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Local Commissioners Memorandum

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To:	Social Services Commissioners
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	8/15/01
Subject:	PINS/JD Placements and Title IV-E Reimbursement
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Attachments:	None
Attachment Available On – Line:	

I. PURPOSE

The purpose of this release is to provide child welfare staff in social services districts with guidance on meeting federal Title IV-E requirements relating to the situation where the court directs the placement of an adjudicated Person in Need of Supervision (PINS) or Juvenile Delinquent (JD) with a specific foster care provider.

II. BACKGROUND

In the regulations issued by the federal Department of Health and Human Services (DHHS) regarding the Title IV-E foster care program, DHHS promulgated standards, effective March 27, 2000, relating in part to the situation where the court places a foster child with a specific foster care provider. In New York State, this issue may arise in placement of juvenile delinquents (JD) under Article 3 of the Family Court Act (FCA) and of persons in need of supervision (PINS) under Article 7 of the FCA.

The regulatory standard at 45 CFR 1356.21 (g)(3) states:

(g) Case plan requirements. In order to satisfy the case plan requirements of sections 471 (a)(16), 475 (1) and 475 (5) (A) and (D) of the Act, the State agency must promulgate policy materials and instruction for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

* * *

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. FFP is not available when a court orders a placement with a specific foster care provider (Emphasis added).

DHHS provided the following clarification of the regulatory standard when the standard was promulgated:

In addition, we are clarifying in the regulation at § 1356.21 (g)(3) that it is not permissible for courts to extend their responsibilities to include ordering a child's placement with a specific foster care provider. To be eligible for title IV-E foster care maintenance payments the child's placement and care responsibility must either lie with the State agency, or another public agency with whom the State has an agreement according to section 472(a)(2) of the Act. Once a court has ordered a placement with a specific provider, it has assumed the State agency's placement responsibility. Consequently, the State cannot claim FFP for that placement.

Additional clarification on this issue has been provided in a DHHS federal Q and A response regarding this issue as follows:

Question: The final rule specifies that Federal financial participation (FFP) for title IV-E foster care maintenance payments may not be claimed when a court orders a placement with a specific foster care provider. In situations where the court specifies the placement in a court order after hearing testimony from various sources, including the State IV-E agency, is FFP available? Is availability of FFP affected when the court disagrees with the agency's placement recommendation and specifies another placement in the order?

Answer: Title IV-E requires, as a condition of eligibility, that a child's placement and care responsibility be vested either with the State agency, or another public agency with which the State has an agreement. The purpose of the regulatory provision in question is to assure that the authority of the State title IV-E agency with placement and care responsibility for the child is not usurped. A "court-ordered" placement, as prohibited in the rule, involves the court taking placement and care responsibility away from the agency and assuming placement and care responsibility by choosing the child's placement without bona fide consideration of the agency's recommendation regarding placement. This does not mean that the court must always concur with the agency's recommendation in order for the child to be eligible for title IV-E foster care payments. As long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow the payments. The prohibition in the rule also does not apply to situations

where the court merely names the child's placement in the court order as an endorsement or approval of the agency's placement choice.

In response to the Adoption and Safe Families Act, the Office of Court Administration (OCA) has amended the Uniform Rules of the Family Court, effective January 31, 2001. Where the court order directs the placement of an adjudicated PINS or JD with a specific foster care provider, the order must also include language specifying that the court considered the Commissioner's position regarding the child's placement. The Uniform Court Rules address the issue as follows:

A. Juvenile Delinquents

22 NYCRR 205.28 (c) Placement; required findings. In any case in which the court is considering ordering placement pursuant to section 353.3 or 353.4 of the Family Court Act, the presentment agency, local probation department, local commissioner of social services and New York State Office of Children and Family Services shall provide information to the court to aid in its required determination of the following issues:

* * *

(4) in the case of an order of placement specifying a particular authorized agency or foster care provider, the position of the New York State Office of Children and Family Services or local department of social services, as applicable, regarding such placement.

B. Persons in Need of Supervision

22 NYCRR 205.67 (c) Placement; required findings. In any case in which the court is considering ordering placement pursuant to section 756 of the Family Court Act, the petitioner, presentment agency, if any, local probation department and local commissioner of social services shall provide information to the court to aid in its required determination of the following issues:

* * *

(4) in the case of an order of placement specifying a particular authorized agency or foster care provider, the position of the local commissioner of social services regarding such placement.

Please note: On December 12, 2000, OCFS issued 00 OCFS ADM-5, which contains the comprehensive standards for Title IV-E. Please refer to that document for a discussion of the other DHHS requirements concerning Title IV-E eligibility.

III. NECESSARY ACTION

The impact of the above-referenced federal standard is not that, in every case where the court specifies a particular foster care provider, the case may never be Title IV-E eligible. The case may be Title IV-E eligible where the social services district was part of the

placement decision-making process. Even if the court fails to accept the advice or input of the social services district, as long as such advice or input is adequately documented as noted below, Title IV-E may be available.

In recognition that practice varies throughout the State with regard to the opportunity for a social services district to provide input into the court's decision concerning the specific placement or foster care provider for adjudicated PINS or JD children, OCFS encourages the following actions to address the above-referenced Title IV-E requirement and to avoid the loss of federal Title IV-E reimbursement for otherwise eligible cases:

- Meet with and encourage the Family Court to seek input from the social services district's child welfare unit concerning the placement decision. Such input may include notice and participation at the dispositional hearing or the submission of a placement recommendation directly to the court. In order to comply with the federal mandates, such input must be documented in the court order;
- Where Probation is the primary representative at dispositional hearings for adjudicated PINS or JD children, meet with and encourage Probation to reach out to the social services district's child welfare unit to seek its recommendations and incorporate these recommendations into their report to the court. The report to the court should reference the input by the social services district. In order to comply with the federal mandates, the court order must reference the report.

Cases not meeting the above requirements are ineligible for Title IV-E reimbursement.

OCA has amended its prescribed court forms so that court orders in Article 3 and 7 cases contain a section which specifically document social services district input regarding an order of placement specifying a particular foster care provider. Templates of these amended court forms should be available in the Public Folder in the near future. To access these templates, click on Public Folders/ All Public Folders/ Statewide/ OCFS/ ASFA-Family Court Forms.

The goal of these actions is to provide adequate documentation that describes the involvement by the social services district in the court's decision-making regarding the placement of adjudicated PINS and JD children with a particular foster care provider.

Issued By

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