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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 91 ADM-7

TO: Commissioners of Social Services
 Directors of Voluntary Agencies

DIVISION: Family &
 Children
 Services

DATE: February 19, 1991

SUBJECT: Foster Care: Special and Exceptional Services for Children in
 Family Boarding Homes

SUGGESTED
 DISTRIBUTION:

Directors of Services
 Child Welfare Staff
 Fiscal Staff
 Staff Development Coordinators

CONTACT
 PERSON:

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ATTACHMENTS:

Department regulations 427.6(c), 427.6(d), 427.6(e)
 and 427.6(f) are available on-line.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		427.2	398-a	VIII-B	90 LCM-115
		427.6		Standards	
		427.15		of Payment	
		443.3(p)		for Foster	
				Care of	
				Children	

I. PURPOSE

This release informs you of amendments to the Department regulations that govern the eligibility of social services districts to receive State reimbursement for payments for special and exceptional foster care services.

II. BACKGROUND

On July 24, 1990 the Department filed amendments to the Standards of Payment regulations (18 NYCRR Part 427). These amendments became effective on August 8, 1990. The amended regulations, 18 NYCRR 427.6(c), (d), (e), and (f), describe the characteristics of the children and the qualifications of the foster parents which must be present in order for a social services district to be eligible for State reimbursement for payments for special and exceptional foster care services. The amended regulations are attached to this directive.

The intent of the revisions is to eliminate definitions that were essentially labels and to emphasize that the categories for special or exceptional services are based on the conditions of the children.

The regulations also outline the qualifications that foster parents must have in order for State reimbursement to be available for the higher payments for providing special and exceptional care.

III. PROGRAM IMPLICATIONS

As a result of these regulation changes, some children who received special foster care services are no longer eligible. In addition, certain children who were not previously eligible may now receive special or exceptional services under the expanded definitions.

Foster parents who care for these children will now have to meet certain training and other requirements in order to receive higher payments.

The eligibility of a social services district for State reimbursement for a foster child will be conditioned upon the characteristics and conditions of the child and the training and experience of the foster parent.

A. Special Foster Care Services

Three categories that were considered to be labels were removed:

1. unmarried expectant mothers;

2. children who are adjudicated as abused or neglected or are awaiting a family court hearing on an abuse or neglect petition; and
3. children who are family care patients from the Department of Mental Hygiene.

Social services districts may still be eligible for reimbursement for special foster care services when the conditions of the foster children and the training and experience of the foster parents are evaluated in terms of the new criteria.

The special category is expanded to include children with moderate developmental, emotional or behavioral problems and children who enter foster care directly from inpatient hospital care. [See 18 NYCRR 427.6(c)(4) and (c)(6).]

Social services districts may also be eligible for State reimbursement under the special category for foster children who have conditions equivalent to those described in 18 NYCRR 427.6(c)(1)-(6). [See 18 NYCRR 427.6(c)(7).]

Eligibility for State reimbursement for special services to children with pronounced physical conditions, juvenile delinquents or PINS and children who are refugees or Cuban/Haitian entrants is continued in the revised regulations.

B. Exceptional Foster Care Services

The exceptional category is expanded to specifically include children with acquired immune deficiency syndrome (AIDS), the human immunodeficiency virus (HIV), or HIV-related illness. [18 NYCRR 427.6(d)(5)] The Department's interpretation of this regulation is that children who have tested (and remain) seropositive are eligible.

The other categories are essentially unchanged.

As with special services, local commissioners may also designate children with equivalent conditions as eligible for exceptional services either by submitting a list of equivalent conditions to the Department for approval or by requesting Department approval for an individual, child-specific condition. [See 18 NYCRR 427.6(d)(6)]

C. Foster Parent Qualifications

In order for social services districts to receive State reimbursement for children with special or exceptional conditions, foster parents must have demonstrated their ability to provide higher levels of care through past training and experience. Foster parents must also participate in agency foster parent training and in case conferences. [See 18 NYCRR 427.6(e) for more detailed information.]

IV. REQUIRED ACTION

- A. Each social services district must establish a schedule of rates which it pays to foster family boarding homes for normal, special and exceptional foster care.
- B. Children in foster boarding homes are designated as normal, special, or exceptional by the local department of social services that has responsibility for the child. This is the case for children both in foster boarding home programs operated by local districts and those operated by voluntary child caring agencies. Children should be designated within 90 days of admission and re-designated according to changes in their conditions while in care.
- C. As of August 8, 1990, social services districts must use the criteria in 427.6(c) and 427.6(d) for designating children as special or exceptional and the criteria in 427.6(e) to determine if they are eligible to receive State reimbursement for the higher payments.
- D. Social services districts must review the case records of children who qualified for special or exceptional foster care services under the definitions that were changed and determine whether they meet the new criteria. Children who received special or exceptional foster care services prior to August 1, 1990 but who do not qualify under the new criteria, will not be eligible for state reimbursement for the higher level of payment after March 31, 1991. [18 NYCRR 427.6(f)]
- E. Social services districts must ensure that foster parents who care for special or exceptional level children meet the requirements of 18 NYCRR 427.6(e).

This includes demonstrating the ability to care for these children by meeting the training and experience requirements of regulation 427.6(e) (2).

Foster parents who are currently approved for special or exceptional rates but who do not meet these requirements have until March 31, 1991 to complete any necessary training. Social services districts should make a determined effort to ensure that the requirements are met before that date.

Social services districts must also ensure that foster parents participate in the ongoing training required by regulation 427.6(e)(3). This training may be provided directly by district staff or through contracts with voluntary child caring agencies or other human services agencies qualified to provide such training.

- F. Regulations 427.6(c) 7 and 427.6(d) (6) allow local commissioners to develop lists of special and exceptional conditions that are not specifically covered by the revised definitions but are essentially equivalent. Individual, child-specific conditions may

also be approved for special or exceptional services. Both must be approved by the State Department of Social Services.

1. Lists of Equivalent Conditions

The Department anticipates that the amended regulations are sufficiently broad enough to cover a significant number of children whose foster care is currently subject to State reimbursement at the special or exceptional level. Local commissioners and their staff should review the revised criteria and determine if there are any classes of children in care whose conditions are not covered by the regulations but who they believe should be eligible for the enhanced State reimbursement.

The local commissioner may then submit justification for these conditions for approval to this Department through the appropriate regional office of the Division of Family and Children Services. Department approval must be obtained before the special or exceptional rate can be paid.

The Department will determine if the conditions:

- a. already meet the special or exceptional criteria,
- b. are equivalent to the special or exceptional criteria and can be approved, or
- c. are not equivalent and cannot be considered eligible for enhanced State reimbursement.

The regional office will notify the social services district of the determination. Social services districts may expand and update their approved categories as necessary.

Approved lists of equivalent conditions must be shared with voluntary child caring agencies that have contracts to provide foster care services for the social services district.

2. Child-Specific Conditions

Local commissioners may also request approval for a child with a condition that is not specifically addressed by the regulations but who they believe requires special or exceptional care.

In such cases the local commissioner may approve the special or exceptional rate and then submit a request through the regional office. The Department will make every effort to make a decision within 60 days. If the Department does not act on the request within 60 days, the rate can be continued until a decision is made. If the request is denied, the rate may be continued until the end of the month in which the district is notified of the Department's decision.

However, if a social services district requests approval for a condition or conditions previously denied to that district by this Department, the subsequent denial is retroactive to the date that the rate was first approved by the social services district.

- G. Social services districts must advise all foster parents and applicants of the requirements for designating children as special and exceptional and for receiving the higher payments for providing such care. This information must be included in the district's foster parent manual that is required by 18 NYCRR 443.3(p).

V. SYSTEMS IMPLICATIONS

None

VI. ADDITIONAL INFORMATION

Variable Rates for Special and Exceptional Services

In some instances, local social services districts pay more than one rate for special or exceptional foster care services. Districts have reported rates based on variables such as the children's age or type and severity of condition. While the regulations do not prohibit this practice, districts are reminded that they must be consistent in the application of district standards.

VII. EFFECTIVE DATE

This directive is effective as of March 1, 1991, retroactive to August 8, 1990.

Joseph Semidei
Deputy Commissioner
Family and Children Services

REVISED REGULATIONS

- 427.6 (c) If approved by the department, social services districts are eligible to receive State reimbursement for payments for special foster care services made on behalf of children who:
- (1) are boarded out with foster parents who meet the criteria of subdivision (e) of this section; and
 - (2) suffer from pronounced physical conditions as a result of which a physician certifies that the child requires a high degree of physical care; or
 - (3) are awaiting family court hearings on PINS or juvenile delinquency petitions, or have been adjudicated as PINS or juvenile delinquents; or
 - (4) have been diagnosed by a qualified psychiatrist or psychologist as being moderately developmentally disabled, emotionally disturbed or having a behavioral disorder to the extent that they require a high degree of supervision; or
 - (5) are refugees or Cuban/Haitian entrants, as defined in subdivisions (p) and (q) of section 427.2 of this Title and are unable to successfully function in their communities because of factors related to their status as refugees or entrants. Such factors shall include but not be limited to, the ability to communicate effectively in English, the lack of effective daily living skills and the inability of the child to relate to others in the child's community; or
 - (6) enter foster care directly from inpatient hospital care. Such children are eligible for special foster care services for a period of one year. Eligibility after one year will continue only if the child meets one of the conditions described in paragraph (2), (3), (4), (5) or (7) of this subdivision; or
 - (7) in the judgment of the local social services commissioner, have a condition equivalent to those in paragraph (2), (3), (4) or (5) of this subdivision. Special payments for foster children who have the equivalent conditions described in this paragraph are approved if:
 - (i) a list of equivalent conditions has been developed by the local social services commissioner and approved by

the department as eligible for special foster care services; or

- (ii) individual, child specific requests for special foster care services have been approved by the local social services commissioner. Such child specific requests must be approved by the department within 60 days after approval by the local social services commissioner.

427.6 (d) If approved by the department, social services districts are eligible to receive State reimbursement for payments for exceptional foster care services made on behalf of foster children who:

- (1) are boarded out with the foster parents who meet the criteria of subdivision (e) of this section; and
- (2) require as certified by a physician, 24-hour a day care provided by qualified nurses, persons closely supervised by qualified nurses or physicians; or
- (3) have severe behavior problems characterized by the infliction of violence towards themselves, other persons or their physical surroundings, and who have been certified by a qualified psychiatrist or psychologist as requiring high levels of individual supervision in the home; or
- (4) have been diagnosed by a qualified physician as having severe mental illnesses, such as child schizophrenia, severe developmental disabilities, brain damage or autism; or
- (5) have been diagnosed by a physician as having acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) - related illness, as defined by the AIDS institute of the State Department of Health. Such definitions are contained in directives issued by the department from time to time. Foster children who have tested positive for HIV infection and subsequently tested negative for HIV infection due to seroconversion remain eligible for exceptional services for a period of one year from the date of the test which indicated seroconversion. Upon expiration of such one year period, the child's condition must be evaluated and the local social services commissioner must determine the child's continued need for exceptional services in accordance with paragraph (2), (3), (4) or (6) of this subdivision; or
- (6) in the judgment of the local social services commissioner, have a condition equivalent to those in paragraph (2), (3), (4) or (5) of this subdivision. Exceptional payments for foster children who have the equivalent conditions described in this paragraph are approved if:

- (i) a list of equivalent conditions has been developed by the local social services commissioner and approved by the department as eligible for exceptional foster care services; or
 - (ii) individual, child specific requests for exceptional foster care services have been approved by the local social services commissioner. Such child specific requests must be approved by the department within 60 days after approval by the local social services commissioner.
- 427.6 (e) If approved by the department, social services districts are eligible to receive State reimbursement for payments for special or exceptional foster care services made to foster parents who:
- (1) provide foster family boarding home care to the foster children described in subdivisions (c) and (d) of this section; and
 - (2) have demonstrated their ability to care for foster children with special or exceptional conditions through past training and experience in nursing, special education, child care or the completion of or participation in special training provided by an authorized child caring agency or other relevant training and experience; and
 - (3) actively participate in agency training for foster parents of not less than four hours per year in the case of providers of special foster care services and five hours per year in the case of providers of exceptional foster care services; and
 - (4) actively participate in case conferences as determined by the authorized agency; and
 - (5) are able to provide the intensive supervision and interpersonal relationships that are consistent with the child's therapeutic goals. This includes the ability to work with the professionals involved in the treatment plan, such as physicians, nurses, social workers, psychologists and psychiatrists. Foster parents must also be able to accept assistance and guidance in caring for the child.
- 427.6 (f) Where certified or approved foster parents are providing care for a foster child who was eligible for special or exceptional foster care services prior to August 1, 1990 and are receiving a payment for such child which exceeds the amounts established pursuant to this section, State reimbursement will continue to be made at the higher amount so long as the child continues to receive care as a foster child in that foster family boarding home. Such higher payments cannot be made after March 31, 1991 and the rate of payment after such date will be the rate authorized by this section.