the court proceeding required to be held by this sub-
3 division, reasonable efforts were made to make it possible for the child
4 to return to his home. In the case of a child whose care and custody
5 have been transferred to a social services official by means of an in-
6 strument executed pursuant to the provisions of section three hundred
7 eighty-four-a of this chapter, approval of the instrument shall only be
8 made upon an additional determination that all of the requirements of
9 such section have been satisfied. (b) The social services official or
10 division for youth shall initiate the proceeding by filing the petition
11 as soon as practicable, but in no event later than thirty days following
12 removal of the child from the home provided, however, that the court
13 shall receive, hear and determine petitions filed later than thirty days
14 following removal of the child from his home, but state reimbursement to
15 the social services district for care and maintenance provided to such
16 child shall be denied pursuant to section one hundred fifty-three-d of
17 this chapter. The social services official or division for youth shall
18 diligently pursue such proceeding. Where the care and custody of a
19 child as a public charge has been transferred to a social services offi-
20 cial by means of an instrument executed pursuant to the provisions of
21 section three hundred eighty-four-a of this chapter, or where the divi-
22 sion for youth has accepted a child for placement in one of its facili-
23 ties by means of an instrument pursuant to section five hundred two of
24 the executive law, for a period of thirty days or less or for an in-
25 determinate period which such official or division deems unlikely to ex-
26 ceed thirty days, and thereafter such official or division determines
27 that such child will remain in his or its care and custody for a period
28 in excess of thirty days, such official or division shall, as soon as
29 practicable but in no event later than thirty days following such deter-
30 mination, execute with the child's parent, parents or guardian a new in-
31 strument pursuant to the provision of section three hundred eighty-four
32 or three hundred eighty-four-a of this chapter or section five hundred
33 two of the executive law, as may be appropriate, and shall file a peti-
34 tion in family court, pursuant to this section, for approval of such
35 instrument. In such cases involving a social services official, expen-
36 ditures for the care and maintenance of such child from the date of the
37 initial transfer of his care and custody to the social services official
38 shall be subject to state reimbursement, notwithstanding the provisions
39 of section one hundred fifty-three-d of this chapter.
40 (2) Contents of petition. Any petition required or authorized pur-
41 suant to subdivision one of this section shall allege whether the
42 parent, parents or guardian executed the instrument because he or they
43 would be unable to make adequate provision for the care, maintenance and
44 supervision of such child in his or their own home, and shall include
45 facts supporting the petition. The petition shall also set forth the
46 names and last known addresses of all persons required to be given not-
47 ice of the proceeding, pursuant to this section and section three hun-
48 dred eighty-four-c, and there shall be shown by the petition or by affi-
49 davit or other proof satisfactory to the court that there are no persons
50 other than those set forth in the petition who are entitled to notice
51 pursuant to the provisions of this section or of section three hundred
52 eighty-four-c. The petition shall also set forth the efforts which were
53 made, prior to the placement of the child into foster care, to prevent
54 or eliminate the need for removal of the child from his home and the ef-
55 forts which were made prior to the filing of the petition to make it

possible for the child to return to his home. If such efforts were not made, the petition shall set forth the reasons why these efforts were not made. The petition shall request that, pending any hearing which may be required by the family court judge, a temporary order be made transferring the care and custody of the child to the social services official or approving the placement of the child with the division for youth in accordance with the provisions of subdivision three.. In the case of a child whose care and custody have been transferred to a social services official by means of an instrument executed pursuant to section three hundred eighty-four-a of this chapter, the petition shall also allege and there shall be shown by affidavit or other proof satisfactory to the court that all the requirements of such section have been satisfied.

§ 2. Subdivision three of section three hundred fifty-eight-a of such law, as amended by chapter seventy-eight of the laws of nineteen hundred seventy-eight, is amended to read as follows:

(3) Disposition of petition. If the judge is satisfied that the parent, parents, or guardian executed such instrument knowingly and voluntarily and because he or they would be unable to make adequate provision for the care, maintenance and supervision of such child in his or their home, and that the requirements of section three hundred eighty-four-a, if applicable, have been satisfied and that where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his home and that prior to the initiation of the court proceeding required to be held by subdivision one of this section, reasonable efforts were made to make it possible for the child to return to his home, he may find and determine that the best interest and welfare of the child would be promoted by removal of the child from such home, and that it would be contrary to the welfare of such child for him to continue in such home, and he shall thereupon grant the petition and approve such instrument and the transfer of the custody and guardianship or care and custody of such child to such social services official or the placement of the child with the division for youth in accordance therewith. Approval of such instrument in a proceeding pursuant to this section shall not constitute a remand or commitment pursuant to this chapter and shall not preclude challenge in any other proceeding to the validity of the instrument.

§ 3. Subdivision (b) of section one thousand fifty-two of the family court act, as added by chapter nine hundred sixty-two of the laws of nineteen hundred seventy, is amended to read as follows:

(b) The court shall state the grounds for any disposition made under this section. If the court places the child in accord with section one thousand fifty-five of this part, the court shall determine whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, that reasonable efforts were made prior to the date of the dispositional hearing held pursuant to this article to prevent or eliminate the need for removal of the child from his home and if the child was removed from his home prior to the date of such hearing, that such removal was in the child's best interests and, where appropriate, reasonable efforts were made to make it possible for the child to return home.

§ 4. This act shall take effect on the sixtieth day after it shall have become a law.