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Local Commissioners Memorandum

Transmittal:	03-OCFS-LCM-20
To:	Local District Commissioners
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	November 5, 2003
Subject:	Title IV-E Special Project - Revenue Maximization
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Attachments:	<ol style="list-style-type: none"> 1. Initial Title IV-E Foster Child Eligibility Checklist – <u>Rosales</u> Special Project Review Only 2. Instructions for Completing Question 5 – <u>Rosales</u> Project Checklist
Attachment Available On – Line:	N/A

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to inform social services districts (districts) regarding a recent Federal Court of Appeals decision affecting eligibility for the Title IV-E foster care program, the State’s intentions to file an amendment to the New York State Title IV-E State Plan and a special project option available to social services districts (districts) to pursue potential available Title IV-E reimbursement.

II. Background

A decision, by the United States Ninth Circuit Court of Appeals in a case entitled Rosales v. Thompson, issued March 3, 2003, addressed the Department of Health and Human Services (DHHS) policy definition of which home and living arrangements must be considered when making a determination of Title IV-E eligibility. The court determined that the DHHS policy was overly restrictive and not consistent with the plain wording of the Social Security Act. The Court concluded that as long as the child was living with a specified relative (within the fifth degree of relationship, see Appendix B of the Office of Children and Family Services Eligibility Manual) and the child would have been AFDC eligible *in that home* in the month a petition leading to the removal of the child is filed or voluntary placement agreement is signed, the child meets the AFDC requirement for initial Title IV-E foster care eligibility. If the child is not living with a specified relative at the time the petition is filed or the voluntary placement agreement is signed, then it is permissible for States to look back six months and determine if the child was living with a specified relative during any of the prior six months. If so, and if the child had been living in that home in the month the petition was filed or the voluntary placement agreement was signed would have been AFDC eligible in that home, the child would then also meet the AFDC requirement for initial Title IV-E foster care eligibility.

NOTE: Districts are reminded that the other AFDC requirements are unchanged and must be documented, including:

- Under Federal Title IV-E, only parents or guardians can sign a voluntary placement agreement to qualify for that program;
- An AFDC scratchpad budget using the July 1996 standards must be completed;
- *The income of the child, including any support payments received from parents or step-parents must be considered in the budget; and
- **A deprivation factor must exist.

* For such situations, the income of the relatives is not considered since they are neither parents nor step-parents of the child.

**Since these cases involve the child living with relatives other than the parent, a deprivation factor of absence or death is always present.

The DHHS has not appealed the decision to the Supreme Court. However, the Federal agency has decided not to implement the decision for states outside of the Ninth Circuit court's jurisdiction. The Ninth Circuit's ruling only applies to the Pacific Coast and Rocky Mountain states.

In summary, the Rosales decision effectively eliminates the Federal agency policy distinctions regarding legal removal and physical removal, and the definition of removal is simplified. Fundamentally, the removal and living with specified relative criteria is met anytime the child is potentially eligible for the former AFDC program in the month the petition is filed or placement agreement is signed.

OCFS is taking steps to implement the Rosales decision in New York State. If the State prevails, additional children will be eligible for the Title IV-E foster care program and districts will be able to obtain Title IV-E funding for these children.

III. Program Implications

As the first step, OCFS is making revisions in its Title IV-E State Plan that reflects the expanded definition of eligibility. This revised plan will be submitted to DHHS for review and approval.

Please note that OCFS is not implementing the Rosales decision as a standard policy at this time. DHHS must review the State Plan amendment and review the claims filed pursuant to this LCM. If DHHS denies the State Plan amendment and/or related claims, OCFS will likely appeal the determination. Until there is a favorable resolution to this issue, the policy as found in the Office of Children and Family Services Eligibility Manual for Child Welfare Programs (the Manual) remains in place for reviews of eligibility other than those made under the Rosales Project.

OCFS is implementing a special project (Rosales Project) to isolate the resultant claims to accommodate the anticipated successful appeals process and to underscore the unique nature of the project. Districts must continue to establish initial Title IV-E eligibility in the first instance in the manner prescribed in the Manual. Districts interested in participating in the Rosales Project must determine initial Title IV-E eligibility as described below. The project will begin October 1, 2003, and end on September 30, 2004, unless OCFS prevails in its appeal earlier than that date. Districts are advised not to allow IV-E claims for cases found eligible under the terms of the Rosales Project to be made for payments on or after October 1, 2004, which is the anticipated start of the Phase II Title IV-E review.

Districts are encouraged, but are not required, to participate in the Rosales Project. Participating districts are required to identify cases currently in foster care that are not authorized or claimed as Title IV-E foster care solely because of the current Federal policy on eligibility regarding living arrangements at the time the petition leading to the removal was filed or voluntary placement agreement was signed. Districts must then determine if such children would meet Title IV-E foster care criteria by implementing the Rosales definition. For children determined eligible, districts must file special project claims for Title IV-E reimbursement for expenditures related to those children (see Claiming Information below).

Each child considered for Title IV-E claiming must also remain eligible for the period under review, i.e. starting October 1, 2003. A Re-determination Checklist [Foster Care LDSS-4810 (6/02)] also must be completed to document continuing eligibility. The LDSS-4810 is unaffected by the Rosales decision and districts should use the forms and instructions as found in the Manual.

There are two attachments to this LCM. Attachment 1 is an initial Title IV-E foster child eligibility checklist to be used in determining eligibility under the provisions of Rosales. It reflects the living with specified relative criteria consistent with the Rosales decision. This checklist is an edited version of the initial foster child eligibility checklist LDSS-4809 (6/02) found in the Manual. OCFS has also eliminated references to TANF-EAF in this new document. Attachment 2 provides revised instructions for completing the "Living with Specified Relative" requirement of the checklist (item 5) and examples of that requirement that meet the Rosales decision.

For children already in care and classified as non-Title IV-E foster care (generally will have been authorized as TANF-EAF), a review of initial and current Title IV-E eligibility is to be made. Generally, the following should be considered in selecting children to be reviewed. The child:

- remains in foster care as of October 1, 2003;
- is under the age of 18;
- was not authorized as Title IV-E; and
- was placed in kinship setting at the time of the initial entry into foster care (recorded in CCRS as M910), preferable but not essential.

Please take special note, under the Rosales criteria, children who lived with a non-parental relative in the month the petition was filed or the voluntary placement agreement was signed and remain with that relative as a kinship placement will meet the living with specified relative criteria. If all other Title IV-E criteria are also met, the child will meet the initial Title IV-E eligibility requirements under the Rosales decision.

IV. Systems Instructions

Children determined Title IV-E foster care eligible under the Rosales Project are to be encoded on the Welfare Management System using eligibility code "14", since that reflects an FNP eligibility status. Do not encode the cases as Title IV-E or TANF-EAF, since that would automatically generate claims to those programs. For children currently authorized as TANF-EAF and converted to Title IV-E under the Rosales Project, the district must use the suffix code "E" to allow for reimbursement for those services not eligible for Title IV-E funding (e.g. counseling and tuition). Districts are reminded that the direct services foster care services component must be encoded as '08" and "08E", in that order and the services other than room and board and clothing must be encoded with an "E" to appropriately claim TANF-EAF.

V. Claiming Information

Districts must file claims for Title IV-E foster care reimbursement made eligible under the provisions of the Rosales Project through the submission of claim form LDSS-3922, Reimbursement Claim for Special Programs. The claim form must be labeled with the project name "Rosales IV-E" to enable the claim form to be processed in an appropriate manner.

Forms are to be submitted to the Office of Temporary and Disability Assistance (OTDA), Bureau of Financial Services. Payments are to be reported on line 12 (Assistance Direct to Clients), with total carried to line 17. Lines 18 and 19 are to be completed reflecting 50% and 50% respectively. Claims may not be filed for payments made earlier than October 1, 2003.

The State share is included in the Foster Care Block Grant and any additional Federal reimbursement will result in a reduced local share.

Contacts for questions on preparing and submitting claims should be directed to the following OTDA staff:

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