

ADMINISTRATIVE DIRECTIVE

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES
40 North Pearl Street
Albany, New York 12243
Cesar A. Perales, Commissioner



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DIVISION:

Family and Children Services

TO:

Commissioners of Social Services

SUBJECT:

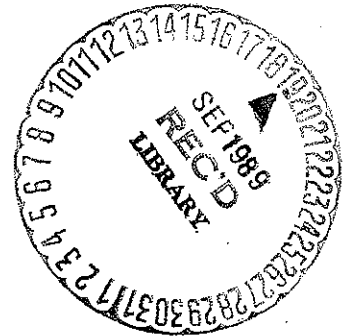
Preventive Services Utilization Review

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I. PURPOSE

This directive has two purposes. The first is to advise local social services districts that the Department plans to conduct a utilization review

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Social Services Law and Other Legal References	Manual References	Miscellaneous Reference
	86 ADM 48 81 ADM 53	Part 423 Part 428 DR 430.8- 430.13	153 398.b 409.b 409.e 409.f 409.h		Uniform Case Record Desk Aid

of the preventive services programs in each local district in accordance with the procedures established by 18NYCRR Section 430.13. The Department will advise each district of their respective starting date for Preventive Utilization Review.

The second purpose is to facilitate agency preparation for utilization review by describing program implications and the required actions that are related to the utilization review policy.

II. BACKGROUND

With the passage of Section 398-b of the Social Services Law (SSL) the Department was required to establish a process for utilization reviews of foster care and preventive services in each local social services district. The utilization review of preventive services has been somewhat delayed to permit all districts to enter their preventive services cases into CCRS. Sufficient information has now been entered into the system to permit the Department to create the universe on which to base the district specific sample necessary to select cases for the review.

III. PROGRAM IMPLICATIONS

The statute requires utilization reviews to be performed on the basis of a selected sample of cases to review conformity to regulatory standards. Additionally, in those instances where standards were not met, a denial of reimbursement is mandatory. These requirements were, as provided by the statute, promulgated into regulations. The regulations pertaining to procedures are incorporated in the following section.

A. STATE METHODOLOGY

1. General Procedures

The general procedures governing the conduct of utilization reviews are found in 18 NYCRR Section 430.13(g)(1). This particular section reads as follows:

"(1) General Procedures (i) The department may review individual case records of children in care or in receipt of preventive services, and may review any other relevant data and information compiled or maintained by the Child Care Review Service, social services districts and authorized agencies from which districts purchase foster care or preventive services, to determine compliances with all or part of the standards specified in sections 430.8-430.12 of this Part. The department shall deny reimbursement in accordance with the provisions of paragraphs (2) and (3) of this subdivision for any case where care or services have been provided in violation of the standards specified in such sections.

(ii) The department shall, 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 have been provided in accordance with the standards set forth in sections

430.8-430.12 of this Part. If the department finds, in a portion of the sample cases, that care or services have been provided in violation of such standards, it shall deny reimbursement thereof in accordance with the provisions of paragraphs (2) and (3) of this subdivision."

When conducting the reviews, the department uses as the universe mandated preventive services cases for selecting its sample. The district specific sample is drawn from the universe created by using the district caseload data entered into the Child Care Review Services (CCRS). The most recent available CCRS information prior to the review initiation date will be utilized.

Children who are adjudicated juvenile delinquents (JDs) and persons in need of supervision (PINS) in receipt of mandated preventive services will be included in the sample. Refugee children will also be included in the sample, as Federal policy calls for those cases to be reviewed and reimbursement to be denied for failure to comply with utilization review standards.

2. Documentation

In order to accomplish the utilization review it is necessary to secure and review documentation pertaining to the provision of preventive services. The individual uniform case record to be obtained is to contain those forms and related documents, for each selected case, which are required to be maintained in accordance with 18 NYCRR 428.3 - 428.10. These regulations establish standards which relate to the forms and other documents required to be maintained and establish specific due dates for completion.

The utilization review standards in 18 NYCRR 430.9(b) state the provision of mandated preventive services will be deemed appropriate only when appropriate documentation of the reason for the need for mandated preventive services is found in the Uniform Case Record. The specific documentation required is found under the several other paragraphs of 430.9. If, for example, preventive services are being provided because of "parent unavailability" the documentation required is specified in 18 NYCRR 430.9(c)(3)(i). This subparagraph states in part that "the first uniform case record required after the date of authorization for preventive services shall contain a description of the reasons for the parents' or caretakers' absence from the home,.....". It is understood that the UCR form itself may not in all cases contain all the necessary documentation. In these cases additional documentation, which may be included in the progress notes or other documents, may be considered during the utilization review.

As indicated the progress notes are considered the primary place to record additional information which exceed space on the UCR forms or which is not appropriate for entry on the UCR form. Progress notes are to be maintained as contemporaneously as possible [see 18 NYCRR 428.5(a)]. Contemporaneous is not specifically defined in the regulations but is generally analogous to the Civil Practice Law and Rules and Family Court Acts'

requirements that business record entries be made within a reasonable time after the event recorded. New York courts have found 15 days after the date of occurrence to be a reasonable time within which to make business record entries. Since the review will be conducted at least 30 days after the end of the period to be reviewed, any case record recordings concerning the period to be reviewed are to be made by the audit date. In those instances where the activity under review occurred 30 days or less prior to the audit date, the rule of contemporaneous recording will apply.

While it is not the intent of this review to concentrate solely on the forms in the uniform case record, documentation to support the fact that standards are being met must be entered on the UCR form specified for 18 NYCRR Part 428, progress notes Court Orders or other documents ie. medical records in the case record. In all instances the appropriate specified UCR form must be completed as required by 18 NYCRR Part 428. Documentation which is prepared after the audit date is not acceptable unless the rule of contemporaneous recording applies. The District/Agency must establish that any documentation submitted after the time the case record has been turned over to the reviewer existed prior to the audit date. At the close of the comment period associated with the draft audit report, the reviewer will not consider any further documentation in determining cases to be sanctioned or amounts of the financial sanctions to be applied.

3. Procedures

- (a) A sample of cases will be selected from CCRS. The audit date for all cases in the sample will be the last day of the month of that monthly CCRS file used as the basis to select the sample. The audit date establishes the date by which case documentation must exist and the date from which the review (audit) period is determined.
- (b) In general, the review (audit) period for all cases selected is the 6 month period starting 6 months prior to the audit date. The response to some questions may require a review of earlier entries in the case record.
- (c) An entrance conference will be scheduled with the local district commissioner. A list of the cases to be reviewed by the Department will be provided to the district. Any review involving more than 50 cases will be divided into increments of 50 cases.
- (d) The review initiation date for all cases selected by the Department shall be the date of the entrance conference/list presentation. For those districts with more than 50 cases subject to review an increment date will be established for each 50 subsequent cases. The review initiation date or the increment date for each subsequent 50 cases establishes the dates from which Paragraph (e) and (f) are computed. It should be noted that the audit date for each case will not change [see paragraph(a)].

- (e) By the end of two working days from the presentation of the list of the cases to be reviewed or from the date of presentation of the incremented list, the local district shall retrieve the original, uniform case record for each case identified in the list of cases provided by the Department for not less than 80% of the cases and make such records available for review. The uniform case record shall include the documentation identified in 18 NYCRR Section 428.3(b). The remaining 20% of such records shall be made available to the Department for review by the end of the third day. In New York City cases selected from purchase provider agencies will be read at the provider agency by the reviewers. All other cases will be reviewed within the local district offices.
- (f) For cases selected from purchase provider agencies, the local district shall retrieve the original supporting documentation and any other documentation available for each case identified in the list of cases provided by the Department within ten working days of the relevant review initiation date or increment date. The original supporting documentation shall include the documentation in 18 NYCRR 428.3(b). All documentation is to be made available pursuant to paragraph (d) above. This paragraph is not applicable in New York city as retrieval is not necessary since the reviews will be conducted at the purchase provider agency.
- (g) Upon receipt of the written documentation provided by the local district pursuant to paragraphs (e) and (f) herein, the Department's Office of Audit and Quality Control shall review such documentation to determine compliance with 18 NYCRR Part 428. Where the reviewer finds the case to be in violation of the Uniform Case Record requirements contained in 18 NYCRR Part 428, the case will be removed from the sample without further review and the Department will assess an appropriate sanction pursuant to Section 153-d of the Social Services Law and 18 NYCRR 430.2 and 430.7
- (h) Cases not subject to a sanction as described in the proceeding subparagraph (g) will be reviewed to determine compliance with 18 NYCRR 430.9.
- (i) Any documents not submitted to the Department by the district within ten (10) days of the increment date will be accepted for review only until the date the Department's Audit and Quality Control staff complete their initial review of the cases in the relevant increment.
- (j) Notwithstanding any other provision to the contrary, except those documents meeting the rule of contemporaneous recording, documents prepared by the district or provider agency after the audit date shall not be accepted as evidence of compliance with 18 NYCRR Part 428 or 430.9.

- (k) The district and/or the provider agency shall be given written notice by the Department's Office of Audit and Quality Control, as soon as possible, regarding any case which may be subject to ongoing daily sanctions. The date of the written notice will be day one of the ongoing sanction of those cases subject to ongoing sanctions. In all other sanctions the sanctions will be computed retroactively from the audit date which establishes the end of the review period. Written notice shall be given regarding any case determined to be out of compliance with 18 NYCRR 430.9. Within five (5) working days of receipt of such notice, the district and/or the provider agency may respond to the Department's findings by submitting additional documentation, as identified in paragraphs (d) and (e) of this section.
- (l) Once the review of all case records has been completed an exit conference with the local district commissioner will be held at a mutually convenient time by Audit and Quality Control staff. Audit and Quality Control staff may choose to conduct an exit conference at the end of each increment rather than waiting for the total sample to be reviewed. If, after the exit conference, it has been found that the district disputes the findings on a specific case(s) the case(s) will be submitted to the appropriate regional office of the Division of Family and Children Services for review prior to the preparation of the draft audit report. The review by the Regional Office will be concluded within thirty days of receipt of the case. For those cases in dispute, Audit staff will forward its findings and any local district documentation supporting the basis for this position to the Regional Office. Documentation must meet the requirements of paragraph 2.
- (m) After completion of the review by the Department's regional office staff, any case still determined to be out of compliance with 18 NYCRR 430.9 by the Department shall be identified in a written draft report, which shall be issued to the local district and shall set forth the name of any case determined to be out of compliance, the regulatory provision violated and the number of days out of compliance. Where more than one increment of cases was reviewed by the Department, the Department may issue a single draft report combining all of the relevant increments or a separate draft report for each increment.
- (n) Any district wishing to contest the findings set forth in the draft report shall submit a written response to the Department's Office of Audit and Quality Control. Such response shall be submitted to the Department no later than thirty (30) working days after the issuance of the draft report. No documentation or response shall be accepted after the expiration of this period.
- (o) Additional documentation submitted to the Department pursuant to paragraphs (j) thru (m) herein shall be limited to original

records identified in 18 NYCRR 428.3(b). Such records must have pre-existed the review audit date. It shall be the burden of the local district to establish that such documents were prepared prior to the review audit date.

- (p) At the close of the thirty day comment period all comments received will be considered an as appropriate included in the final audit report. On the expiration of the comment period no further comments furnished by the district will be considered in determining whether or not a case is sanctionable. Districts which continue to believe that all issues have not been resolved regarding a particular sanction(s) may within 60 days of the final audit report, request a fair hearing in accordance with 18 NYCRR Section 430.13(d) thru (f) which follows:

- "(d) A social services district aggrieved by the denial of State reimbursement pursuant to this section is entitled to a fair hearing to appeal such denial. Such fair hearing must be requested within 60 days of the date the written notice that reimbursement will be denied is sent.

- (e) Any authorized agency aggrieved by the determination of a social services district to charge loss of reimbursement pursuant to subdivision (c) of this section is entitled to a fair hearing to appeal such determination. Such fair hearing must be requested within 60 days of the date the written notice that loss of reimbursement will be charged to such authorized agency is sent.

- (f) The department shall conduct fair hearings required by this section in accordance with section 22 of the Social Services Law and article 3 of the State Administrative Procedure Act."

B. EFFECT ON LOCAL DISTRICT NON - COMPLIANCE

1. Denial of Reimbursement

When a case has been found to be in error by not meeting required standards the statute provides that reimbursement for that case must be denied. This requirement is promulgated in 18 NYCRR Section 430.13(g)(2) as follows:

"(2) Denial of reimbursement. The department shall deny reimbursement for any case where care or services have been provided in violation of the standards set forth in sections 430.8-430.12 of this Part, for the time periods during which such violations exist, as specified in subparagraphs (i)-(iii) of this paragraph.

(i) General standard for commencement and termination of sanctions for individual cases. Except as provided in subparagraph (ii) of this paragraph, all violations of the standards set forth in sections 430.8-430.12 of this Part shall be deemed to have occurred 60 days prior to the date of the audit, unless the district provides evidence that the violation occurred at a later date. Violations of standards specified in sections 430.8-430.12 of this Part, for individual cases reviewed, shall be deemed to continue to exist until the department determines, upon submission of evidence by the district, that appropriate corrective action has occurred pursuant to paragraph (5) of this subdivision.

(ii) Specific standards for commencement of sanction for individual cases (OMITTED NOT APPLICABLE.)

(iii) Restoration of reimbursement for individual cases. Notwithstanding paragraph (3) of this subdivision, any sample case remaining out of compliance with the standards specified in sections 430.8-430.12 of this Part shall be denied reimbursement until that particular case is brought into compliance according to paragraph (5) of this subdivision."

For those cases which have reimbursement restored, claiming is only for expenditures made for the case beginning on the date and after it comes into compliance. No retroactive claim is to be made for the period of the sanction.

2. Extrapolation

In addition to denying reimbursement for individual cases under review found to be out of compliance with the regulatory standards, the statute provides that when there are violations in a portion of the sample in excess of 7.5 percent of the total number of cases in the sample, that portion of the sample in violation

which exceeds 7.5 percent shall be attributed to the entire caseload not included in the sample and reimbursement shall be denied on the portion attributed. This requirement is promulgated in department regulation 18 NYCRR 430.13(g) (3) which is as follows:

"(3) Extrapolation to populations. (i) If the department finds that care or services have been provided in violation of the standards set forth in sections 430.8-430.12 of this Part, in a portion of the sampled case records, which portion exceeds 7.5 percent of the entire sample, the department shall attribute that portion of the violation which exceeds 7.5 percent of the entire sample to the entire foster care or preventive services caseload not included in the review, and the department shall deny reimbursement thereon; provided, however, that the sample was chosen in accordance with generally recognized statistical sampling methods. Reimbursement shall be denied under this paragraph for a period equal to the average of the number of days prior to the day of the audit for which violations have been deemed to occur in the sample cases.

(ii) If reimbursement is denied under this paragraph, the social services district may perform such 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 in accordance with subdivision (c) of this section."

3. Corrective Action

During the conduct of the utilization review certain cases which are sanctioned may be liable for an ongoing sanction until such time as the district takes necessary action to correct the existing situation which led to the sanction. On discovery of a case requiring corrective action, the auditor will verbally advise the district to enable them to initiate corrective action at the

earliest practical time to minimize the extent of the time period when the sanction continues. The pertinent regulation governing corrective action 18 NYCRR 430.13(g)(5) is as follows:

"(5) Corrective Action. (i) General. Cases where care or services have been provided in violation of the standards set forth in sections 430.8-430.12 of this Part, shall have reimbursement restored, in accordance with the provisions of paragraph (2) of this subdivision, at the time of the audit date unless specific corrective action in accordance with subparagraphs (5)(ii)-(v) of this subdivision is required.

(ii) Corrective action for cases in violation of section 430.9 of this Part. For any case in violation of section 430.9 of this Part, reimbursement shall be denied, in accordance with the provisions of paragraph (2) of this subdivision, until the date of corrective action as evidenced by either (a) sufficient documentation existing in the uniform case record to show that the case is no longer in violation of the standards, or (b) mandated preventive services are discontinued for cases found not eligible for such services.

(iii) Corrective action for cases in violation of section 430.10 of this Part. (OMITTED NOT APPLICABLE.)

(iv) Corrective action for cases in violation of section 430.11 of this Part. (OMITTED NOT APPLICABLE.)

(v) Corrective action for specific diligence of effort standards. (OMITTED NOT APPLICABLE.)


IV. REQUIRED ACTION

On receipt of this Administrative Directive, districts are to take those steps necessary to ensure uniform case records as required by Department Regulation Part 428 are maintained on a contemporaneous basis and documentation as required by 430.9 is contained in each case record. Districts which contract for services must monitor compliance with those requirements by the contracting agency. It should be noted that when a contract agency fails to provide the necessary documentation or to conduct a full review of the case, that agency should be held responsible by the local district for its share of the sanction on the case, pursuant to 18 NYCRR 430.13(c) which follows:

"(c) All social services districts which purchase foster care or preventive services from other agencies are 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 allocable to local district administrative costs may not be charged. Every agreement by a social services district to purchase foster care or preventive services from another agency shall be deemed to include the provisions of this subdivision."

V. EFFECTIVE DATE

This directive is effective on October 1, 1989 retroactive to September 1, 1989.



Joseph Semidei
Deputy Commissioner
Division of Family
and Children Services

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