



Office of Children and Family Services

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Administrative Directive

Transmittal:	23-OCFS-ADM-21
To:	Local Departments of Social Services Commissioners Voluntary Authorized Agencies Executive Directors
Issuing Division/Office:	Division of Child Welfare and Community Services
Date:	November 20, 2023
Subject:	Newly Adopted Extraordinary Level of Care and other Regulatory Changes
Suggested Distribution:	Local Departments of Social Services Directors Voluntary Authorized Agencies Executive Directors Accounting Supervisors Foster Care Supervisors Preventive Service Supervisors Home Finding Supervisors CONNECTIONS Implementation Coordinators
Contact Person(s):	See section VII.
Attachments:	None

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
	08-OCFS-ADM-03	18 NYCRR 421.24, 427.6, 435.1-3, 435.5, 435.10, 436.5, 441.22	Chapter 56 of the Laws of 2022, Social Services Law, sections 398-a(2-c), 409-a, 451(2)&(4), 453(2), 458-a(2) and 458-b(6)		

I. Purpose

The purpose of this Administrative Directive (ADM) is to inform local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of regulatory amendments that impact foster care rates, adoption subsidies, and Kinship Guardianship Assistance Program (KinGAP) payments as well as respite care and services provided to families and foster parents.

II. Background

Chapter 56 of the Laws of 2022 required that as of July 1, 2023, all LDSSs must pay at least 100% of the maximum state aid rates (MSARs¹) published by the New York State Office of Children and Family Services (OCFS) for children in regular, therapeutic, special needs, and emergency foster boarding homes. On August 9, 2023, conforming and other regulatory amendments were adopted that include

- adding the extraordinary level of care rate category to the list of categories of foster care rates for children placed in foster boarding homes;
- eliminating the ability of LDSSs to pay an adoption subsidy rate that is less than 100% of the foster care board rate for all initial adoption subsidy agreements made and fully executed on or after September 1, 2023;
- eliminating the ability of LDSSs to pay a KinGAP rate that is less than 100% of the foster care board rate for all initial Kinship Guardianship Assistance and Nonrecurring Payment Agreements (KinGAP agreements) made and fully executed on or after September 1, 2023;
- expanding the definition of a handicapped child for purposes of eligibility for adoption subsidies to include a child who is determined to need an extraordinary level of care while in foster care;²
- revising eligibility standards for respite care and services; and
- making technical corrections.

See Program Implications for an overview of the new regulations.

III. Program Implications

Extraordinary Level of Care Foster Care Rate

A new extraordinary level of care rate was added to the list of categories of foster care payment rates (previously just basic, special, and exceptional) for children placed in foster boarding homes. The child in foster care and the foster parent must both meet the criteria below to be eligible for the new extraordinary level of care rate:

Criteria for Child Eligibility:³

The LDSS must assess the child to require an extraordinary level of care based on the child's physical, mental, emotional, or social needs. Additionally, because of such needs, without an extraordinary level of care in a foster family boarding home, the child would require, as determined by the LDSS, placement in a Qualified Residential Treatment Program (QRTP) or require, as certified by a physician, 24-hour-a-day care by qualified nurses or persons closely supervised by qualified nurses or physicians, and meet one or more of the following criteria:

- a. Have severe behavior problems related to inflicting violence on themselves or other persons or their physical surroundings and who
 - have been certified by a qualified psychiatrist or psychologist as requiring high levels of individual supervision in the home; or
 - have been adjudicated as a Person in Need of Supervision (PINS) or Juvenile Delinquent (JD); or
 - have been diagnosed by a qualified physician as having a severe mental illness, severe brain injury that seriously affects the child's ability to relate to their peers and/or authority figures, intellectual, or developmental disability; or

¹ See [22-OCFS-ADM-16](#) for more information on the amendments to MSARs.

² 18 NYCRR 421.24(a)(2)(v).

³ 18 NYCRR 427.6(f)(1).

- b. Have been diagnosed as having acquired immune deficiency syndrome (AIDS) or a human immunodeficiency virus (HIV)-related illness;⁴ or
- c. The child has been released from in-patient psychiatric hospital care within the last year; or
- d. The child has been temporarily placed in a QRTP but is ineligible to stay due to a determination by a qualified individual through the assessment process and is identified as eligible for extraordinary level of care; or
- e. The child is a survivor of or at high risk of commercial labor or sexual exploitation; or
- f. The LDSS commissioner has determined that the child has a condition equivalent to the criteria above, and the equivalent condition(s) has been approved by OCFS as eligible for extraordinary foster care services or a child-specific request submitted by the LDSS and approved by OCFS.

The foster parent(s) must also meet the criteria below to be eligible for the new extraordinary rate.

Criteria for Foster Parent Eligibility:⁵

The LDSS must assess the foster parent to be capable of providing care to a child in foster care with the characteristics of a child with a need for an extraordinary level of care as described above. Additionally, because of such needs, the foster parent must meet **all** the following criteria:

1. Be easily accessible to meet a child's needs on an ongoing and emergent basis;
2. Demonstrate the ability to care for children in foster care with special, exceptional, or extraordinary needs through past training and have professional experience in nursing, special education, providing care for children in a New York licensed, registered or permitted child care program or have completed or participated in specialized training for this population provided by an LDSS or VA or have other relevant training and experience;
3. Will have only one child in foster care in the foster family boarding home at a time (**see footnote**);⁶
4. Actively participate in ongoing foster parent training provided by the LDSS or VA (at least 8 hours per year);
5. Actively participate in ongoing case conferences, as scheduled by the LDSS or VA;
6. Actively participate in daily (Monday-Friday) contacts with the applicable LDSS or VA and provide daily updates of the child's progress via email, phone, virtual or in-person contact;
7. Actively participate in weekly foster parent group meetings focused on training in parenting practices and support;
8. Actively support and implement daily the child's individualized behavior management program;
9. Actively support the child's individualized therapy, including implementing strategies that have been identified in the child's treatment plan;
10. Actively participate in individualized skills training and coaching for the child; and

⁴ Children in foster care who have tested positive for HIV infection and subsequently tested negative for HIV infection due to the presence of antibodies (seroconversion) remain eligible for extraordinary services for one year from the date of the test that indicated seroconversion. After the one-year period, the child's condition must be evaluated and the LDSS commissioner must determine the child's continued need for extraordinary foster care services.

⁵ 18 NYCRR 427.6(f)(2).

⁶ For the placement to qualify for the extraordinary rate, only one child in foster care may be placed in the home at any one time; this applies to siblings who are in foster care. If one or more children in the sibling group are in need of an extraordinary level of care, the siblings would need to be placed in separate foster family boarding homes. However, nothing in the regulations prohibits other children (biological/adopted) from residing in the home if those children are not in foster care.

11. Have the capacity to provide intense supervision and interpersonal relationships that are consistent with the child's therapeutic goals, including working with the professionals involved in the treatment plan and accept assistance and guidance in caring for the child.

Adoption Subsidies

The regulations include the following changes to adoption subsidy payments:

- The definition of a “handicapped” child is expanded to include children who need an extraordinary level of care. Therefore, a child who meets the criteria for the “extraordinary level of care rate” in foster care and is in receipt of the extraordinary rate at the time of application for adoption subsidy would also meet the criteria for the extraordinary rate for an adoption subsidy.⁷
- The monthly payment rate for adoption subsidy where the initial adoption subsidy agreement was made and fully executed on or after September 1, 2023, must be 100% of the applicable foster board rate. As of that date, LDSSs may no longer consider the income of the prospective adoptive parent for the purposes of determining the amount of the monthly adoption subsidy payment rate.⁸
 - The extraordinary level of care rate is not applicable in adoption subsidy cases where the child was not placed in foster care.⁹
 - The extraordinary level of care rate is not available through an amendment of an initial adoption subsidy agreement that was made and fully executed prior to the effective date of the OCFS regulations that enacted the extraordinary rate category (August 9, 2023).

KinGAP Agreements

The regulations require the following changes to KinGAP agreements:

A child who meets the criteria for the “extraordinary level of care rate” in foster care and is in receipt of the extraordinary rate at the time of application for KinGAP payments is made also meets the criteria for the extraordinary rate for a KinGAP agreement under the definition¹⁰ of applicable board rate for KinGAP purposes.

The monthly payment rate for KinGAP agreements where the initial KinGAP agreement was made and fully finalized on or after September 1, 2023, must be 100% of the applicable foster board rate. For all KinGAP agreements made and fully finalized on or after that date, LDSSs may no longer consider the income and family size of the prospective relative guardian for the purpose of determining the amount of the monthly KinGAP payment rate.¹¹

- The extraordinary level of care rate is not available through an amendment of an initial KinGAP agreement that was made and fully executed prior to the effective date of the OCFS regulations that enacted the extraordinary rate category (August 9, 2023).

⁷ SSL §451(4); 18 NYCRR 421.24(a)(2)(v).

⁸ 18 NYCRR 421.24(a)(6).

⁹ A child not placed in foster care means a child who was not in the care and custody or custody and guardianship of an LDSS.

¹⁰ SSL 458-a(2).

¹¹ 18 NYCRR 436.5(b).

Respite Care and Services

The regulations include the following changes to respite care and services:¹²

- Therapeutic foster parents may now receive respite care and services for children in their care.¹³
- The maximum number of available days of respite care and services for foster families is increased from 21 to a maximum of 30 consecutive days per child or a total of seven weeks per child.¹⁴
- Respite care for families may be provided for up to a maximum of seven weeks per child, per year from the prior 21 consecutive days.¹⁵
- The LDSS may extend the number of respite days beyond the time frames prescribed if the LDSS determines there are extraordinary circumstances that warrant an additional respite stay.¹⁶
- The provision that required a period of seven consecutive days to elapse between respites to a family or foster family has been repealed and is no longer required.¹⁷
- The provision that limited respite care and services for a foster family to a maximum of seven weeks in any calendar year has been repealed.¹⁸
- The payment conditions for reserved accommodations for respite care and services in foster family boarding homes or in emergency foster family boarding homes have been removed and no longer apply.¹⁹

IV. Required ActionExtraordinary Level of Care Foster Care Rate

LDSSs are eligible to receive state reimbursement for payments for extraordinary foster care services on behalf of children in foster care who are determined by the LDSS to need an extraordinary level of care as set forth in 18 NYCRR 427.6(f) and where the child and foster parent satisfy the criteria outlined in section III of this ADM.

The standardized procedure to notify foster parents of a child's level of care determination and associated board rate payment previously found in 08-OCFS-ADM-03 applies to the new extraordinary rate and must be followed. Once the level of care has been determined and the board rate payment is set, the notification form *Notification of Foster Care Level of Care and Board Rate Payment* (OCFS-LDSS 7018; revised 10/23) must be completed by the LDSS or VA and given to the foster parents. Please note that 08-OCFS-ADM-03 has been cancelled and reissued (see 23-OCFS-ADM-22) to include the extraordinary rate.

¹² 18 NYCRR Part 435.

¹³ 18 NYCRR 435.1-3.

¹⁴ 18 NYCRR 435.5(b).

¹⁵ 18 NYCRR 435.5(c).

¹⁶ Ibid.

¹⁷ 18 NYCRR 435.5(d) Repealed.

¹⁸ 18 NYCRR 435.5(e) Repealed.

¹⁹ 18 NYCRR 435.10(c).

Adoption Subsidies

LDSSs may no longer consider the income of the prospective adoptive parent to calculate the monthly adoption subsidy payment rates and must pay adoption subsidy rates at 100% of the applicable foster care board rate when the initial adoption subsidy agreement was made and fully executed on or after September 1, 2023.

Income requirements used to calculate monthly adoption subsidy payments that are less than 100% of the foster care board rate may only apply to adoption subsidy agreements made and fully finalized before September 1, 2023. All adoption subsidy agreements made and fully finalized before September 1, 2023, that used parent income or pay less than 100% of the foster care board rate continue in full force and effect for the care and maintenance or medical care of adopted handicapped or hard-to-place children. Any upgrades to adoption subsidies fully executed prior to September 1, 2023, that used family size and parent income will continue to use the family size and parent income that was used in the initial application for the requested upgrade.

KinGAP Agreements

LDSSs must pay 100% of the foster care board rate for all initial KinGAP agreements made and fully executed on or after September 1, 2023. Therefore, the income and family size of the prospective relative guardian may no longer be used to calculate payment amounts for initial KinGAP agreements finalized after that date. Any KinGAP agreement using income and family size calculations that are in process on or after September 1, 2023, where letters of guardianship have not yet been issued, must be modified to reflect 100% of the applicable foster boarding rate and re-signed by the prospective relative guardian and the LDSS before the letters can be issued.

KinGAP agreements finalized before September 1, 2023, where the letter of guardianship was issued prior to September 1, 2023, may continue to be paid at a rate that is less than 100% of the applicable foster care board rate, and any amendments to such agreements may be continued at that rate.

Respite Services

Therapeutic foster parents are now eligible to receive respite care and services. As of August 9, 2023, foster parents (including therapeutic foster parents) may be provided respite for up to a maximum of 30 consecutive days, seven weeks per year, per child in care. Families may receive respite care and services for up to a maximum of seven weeks per child, per year.²⁰ LDSSs may now approve additional respite days for families where there are extraordinary circumstances that warrant an additional respite stay. LDSSs may determine what is considered to be an extraordinary circumstance.

Additionally, foster parents and families no longer have to wait for a seven consecutive day period between receiving respite care and services.

V. Systems Implications

CONNECTIONS

CONNECTIONS Activities have been changed to accommodate Level of Difficulty (LOD) 5-Extraordinary. When a child has been determined as qualifying for LOD 5-Extraordinary, an S200 activity must be entered on the child's Activities track with the effective date of the LOD 5. Modifiers are available, but not required when the S200 for LOD 5 is entered.

²⁰ 18 NYCRR 435.5(c).

Benefits Issuance Control System (BICS)

BICS Rate Table Entry has been changed to permit the entry of a Pass-Through/LOD rate table for LOD 5 and any associated modifiers. BICS Rate Table Inquiry will display any Rate Table entries for LOD 5 and associated modifiers.

BICS will process LOD 5 for payments for Purchase of Service (POS) 61-Foster Care Service and Maintenance and POS 62-Emergency Foster Care Service and Maintenance for children placed in foster boarding homes as is currently done. BICS retroactive payment and claiming processes have been changed to accommodate LOD 5. BICS Individual Data Inquiry has been changed to display S200 codes with LOD 5.

BICS Accounts-Selection 15-KinGap/Adoption LOD has been changed to accept LOD 5 and any associated modifiers. BICS will process KLOD 5 and ALOD 5 for payments for POS 52-Adoption Subsidy and POS KG-Kinship Guardianship as is currently done. BICS Individual Data Inquiry has been changed to display KLOD and ALOD with LOD 5.

Welfare Management System (WMS) and BICS

WMS will be changed to allow entry of POS lines for POS type 8A-Planned Temporary Respite for Foster Care, 8B-Crisis Temporary Respite for Foster Care, and 8C-Crisis Respite Services for a maximum of 30 days.

When an absence for Respite (M950-ST) has been entered in CONNECTIONS, with allowable days, BICS will be changed to process payment, for POS 61 and 62, up to the number of allowable days, and provide only federal non-participating (FNP) reimbursement for those payments. Payments for POS 61 and 62 that exceed 30 days will be considered non-reimbursable.

New York Adoption Subsidies (NYSAS)

Subsidy applications and all forms generated from NYSAS will include an "X" to indicate the selection of the Extraordinary Rate. E, S, and B will remain for Exceptional, Special, and Basic.

VI. Additional Information

OCFS policies, procedures, forms, manuals, and publications will continue to be updated to reflect the regulatory changes described above. The forms listed below are the KinGAP and Adoption Subsidy forms that have already been revised. The revised forms can be found on the OCFS website at ocfs.ny.gov/forms/.

KinGAP

- [OCFS-4435b](#), *Kinship Guardianship Assistance Eligibility Checklist Instructions* (Revised 09/23)
- [OCFS 4431](#), *Kinship Guardianship Assistance and Nonrecurring Expenses Agreement* (Revised 09/23)
- [OCFS 4432](#), *Kinship Guardianship Assistance and Nonrecurring Guardianship Expenses Amendment* (Revised 09/23)

Adoption Subsidy

- [LDSS 4623A](#), *Adoption Subsidy and Nonrecurring Adoption Expenses Agreement-Initial Application* (Revised 11/23)
- [LDSS 4623B](#), *Adoption Subsidy and Nonrecurring Adoption Expenses Agreement-Post Finalization Application* (Revised 11/23)
- [LDSS 4623C-2](#), *Adoption Subsidy and Nonrecurring Adoption Expenses Agreement-Upgrade or Substantive Amendment* (Revised 11/23)

VII. Contacts

Any questions concerning this release should be directed to the appropriate regional office in the OCFS Division of Child Welfare and Community Services:

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VIII. Effective Date

This ADM becomes effective immediately upon release. The effective date for the establishment of an extraordinary rate is August 9, 2023, and the effective date for the changes to monthly payments for adoption subsidy and KinGAP agreements is September 1, 2023.

/s/ Gail Geohagen-Pratt

Issued by:

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Title: Deputy Commissioner

Division/Office: Division of Child Welfare and Community Services