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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 92 LCM-162

Date: October 21, 1992

Division: Services & Community
Development

TO: Local District Commissioners

SUBJECT: Payments to Foster Parents

ATTACHMENTS: None

The purpose of this LCM is to clarify the Department's position relating to the obligation of social services districts to make payments to foster parents, including kinship foster parents, at a particular level (basic, special or exceptional). There has been some confusion regarding the issue of when, if ever, a social services district is obligated to pay at a certain level. In particular, there has been confusion with respect to the applicability of 18 NYCRR Part 427 in this process. Please be advised, however, that the Department's intention in issuing this letter is not to discourage social services districts from paying rates sufficient to meet the needs of foster children and to attract a sufficient number of qualified foster parents. The foster care rates are an important ingredient in enabling social services districts to place children in the least restrictive setting appropriate to the needs of the child and to attract a sufficient number of qualified foster parents to serve as placement resources for such children.

Department regulation 18 NYCRR Part 427 sets forth the Department's standards relating to the extent and degree of State financial participation in foster care rates. The Department does not interpret or apply 18 NYCRR Part 427 as it currently exists or as it previously existed to require a social services district to pay a foster parent at a particular rate for a particular category of foster children. Such regulations merely address standards and limits upon State reimbursement of social services districts.

The Department's standards of payment regulations were first promulgated in 1974. The regulations were intended to set forth the standards established by the Department relating to limitations upon State financial participation in foster care payments made by social services districts. Included within these regulations were 18 NYCRR 427.2(j) and (k) which

defined children who require special foster care services and children who require exceptional foster care services. In addition, 18 NYCRR 427.6 was promulgated to require each social services district to establish and submit to the Department an annual schedule of rates the social services district pays foster boarding homes. State reimbursement for such rates was limited to the maximum amount established by the Department in accordance with 18 NYCRR 427.6(b).

In 1988, Department regulation 18 NYCRR 443.3(v) was added to provide that "with the exception of foster family free home care as defined in (18 NYCRR 441.2(j)), certified and approved foster parents must be reimbursed for each child to whom they provide foster care according to the standards established in (18 NYCRR Part 427)". This regulation was promulgated to ensure that where a social service district established foster care rates in accordance with 18 NYCRR 427.6, the district would make foster care payments in a manner consistent with the rates established by the social services district.

In 1990, the Department amended 18 NYCRR 427.2 and 427.6 to clarify the circumstances under which a social services district may receive State reimbursement for services provided to foster children who need special or exceptional services. In addition, the regulations required social services districts to establish a schedule of rates for foster family care which reflected normal (basic), special and exceptional foster care categories. Heretofore, no such requirement existed. The regulation provided that where certified or approved foster parents were providing care for a child who was receiving special or exceptional foster care services prior to August 1, 1990 and they received foster care payments in excess of the standards promulgated on July 24, 1990, such higher payments could continue until March 31, 1991 and be subject to State reimbursement.

The confusion has been whether the definitions of "special" and "exceptional" children in the previous 18 NYCRR 427.2(j) and (k) were eligibility standards which required a social services district to pay a special or exceptional rate for a child who fell within one of those categories. An interpretation that a social services district was obligated by 18 NYCRR Part 427 and 18 NYCRR 443.3(v) to pay a rate commensurate with the definitions in 18 NYCRR 427.2(j) or 427.2(k) is not correct. Department regulations, 18 NYCRR 427.2(j) and (k), as repealed on July 24, 1990, did not constitute eligibility standards for a particular foster care rate a social services district was obligated to pay. On the contrary, these definitional provisions merely applied to the limitations on the level and extent of State financial participation. The regulations were intended to give social services districts guidance concerning limits on State reimbursement. Social services districts pursuant to 18 NYCRR 427.6 were authorized to establish their own categories and rates. Such categories did not have to include all of the categories in 18 NYCRR 427.2(j) and (k). The provisions of 18 NYCRR Part 427 merely placed limitations on the degree of State participation in such categories and rates. The regulation also made

it clear that State reimbursement at the special or exceptional rate was not available for categories of foster children not contained in the categories set forth in the previously existing 18 NYCRR 427.2(j) and (k).

This means that because, for example, a foster child was adjudicated as an abused or neglected child pursuant to Article 10 of the Family Court Act, a social services district was not and is not obligated in accordance with 18 NYCRR 427.2(j) to pay the special rate for such child unless that district by its own formal local policy adopted that standard. The applicable rate would be the rate established by the social services district and provided to the Department in accordance with 18 NYCRR 427.6. Prior to July 24, 1990, a social services district was not obligated to have separate and distinct rate categories [basic (normal), special or exceptional]. A foster parent seeking a revised retroactive rate for a child still in the foster home would be bound by the category established by the social services district during the period in question. Again, for example, some social services districts established local policies where they would pay the special rate for some categories of abused or neglected children but not all categories. These limitations could include the age of the child or the length of stay. Such social services districts could permissibly limit payment at the special rate to only those cases within locally established categories. Social services districts are expected to apply the policies they establish in a uniform manner for children who fall within such categories.

The Department's July 24, 1990 regulatory amendments repealed the definitions in 18 NYCRR 427.2(j) and (k) relating to special and exceptional children in an effort to clarify that 18 NYCRR 427 applied to limitations on State financial participation and not the establishment of State mandated eligibility categories. The Department's intention here is to reinforce this position. At the same time, social services districts are strongly encouraged to establish foster boarding home rates which will ensure the ability to place children in the least restrictive setting appropriate to meet the needs of the child. Such action is warranted in order to comply with the appropriateness of placement standards set forth in Department regulation 18 NYCRR 430.11. We request that you implement your internal procedures in a consistent manner.

If you have any questions on this matter, please contact your Regional Office Director:

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