

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



BARBARA B. BLUM
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 81 ADM-53
 [Services]

TO: Commissioners

SUBJECT: Foster Care Apportionment, 153-d
 and Utilization Review Sanctions

DATE: November 24, 1981

SUGGESTED DISTRIBUTION:
 Child Welfare Executives and Staff
 Accounting Staff
 Child Placement Agencies
 County Youth Boards
 Other Family and Youth Services Agencies

Any questions concerning this release should be directed to Michael Marks at

CONTACT PERSON: 1-800-342-3715, Ext. 4-9579.

1. Purpose

The purpose of this Administrative Directive is to notify social services districts of each district's annual foster care apportionment amount for State Fiscal Year 1981-82. In addition, the directive discusses the mechanisms by which a district may apply for reimbursement for foster care expenditures above its apportionment amount. One major factor in the department's decision to grant additional foster care funds will be the extent to which the district's foster care cases have been found to be out of compliance with the provisions of Section 153-d and Sections 398-b of the Social Services Law which contain statutorily based case management requirements and require the Department to promulgate standards for utilization reviews. Because of this interrelationship, this directive will also serve as notice to the districts and voluntary agencies of the department's intention to withhold reimbursement for the care and maintenance of a child outside his own home and for preventive services if the Department finds the district to be out of compliance with the six case management requirements in statute or with the utilization review standards to be promulgated in regulation form. The specific procedures and standards to be implemented with regard to the two sanction requirements will also be addressed in this directive.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
		420	SSL 153-d, e		
		428	SSL 409		
		430	SSL 392		
		431	SSL 358		
			SSL 372		
			SSL 384		
			SSL 398-b		
			Family Court Act 1055		
			State Administrative Procedures Act Article 3		

II. Background

The Child Welfare Reform Act of 1979 places new limitations on reimbursable foster care expenditures for local districts. Through the legislative appropriation process, a statewide limit on reimbursable foster care spending has been established. The Act mandates that the appropriated state funds and any federal funds received for foster care and maintenance be apportioned among the social service districts according to a formula developed by the Department and approved by the Director of the Budget. These apportionments are the maximum level of foster care spending which will be subject to state reimbursement. Districts will be entitled to apply for and receive reimbursement for expenditures in excess of the apportionment amount if they have provided foster care to a specified percent of their clients in a manner that would not be subject to denials of state reimbursement, and if the district's expenditures for preventive services are not substantially out of compliance with the district's Consolidated Services Plan. The extent of such reimbursement is subject to the total state foster care appropriation.

The Child Welfare Reform Act provides for a number of instances that would result in the denial of state reimbursement for a particular foster care or preventive case. Such reimbursement will be denied when any of a series of statutorily imposed case management or regulatory utilization review standards are not met,

Under the case management requirements, sanctions will apply in the following circumstances:

- 1) A child's foster care status has not been the subject of a timely petition in accordance with the 18-month Family Court review procedure.
- 2) An order made pursuant to an 18-month review has not been carried out within the time frame established for compliance.
- 3) A district has failed to comply with the individual child service plan requirements provided in the Act, including compliance with the case assessment requirements.
- 4) A district has failed to refer a child to the statewide adoption service.
- 5) A district has failed to comply with an order pursuant to the Family Court Act, including orders to provide family services, to institute a proceeding to free a child for adoption, or to undertake diligent efforts to encourage and strengthen the parental relationship.
- 6) A child is continued in care in violation of the requirements of Section 384-a of the Social Services Law for return of the child upon request, on a certain date, or upon the occurrence of a specified event.

- 7) The instrument by which a child was placed in foster care has not been the subject of a timely petition for judicial approval.

In addition, the Child Welfare Reform Act requires that the Department promulgate standards to determine whether:

- : Children placed in foster care by local social services districts require such placement.
- : The specific level and type of placement is appropriate.
- : Diligent efforts have been made to facilitate discharge from care.
- : Preventive services are offered in accordance with the requirements of the Act.

The specifics of all of these standards will be spelled out in the following section. As should become clear from that discussion, the Department's emphasis is on ensuring that every case is in compliance with the law and regulations, not on imposing large sanctions. To this end, the Department is phasing in its implementation of these standards so that the implementation process does not cause major disruptions in the delivery of services.

III. Program Implications

The Department is instituting for the first time a cap on state reimbursement for expenditures made by local districts for the care and maintenance of children in foster care. The following chart reflects the districts' apportionment amounts for State Fiscal Year 1981-82:

District Foster Care Apportionment Amounts
April 1, 1981 - March 31, 1982
(includes federal, state and local funds)

Albany	3,317,000	Chautauqua	1,516,000
Allegany	76,000	Chemung	1,024,000
Broome	1,727,000	Chenengo	326,000
Cattaraugus	706,000	Clinton	482,000
Cayuga	398,000	Columbia	321,000
Cortland	272,000	Genesee	518,000
Delaware	203,000	Greene	50,000
Dutchess	1,919,000	Hamilton	50,000
Erie	9,768,000	Herkimer	242,000
Essex	102,000	Jefferson	284,000
Franklin	192,000	Lewis	76,000
Fulton	240,000	Livingston	280,000
Madison	121,000	Ontario	338,000
Monroe	6,508,000	Orange	2,030,000
Montgomery	159,000	Orleans	239,000
Nassau	4,779,000	Oswego	342,000
Niagara	1,600,000	Otsego	249,000
Oneida	1,645,000	Putnam	183,000
Onondaga	4,060,00	Rensselaer	1,382,000

Rockland	2,567,000	Tioga	298,000
St. Lawrence	737,000	Tompkins	386,000
Saratoga	368,000	Ulster	617,000
Schenectady	1,414,000	Warren	726,000
Schoharie	84,000	Washington	232,000
Schuyler	62,000	Wayne	458,000
Seneca	61,000	Westchester	10,901,000
Steuben	322,000	Wyoming	108,000
Suffolk	6,128,000	Yates	50,000
Sullivan	491,000	New York City	217,367,000
		Statewide Total	291,101,000

It should be noted that these figures reflect total expenditures, including federal, state, and local funds. Clearly, local expenditures are not subject to a state-determined limit. Rather, these figures represent the maximum amount of expenditures that will be subject to state and federal reimbursement, unless the exceptions provided for below are invoked.

The apportionment amounts were based on claims made during State Fiscal Year 1979-80, with an adjustment for rate increases granted since the end of the base fiscal year and anticipated for the coming year. In examining its apportionment amount, each district should be aware that these figures do not include local district administrative costs, the costs of the care and maintenance of children for whom the State Department of Social Services does not reimburse the districts (e.g., DFY children) or the costs of the care and maintenance of Indo-Chinese refugees. At the present time these costs are not capped. Also not included in the figures are expenditures for medical assistance. The recently passed state budget has placed a cap on medical expenditures for foster care cases; you will be receiving notice in the future as to your district apportionment for these costs.

The Department may change the apportionment amounts or reapportion the amounts among the districts, if this appears to be called for by future rate increases or other fiscal considerations or constraints.

The Child Welfare Reform Act provided for conditions under which a district could receive reimbursement for expenditures above the apportionment amount, that is, reimbursement for what are here referred to as "excess foster care expenditures." While the following discussion sets out these conditions in the same manner as do the regulations, one note should be added here. As with the implementation of the case management and utilization review standards, the Department is seeking an orderly transition to the new procedures with an aim of avoiding major disruption in the delivering of services.

A district has two other options for applying for additional reimbursement. First, a district may apply for reimbursement for excess foster care expenditures and may receive payment for these expenditures, if:

- o a natural disaster has occurred and some victims of that disaster have entered foster care due to effects of that disaster.

A natural disaster is defined in regulation as meaning "any occurrence which serves as the basis for an official declaration of a state emergency by the Governor of the State of New York or the President of the United States."

- o an emergency, extraordinary or unforeseen circumstances has contributed to the placement of a number of children in foster care.

An emergency, extraordinary or unforeseen circumstance is defined in regulations as meaning "any event, condition or set of events or conditions which are outside the reasonable control of the local social services districts and which have not occurred in the years from which data was drawn to develop the district's foster care apportionment amount.

Any application for reimbursement for excess foster care expenditures resulting from a natural disaster or an emergency, extraordinary or unforeseen circumstance which contributed to the placement of a number of children in foster care will be considered valid for no longer than 90 days. An approved application for reimbursement for excess foster care expenditures under these circumstances applies only to the cost of care and maintenance of children in foster care due to these circumstances.

Second, a district may also apply for reimbursement for excess foster care expenditures for children whether or not affected by a natural disaster or emergency, extraordinary or unforeseen circumstances if certain departmental review standards are met.

The Departmental review must find, with the approval of the Director of Budget, that:

- 1) less than 15% or for state fiscal years commencing on or after April 1, 1983, less than 10% of the children cared for by the Department outside their homes have been provided care in such a manner as would be subject to denial of state reimbursement due to a failure to comply with the statutorily based case management and utilization review standards, and
- 2) that the district's expenditures for preventive services are not in substantial non-compliance with the district's own assessment of its projected program and fiscal requirements in meeting identified needs, as set forth in the district's plan submitted and approved by the Department.

It is possible for a district to be granted interim approval for additional reimbursement for children not affected by a natural disaster or unforeseen circumstances if the application has met all the requirements other than those relating to a utilization review and no utilization review has taken place within twelve months prior to the date of application. In this event, the Department will conduct a utilization review within 120 days of the application and final approval of the application shall be dependent on the findings of the utilization review. In addition, in the event that a district has been denied reimbursement for some or all of its foster care expenditures based on substantial non-compliance with case management and utilization review standards, such expenditures will be deemed to have been reimbursed for the purposes of determining whether the district's reimbursable foster care expenditures exceed the districts foster care apportionment amount.

Under all instances where a district applies for excess foster care reimbursement, the Department will notify the district that its application has been approved, disapproved or approved on an interim basis within 30 days of receipt of application. In the event that the Department fails to notify the district within that time, the application will be considered to be approved on an interim basis. Interim approval means that the district may claim and receive reimbursement for its excess foster care expenditures, but if the application is later rejected, that reimbursement must be returned to the Department.

As mentioned in the preceding paragraphs, the degree of compliance with the case management provisions and the utilization review standards is an integral part in the determination of whether or not a district will receive additional reimbursement for its foster care expenditures above its apportionment amount. The Department will be promulgating regulations which contain standards the district must adhere to in order to be considered in compliance with the case management requirements. In addition, utilization review standards are in the process of being placed in a regulatory format. The subsequent paragraphs will review the standards which apply to each of the sanction requirements as well as the procedures which will be followed in the implementation of both reviews during state fiscal year 1981-82.

Case Management Requirements

Procedures:

The Department is undertaking the first year's case management reviews with two objectives:

- : to fulfill the intent of the Child Welfare Reform Act - to ensure that the actions needed to get foster care children placed in permanent settings are aggressively accomplished;
- : to avoid penalizing child care agencies and districts beyond their ability to continue to deliver needed services.

With these underlying objectives, three cycles of sanctions are planned. Each cycle involves a case by case review of a random sample of cases from each county with no statistical extrapolation of non-compliance to the population of cases. The random sample and subsequent review of cases occurs only during the state fiscal year 1981-82, after which the Child Care Review Service will begin the same type of review for all cases. Preliminary to the first cycle, all districts have been notified of those foster care cases which have not reported to the Child Welfare Information Services (CWIS) a discharge objective and of those cases freed for adoption for which no registration exists. This notification served as a notice to the districts that the case is not in compliance with these case management requirements and provided an opportunity for the districts to correct the situation before reimbursement was withheld for those cases.

The first cycle of reviews took place between April 1, 1981 and June 30, 1981. During this time period, a sample of 1310 cases was drawn from existing CWIS/CCRS files and these were reviewed by the Office of Audit and Quality Control. The size of the sample of cases reviewed were distributed among the districts depending on the size of the district caseload ranging from 400 cases to be reviewed in New York City to five (5) cases to be reviewed in those counties with a caseload of less than 100. The second cycle also involves a sample of 1310 cases to be reviewed on all case management requirements during the period July 1 - September 30. This review is necessary in order to provide the districts with the earliest possible notification of a violation on the uniform case record requirements. Cases found to be out of compliance will be denied reimbursement as in the first cycle. The third cycle will involve a review of a larger, but as yet undetermined sample during the final six (6) months of the fiscal year.

Standards

The standards are formatted so that for each of the standards, there is a list of accepted documentation that the district must provide to the Department in order to be considered in compliance. For example, one source of documentation which applied to all of the case management elements is the timely entry of the appropriate data relating to the case management requirements into the Child Care Review Service. In other words, if CCRS shows that the child has been photolisted, than the Department will consider such entry into the system as appropriate documentation/evidence that the requirement that a child be referred to the statewide adoption service has been met. Because the present CWIS/CCRS system does not contain data elements for all the case management requirements and because the redesigned CCRS is not yet operational statewide, the district is allowed a number of different options other than CCRS to document compliance with the specified standard. In short, flexibility in documentation is encouraged, but it should be stressed that the burden of proof is on the district to come up with evidence that the standard has been adhered to.

The following are the specific standards that will apply in each of the 153d elements. Examples of what will constitute documentation of compliance with the standards are also discussed below. Documentation shall include but need not be limited to what is described below.

1. 153d Element: Has the foster care status of a child been the subject of a timely petition in accordance with the 18-month family court review procedure and has an order pursuant to an 18-month review been carried out within the time frame established for compliance.

Standard: The district must have filed a petition in the appropriate family court to review the foster care status of a child who has been voluntarily placed and has remained in care for a continuous period of 18 months.

Documentation: (1) Timely entry of the appropriate data relating to the filing of an 18-month petition into the Child Care Review Service, (2) A receipt from the family court that the petition has been filed is present in the Uniform Case Record, (3) An entry in the progress notes of the Uniform Case Record and in the Initial and Comprehensive Service Plans and Goal and Objective Review-Child of the Uniform Case Record as applicable, that such a request to the family court was made.

Standard: The district must comply with a dispositional order pursuant to an 18-month review within the time specified by the court in the order. If no time frames are specified in the order, then the Department has specified time frames for compliance with the dispositional order based on the type of dispositional order authorized by the court.

- For an order directing that the child be returned to the parent, guardian or relative, such agency must return the child within 30 days after having received the dispositional order, or on October 1, 1981, whichever is later.
- For an order directing an agency to legally free a child for adoption, an agency must institute a proceeding within 90 days after having received such dispositional order or on October 1, 1981, whichever is later.
- For an order directing that a child, whose guardianship and custody have been committed to an authorized agency by an order of a surrogate or judge of the family court or by a surrender instrument, be placed for adoption in the foster family home where he resides or has resided or with any other person or persons, an agency must initiate action to place a child for adoption within 90 days after having received such dispositional order or by October 1, whichever is later.

The district must comply with an order of protection within the time frame specified by the order. If no time frame is specified in the order, then the agency has 30 days or until October 1, whichever is later, to comply with such order.

The district must comply with an order of diligent effort within the time frames specified in the order. If the court did not specify the time frames in the order, then the agency has 30 days or until October 1, 1981, whichever is later, to comply with such an order.

Documentation: (1) Timely entry of the appropriate data related to a change in the legal status of the child into the Child Care Review Service including identification of the disposition and the activities required by the order, (2) An entry in the Progress Notes section of the Uniform Case Record and in the Initial and Comprehensive Service Plan and Goal and Objective Review-Child of the Uniform Case Record, as applicable, that identifies compliance with the order within the time specified by the order of this section.

2. 153d Element: Has the district complied with the individual child service plan requirements provided in the act, including compliance with the case assessment requirements?

Standard: The district must complete the following forms of the Uniform Case Record within the time frames specified by Part 428 of the Department's regulations:

1. DSS-3300-S - Assessment Summary
2. DSS-3301 -- Initial Service Plan
3. DSS-3303-F - Goal and Objective Review - Family
4. DSS-3303-C - Goal and Objective Review - Children

5. DSS-3304-C - Comprehensive Service Plan - Child
6. DSS-3304-F - Comprehensive Service Plan - Family

This standard will apply on April 1, 1981, or on the tracking date as defined in Part 428 of the Department's regulations, whichever is later, to cases initiated on or after April 1, 1981, on or after other cases when the first recertification on or after that date is due. For New York City, the corresponding forms must be used.

Documentation: (1) The timely entering of the appropriate date related to Part 428 of the Department's regulations into the Child Care Review Service. The specific data elements to be included for each form are the following.

<u>FORM</u>	<u>DATA ELEMENTS</u>
DSS 3300-S	Date of assessment Child and family service needs Services available Program Choice
DSS 3301	Date Initial Service Plan Completed Permanency planning goal Anticipated date of permanency planning goal completion Date permanency planning goal set
DSS 3303-F DSS 3303-C	Date Goal and Objective Review Completed Child and family client goals Status of client goals Status of services addressing client goals
DSS 3304-C 3304-F	Date Comprehensive Service Plan completed Permanency planning goal Anticipated date of permanency planning goal completion Date permanency planning goal was set Child and family client goals Services which address the goals

3. 153-d Element: Has the child been referred to the statewide adoption service in accordance with statute?

Standard: The district must refer the child to the statewide adoption service in accordance with the requirements of Section 327c of the Social Services Law and Part 420 of the Department's regulations.

Documentation: (1) Timely entry of the appropriate data relating to the filing of a child with the Statewide Adoption Service into the Child Care Review Service, (2) An entry in the Progress Notes of the Uniform Case Record that the child has been referred to the statewide adoption service, (3) A copy of the letter sent to the statewide adoption service requesting such referral is present in the legal section of the uniform case record, (4) The photo-listing of the child with the statewide adoption service.

4. 153-d Element: Has a district failed to comply with an order pursuant to Section 1055 of the Family Court Act, including an order to provide family services and to institute a proceeding to free a child for adoption?

Standard: The district must comply with an order of diligent effort or an order to legally free a child for adoption made pursuant to the family court act within the time frames specified by the court in the order. If the court did not specify the time frames in an order of diligent effort, the district or agency has 30 days or until October 1, 1981, whichever is later, to comply with such an order. If the court did not specify the time frames in an order to legally free the child for adoption, then the procedure must be instituted within 90 days after the district or authorized agency has received notification of such an order or by October 1, 1981, whichever is later.

Documentation: (1) A timely entry into the Child Care Review Service of the appropriate data related to an order of diligent effort or an order to legally free a child for adoption pursuant to the family court act, (2) An entry in the progress notes of the uniform case record that efforts were made to follow the requirements of the court order pursuant to the family court act.

5. 153d Element: Has a district or authorized agency continued a child in care in violation of the provision of Social Services Law. The following specific requirements must be met:

Standard: The child must not be continued in care in violation of the conditions set forth in Section 384a of the Social Services Law. The following specific requirements must be met:

- (1) That the authorized agency has returned the child on a certain date or upon the occurrence of an identifiable event in accordance with the written instrument which transferred care. Such agency must return the child at that time unless returning the child would be contrary to a court order entered at any time prior to such date or event or within ten days after such date or event or unless and so long as the parent or guardian is unavailable or incapacitated to receive the child.
- (2) That the authorized agency returned the child within twenty days after having received notice that the parent or guardian wished the child returned, unless such action would be contrary to a court order entered at any time prior to the expiration of such a twenty-day period.

Documentation: (1) A timely entry into the Child Care Review Service of the appropriate data related to the provisions of the Social Services Law which sets forth the conditions for transfer of custody. (2) An entry in the Progress Notes Section of the Uniform Case Record that efforts were made to follow the conditions set forth for transfer of custody including documentation that a court order was entered which provides that the child not be returned home pursuant to the requirements of subdivision 2 of Section 384a of the Social Services Law.

6. 153d Element: Has the instrument by which a child was placed been the subject of a timely petition for judicial approval?

Standard: The district must petition the appropriate family court judge to approve the written instrument which transferred custody of the child no later than 30 days following a determination that the child will remain in care for more than 30 days.

Documentation: (1) A timely entry of the appropriate data related to the filing of a 358a petition into the Child Care Review Service. (2) A receipt from the family court that the petition has been filed is present in the legal section of the Uniform Case Record. (3) An entry in the Progress Notes Section of the Uniform Case Record that such a request to the Family Court was made.

UTILIZATION REVIEW REQUIREMENTS (398b)

PROCEDURES

Because of the ambiguity inherent in the utilization review question, a phased approach is to be implemented. The standards focus on basic compliance with case assessment standards and on consistency between the plans and services delivered. Utilization review based on these standards will take place in every district during the second half of the current State Fiscal Year.

Standards

This section will discuss the standards that will apply to each of the four utilization review questions for State Fiscal Year 1981-82. The standards will apply to all new cases that have entered care since April 1, 1981, and to all cases where recertification has come due since that date. The following are the specific standards that apply to each utilization review question:

Necessity of Placement

For all new cases that have entered care since April 1, 1981, and to all cases where certification has come due since that date, the department is requiring that the justification for the necessity of placement in foster care be documented in the assessment components of the Uniform Case Record which includes the Assessment History Form (DSS-3300-H) (DSS-3400-H in New York City), Family

and Child Life Area Forms (DSS-3300-F and DSS-3300-C) (3400-F and 3400-C in New York City) and the Assessment Summary Form (DSS-3300-S & DSS-3400-S or 3407 in New York City). Such documentation must be done pursuant to Part 428 of the department's regulations. Specifically, the following items must be addressed in the appropriate sections of the case assessment summary form to justify the necessity of placement.

1. Based on the problems and assets identified for the family and children in DSS-3300-F and DSS-3300-C or DSS-3400-F and DSS-3400-C in New York City, the district or authorized agency must describe the risk to the mental and physical well-being of the child if the child remained in the home.
2. A statement of the family's ability or lack of ability to benefit from the provision of preventive services must also be included in the appropriate sections.
3. The factors which describe the reason(s) why placement services are needed must be checked in the appropriate boxes in Item 5.
4. The alternatives to placement that are being considered or tried must be described in the appropriate section and the reasons why the alternatives to placement were not tried or were not successful in averting the need for placement must also be addressed.

Appropriateness of Placement

For all new cases that have entered care since April 1, 1981, and to all cases where certification has come due since that date, the department is requiring that the Assessment Summary Form of the Uniform Case Record indicate that the type or level of foster care placement is appropriate to the child's personal and family circumstances and need for supportive and rehabilitative services. Specifically, (1) if a placement is made outside of the child's county or borough, a clear and comprehensible justification for such a placement must be present in the assessment summary form, (2) if a placement in a group home or institution was chosen, a clear and comprehensible justification as to the reasons why a less restrictive placement was not selected must be stated in the appropriate section of the case assessment form. In addition, in the case of a child where placement has been made in a family home or an institution or in an agency boarding home or in a group home or to an authorized agency or in the custody of a person other than that of a relative within the second degree, consideration must be given that a child be placed with a person or persons of the same religious faith as that of the child. Such consideration must be documented in the appropriate sections of the Assessment Summary Form. If such a placement was not practicable, documentation as to the reasons why it was not practicable shall be included in the appropriate sections of the Assessment Summary Form.

Reimbursement shall not be withheld pursuant to the necessity or appropriateness standards for any case in which a court order has placed the child in foster care or specified that action be taken that is contrary to standards set down in this Section; provided the district has, at the time of the first recertification following such court order, or at the second recertification if the first recertification occurs within six months of the court order, filed a petition with the court for review of that order or documented why such a review was not appropriate.

Diligence of Effort

An agency providing foster care for a child shall be considered exercising diligent efforts, where appropriate, toward the discharge from care of the child, either to his own family or to an adoptive home, if the following conditions are met:

For all new cases that have entered care since April 1, 1981, and to all cases where certification has come due since that date,

- (a) The Assessment forms (DSS-3300-H, DSS-3300-F, DSS-3300-C, and DSS-3300-S) (DSS-3400-H, 3400-C, 3407 or 3400-S in New York City) the Initial Service Plan and the Comprehensive Service Plan must be completed and the Initial Service Plan and the Comprehensive Service Plan must be reviewed and revised according to the time frames set forth in Section 428.3 of the department's regulations.
- (b) If the permanency planning goal as reflected in the Initial Service Plan or the Comprehensive Service Plan (child), as applicable, is to return the child to his/her own family, then a visitation plan on form DSS-3302 must be completed for such child.

Beginning October 1, 1981,

- (a) If the permanency planning goal as reflected in the Initial Service Plan or Comprehensive Service Plan (child) as applicable, is to return the child to his/her own family, then:

The progress notes in the Uniform Case Record must contain entries documenting compliance with Part 431.15 of the department's regulations which sets forth the services which shall be provided by the local social services district or the purchase of service agency within the first two weeks of placement, during the first three months of placement and during the fourth through twelfth months of placement.

In addition, the progress notes in the Uniform Case Record shall document parental visits and such documentation shall be consistent with the visitation plan. Finally, a discharge/transfer plan shall be completed accordingly to the guidelines present in Part 428.10(c) of the department's regulations. All children receiving mandated preventive services shall have a discharge plan completed in their case record. In addition, upon the discharge of the child, the progress notes of the Uniform Case Record shall describe actual delivery of the services planned for in the discharge plan.

- (b) If a child's permanency goal as reflected in the Comprehensive Services Plan (DSS-3304-C) (DSS-3403-C in New York City) has been to return the child to his/her own family for a period in excess of two years, the district or agency must document either efforts to free the child for adoption or prepare the child for independent living or document a reason why these efforts are not appropriate. Such documentation shall be included in the appropriate section of the Assessment Summary form.
- (c) If the child's permanency goal as reflected in the Comprehensive Service Plan (DSS-3304-C) (DSS-3403-C in New York City) has been to return the child to his/her own family for a period of more than one year following the date such child came into care and the child's parents or custodian have during that time frame failed substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, the district or agency shall document efforts to obtain a court determination of permanent neglect or shall document reasons why these efforts are not appropriate at the time of the first recertification after that year has elapsed. Such documentation shall be included in the appropriate section of the Assessment Summary form. This provision shall not apply, however, if the district is subject to denial or reimbursement for the child in question upon a determination that the district has failed to include in the progress notes of the Uniform Case Record entries documenting compliance with Part 431.15 of the department's regulations.
- (d) If the permanency planning goal as reflected in the child's service plan maintained pursuant to Part 428 is to discharge to an adoptive home a child who has been freed for adoption, then the child has been referred to the statewide adoption service according to the time frame and conditions stated in section 372-c of the Social Services Law. In addition, a child must be placed for adoption in the foster family home where he resides or has resided or with any other person or persons according to an order made pursuant to subdivision 7 of Section 392 of the Social Services Law within the time frames stated in such order or within 90 days after entry of such dispositional order or by October 1, 1981, whichever is later, and proceedings to legally free a child for adoption according to an order to legally free the child for adoption pursuant to subdivision (d) of Section 1055 of the Family Court Act or to subdivision 7 of Section 392 of the Social Services Law must be instituted within the time frames specified in such order or within 90 days after entry of such order or October 1, 1981, whichever is later.

Preventive Services

Preventive services shall be considered to have been provided in accordance with statute and department regulations if the following conditions have been met:

- (1) For all new mandated and nonmandated preventive cases that have entered care since April 1, 1981, and to all cases where certification has come due since that date an entry must have been made on the Assessment Summary form (a) assessing the risk to the mental and physical well-being of the child(ren) if he or she would remain at home, and (b) assessing the family's ability to benefit from the provision of preventive services.

- (2) Beginning October 1, 1981, for all mandated and nonmandated preventive cases, the progress notes in the Uniform Case Record, which describes the services provided to the child, shall describe the delivery of the services planned in the Assessment Summary form (DSS-3300-S) (DSS-3407 or DSS-3400-S in New York City).

Commencement and Continuance of Sanctions

State reimbursement for the provision of foster care or preventive services shall be denied for each child for which a standard has not been complied with as described in the subsequent sections of this directive and as determined by a review by the department. This review may be either scheduled or unscheduled. The results and findings of a review shall be contained in a report, a copy of which shall be provided to the social services district and to the other agency, the chairman or president of its board of directors and its chief executive officer, if any, which agency may be providing foster care or preventive services for the child on behalf of the district. The local district shall continue to be ineligible for reimbursement until such time as the district complies with the standard(s). The date of compliance shall constitute the end of the sanctions period for that specific act of non-compliance.

Denial of Reimbursement Does Not Relieve the District of Statutory or Contractual Obligations

A determination by the department denying reimbursement to a social services district for the provision of foster care or preventive services for a child shall not relieve the district or any authorized agency from which the district has purchased foster care or preventive services from the statutory contractual obligations to continue to provide foster care or preventive services for the child or other children in its care or for the child and his family in receipt of such services.

Denial of Reimbursement Shall be Passed on to Authorized Agencies to the Extent Such Loss is Attributable to Such Agency

All social services districts which purchase foster care or preventive services from other authorized agencies shall be required to charge any loss of reimbursement pursuant to this section to such agencies to the extent that such loss is attributable to such agencies except that loss of reimbursement for administrative costs may not be charged. Every agreement by a social services district to purchase foster care or preventive services from another authorized agency shall include this provision.

Right to a Fair Hearing

Any social services district or authorized agency aggrieved by a loss of reimbursement may appeal to the department which shall hold a fair hearing in accordance with the department's regulations and accompanying statute. The social services district and authorized agency shall have 60 days from the time written notice was sent by the department, to appeal to the department. Any authorized agency aggrieved by the determination of a social services district to charge loss of reimbursement to the authorized agency may appeal such determination to the department by requesting a fair hearing within 60 days of the date written notice is sent that a social services district is charging loss of reimbursement to such agency.

Utilization Review Sampling Methodology

The department will, in accordance with generally recognized statistical sampling methods, review a sample of individual case records of children in care or in receipt of preventive services to determine whether foster care or preventive services has been provided in accordance with the standards specified. If the department finds, in a portion of the sampled case records, that care or services have been provided in violation of such standards, then the department will deny reimbursement to these cases found to be out of compliance. In a subsample of the cases under review, the Department will also conduct on-site agency interviews with the child to determine the validity of statements in the case record. If the department finds that more than 7.5% of a district's sample is out of compliance it shall attribute that portion of the violation which exceeds 7.5% to that portion of the entire foster care or preventive services caseload not included in the review and the department shall deny reimbursement. In such event, the social services district may perform audits of agency records and other reviews as may be appropriate for the purpose of determining whether such loss of reimbursement may be attributed to another agency.

For purposes of determining whether the percentage of violations exceed 7.5%, reviews of foster care and preventive services cases will be considered separately. This means that if 10% of the cases in foster care are out of compliance with the provisions of Section 398-b, 2.5% of the reimbursement for all foster care expenditures will be withheld; but in this case no extrapolation on preventive services cases would take place, unless at least 7.5% of these cases were also out of compliance.

When an extrapolated sanction has been levied, this sanction will end when the number of cases in the sample which are out of compliance has been reduced to 7.5%. Beginning four months after that date, the district in question will be required to undertake a second review of an equal size sample drawn by the Department. This review must use the Department's guidelines and protocols, and Department staff will review a subsample of the cases. If the district's and the Department's results agree in at least 90% of the subsample cases, the district's results for the full sample will be considered valid. Otherwise, the Department will conduct a review of the entire sample and the results of that review will be used.

Whether district or Department results are used, if more than 7.5% of the cases are out of compliance, the percentage above 7.5% will be applied to the foster care or preventive service caseload not reviewed, and reimbursement will be withheld retroactively to the date on which the previous extrapolated sanction ended. This process will be continued until a review is conducted which shows no more than 7.5% of the cases to be out of compliance. By September 30, 1983, a review of this methodology will be conducted and any modifications necessary will be made.

IV. Required Action

The districts and voluntary agencies are required to adhere to the standards relating to the six statutorily mandated case management requirements and the standards relating to the utilization review questions as expressed in this administrative directive. Failure to adhere to the standards will result in a loss of state reimbursement for those cases out of compliance and, in the case of utilization review, could result in a more sizeable loss of reimbursement based on an extrapolation to the entire population of cases if a sizeable portion

(7.5%) of the sampled cases result in sanctions. In addition, a poor showing by a district on the review of the case management requirements and the standards relating to utilization review could result in a determination by the department to deny a district's request for additional foster care reimbursement. The department recognizes that the standards relating to utilization review refer basically to the clear and comprehensible completion of the uniform case record for each child, but it believes the success of implementing the uniform case record plus the adherence to the case management requirements is a major step forward in ensuring that the child welfare system is accountable to both the statute and the clients it serves.

Any district which expects to exceed its foster care apportionment amount in the near future should make application for reimbursement of its excess expenditures by writing to Norris Phillips, Deputy Commissioner, Division of Services, Department of Social Services, 40 North Pearl Street, Albany, New York 12243. Such letter should contain a justification for the request consistent with the guidelines in this Directive.

V. Effective Date

This Directive shall take effect September 25, 1981.



Norris P. Phillips
Deputy Commissioner
Division of Services

