

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

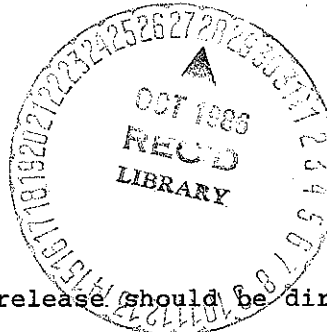
TRANSMITTAL NO.: 86 ADM-35
 (Family and Children's
 Services)

TO: Commissioners of Social Services

SUBJECT: Foster Care Utilization Review Exceptions

DATE: October 8, 1986

SUGGESTED DISTRIBUTION: Directors of Social Services
 Child Welfare Supervisors
 Child Placement Agencies
 All Foster Care Staff



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I. Purpose

Activity on exception requests escalated significantly after April 1, 1984, when the last grandfathering period ended. The experience gained since that time has indicated the need for a comprehensive statement of both procedural and substantive requirements. This directive is designed to fill that need, as well as to notify districts that the option of local review of exception requests has been eliminated as of October 1, 1986.

II. Background

The utilization review regulations (18 NYCRR 430.8 - 430.13) require districts to obtain special approval in order to continue to receive

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
82-ADM-42		430.8-430.13	SSL 398-b		
LIBRARY TEN EYCK BLDG. 10-11 ALBANY, NY A03					

DSS-250 (REV. 8/82)

reimbursement for foster care costs, if any of the following actions are to occur:

- a child over 10 is to be placed in a group foster care setting when there is no child service need contributing to the necessity of placement;
- a child under 10 is to be placed in a group foster care setting without the normal regulatory requirements having been met;
- a child under 12 is to be placed in an institutional setting without the normal regulatory requirements having been met;
- a child with a goal of return home is to remain in care for more than 24 months;
- a child with the goal of adoption is to remain in care more than twelve months after being freed without having been placed in an adoptive home; and
- a goal of independent living is to be set for a child under 14 and the child is not in a kinship foster home, a court has not refused to free the child, and the child is not an unaccompanied refugee minor.

Each of these circumstances or actions is seen as potentially appropriate for certain cases but is also an exception to the standards established as generally acceptable practice. Rather than attempt to define every exceptional circumstance in which these actions could be taken, the Department opted to require case-specific reviews to determine whether individual cases should in fact be considered as exceptions to the standards.

For all of the actions, except those of maintaining children in care over 24 months with a goal of return home and maintaining children with the goal of adoption more than twelve months after freeing without placement in an adoptive home, the requirement for special approval took effect on April 1, 1982, the effective date of the regulations. In these two circumstances, however, a part of what had to be reviewed was the diligence of the district's efforts to return the child or to find an adoptive placement. If any part of the time frame counted in the standard occurred prior to April 1, 1982, the district would, in effect, be held accountable for rules not in effect at that time. Therefore, these cases were "grandfathered," with the date of placement or the date of freeing deemed to be the effective date of the regulations.

This resulted in a relatively large number of cases coming due for review and approval or disapproval as an exception on April 1, 1983, and on April 1, 1984. In the latter case, the Department also initiated its first sanctioning process on the exceptions. While the annual approvals given to many cases will lead to a larger number of cases coming due in the April-June quarter each year for the next few years, by and large the workload has become more evenly spread out across the year.

A number of issues have arisen during the implementation of the exception process. Most of these questions were procedural in nature, although there were also concerns expressed about the guidelines to be used during the reviews. In addition, a clear inequity among districts appeared when some districts elected, as permitted by regulation, to review their own exception requests with the advice of a panel. These districts had virtually no disapprovals of their requests, while other counties experienced an average disapproval rate in excess of 20%. Recent regulatory changes have eliminated the local review option.

III. Program Implications

There are two broad types of questions which need to be addressed: questions about the mechanics of submitting cases to the Department for review and questions about the standards to be used in reviewing cases. Both types of questions will be addressed in this section.

A. Submission Requirements and Process

The basic rule to be used in determining which cases should be submitted for exceptions and when they should be submitted is the following: any case which will be out of compliance unless an exception is obtained must be submitted, i.e., received by the regional office, prior to the date on which non-compliance would begin. Obviously, such a general rule needs greater specification for individual circumstances, and the ensuing discussion is designed to provide the necessary details.

1. Group Settings

For children placed in group settings when there is no child service need, the question of which children are included should be clear. If any of the reasons for which the child is in placement falls under the "child service need" criterion of the utilization review regulations, no exception is needed on this ground. Conversely, if all the reasons for which the child is in placement relate to the needs or action of the child's parents, an exception is required. For this standard, and for all exceptions related to the appropriateness of placement standards (subpart 430.11 of Department regulations) the timing of submission should be prior to the placement of the child in the relevant setting, but it may occur up to the date on which the documentation in the Uniform Case Record (UCR) justifying the placement is due.

The other standards related to the appropriateness of the child's placement have to do with the placement of children under 10 and 12 in group and institutional settings, respectively. While the timing of the submission is the same as that described above, the decision as to the need for an exception is made somewhat differently. Section 430.11(f) of the Department's regulations states that such placements are permissible, without an exception, if the child is in need of twenty-four hour supervision and three of the seven services listed in the regulations, and the agency has been approved to care for children under the age of 10 or 12. For children in these circumstances no exception request should be submitted. For any other child under 10 who is to be placed in a group setting or under 12 in an institutional setting, an exception must be granted, if reimbursement is to be continued. In most cases this will mean that the child's service needs do not conform to those specified in regulation, but it may also be the case that the child needs placement in a setting not approved for regular occupancy by younger children. Both types of cases need exceptions.

2. Independent Living

The exception required for the setting of a goal of independent living operates in much the same way as do those exceptions discussed above. The district needs no exception before setting this goal if: the child is fourteen years of age, or over; or the child resides in a kinship home (i.e., with a relative within the second degree of relationship to the parent); or a court has refused to free the child for adoption after a hearing on that issue; or the child is an unaccompanied refugee minor. Obviously, in these cases there remain requirements for setting the goal of independent living. One must have explored thoroughly all efforts to return the child to his or her parents and to get the child adopted. Moreover, a judge's refusal to free a child may represent only a temporary disposition, indicating the need for more, or for a longer period of, diligent efforts. In that event, the goal of independent living would be inappropriate with or without an exception because adoption has not been eliminated as a possibility.

The time period for submission of independent living requests also relates to documentation due dates, but in most cases this will be the date the goal is changed through a new UCR plan or plan amendment. In a few cases goal changes will be made without a UCR plan or plan amendment being required. However, CCRS plans represent the only means of changing the goal in the system, and the date of the CCRS plan will therefore be taken as the date by which the exception request is due. What this means in practice is that the exception request needs to be submitted and approved prior to the date the goal is changed on CCRS.

For all of the exceptions discussed above, the primary means of enforcement will be the utilization review audits. Because there are a variety of cases in which exceptions are not required because the regulation itself spells out one or more exceptional circumstances, it is not feasible to do a computer tracking of the compliance and non-compliance of the caseload with regard to these issues. This is not the case, however, for the other two standards, and therefore monthly reviews are conducted of the status of all children in care over two years with a goal of return home and of all children freed for over one year with no adoptive placement. For this reason a somewhat more detailed discussion of each of these types of cases is necessary.

3. Adoption

In the adoption cases there are only a few issues which appear to have caused confusion or misunderstanding. The first has to do with identifying which adoption cases require exceptions. In a few cases districts have submitted cases which involved the standard requiring that the child be freed within twelve months of having the goal of adoption set. However, no exception is required for this type of case. The only adoption cases which are subject to the exception requirements are those in which the child has been freed but not placed in an adoptive home within twelve months of freeing. Such cases are due in the regional office no later than one year after the date the child was freed (assuming the child has the goal of adoption), and that date is the date of the A499 activity in CCRS.

The assumption that the child's goal is adoption is an important one. If the child has been freed for more than one year but has another goal, e.g., independent living, there is no requirement for placement of the child and thus no requirement for an exception. However, if, after the child has been freed for more than one year, the goal is then changed to adoption, the exception request will be due on the date of the goal change. The basic rule is that the exception is due on the first day on which the child has been freed for at least one year and on which the child has the goal of adoption.

In some cases the date of disruption of an adoptive placement, i.e., a placement in a home with a signed agreement for the adoption of the child, becomes the day by which compliance with this standard is measured. This occurs when the child has been freed and placed in an adoptive home, but at some point prior to finalization the placement disrupts, leaving the child once again freed but not placed. Rather than measure compliance from the original freeing date, 18 NYCRR 430.12(e)(2)(ii) provides that a new twelve-month period, at the end of which the child should be placed, begins on the date of the disruption. The date of disruption is taken to be the date of disruption coded in CCRS. Should the child not be placed by that time, an exception request is due in the regional office by the first anniversary of the disruption.

Note should be taken that disruptions of finalized placements need to be treated somewhat differently. In fact, these are basically the same as original foster care placements of children from their biological families and should be treated as such. Thus, if a child is placed from an adoptive family but no action is taken to terminate the parental rights of the adoptive family, the permanency goal will probably be "return to parents" and thus not related to adoption, at all. Only in the event that the disruption of a finalized adoption includes a surrender or termination of parental rights, and the child's permanency goal is adoption, will there be any relevance for the exception process, and even here it is the date of freeing which initiates the twelve-month period.

4. Return Home

The largest number of exceptions have to do with the standard requiring the return of children to their parents within two years. This is also the case which is most complex, at least in terms of the description of when the exception requests are due. There is, however, a general rule which can be stated simply and which then forms the basis for the details of the requirements. The rule is this:

- When 1) a child has been in foster care for two or more years (including time as AWOL) and 2) the goal at the present time is "return to parents" or "return to primary resource person," the exception is due on the first day both conditions are met.

To make the general rule clearer, a few examples of "unusual" cases which have occurred may be useful.

- o If a child came into care with a goal of "return home," had his/her goal changed to "adoption" after one year, then had the goal changed back to "return home" after six months, an exception will still be required at the two-year mark.

- ° If a child began placement with a goal of "return to parent" and later receives the goal of "return to primary resource person," no change occurs in the due date of the exception request.
- ° If a child enters care with any goal, stays in care over two years, and then has a change of goal to "return home" at some point after the two-year mark, the exception is due on the date of the goal change.

There are a couple of special situations which merit closer attention, as well. The first has to do with children in the custody of the local commissioner who are placed in facilities operated or licensed by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities. Recent revisions to the utilization review regulations make clear that no exception is required for either the adoption or the return home standard, so long as the child remains in the OMH or OMRDD facility. However, there is an expectation that permanency work will continue during this period and therefore the time in that facility counts towards the twelve or twenty-four month standard, respectively. Thus, if a child stays in foster care, for example, for a fifteen month period, then moves into an OMH or OMRDD facility, while the commissioner retains custody, and stays there for a year, an exception request would be required the day the child leaves OMH or OMRDD and moves into foster care, assuming that the goal was return home or that the goal was adoption and that the child was freed.

The same rule applies to JD or PINS cases which later become voluntary or CPS placements. While JD or PINS cases are not sanctionable so long as they remain in that status, the time in that status counts as part of overall placement time when a change in legal status makes the case subject to exception requirements.

The last important question in this regard has to do with how an interrupted placement is counted. For purposes of filing court petitions, such interruptions may or may not constitute the end of one placement and the beginning of another, depending on such factors as the length of the interruption and, more importantly, the legal authority under which the child is in care. For the sake of simplicity the manner of calculation for exception purposes, and indeed for all statistics generated out of CCRS regarding length of stay, follows a single rule, regardless of the legal authority for the placement. The rule is as follows:

If a child leaves placement (either through trial or final discharge), not through AWOL status and returns within 90 days, the return is treated as a continuation of the original placement, with the time of the interruption not counted as part of the length of stay. Thus, the length of time between the original placement date and the exception due date is lengthened by the duration of the interruption. As an example, if the child is placed on July 1, 1982, returns home on March 1, 1983, and is re-placed in care on May 1, 1983, the exception request is due on September 1, 1984.

If a child leaves placement (through either trial or final discharge), not through AWOL status and returns after 90 days, the return marks the beginning of a new placement and time in care is counted only from that point on. As an example, if the child is placed on July 1, 1982, returns home on March 1, 1983, and is re-placed in care on August 1, 1983, the exception request is due on August 1, 1985.

In order to understand the sanctioning issues involved in the time frame requirements, it is necessary to see how the process of applying sanctions works. While there has been some variation in this in the past, the current procedure has been regularized to the maximum extent possible. The basic steps involved are as follows:

- 1) The district receives a monthly notice from CCRS of all cases coming due in the following three months.
- 2) The case is received at the regional office.
- 3) The regional office reviews the case.
- 4) If the end of the month occurs prior to the review of the case, the regional office will enter a "pend" code on CCRS to prevent the case from being sanctioned.
- 5) Once the review is completed, the regional office enters the disposition of the exception request, together with the relevant dates, into CCRS, and notifies the district.
- 6) At the end of each month, CCRS compiles a list of all cases which are out of compliance on that date, either because an exception has been denied or because the case was never submitted.
- 7) At the end of each calendar quarter, the monthly CCRS lists are aggregated into a single draft "audit report," including information regarding the amount of money to be sanctioned.
- 8) From that point, the process follows the normal procedure, i.e., final report, fair hearing, and claim adjustment.

In this process there are three topics which deserve special consideration: late submissions, timing of "from" dates on approvals and denials, and the applicable date of goal changes.

From a regulatory standpoint, any case which is not received in the regional office by the date it is due is subject to sanction. Examination of the above process, however, reveals that sanctions would rarely be applied for minor problems of lateness. Because compliance is measured on the last day of each month, cases which were out of compliance from, for example, the fifth of the month to the fifteenth of the month and were approved on the latter date, would appear as in compliance on the last day of the month and would therefore not be sanctioned. On the other hand, a case submitted ten days late when the due date was towards the end of the month would appear on the sanction list.

Clearly, the intent of the entire exception process is to focus on substantive rather than technical standards, and undue attention to a few days of lateness could well detract from that focus. On the other hand, a regular pattern of late submissions can also represent a failure to take even the substantive aspects of the process seriously. In order to balance these two concerns as much as possible, the system for sanctioning has been constructed so that most late submissions will not be caught and a few will be. In addition, the regional office is given the discretion, upon appeal by the district, to eliminate any sanction which occurs purely because of lateness. This should occur, however, only when the district's diligence on that particular case has been at least adequate to receive an approval of the exception request. Moreover, sanctions for submissions which are over 30 days late will not be eliminated.

The second topic here, that of the "from" dates, is closely related. By and large, the approval should begin on the due date of the exception request. In the event that the request is submitted late, the "from" date is sometimes set by the regional office as the date of the receipt of the request. This is appropriate in those cases in which the date of receipt is in a later month than the due date and the regional office does not intend to eliminate the sanction for lateness. In all other approval cases, setting the "from" date at the date of receipt is simply more likely to lead to confusion than to anything else.

In the case of denials, the effective "from" date is the date of the activity, i.e., the date the Regional Office enters the denial into CCRS. This protects the district from sanction in the event of a delay in the Regional Office review of the exception request.

Finally, there have been numerous cases in which counties have changed a child's goal after a denial of an exception request, often at the recommendation of the regional office. In some cases, however, that goal change has been back-dated by several months in order to avoid a sanction. The recent design of CCRS prevents back-dating of goal changes past the time of the most recent plan on file, but some room remains for this kind of activity. While no further system change will be made to prevent such back-dating, the fact that sanctions will be based on the case status on the last day of each month means that any goal change which is back-dated to any previous month will have no effect on sanctions for those previous months. Moreover, even on appeal the regional office will not accept a date for any goal change which is more than thirty days prior to the date on which the change is entered into the computer.

B. Standards/Guidelines for Reviews

Precisely because these reviews are designed to deal with exceptional cases, there can be no hard and fast rules in rendering the decisions. At the same time, there needs to be some basic consistency in the kinds of decisions rendered. These conflicting requirements have led to the development of guidelines to be used by the regional offices as they make their decisions. What follows here is not new. These guidelines are basically the same as those sent to all districts in March of 1984, and they have been used by the regional offices since April of 1985.

It is important to stress that these guidelines are not the equivalent of a decision protocol, i.e., there is no automatic decision made with regard to either compliance or non-compliance with the guidelines. Many cases will undoubtedly receive an approval of the exception request without meeting all of the guidelines, and a few unusual cases may be denied an exception even when they appear to meet all of the guidelines. Nevertheless, the bulk of the decisions should fall within the range defined by the guidelines and all exception decisions should follow the basic logic.

Two sets of guidelines have been developed and will be presented here. The first is for adoption cases and the second for return home cases. Guidelines have not been developed for the other standards, largely because of the lack of volume in those reviews and the consequent difficulty in establishing any general trends or rules.

1. Adoption

There are two basic requirements for receiving an approval for the request to continue to receive reimbursement for a child freed for adoption but not placed within twelve months.

° Activity with Foster Parents

A child's foster parents, at or by the time of freeing, were encouraged and helped to carry through the steps toward adoption as quickly as possible and within the required time frames.

° Recruitment of a New Home

The district has taken positive steps toward locating an appropriate adoptive family for the child through various recruitment activities and appropriate follow-up of all inquiries, once a child is photolisted.

a. Activity with Foster Parents

Section 421.19 of the Department's regulations is designed to ensure that foster parents are informed about the child's status, as well as about adoption, and are helped to go through the steps toward adoption within specified time frames. The following activities should be undertaken:

Prior to the child becoming free for adoption, the district should conduct group and/or individual meetings with foster parents to determine as early as possible the extent to which the foster family is willing and able to adopt the child when the time comes. The case planner needs to make the foster parents aware of the legal differences between foster care and adoption as well as of the availability of adoption subsidy. In addition, the worker is required to address any potential ambivalence that the foster family may have toward adopting the child. 18 NYCRR 421.19(b) also require that the district offer an adoption application to foster parents immediately upon the preparation of a plan to free a child for adoption if such child has been in the foster home for 12

continuous months. The processing of an adoption application made by a foster parent should adhere to the requirements of 18 NYCRR 421.19(d) and (f) which stipulates time frames for acknowledging an application and the completion of an adoption study.

When a child is free for adoption, the district must inform the foster parents that the child is free within 10 days of receipt of the court order, even if the foster parents were informed of the impending change in the child's status prior to the child being free. In addition, the district

- must inform the foster parents in writing of the availability of adoption subsidy;
- must offer an adoption application to foster parents for children who have been in the care of the foster parents for 12 continuous months and must accept an adoption application from all foster parents who do not meet the 12 month criterion immediately upon the child being freed;
- must meet the time frames for completing the adoption study and approving/disapproving the applicant pursuant to Section 421.19 of the Department's regulations;
- must seek a written waiver from the foster parents who do not wish to adopt, or, in the absence of a written refusal, must record in detail the foster parents unwillingness to proceed; and
- must notify the foster parents of the initiation of the recruitment effort (including photolisting), if the foster parents have not yet signed the written waiver.

b. Recruitment of a New Adoptive Home

Prior to a child being freed: If the foster family of a child is not willing to adopt, or if an agency does not feel that a family is an appropriate adoptive home for the child, the case planner should consider moving the child to a new foster home which will consider adopting the child when and if the child becomes freed. Before moving the child to a pre-adoptive home, the case planner must

- assess the extent of the commitment that the prospective adoptive family is making regarding the child, including the securing of a written letter of intent from the prospective adoptive family which would formalize the parents' intention to adopt upon the child becoming freed;
- complete and approve a home study for the prospective family; and
- assess the child's special emotional needs with regard to whether such a move would be in the best interests of the child (see separate discussion on page 12). If a child is removed from a foster home, the provisions of Section 400 of Social Services Law and 18 NYCRR 431.10 must be complied with.

After the child is freed for adoption.

- The district must register the child with NYSAS within 10 working days of the child being freed, if the child has received foster care from an authorized agency for a three month period.

- The district must take positive incremental steps toward locating an appropriate adoptive family once the child is registered and the photolisting is no longer "on hold." Diligent efforts at locating an adoptive home must consist of a series of case specific positive steps towards recruitment of a new home with at least one step to occur approximately every two months. Such steps may include presenting the child in a regional adoption exchange; presenting the child to a foster parent community or adoptive parent community organization which periodically publishes flyers or other announcements of children available for adoption; presenting the child on television or in a newspaper column; presenting the child to an organization with special affiliations such as a religious, racial or ethnic organization or an organization that deals with handicapped children; listing the child with a national publication, etc. The district must also demonstrate that it has used the Prospective Adoptive Parent Registry (PAPR) to attempt to identify a suitable family and that it has conducted appropriate follow-up with families identified through that system. In describing the recruitment efforts, the case planner should note the effect of the action and, where no promising placement possibility was found as a result of a specific recruitment effort, a new plan of action should be initiated. The important point to note is that a positive effort must be made to locate a home and that such efforts must be made throughout the one year time frame.

- If a district has implemented new, program specific initiatives geared to the types of child for whom an exception is being requested, such initiatives will be considered in reviewing district efforts at working towards locating an adoptive home for the child. For example, if a district has implemented a full-scale media campaign in an attempt to locate adoptive homes for a targeted group of children (e.g., black children with physical handicaps), then this effort will be taken into account in reviewing the exception request. This attempt here is to review the district's entire adoption program and the efforts being made to locate an adoptive home for the child.

c. Inquiry Follow-up

The district, upon receipt of a Form 2705 New York State Adoption Service Report of Inquiry Received, or upon receipt of any other inquiry, must send a summary describing the child identified on the form to the agency making the inquiry. In responding to the inquiry, the district which has the child must respond in a timely manner pursuant to 18 NYCRR 421.17 by sending the child's summary or documenting the reasons why such summary was not sent. The rationale for not sending a summary must be consistent with the provisions of 18 NYCRR 421.17(f) and (g). In responding to inquiries the district must clearly inform the parties of the availability of an adoption subsidy, if appropriate.

The district must follow-up with approved families who are deemed to be appropriate adoptive families for the child. The district must ensure that the potential adoptive parents have the opportunity to be fully informed about the child and his or her condition. In addition, the district must provide resources to support the caseworker in his/her efforts to meet with the family (reimbursement for travel, etc.). Follow-up with approved families from out-of-state requires timely follow-up with the Interstate Compact. Follow-up with families approved by voluntary agencies may require payments of purchase of service fees if such placement is appropriate. The only exception to the requirement for timely follow-up with out-of-state applicants is if there are several other inquiries for that child at the time, in which case the in-State inquiries may be accepted first to determine the appropriateness of the child/family match.

The district must respond to inquiries from prospective parents who have not yet had an adoption study completed. If the person is within the area served by the child's agency, such inquiry should be seen as an application and given the appropriate priority that is stipulated in 18 NYCRR 421.14. If the person lives elsewhere in New York State, the parents should be advised of the application procedures and if such child has not received many inquiries and has been waiting for an adoptive placement for greater than 6 months, the caseworker should make an attempt to aid the prospective parents in having an adoption study completed by the local authorized agency as soon as possible.

d. Special Case Situations

Children With Special Emotional Needs: For the purpose of the exception guidelines, "children with special emotional needs" refers to those children who in the judgement of the case planner and an independent psychiatrist or psychologist, have serious emotional needs which make recruitment for an adoptive home and the subsequent placement of the child into the home contrary to the best interests of the child.

The guidelines for reviewing an exception request differ slightly for children with special emotional needs. For such children:

- Diligent effort at recruitment of an adoptive home for the child can be suspended for the time period when the child has special emotional needs such that it would not be in the best interests of the child to move the child to an adoptive home, provided that recruitment efforts begin at some point prior to the time when the child's needs are such that he/she can be moved. The goal is to have a home ready to accept the child, as soon as the child can leave his/her current setting. Despite the relaxation of requirements in these cases, the case planner must have followed up with inquiry requests for such children. In photolisting the child, the case planner may request that a special message accompany the photo-listing to warn potential inquirers of the special case circumstances which may delay or impede the placement, and this in and of itself would

reduce the number of inappropriate inquiries of that child. However, those inquirers that are seriously interested in the child even with the caveats accompanying the photolisting must have been contacted and follow-up must have been ensured.

- Activities aimed at working with foster parents in an attempt to achieve an adoptive placement must be documented for an exception to be granted. Such activities should be maintained so that movement can be facilitated if and when stabilization occurs.

The case planner must document evidence of the child's special emotional needs in the Uniform Case Record. Specifically, the case planner must indicate that service activities are being planned and implemented in an attempt to address the child's emotional problems. In addition, the plan goals should be written so as to describe the kind of behavior which the child needs to consistently exhibit before recruitment efforts can be continued and the anticipated date by which recruitment activity can be resumed.

Potential Adoptive Parents Facing Serious Time-Limited Problems: The kind and nature of activities designed to facilitate an adoptive placement will differ in those situations where the foster parents have clearly signified their intent to adopt the child but have failed to enter into an adoptive agreement with the district/agency because of a time-limited problem impeding the adoptive placement. Loss of employment, death of a spouse, divorce and marital problems are some examples of situations which might force the foster parents to temporarily forego entering into an adoptive agreement.

The guidelines for reviewing an exception request differ slightly for these case situations. For such children:

- Diligent effort at recruitment of an adoptive home can be suspended for the time period in which the crisis is occurring but should not be suspended for a period exceeding six months, unless a thorough review of the circumstances by the case planner indicates that the situation will be resolved within a reasonable time. Again, the only exception to this rule is that the case planner must continue to follow-up with inquiry requests for such children with full disclosure of the case circumstances to be provided to all potential inquirers.
- Activities aimed at working with the foster parents are different in these cases. Clearly the major impediment to accomplishing the permanency planning goal is the crisis situation affecting the foster parents and the case planner must make attempts at intervening and assisting the foster parents throughout the crisis period. In these situations, the work with the foster parents has shifted from attempting to work through the permanency decision to planning and implementing a service plan which attempts to reduce the crisis situation so that an adoptive placement can be realized.

There are two key elements to consider for these cases. First, the foster parents must unequivocally want to adopt the child and second, the crisis situation is time limited. Clearly, full adoption recruitment should continue or commence if in the opinion of the case planner, either of the key elements does not apply. The case planner must document the kind and nature of the crisis situation and the various planning activities designed to address the crisis in the Uniform Case Record for the child.

e. Conclusion

In reviewing the exception request, the Regional Office representatives must review the case in its entirety. With the exception of photo-listing the child in the required time-frames, failure to comply with each standard and process requirement may not automatically result in an exception disapproval. Reviewers should be reviewing for evidence of positive incremental efforts on the part of the district/agency in locating an adoptive home.

When a case is submitted for an exception for the second or third time on this standard, the same type of considerations will apply. However, in these cases the regional offices will look for more intensive efforts and a case which received an approval the first time is likely to be denied, if only the same level of diligence is exhibited.

2. Return Home

Approval of an exception request for a child in care over twenty-four months with a goal of return home requires documentation in two general areas.

° Necessity of Continued Foster Care

To what extent does the child for whom an exception is being sought continue to need to remain in his/her foster care placement at the time of the exception request pursuant to the utilization review standards for continued necessity of placement?

° Diligence of Effort

For those children who need to remain in foster care pursuant to the standards for continued necessity of placement, to what extent is the continued need a result of a lack of effort on the part of the district/agency to plan for and ensure the provision of appropriate services for the parent and the child throughout the period of time in which the child has been placed in foster care?

a. Necessity for Continued Foster Care

In reviewing an exception request, the first issue which needs to be explored is whether or not the child continues to require out-of-home care. Regional office representatives must review the rationale that is presented for the need for continued care with particular emphasis on assessing the extent to which the provision of extensive in-home services could alleviate the continued need for out-of-home care. It should be stressed that no child should ever be placed in care or remain in care solely because of inadequate housing or insufficient parental finances to care for the child. In short, a district which continues to maintain a child in care inappropriately should not be granted an exception.

b. Diligence of Effort at Reunification

After assessing the child's present need for out-of-home care, the case should then be evaluated in terms of the extent to which the child's need for placement is a result of a lack of effort on the part of the district to assess and plan for the family's service needs and the extent to which such services were provided to the parents and child throughout the period of time in which the child was placed in care. The following questions should structure the review.

Case Assessment: To what extent were the case assessments sufficient in view of the problems that the family/child were facing and the prior history of the case?

Whether reviewing a summary compilation of the family/child's functioning during the time period under review or the actual Uniform Case Record Assessment documents, the case reviewers should evaluate the content of the case assessments completed in terms of its ability to provide a basis for a reasonable service plan for the case. The case assessments need to have accurately identified the primary service needs of the family. To maximize the probability of accuracy, the case assessments should, wherever possible, include multiple sources of information about a family including parents'/child's perceptions of the circumstances of the case, psychiatric/psychological assessments where needed, and assessments or observations completed by other service providers.

Gross or insufficient assessments may adversely affect the progress that can be made on a case. For example, if in reviewing a case the father is identified as exhibiting erratic behavior during the course of the last 4 months and the suspected reasons for such behavior is a dependency on alcohol, then the next assessment of the family's current functioning should indicate this new impediment towards eventually returning the child home. Clearly, if the possibility of a chemical dependency is noted in the record but not accurately identified or addressed in the updated assessment, then the service plan may not sufficiently focus on this issue. If such a misassessment was of sufficient importance to hinder or even prevent progress that could have been made in attaining the permanency planning goal, the exception should be denied.

Case Planning and Implementation

- To what extent were the case plans sufficient in attempting to address the reasons why the child is in foster care and the service needs of the parent/child? To what extent were such plans actually implemented?

The case plan created for the child/family must adequately reflect the primary service needs presented. The kind and nature of the services planned and delivered must relate to the reasons for the continuing need for placement. For example, if the child was placed into care via child protective services issues and remains in care for health and safety factors, then it would be insufficient for the case planner to focus all of his/her energies on the child's adjustment problems in foster care. Instead, services should focus on attempting to alleviate a repeat of the substantiated allegations if the child were to return home.

The comprehensive nature of the service plan needs to be stressed. Counseling services provided by the case planner will normally not be a sufficient response to multi-problem families, especially if such counseling services have not elicited sufficient progress over a 6 month period. Even in service deficient areas of the State, the case planner must be proactive in his/her attempts to access the services needed.

Use of services available in other districts and other service systems should be explored which would require the case planner to actively engage the clients towards positive activity. The key here is the extent to which various service tasks were proposed and implemented throughout the two year time frame and the extent to which lack of creative effort on the part of the district sufficiently hindered the progress towards the PPG.

When the goal for the child has been something other than "Return home" for some portion of the twenty-four months, the Regional Office should examine the appropriateness of the goal changes themselves. In these cases it is not expected that efforts to return the child have occurred for the entire period.

- To what extent were the parent/child visiting plans sufficient in working towards the attainment of the permanency planning goal?

The district worker should plan and facilitate bi-weekly visitation between the parent and the child throughout the two-year period. Again, the extent to which consistent efforts were or were not made to facilitate such visitation should guide the decision to accept/reject the exception request.

If visitation was not realized, the district should have explored additional avenues to facilitate the visitation. Clearly, if there were long lengths of time in which visitation did not occur and the district did not attempt to actively address the issues which are precluding parent-child contact, the exception should not be approved. For example, if visiting between parent and child was not possible due to the inability of the child to cope with such visiting because of his emotional instability, then the child's service plan should at least have dealt with this issue in some form.

"It should also be noted that bi-weekly visitation is only a minimum standard established in the regulations. As quality visitation is recognized to be so vital to reunification of the family, it would be expected that diligent efforts towards a return home would often include a more frequent and expanded visitation schedule."

- To what extent were the kind and quantity of casework activities with the parents or caretakers sufficient to meet the service needs for the family?

The case planner should establish various service tasks for the service providers and the parents and children involved in the case. Such tasks should be of sufficient quality and quantity to accomplish the goals and objectives included in the plan. The kind and level of casework activity relates not only to the problems which the family/child presents but also to the type of progress that was made in the case. For cases where little or no progress was realized during the first year of placement, additional casework activities including advocacy, outreach work and intensified counseling should have been considered in order to create an improved service package.

c. Parameters of the Review

In evaluating the kind and quantity of services planned and implemented, the key issue to be considered is the progress that has been made towards attaining the permanency planning goal. If the services that were delivered resulted in the continual improvement in parent/child functioning and interaction such that continuing with the same course of action will result in discharge in the near future, then an exception request should be considered. Likewise, if progress towards accomplishing the permanency planning goal was not attained during the course of service provision and very little realistic change in the service plan was realized during the course of the two year period, especially after one year of stagnation, then an exception denial should be considered. This means that the district should always take a close look at the progress made, or not made, after one year of placement. The situation where various service options have been attempted and improvement has been made but return home is still not predicted in the near future results in a difficult situation to assess diligence of effort. In this case, the intensity of the services offered and delivered and the various service options utilized during the course of the two years will be decisive.

When a case is submitted for an exception for the second or third time on this standard, the same type of considerations will apply. However, in these cases the regional offices will look for more intensive efforts and a case which received an approval the first time is likely to be denied, if only the same level of diligence is exhibited.

C. Dispositional Alternatives

For all exceptions except those relating to the return home and the adoption standard, the responses to exception requests will be simply approval or disapproval. Approvals remain valid for the remainder of the child's time in care, provided that the child's status regarding the relevant issues remains the same continuously. In other words, an approval, for example, for a child under twelve to reside in an institution remains in effect for the duration of the child's tenure in care, unless the child is moved to a lower level of care at some point. In the latter event, a second placement into an institution would require a second exception, if the child is still under age 12.

For the return home and adoption standards there is a one-year limit on the duration of an exception. The Regional Office may, however, grant an exception for a shorter period of time, if the district's diligence and the actual progress made on the case have been marginal. In such cases the district must apply for an additional exception by the date of the expiration of the approval.

Cases denied an exception for these two standards (and in some cases for the other circumstances) will carry required actions with them. Receipt of an approval, and thus the end of the sanction, will be dependent on completion of the required actions, as well as continuation of other appropriate diligent efforts.

Both approved and denied cases are likely to carry recommended actions. For approvals, including time-limited approvals, the recommended actions will form part of the basis for the second review, should the case need an extension of the exception. Failure to address the recommendations, together with a failure to take any alternative aggressive action to achieve permanency, will result in a denial of the extension.

Finally, it should be noted that a level of care exception does not affect a permanency related exception. A case may therefore require more than one exception, one for group or institutional placement and one for extension of a return home or adoption goal. The fact that the former is valid for the duration of the case does not imply that the second one is also permanent. Each of the two types of exceptions works on its own rules.

IV. Required Actions

Districts are required to submit exception requests to the Regional Office of the Division of Family and Children Services before the date on which the case will be out of compliance if no exception is granted. Local commissioners may no longer grant exceptions to their own cases due for exception on or after July 1, 1986, although exceptions granted by local commissioners for cases due prior to that date will remain in effect until they would normally expire.

The documentation to be submitted with the exception request must include:

- for all circumstances other than the return home and adoption cases, sufficient portions of the Uniform Case Record, including progress notes, and related documents to show the need and justification for the exception;
- for adoption cases, all of the Uniform Case Record, including progress notes, related documents, and records of all inquiries, since the time the child was freed, the child's last placement was disrupted, or the last exception request was submitted, whichever is latest; and
- for return home cases, all of the Uniform Case Record, including progress notes and related documents since the child last entered care or since the last exception request was submitted.

In the event that an exception is requested for the goal of independent living and a denial would leave the case sanctionable on the return home standard, the district may request a review on both standards. However, in that case the required documentation for both standards must be submitted.

When sanctions are taken against the district (i.e., reimbursement is denied by the Department), due to a violation of a utilization review requirement of 18 NYCRR 430.8-430.12, the district and an authorized agency charged with the loss have certain fair hearing rights. These rights are set forth in Section 398-b(4)(b) of the Social Services Law and 18 NYCRR 430.13(d), (e) and (f). Section 398-b(4)(b) provide:

"(b) Any social services district aggrieved by the denial of state reimbursement pursuant to this section and any agency aggrieved by the determination of a social services district to charge loss of reimbursement, pursuant to paragraph (a) of this subdivision, may appeal to the department which shall hold a fair hearing thereon in accordance with the provisions of section twenty-two of this chapter relating to fair hearings."

18 NYCRR 430.13(d), (e) and (f) provide:

"(d) A social services district aggrieved by the denial of State reimbursement pursuant to this section is entitled to a fair hearing to appeal such denial. Such fair hearing must be requested within 60 days of the date the written notice that reimbursement will be denied is sent.

(e) Any authorized agency aggrieved by the determination of a social services district to charge loss of reimbursement pursuant to subdivision (c) of this section is entitled to a fair hearing to appeal such determination. Such fair hearing must be requested within 60 days of the date the written notice that loss of reimbursement will be charged to such authorized agency is sent.

(f) The department shall conduct fair hearings required by this section in accordance with Section 22 of the Social Services Law and Article 3 of the State Administrative Procedure Act."

Should the district wish to dispute the denial, or should the authorized agency wish to dispute its being charged with loss of reimbursement, they have 60 days from the date of the notice of denial or notice of being charged to request a fair hearing. Requests for fair hearing should be addressed to:

Office of Administrative Hearings
New York State Department of Social Services
40 North Pearl Street
Albany, New York 12243

The request should specifically identify the determination being appealed and the case or cases being appealed. Due to the nature of the hearing and the possible issues (discussed below), the fair hearing can take one of two forms. A conventional hearing can be held, with all parties appearing before an Administrative Law Judge to offer testimony and/or documents. In the alternative, there can be a written hearing, in which all parties submit documentation in writing to the Administrative Law Judge without the necessity of parties actually appearing in person. After submission of documents in a written hearing, each party will have the opportunity to review and comment upon the documentation submitted by other parties before the close of the record. The hearing request should specify what type of hearing is desired. Should a written hearing be requested by either party, the Office of Administrative Hearings may, upon consent of all parties, grant the request. If all parties do not consent, or if the Office of Administrative Hearings determines that a conventional hearing is preferable, the request for a written hearing shall be denied and a conventional hearing will be scheduled.

It is important to note that a hearing request to contest the imposition of Utilization Review Exception sanctions should not be made until official notification of imposition of the sanction has been received by the local district or authorized agency. Official notification to the local district will be in the form of a letter from the Division of Family and Children Services of the Department notifying the local district of the sanction being imposed, the amount and the time period covered. Official notification to an authorized agency should be in the form of a letter from the local district notifying the authorized

agency of the sanction being charged to the authorized agency by the local district. Local districts may appeal the determination of the Department to deny reimbursement and authorized agencies may appeal the determination of a local district to charge loss of reimbursement to the authorized agency. Authorized agencies are not entitled to appeal a determination of the Department to deny reimbursement to local districts.

Possible issues at the UR Exception hearing will include the following:


1. Whether there was a proper request for a UR exception;
2. Whether the local district was notified of the denial of the request for an exception by the Department;
3. Whether reimbursement was denied for failure to comply with a provision of the regulations;
4. Whether the local district was properly notified of the denial of reimbursement;
5. Whether the authorized agency was properly notified of the determination of the local district to charge loss of reimbursement to the authorized agency;
6. Whether the amount of the sanction was properly computed.

Whether the denial of an exception request by the Department was programmatically proper will not be an issue at the hearing. For example, in situations where a child with a permanency goal of return to parents was continued in foster care beyond 24 months without an exception having been granted, whether the best interests of the child would have been served by extending the foster care placement will not be an issue. The issues will be limited to such topics as those listed above. This limitation of issues will apply to fair hearings on all forms of utilization review exceptions including but not limited to extensions of foster care placement beyond 24 months.

As explained above, the hearing will be conducted by written submission or by a conventional fair hearing, in accordance with Section 22 of the Social Services Law, Article 3 of the State Administrative Procedure Act and relevant Department Regulations. A decision will be issued by the Commissioner or his designee and a copy will be sent to each party.

V. Effective Date

The effective date of this release is October 1, 1986.



Joseph Samidei
Deputy Commissioner
Division of Family and
Children Services

