

OFFICE OF CHILDREN AND FAMILY SERVICES

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| LOCAL COMMISSIONERS MEMORANDUM |
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OCFS-4616EL (Rev. 11/98)

Transmittal No: 99 OCFS LCM-8

Date: March 19, 1999

Division: Administration

TO: Local District Commissioners

SUBJECT: Claiming Instructions for Implementing the
Criminal Background Checks on Foster Care and
Pre-adoptive Placement Homes As Required by
Chapter 7 of the Laws of 1999

ATTACHMENTS: None

I. PURPOSE

The purpose of this Local Commissioner Memorandum (LCM) is to provide social services districts and other authorized agencies with guidance on claiming federal reimbursement in light of the changes made by the federal Adoption and Safe Families Act (ASFA) of 1997 and Chapter 7 of the Laws of 1999 of the State of New York.

II. BACKGROUND

Effective January 1, 1999, federal funding may not be claimed for prospective foster care and prospective adoptive parents unless a criminal background check is successfully completed prior to final certification or final approval. Effective February 11, 1999, the criminal background check requirement is extended by State law to existent foster homes as their certifications or approvals come due for recertification or re-approval. Also, as of February 11, State law requires that all individuals in an existing foster or adoptive home over the age of 18 are subject to the criminal background check requirements at next recertification or reapproval of the home. Successful completion of these criminal background check requirements is a condition of federal reimbursement for payments made to or on behalf of the home. For purposes of this letter, successful completion of a criminal background check means that, for each individual in the home

subject to a criminal background check, one of the following results must be in the provider record for the home:

No Record/No Criminal History Found; or

History of One or More Crimes: Discretionary Disqualifiers found and the authorized agency performed a safety assessment of the conditions of the household and determined the placement to be safe.

The Office will soon issue emergency regulations to assist social services districts and authorized agencies in implementing ASFA requirements and the related provisions of Chapter 7 of the Laws of 1999 of the State of New York. By following the provisions of the emergency regulations and the guidance provided in this letter, social services districts will be able to appropriately claim payments made to or on behalf of foster and adoptive homes in a manner consistent with both federal and State law. The procedures outlined in this LCM are proposed to enable the State and social services districts to preserve appropriate sources of reimbursement. Failure to follow these instructions could result in the pending of a district's entire Title IV-E claim. As always, final determination of federal participation rests with the federal Department of Health and Human Services, Agency for Children and Families (ACF).

In addition, districts must keep in mind two fundamental principals as they implement the criminal background check requirements and the procedures discussed in this letter.

1. Regardless of eligibility classification of a case or the claim for reimbursement on payments, districts are responsible for providing all foster care children with the full protections afforded by the ASFA requirements and Chapter 7 of the Laws of 1999 of the State of New York.
2. Title IV-E is the claiming category of choice and must be fully pursued and documented in every appropriate case.

III. CLAIMING CRITERIA

New Foster Care Homes

Certifications

For homes certified on or after January 1, 1999, social services districts may not claim any foster care payment made to or on behalf of such homes as federally participating (FP) until the criminal background checks are successfully completed on the foster parents. In addition, for any home certified on or after February 11, 1999, social services districts may not claim foster care payments made to or on behalf of such homes as FP until the criminal background checks are successfully completed on each person residing in the home over the age of 18. The costs associated with any care provided in such homes before the criminal history background checks are successfully completed must be separately reported on the "DSS-3922

Financial Summary for Special Projects" as described in the claiming instruction section below (items 1 and 3). Once the requisite criminal background checks are successfully completed for the home, social services districts may resume claiming of the appropriate federal category as of the first day of the month in which all of the criminal background checks are successfully completed. This Office will pursue the claims for Title IV-E or EAF for the prior months based on your DSS-3922 claim submissions.

For any foster home that was newly certified on or after January 1, 1999 but before February 11, 1999 without the successful completion of the criminal background check(s) of the foster parent(s), the district must initiate such check(s) on the parent(s) as soon as possible. For any other individuals in the home over the age of 18, the criminal background check is required at the next recertification. For any foster home that was newly certified on or after February 11, 1999 without the successful completion of a criminal background check of the foster parent(s) and each person over the age of 18 currently residing in the home, the district must initiate such checks as soon as possible.

The Office recognizes that there may be extraordinary circumstances where it might be necessary to certify a foster home on an emergency basis without the successful completion of a criminal background check on the foster parent and all other persons over the age of 18 residing in the home. Therefore, the emergency regulations will allow for a home to receive an emergency certification when there are no existing suitable approved or certified foster homes available for a child(ren) for whom the appropriate level of care is a foster boarding home, provided that the prospective foster parent has successfully completed all of the criteria for certification except for the requisite criminal background checks. Once the criminal background checks have been successfully completed, a final certification may be issued for the home. Expenditures for placements in an emergency certified home may not be claimed by the district as Title IV-E or EAF and also must be separately reported on the DSS-3922 as discussed in the claiming instructions (items 1 and 3). Once the requisite criminal background checks are successfully completed and the home receives final certification, FP may be claimed back to the first day of the month in which all of the criminal background checks are successfully completed. The Office will pursue the claims for Title IV-E or EAF for the prior months based on your special claim form submissions.

Kinship Approvals

Office regulations allow social services districts and authorized agencies up to 60 days to complete an approval for cases requiring emergency kinship placements. Effective January 1, 1999, federal funding may not be claimed for prospective kinship foster care parents unless a criminal background check is successfully completed prior to final approval. Effective February 11, 1999, final approval also requires the completion of criminal background check of all household members over the age of 18. The emergency regulations will provide for continuation of the emergency approval beyond 60 days to allow completion of the criminal background checks when all other requirements of the final approval, including the

submission of the fingerprinted cards, have been met by the 60th day of placement.

Social services districts may not claim federal reimbursement for care provided beyond the first 60 days of emergency kinship foster care unless the criminal background check is successfully completed within the first 60 days of placement. After the 60th day, social services districts must claim such payments as federally non-participating on the DSS-3922 as discussed in the claiming section of this memorandum (items 1 and 3). Once the requisite criminal background checks are successfully completed for the home, you may resume claiming the appropriate federal claiming category, either Title IV-E or EAF under the TANF set aside provisions, as of the first day of the month the final approval was completed. This Office will pursue the claims for Title IV-E or EAF for the prior months based on your special claims form submissions.

Foster Home Recertification and Re-approval

Social services districts may not claim as FP foster care payments made to or on behalf of foster homes recertified or re-approved after February 10, 1999 until the criminal background checks are successfully completed on all members of the household over the age of 18. The costs must be separately reported on the DSS-3922 as described in the claiming instruction section below (items 2 and 4). Once the requisite criminal background checks are successfully completed for the home, social services districts may resume claiming the appropriate federal category as of the first of the month in which the criminal background checks are completed. This Office will pursue the claims for Title IV-E or EAF for the prior months based on your special claim form submissions.

For homes that are due to be recertified or re-approved after February 10, 1999, the emergency regulations will provide for the continuation of the existent certification or approval while the criminal background checks are being completed, provided that:

all other eligibility factors for the case and the provider continue to be met, and

the foster parent has submitted all requisite documentation required for recertification or re-approval prior to the expiration of the existent certification or approval, including the fingerprinted cards for the foster parents and all other individuals over the age of 18 who reside in the home.

However, districts may not claim federal reimbursement for payments to such homes until all required criminal background checks are completed and the home is fully recertified or re-approved. The costs associated with any care provided in such homes, after the date the existent certification or approval was set to expire but before the criminal history background checks are successfully completed, must be separately reported on the "DSS-3922 Financial Summary for Special Projects" as described in the claiming instruction section below (items 2 and 4). Once the requisite criminal background checks are successfully completed for the home, social services districts may resume claiming of the appropriate federal category as of the

first day of the month in which all of the criminal background checks are successfully completed. This Office will pursue the claims for Title IV-E or EAF for the prior months based on your DSS-3922 claim submissions.

Prospective Adoptive Home Approvals

For homes approved on or after January 1, 1999, social services districts may not claim any foster care payment made to or on behalf of such homes as FP until the criminal background checks are successfully completed on the foster or pre-adoptive parent(s). In addition, for any home approved on or after February 11, 1999, social services districts may not claim foster care payments made to or on behalf of such homes as FP until the criminal background checks are successfully completed on each person over the age of 18 residing in the home. The costs associated with any care provided in such homes before the criminal history background checks are successfully completed must be separately reported on the "DSS-3922 Financial Summary for Special Projects" as described in the claiming instruction section below (items 1 and 3). Once the requisite criminal background checks are successfully completed for the home, social services districts may resume claiming of the appropriate federal category as of the first day of the month in which all of the criminal background checks are successfully completed. This Office will pursue the claims for Title IV-E or EAF for the prior months based on your DSS-3922 claim submissions.

For any pre-adoptive home that was newly approved on or after January 1, 1999 but before February 11, 1999 without the successful completion of the criminal background check(s) of the pre-adoptive or foster parent(s), the district must initiate such check(s) on the parent(s) as soon as possible. For any other individuals in the home over the age of 18, the criminal background check is required before the adoption is made final. For any pre-adoptive or foster home that was newly approved on or after February 11, 1999, without the successful completion of a criminal background check of the pre-adoptive or foster parent(s) and each person over the age of 18 currently residing in the home, the district must initiate such checks as soon as possible.

Adoption Subsidies

The State legislation requires that, as of February 11, 1999, a criminal background check be done on any approved adoptive parent and each person over the age of 18 residing in the home prior to the adoption being made final if such check(s) was not done as part of the adoptive home approval. Adoptions that were made final on or after February 11, 1999 without the completion of these criminal background check(s) are not eligible for federal adoption subsidy funding under Title IV-E for the duration of the adoption. Subsidy payments for such adoptions must be claimed as FNP on the DSS-3922 as discussed in the claiming instructions (item 5).

IV. CLAIMING INSTRUCTIONS

Expenditures for Title IV-E and EAF foster care and Title IV-E adoption subsidy cases placed in homes certified or approved on or after January 1, 1999 or recertified or re-approved on or after February 11, 1999 without a criminal background check must be claimed on the "DSS-3922 Financial Summary for Special Projects" claim form.

A separate DSS-3922 must be filed for the claiming of expenditures for each of the following five types of foster care and adoption situations. Costs related to foster care should be claimed 100% in the State share column and will be applied to the Family and Children's Services Block Grant. Expenditures for adoption subsidies should be claimed at 75% reimbursement and 25% local share. The DSS-3922 should accompany the supplemental claim that will be generated as a result of the Accounts adjustment activity described below.

1. Placements of Title IV-E children in new foster and adoptive homes certified or approved on or after January 1, 1999 without a successful completion of the criminal background checks. The project name on the DSS-3922 should be "IV-E FC 1/99", "IV-E FC 2/99" etc."
2. Placements of Title IV-E children in foster homes recertified or re-approved on or after February 11, 1999 without a successful completion of the criminal background checks. The project name on the DSS-3922 should be "IV-E FC RECERT 2/99", "IV-E FC RECERT 3/99", etc."
3. Placements of EAF children in new foster and adoptive homes certified or approved on or after January 1, 1999 without a successful completion of the criminal background checks. The project name on the DSS-3922 should be "EAF FC 1/99", "EAF FC 2/99" etc."
4. Placements of EAF children in foster homes recertified or re-approved on or after February 11, 1999 without a successful completion of the criminal background checks. The project name on the DSS-3922 should be "EAF FC 1/99", "EAF FC 2/99" etc."
5. IV-E pre-adoption placements on or after February 11, 1999 that were approved without a successful completion of the criminal background checks. The project name on the DSS-3922 should be "ADOPT 2/99", "ADOPT 3/99", etc."

The expenditures should be claimed on line C.12 of the DSS-3922 and labeled "Foster Care" for the Title IV-E and EAF Foster Care claims (items 1-4 above) and "Adoption Subsidies" for the IV-E adoption subsidies (item 5 above). Only Foster Care maintenance and Adoption Subsidy payments for Title IV-E and EAF eligible cases are covered by these instructions. Other expenditures, e.g. clothing, can be claimed on the appropriate schedule for Federal reimbursement.

All of these expenditures will be claimed to the State as FNP. The State will submit the claims to the Department of Health and Human Services (DHHS) for adjudication on the basis of the DSS 3922's submitted. Upon receipt of federal funds, adjustments will be reflected in the Claim Settlements.

Claims Already Filed with the Office of Temporary and Disability Assistance

Retroactive Accounts Adjustments in the Benefits Issuance and Control System (BICS) should be made to the relevant payments to change their funding from federal participating to Non-federal Participating.

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The following retroactive adjustments should be done in the BICS Accounts Adjustments function:

- * Items 1 and 2 - For IV-E foster care and adoptive cases, the suffix code of "F" should be entered into each Maintenance Payment. This will reduce FP foster care claimed on the original Schedule K and increase FNP Foster care on the Supplemental Schedule K of the Composites. The adjusted amounts will be claimed on the DSS-3922.
- * Items 3 and 4- EAF foster care and pre-adoptive cases should be changed to Non-IV-E foster care to make the payments FNP, since EAF cannot be claimed as FNP. The claiming category 04 must be changed to 08.
- * Item 5- For Title IV-E pre-adoption subsidies paid on or after February 11, 1999 in a home approved without the required criminal background check(s), the payments should be changed to non-IV-E Adoption Subsidies. The suffix code of F should be entered for these POS lines for ongoing subsidy payments. Please understand that these adjustments will show up in the Supplemental Composites for the Schedules K or H.

If there are any retroactive claiming changes for individuals for reasons other than those noted in this letter, these adjustments must be analyzed before you compile the amounts to report on the DSS-3922. Also, districts will need to be aware that unrelated claiming changes to cases not affected by the ASFA legislation, will also have to be segregated and claimed normally via Schedule K.

Should federal reimbursement become available later, then such expenditures must be adjusted again through the Accounts function to their original coding. The adoption subsidies, however, will never become federally participating if the adoption is finalized after February 10, 1999 without the required criminal background check(s) being done on the adoptive parents and all members of the household over the age of 18.

Prospective Claims

For all other ongoing cases, there would have to be a new payment line written. For foster care cases, the coding would have to be a direct component of 08F, and the purchase of service line of 61F. The claiming category would remain the same except for EAF cases that would have to be changed to 08.

Adoption subsidy cases would have to be changed to a 01F for the direct component and a purchase of service line using the POS code of 52-55, with an F suffix code.

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V. CONTACTS

If you have any questions regarding the claiming criteria section of this letter please contact Mr. John Conboy at 1-518-402-0147 (User ID # 90b061).

Questions pertaining to the claiming instructions may be directed to Mr. Roland Levie (Regions I-IV) at 1-800-343-8859, extension 4-7549 (User ID # FMS001) or in Region V Mr. Marvin Gold at 212-383-1733 (User ID # OFM270).

Sincerely,

Melvin I. Rosenblat
Deputy Commissioner
For Administration