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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 90 LCM-115

Date: July 26, 1990

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 427.2, 427.6 & 427.15

ATTACHMENTS: Attachment listed below
(Attachment available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 427.2, 427.6 & 427.15 relating to foster care standards of payment.

The final rule - Filed: 7/24/90 - Effective: 8/8/90.

Michael J. McNaughton
Director, Local District
Policy Communications

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), and 398-a of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby amend 427.2, 427.6 and 427.15 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective upon publication of the Notice of Adoption in the State Register.

Dated: July 24, 1990

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on July 24, 1990 amending 427.2, 427.6 and 427.15 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on April 4, 1990.

Dated: July 24, 1990

Signed: _____

Commissioner

Subdivisions (j) and (k) of section 427.2 are repealed and subdivisions (l) through (t) are relettered as subdivisions (j) through (r) respectively.

Section 427.6 is amended to read as follows:

(a) Each social services district [shall] must establish and submit to the department annually a schedule of rates which it [shall pay] pays to foster family boarding homes for normal, special and exceptional foster care [service] services and clothing replacement provided to children; however, State reimbursement [on] for payments for such care based upon such rates [shall be] is limited to the maximum provided for in subdivision (b) of this section.

(b) State reimbursement [shall] must be made only on actual payments to certified or approved foster parents providing care for children in foster family boarding homes up to the maximum levels established by the department for normal, special and exceptional foster care services and clothing replacement based upon data published by the U.S. Bureau of Labor Statistics, and other generally accepted sources, relating to the cost of raising children. [a child in a family of four with a moderate standard of living].

[(c) In the case of children who require special foster care services, State reimbursement shall be made only on actual payments to certified or approved foster parents providing care for children in foster family boarding homes. However, in no

case shall reimbursement be made on payments that exceed one third of the average, as established by the department, of the statewide cost of institutional care provided by authorized agencies.

(d) In the case of children who require exceptional foster care services, State reimbursement shall be made only on actual payments to certified or approved foster parents providing care for children in foster family boarding homes. However, in no case shall State reimbursement be made on payments that exceed one half the average statewide cost, as established by the department, of institutional care provided by authorized agencies, or, where the child cannot be cared for in such institutions, one half the average cost of the hospital or nursing home care which would be necessary if foster care were not provided.]

(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 function successfully in their communities because of factors related to their status as refugees or entrants. Such factors include but are not limited to, the inability 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.

(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, or persons closely supervised by qualified nurses or physicians; or

(3) have severe behavior problems characterized by the infliction of violence on 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.

(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.

[(e) Where certified or approved foster parents are providing care for a child in a foster family boarding home on October 1, 1974 and are receiving payment for such care in excess of the maximum level of payment approved by the department for the type of care provided. State reimbursement shall continue to be made on the excess payment for so long as the child continues to receive care in that foster family boarding home.]

(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.

[(f)](g) State reimbursement through the Department of Social Services [shall] is not [be] available for foster care or for bed reservations in any foster family boarding home during any period in which a child is being held therein for detention as defined in section 510-a of the Executive Law.

Paragraphs (1), (4) and (5) of subdivision (b) of section 427.15 are amended to read as follows:

(1) A child who is a refugee or Cuban/Haitian entrant and qualifies [as a child who requires] for special foster care services [pursuant to section 427.2(j)(6)] in accordance with section 427.6(c)(5) of this Part [shall be] is deemed to require such services for the first 12 months that the [minor] child receives foster care services. During such 12-month period, the social services district which has the care and custody of the child [shall] will receive State reimbursement in accordance with the provisions of section 427.6(c) of this Part.

(4) After such evaluations, the social services district [shall] must determine whether the child should receive

special foster care services. Such determinations [shall] must be based upon the standards contained in section [427.2(j)-(k)] 427.6(c) of this Part.

(5) Nothing in this subdivision [shall preclude] precludes a child who is a refugee or Cuban/Haitian entrant, as defined in section 427.2 [(r)-(s)] (p)-(q) of this Part from receiving exceptional foster care services if such child meets the criteria for such services as set forth in section [427.2(k)] 427.6(d) of this Part.