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| LOCAL COMMISSIONERS MEMORANDUM |  
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Transmittal No: 91 LCM-123

Date: July 3, 1991

Division: Family and Children  
Services

TO: Local District Commissioners

SUBJECT: Preventive Services and PINS Adjustment Services

ATTACHMENTS: There are no attachments to this memorandum.

Issues have arisen as to the relationship of preventive services to PINS Adjustment Services programs. The purpose of this memorandum is to summarize and, where necessary, to clarify current policy relating to preventive services and PINS adjustment services as it is derived from the applicable laws and regulations and from the Preventive Services Program Manual.

PINS Adjustment Services Act

The PINS Adjustment Services Act (Chapter 813 of the Laws of 1985) makes changes and additions to the Executive Law, the Family Court Act (FCA), and the Social Services Law (SSL) to provide for a program of adjustment services to be made available for children and youth who are the subjects of, or at risk of being the subjects of, petitions to be declared Persons in Need of Supervision (PINS). Youth who are the subjects of petitions alleging Juvenile Delinquency (JD) may also be included, except that the case of a child who has committed a designated felony act must have the written permission of the court before being referred for adjustment services [FCA308.1(3) and (4)].

The Act has as its primary purposes:

- to prevent inappropriate or unnecessary court intervention regarding children or youth (16 years or under) who may be or become persons in need of supervision (PINS);
- to prevent unnecessary and inappropriate out-of-home placements of children and youth;
- to provide for interagency planning and cooperation in providing services to children and families experiencing problems.

PINS Adjustment Services and Eligibility for Preventive Services

The adjustment services process, as defined in Executive Law 243-a and FCA 735, follows a sequential process:

- initial intake and intake assessment conducted by probation;
- referral to the Designated Assessment Service (DAS) for assessment of relevant services;
- completion of formal assessment, development of service plan, and making of referrals for appropriate services by DAS;
- service provision by relevant agencies/providers;
- case recording and service plan review.

All initial requests for filing a PINS petition go to the probation service. The probation service makes an initial assessment as to whether a child and family may benefit from an attempt to adjust the case rather than go to court. For those who appear to be able to benefit from adjustment services, the probation service assigns the case to the Designated Assessment Service (DAS) for a formal assessment of the family's situation and the development of an initial service plan.

The DAS is established by the county (or New York City) executive or governing body pursuant to its approved PINS Adjustment Plan. The DAS may be operated by probation or may be composed of staff from local probation, the local social services district, the local youth bureau and/or local mental health operating under agreement with the local probation service. The function of the DAS is to assess the youth and family and to determine their service needs.

(Note: in counties which do not have an approved PINS Adjustment Services Plan and a DAS, this function will be completed by the local probation service. The remainder of this LCM refers to these functions as they are completed by a DAS.)

When the DAS completes its assessment of the youth and family, the DAS may make referrals for appropriate services that are intended to resolve the problems giving rise to the PINS situation. Preventive services are a primary resource for these referrals. Executive Law 243-a provides that the PINS Adjustment Plan must include expedited procedures "for a social services official to determine eligibility for mandated preventive services for a child who is the subject of a PINS petition or who has been determined by a DAS (or probation service intake) to be at risk of such a petition and who is determined by the social services official....to be at risk of placement into foster care." This is buttressed by Social Services Law 409-a.1(b) which provides that "[a] social services official shall provide preventive services to a child and his family....upon a finding by such official that....the child is the subject of a petition under article seven of the family court act, or has been determined by the assessment service established pursuant to section two hundred forty-three-a of the executive law, or by the probation service where no such assessment service has been designated, to be at risk of being the subject of such petition, and the social services official determines according to standards....that the child is at risk of placement into foster care."

Referrals from the DAS are to be treated the same as an application for services made by the child and family and a Common Application for Services taken. As with any such application, the local district must review the factors relating to eligibility and determine, in this case, whether the child and family are eligible for mandated preventive services.

The determination of a child and family's eligibility for mandated preventive services, including that a child is at risk of foster care placement, is to be made by the social services official pursuant to Department Regulations. The portion of these regulations that deals specifically with being the subject of or at risk of being the subject of a PINS petition is Section 430.9(c), Child Services Need.

Within this definition, the process for establishing eligibility for mandated preventive services is twofold. A child (and his or her family) are to be determined eligible for mandated preventive services when a child is the subject of or at risk of being the subject of a PINS petition and the child is a member of a family in which at least one of the following conditions applies:

- (1) the family would have been eligible for preventive services at some time in the past, if application had been made; or

- (2) some child in the family has been placed in foster care at some time in the past; or
- (3) the child's behavior leading to the petition or the risk of such filing may be described as behavior that is not dangerous but results in management problems in the home, school or community and this behavior has been exhibited over a period exceeding six months; or
- (4) the family, or some member of the family, has in the past or is currently receiving services from the local district, the local mental health or mental retardation agency, the probation service, or the youth board for at least six months. The services which are or have been provided by the social services district must be those services which are set forth in the district's consolidated services plan.

Adjudication of a child as a PINS is not required for the provision of mandated preventive services under the Child Services Need standard.

In districts which choose to provide non-mandated preventive services, this same determination process may also be used to decide whether a child and family, who may not be eligible for mandated preventive services, may be eligible for and may be provided with non-mandated (optional) preventive services. If the result of the determination of eligibility is to deny preventive services to a child and family, the family must be provided with a notice of the denial and notice of their fair hearing rights to appeal the denial. [See 18 NYCRR 423.4(m)(4), 358-3.1(b)(1).]

Local districts are reminded that PINS adjustment services, including preventive services, are one means of demonstrating compliance with State statutes and regulations regarding reasonable efforts to prevent placement [cf. SSL 358-a; FCA 754.2, 1027(b), and 1052(b); 18 NYCRR 430.10(b)]. Making the PINS or PINS-potential child and his or her family eligible for mandated preventive services is a means for assuring that neither the parents nor those agencies working with them and/or the child should routinely fall back on court adjudications or foster care as the means to deal with the problems presented by the child's behavior needs. This in turn will assure that the child will meet the reasonable efforts requirements for Federal Title IV-E reimbursement.

#### Preventive Services Funding and PINS Adjustment Services

The PINS Adjustment Services Act was intended to encourage interagency planning and cooperation in providing needed services for PINS-related children and youth and their families. An important part of such planning and cooperation is the funding of both the planning process and the delivery

of services. Preventive services dollars from State and local social services departments are a significant element of that cooperative funding process. Such funding is, however, subject to the limitation and requirements of law and of the regulations authorized by law appropriate to the provision of preventive services by social services districts. The Department has specified in 18 NYCRR 423.2(b) those services which may be classified as and provided as preventive services and has established in 18 NYCRR 423.2(b), 423.3 and 430.9 the standards for determining who may be eligible to receive preventive services and the appropriate circumstances and conditions applicable to such eligibility, particularly for mandated preventive services.

There is a very specific consideration to be made regarding the use of preventive services funds to support the assessment and case planning functions of the DAS. The PINS Adjustment Act provisions in Executive Law 243-a and in Family Court Act 734 and 735 make it clear that the intake and initial assessment functions are the responsibility of the probation service. As such, the intake and initial assessment are not fundable with DSS preventive services funds. Subsequent assessment and services planning activities of the DAS may qualify for preventive services funding to the extent that they are provided to and for children and families who are determined to be eligible for preventive services by the local district and to the extent that these services meet the definition in 18 NYCRR 423.2(b)(2) of case planning: "assessing the need for, providing or arranging for, coordinating and evaluating the provision of those preventive services needed by a child and his [or her] family to prevent disruption of the family or to help a child in foster care return home sooner,...referring such child and his family to other services as needed,...documenting client progress and adherence to the plan by recording in the uniform case record...". This does not preclude the use of other DSS funds or resources to support a PINS adjustment services program. Districts are reminded, however, that preventive services reimbursement can be claimed only for those services defined as preventive services and only for those services provided to children and families who have been found eligible for preventive services. Specific claiming is subject to the eligibility category of the child or family for whom case planning is done or for whom services are provided, i.e. whether they are eligible for mandated preventive services or for non-mandated (optional) preventive services. Also, a local district may not use, nor claim reimbursement for, preventive services funds for assessment or other activities for which the county is receiving reimbursement under the enriched funding provisions for adjustment services in Section 243-a of the Executive Law.

While case planning may be delegated and contracted, as in utilizing a Designated Assessment Service for PINS adjustment services assessment and referral, districts are always responsible for case management. Case management includes approving eligibility, authorizing preventive services and reviewing and approving case plans, including the Uniform Case Record.

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Local districts are also reminded of the provisions in 18 NYCRR 423.5(j) that require local districts to explore, and where appropriate utilize, other services resources and funding sources prior to authorizing and claiming a service as preventive services. This is particularly important in regard to the use of Emergency Assistance to Families with Children (EAF) and Title XIX Medical Assistance (MA). Where a case may be eligible for services from any of these alternative resources or for funding from other than preventive services, these sources and resources must be utilized. Any local district agreement or contract regarding PINS adjustment services must include and refer to these requirements.

Finally, local districts are reminded that contracts for services and/or agreements for the provision of preventive services, including those related to PINS adjustment services, must comply with the purchase of services contract requirements in Part 405 and Section 423.4(f) of Department Regulations, including a clear description of what services are to be purchased, the cost basis for the purchase, and who will be the actual provider of services. Local district contracts with other public agencies, including the local youth board or local probation service, for the provision of services, including assessment or case planning conducted by the DAS, require prior approval of the Department before their execution and the submission of claims for reimbursement [18 NYCRR 423.2(a)].

Questions regarding this memorandum should be addressed to the Regional Office serving your district.

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Division of Family and Children Services