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Local Commissioners Memorandum

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| Transmittal: | 10-OCFS-LCM-05 |
| To: | Local District Commissioners |
| Issuing Division/Office: | Strategic Planning and Policy Development Administration |
| Date: | July 13, 2010 |
| Subject: | SFY 2010-11 Foster Care Block Grant Allocations |
| Suggested Distribution: | Accounting Supervisors Directors of Social Services |
| Contact Person(s): | See page 6 & 7 |
| Attachments: | A. Allocation of \$436,002,000 |
| Attachment Available Online: | Yes (as part of this policy), at http://ocfs.state.nyenet/policies/external |

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to provide social services districts with their Foster Care Block Grant allocations for State Fiscal Year (SFY) 2010-11 and the corresponding program implications as authorized by Chapter 53 of the Laws of 2010.

II. Background

Chapter 57 of the Laws of 2009 extended the Child Welfare Financing Law to June 30, 2012. The Child Welfare Financing Law promotes a reduction in the use of foster care placements through three components:

1. A Foster Care Block Grant capping state reimbursement to social services districts for foster care services and administration at the annual amounts appropriated.
2. Uncapped state reimbursement after applying available federal funds for all child welfare services except for Community Optional Preventive Services (COPS), foster care services, and administration.

3. A Quality Enhancement Fund administered by the Office of Children and Family Services (OCFS) to increase the availability and quality of children and family services programs.

The SFY 2010-11 state appropriation for the Foster Care Block Grant is \$436,002,000. This includes funding to support the continuation of the required Maximum State Aid Rates (MSAR) for congregate care programs and the applicable administrative/services rates for therapeutic, special needs, and emergency foster home programs. Section III in this LCM provides additional details on the MSAR payment requirements and the Cost-of-Living Adjustment (COLA). Of the \$436,002,000, a major portion of the Block Grant, or \$399,552,000 is allocated based on historical claims; \$36,450,000 is set-aside for districts that have reduced their use of foster care days. The SFY 2010-11 Foster Care Block Grant allocation also includes the last annual adjustment of \$9,166,970. Section III in this LCM provides additional details on these adjustments.

III. Program Implications

The Foster Care Block Grant includes state reimbursement for foster care services as follows:

- Care and maintenance, including clothing and special payments; supervision; administrative costs claimed on Schedule D, Schedule D-2, and Schedule K; including all tuition for foster children placed in Office of Mental Health (OMH)-licensed residential treatment facilities, as well as in OCFS-licensed child care institutions.
- Supervision of foster care children in federally funded job corps programs.
- Care, maintenance, supervision and tuition of adjudicated juvenile delinquents or persons in need of supervision placed in residential programs operated by authorized agencies and in out-of-state residential programs.

The Foster Care Block Grant does **not** include federal reimbursement for foster care costs or state reimbursement for the following claims:

- Committee on Special Education (CSE) payments.
- Dormitory Authority payments in excess of the Foster Care Block Grant (for more information see Fiscal Reference Manual Volume 2 Chapter 4).
- State reimbursement for foster care services for Indian tribes.
- Medical Assistance payments for children in foster care.
- Independent Living Services (except for those districts that have funds left over from their Foster Care Block Grant allocations for SFY 2009-10 – See V. Fiscal Claiming below).

Separate appropriations are available for these expenditures.

The Block Grant contains only those state funds that are available for reimbursement of a district's expenditures for the services included in the Foster Care Block Grant. District claims that are eligible to receive federal reimbursement under Title IV-E foster care, Independent Living, and TANF-EAF [up to the amount of the district's Flexible Fund for Family Services (FFFS) allocation the districts has indicated and wants to use for TANF EAF JD/PINS and/or

TANF-EAF NYC Tuition – See Section IV below] will be submitted for federal reimbursement even if the district's claims exceed its Foster Care Block Grant allocation for the current SFY.

Chapter 57 of the Laws of 2005 amended Section 398-a of the Social Services Law to add a new subdivision 2-a that prohibits social services districts from paying less than the MSARs established by OCFS. As of July 1, 2006, local social services districts are now required to pay 100 percent of the applicable MSAR established by the OCFS for congregate care programs and for each administrative/services rate for therapeutic, special needs, or emergency foster home programs operated by a voluntary agency. The exception to the requirement is regular foster boarding home programs and pass-through payments to foster parents. In addition, districts that were paying at or above the MSARs for applicable programs as of January 1, 2005, are required to continue to pay at least 100 percent of the MSAR in the 2009-10 MSAR rate cycle, as well as for all subsequent rate cycles.

The Foster Care Block Grant does not include state expenditures made on behalf of youth placed in OCFS operated facilities.

This Block Grant can be used only for foster care expenditures during SFY 2010-11. If a local social services district claims less than its allocation, unexpended funds may be used by the district in the next SFY, up to the amount remaining from the district's Foster Care Block Grant allocation, for the district's expenditures on preventive services (including reunification services), independent living services, and aftercare services.

Cost-of-Living Adjustment (COLA)

Chapter 111 of the Laws of 2010 amended Chapter 58 of the Laws of 2009, which amended Chapter 57 of the Laws of 2008 by suspending the COLA that would have been implemented April 1, 2010. These COLAs are scheduled to resume on April 1, 2011, and be extended for a third year into SFY 2013-14. The SFY 2010-11, Foster Care Block Grant continues to support the mandated 3.2 percent COLA that was effective April 1, 2008.

Chapter 57 of the Laws of 2008 amended Part C of Chapter 57 of the Laws of 2006 that provided a three-year COLA based on the Consumer Price Index, and instead mandated a 3.2 percent COLA effective April 1, 2008. This COLA affected all in-state programs for which OCFS establishes MSARs, including Committee on Special Education (CSE) maintenance rates. The COLA was applicable to MSARs for foster parent and adoption subsidy payments. Local districts were required to pay the increase even for those rates that were exempt from the MSAR minimum payment requirement as specified in Section 398-a (2-a) of Social Services Law and must continue to pay the COLA. In addition, local districts were required by statute to pay no less than the established rates for specified programs. Local districts and voluntary agencies were required to increase their payment schedule by 3.2 percent effective April 1, 2008. This affected all administrative/services rates applicable to regular foster boarding home programs; for all pass-through rates applicable to foster parent payments and adoption subsidies; and for replacement clothing allowances paid to foster parents.

Allocation Methodology

The methodology used to allocate the Foster Care Block Grant funding is designed to continue the focus on safety, well-being, and permanency for children. It is intended to encourage districts to continue to intensify their efforts to reduce foster care days.

As in the past five State Fiscal Years (SFY) (SFY 2005-06, SFY 2006-07, SFY 2007-08, SFY 2008-09 and SFY 2009-10), the allocation methodology continues the claims-based approach and the \$36,450,000 set aside incentive to local districts. SFY 2008-09 was the first year the allocation methodology included the required adjustment of \$9,166,970.

Of the \$436,002,000 appropriation for state reimbursement for foster care services in SFY 2010-11, \$399,552,000 is distributed to districts according to their respective shares of historical claims. In accordance with budget appropriation language, the percentage of funds allocated to each district reflects the district's share of the statewide gross foster care claims (originals and supplemental) for the 12-month period ending June 30, 2009, that were submitted to the state on or before January 4, 2010.

The allocation of the \$36,450,000 set-aside is based on the district's reduction in the utilization of foster care days during two periods: from FFY 2005 to FFY 2007 (\$9,112,500) and from FFY 2007 to FFY 2009 (\$27,337,500). Reductions in care days during the more recent period are weighted more heavily (75 percent) than reductions during the earlier period (25 percent). This methodology recognizes the accomplishments of those districts that have decreased their foster care utilization over the past five years, while providing a more generous incentive to those districts that have achieved more recent reductions in care days.

The \$9,166,970 adjustment is in response to a court ruling regarding the Foster Care Block Grant allocations for SFY 2003-04 and SFY 2004-05. In 2003, the City of New York commenced an Article 78 proceeding challenging the allocation methodology of the Foster Care Block Grant for SFY 2003-04. In 2004, the City of New York brought a separate Article 78 proceeding challenging the allocation methodology of the Foster Care Block Grant for SFY 2004-05 on the basis that the allocation was contrary to law, arbitrary and capricious, and an abuse of discretion because it undercounted historical claims for foster care. The petition requested that OCFS be ordered to allocate the SFY 2004-05 Foster Care Block Grant funds based on all historical claims submitted for the relevant period. In its ruling on the initial case, the court found that OCFS's use of the population based model to allocate a portion of the Foster Care Block Grant funds was arbitrary and not rationally related to the legislative goal of reducing foster care use. The court separately concluded that OCFS's method of allocating another portion of the Foster Care Block Grant funds based on historical claims submitted by a date determined by OCFS undercounted claims and, therefore, was irrational and contrary to the law. The court ordered the state to reallocate the SFY 2003-04 Foster Care Block Grant for all social services districts without the population factors, and to use the historical claims submitted within 22 months (the federal time frame).

In late 2007, the Solicitor General's Office refused to appeal the court's decision regarding the 2003-04 Foster Care Block Grant allocation methodology. Therefore, to implement the court's

decision, the state will reallocate both the SFY 2003-04 and SFY 2004-05 Foster Care Block Grant amounts. New York City has agreed to allow the adjustments to be made over a three-year period. The \$9,166,970 adjustment to the districts' SFY 2010-11 Foster Care Block Grant allocations is the last year of the annual adjustments.

District allocations for each component of the SFY 2010-11, Foster Care Block Grant are provided in Attachment A.

IV. Other Related SFY 2010-11 Budget Actions

Flexible Fund for Family Services (FFFS) - The SFY 2010-11, Enacted Budget appropriates \$960,000,000 of Temporary Assistance for Needy Families (TANF) funding for FFFS. The FFFS provides districts with the flexibility to determine local funding priorities. Districts can use their FFFS allocation to fund the TANF Emergency Assistance to Families (EAF) Juvenile Delinquents (JD) / Persons In Need of Supervision (PINS), and TANF-EAF NYC Tuition costs, as well as any other eligible TANF purpose. Districts will receive separate guidance on the process for indicating the portion of their FFFS allocations that they choose to use to reimburse expenditures associated with TANF-EAF JD/PINS and TANF-EAF NYC Tuition.

Prior to the establishment of FFFS in SFY 2005-06, 50 percent of Federal TANF-EAF funds were used to offset the Foster Care Block Grant. In SFY 2010-11, no offset is taken against the Foster Care Block Grant appropriation of \$436,002,000. Therefore, the full \$436,002,000 in funding is available to districts under the Foster Care Block Grant, as well as the amounts the districts opt to use out of their FFFS allocations to cover these associated expenditures. The EAF foster care swap will continue with TANF funds that are separate from these FFFS allocations.

V. Fiscal and Claiming

The Foster Care Block Grant is an annual capped allocation for foster care costs that are ordinarily reimbursed during the SFY. The Foster Care Block Grant payments are generally made on a monthly basis, and there is no state share settlement of the claims filed for state reimbursement. The reimbursement schedule below sets forth the relevant periods for the foster care maintenance, administration and tuition costs covered by this year's allocations. The scheduled time periods relate to when expenditures are paid. If a social services district exceeds its allocation for a particular SFY, there is no additional funding. Any social services district claims submitted for a particular SFY that do not receive state reimbursement during that SFY may not be claimed against that district's Block Grant apportionment for the subsequent SFY.

There is no Maintenance of Effort (MOE) requirement associated with the Foster Care Block Grant.

Supplemental claims are paid from the Foster Care Block Grant allocation that covers the period when the expenditures are paid by the district for the services or administrative costs, as it pertains to the allowable claiming period.

Federal reimbursement will not be affected by this Block Grant and will be settled in the normal manner subject to the availability of federal funds. Expenditures for the allocations included in this LCM are claimed as follows:

| | | |
|-------------|--|---------------|
| Foster Care | Schedule K | LDSS - 3479 |
| | Schedule H | LDSS - 4283 |
| | Schedule D-2 | LDSS - 2347-B |
| | Reimbursement Claim for Special Project Form | LDSS - 3922 |

Please refer to the Fiscal Reference Manual, Volume 2, Chapter 3 for instructions on completing Schedules K and H, and the Reimbursement Claim for Special Claims Form. The Schedules D and D-2 claiming instructions are in the Fiscal Reference Manual, Volume 3 (or Volume 4 for New York City). The Fiscal Reference Manual is accessible to local districts and sister agencies at the following intranet site address: <http://otda.state.nyenet/bfdm/#>.

Unclaimed Foster Care Block Grant funds from SFY 2010-11 that an eligible district wishes to use during SFY 2011-12 for eligible preventive, independent living, and aftercare services must be reported on the Reimbursement Claim for Special Projects, (LDSS – 3922) with **Saving FCBG 10-11** indicated in the project name box. Costs should be reported in the non-Administrative column for the following time period, October 1, 2010 through September 30, 2011. The reported expenditures are eligible for 100 percent State reimbursement up to the amount of the unclaimed Foster Care Block Grant funds from SFY 2010-11. Any such claims submitted by a social services district for which there are insufficient unclaimed funds available from the district's SFY 2010-11 Foster Care Block Grant allocations are subject to 95.4 percent of 65 percent (or 62 percent) state reimbursement net of any available federal funds.

The reimbursement schedule for SFY 2010-11, Foster Care Block Grant is as follows:

- Foster Care Maintenance Claims: January 1, 2010, through December 31, 2010
- Foster Care Administration Claims: October 1, 2009, through September 30, 2010
- Foster Care Tuition EAF Claims: October 1, 2009, through September 30, 2010
- Non-EAF Foster Care Tuition Claims: January 1, 2010, through December 31, 2010
- Special Project Claims Form Claims: January 1, 2010, through December 31, 2010

EAF Foster Care Maintenance, Administration and Tuition other than TANF EAF JD/PINS and TANF EAF NYC Tuition costs are only counted toward the Foster Care Block Grant if the costs are not eligible to be swapped for Public Assistance reimbursement.

Contact Information

Any fiscal questions regarding the Foster Care Block Grant should be directed to:

Derek J. Holtzclaw, Director, Bureau of Resource Management at (518) 474-1361.

Rayana Gonzales, Children & Family Services Manager 2, Bureau of Budget Management at (518) 473-1683.

Programmatic questions should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services:

- BRO - Mary Miller (716) 847-3145 E-mail: Mary.Miller@ocfs.state.ny.us
- RRO – Karen Buck (585) 238-8201 E-mail: Karen.Buck@ocfs.state.ny.us
- SRO - Jack Klump (315) 423-1200 E-mail: Jack.Klump@ocfs.state.ny.us
- ARO – Kerri Barber, (518) 486-7078 E-mail: Kerri.Barber@ocfs.state.ny.us
- SVRO - Pat Sheehy (845) 708-2499 E-mail: Patricia.Sheehy@ocfs.state.ny.us
- NYCRO-Patricia Beresford (212) 383-1788 E-mail: Patricia.Beresford@ocfs.state.ny.us

Questions pertaining to the FFFS Plan and Fiscal Claiming may be directed to the Office of Temporary and Disability Assistance:

FFFS Plan:

Regions I-IV: Edward Conway 1-800-343-8859, ext. 4-7549 or (518) 474-7549
E-mail – Edward.Conway@otda.state.ny.us

Region V: Marc Solomon (914) 955-5663
E-mail – Marc.Solomon@otda.state.ny.us

Region VI: Marian Borenstein (212) 961-8250
E-mail – Marian.Borenstein@otda.state.ny.us

Fiscal Claiming:

Regions I-IV: Edward Conway 1-800-343-8859, ext. 4-7549 or (518) 474-7549
E-mail – Edward.Conway@otda.state.ny.us

Region V: Michael Borenstein (212) 961-8251
E-mail – Michael.Borenstein@otda.state.ny.us

Region VI: Marian Borenstein (212) 961-8250
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/s/ Nancy W. Martinez

/s/ Thomas S. Tipple

Issued By:

Nancy W. Martinez
Director
Strategic Planning and Policy Development

Issued By:

Thomas S. Tipple
Deputy Commissioner
Administration

Attachment A**SFY 2010-11 Foster Care Block Grant Allocations**

| District | Allocation of \$399,552,000 | Allocation of the \$9,112,500 Set-Aside | Allocation of the \$27,337,500 Set-Aside | Prior Year Adjustment (Year 3) | Final Allocation |
|-----------------|--|--|---|---|-----------------------------|
| Albany | 5,546,636 | 195,806 | 674,560 | (183,927) | 6,233,075 |
| Allegany | 1,256,092 | - | 118,299 | (22,443) | 1,351,948 |
| Broome | 5,738,398 | - | - | (41,268) | 5,697,130 |
| Cattaraugus | 1,431,895 | 105,718 | 114,569 | (115,616) | 1,536,566 |
| Cayuga | 1,430,609 | 50,690 | - | (95,189) | 1,386,110 |
| Chautauqua | 1,550,136 | 37,017 | 296,226 | (93,082) | 1,790,297 |
| Chemung | 2,550,950 | - | 457,167 | (109,753) | 2,898,364 |
| Chenango | 679,935 | 3,408 | 135,184 | (45,794) | 772,733 |
| Clinton | 1,475,589 | 51,388 | 40,676 | (85,442) | 1,482,211 |
| Columbia | 3,145,411 | - | 213,109 | (77,509) | 3,281,011 |
| Cortland | 1,137,405 | - | 129,085 | (29,076) | 1,237,414 |
| Delaware | 580,755 | 28,213 | - | (80,019) | 528,949 |
| Dutchess | 5,588,436 | - | 28,075 | (32,860) | 5,583,651 |
| Erie | 13,438,411 | 743,784 | 1,894,847 | (732,817) | 15,344,225 |
| Essex | 597,539 | 47,219 | - | (79,688) | 565,070 |
| Franklin | 775,250 | 26,022 | 332,920 | (9,876) | 1,124,316 |
| Fulton | 1,273,614 | 23,366 | - | (152,579) | 1,144,401 |
| Genesee | 709,623 | 9,789 | - | (20,319) | 699,093 |
| Greene | 2,005,598 | - | 463,417 | (7,621) | 2,461,394 |
| Hamilton | 29,213 | 3,503 | - | (587) | 32,129 |
| Herkimer | 1,580,701 | - | 311,246 | (34,700) | 1,857,247 |
| Jefferson | 1,474,413 | 91,030 | 308,928 | (198,758) | 1,675,613 |
| Lewis | 289,357 | - | - | (23,204) | 266,153 |
| Livingston | 1,128,258 | - | 72,330 | (78,645) | 1,121,943 |
| Madison | 1,305,085 | 9,842 | - | - | 1,314,927 |
| Monroe | 12,802,098 | 528,147 | 4,131,334 | (755,314) | 16,706,265 |
| Montgomery | 1,109,218 | - | 41,231 | (173,357) | 977,092 |
| Nassau | 9,718,072 | 151,455 | - | (872,662) | 8,996,865 |
| Niagara | 2,572,882 | 146,556 | 59,124 | (332,522) | 2,446,040 |
| Oneida | 6,206,994 | - | 941,703 | (331,130) | 6,817,567 |
| Onondaga | 7,379,453 | 254,306 | 1,070,889 | (566,587) | 8,138,061 |

| | | | | | |
|------------------|-------------|-----------|------------|-------------|-------------|
| Ontario | 1,019,717 | - | 265,681 | (48,670) | 1,236,728 |
| Orange | 6,266,970 | 105,570 | 420,775 | (381,083) | 6,412,232 |
| Orleans | 293,298 | 73,262 | 106,706 | (68,146) | 405,120 |
| Oswego | 3,213,047 | - | 802,688 | (44,988) | 3,970,747 |
| Otsego | 866,281 | 46,626 | - | (51,895) | 861,012 |
| Putnam | 791,103 | 2,212 | - | (24,211) | 769,104 |
| Rensselaer | 3,670,483 | 150,662 | - | (291,308) | 3,529,837 |
| Rockland | 2,639,707 | 207,383 | 1,159 | (207,123) | 2,641,126 |
| St. Lawrence | 1,454,378 | - | - | (55,641) | 1,398,737 |
| Saratoga | 2,082,172 | 91,697 | 4,032 | (73,505) | 2,104,396 |
| Schenectady | 5,119,424 | - | 27,117 | (102,498) | 5,044,043 |
| Schoharie | 802,859 | 8,836 | - | (20,887) | 790,808 |
| Schuyler | 227,880 | 1,058 | - | (125,620) | 103,318 |
| Seneca | 668,204 | - | 96,675 | (68,165) | 696,714 |
| Steuben | 1,902,829 | 186,716 | 314,472 | (60,745) | 2,343,272 |
| Suffolk | 14,084,179 | 628,891 | 2,600,154 | (948,284) | 16,364,940 |
| Sullivan | 1,202,745 | - | 209,127 | (181,756) | 1,230,116 |
| Tioga | 621,474 | - | 87,905 | (55,651) | 653,728 |
| Tompkins | 1,479,518 | - | - | (46,408) | 1,433,110 |
| Ulster | 3,431,679 | 14,530 | 109,428 | (47,424) | 3,508,213 |
| Warren | 1,094,682 | 12,794 | 242,948 | (80,265) | 1,270,159 |
| Washington | 1,066,012 | - | - | (59,022) | 1,006,990 |
| Wayne | 950,770 | 78,373 | 130,345 | (75,622) | 1,083,866 |
| Westchester | 21,667,526 | - | 37,703 | (595,333) | 21,109,896 |
| Wyoming | 566,878 | - | 224,299 | (45,372) | 745,805 |
| Yates | 321,748 | - | 238,110 | (25,000) | 534,858 |
| Upstate Totals | 174,013,589 | 4,115,869 | 17,754,243 | (9,166,966) | 186,716,735 |
| New York City | 225,538,411 | 4,996,631 | 9,583,257 | 9,166,966 | 249,285,265 |
| Statewide Totals | 399,552,000 | 9,112,500 | 27,337,500 | - | 436,002,000 |