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Local Commissioners Memorandum

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| Transmittal: | 08-OCFS-LCM-01 |
| To: | Local District Commissioners Local District Directors of Services Local District Fiscal Managers |
| Issuing Division/Office: | Strategic Planning and Policy Development |
| Date: | January 25, 2008 |
| Subject: | Ineligibility for Title IV-E Foster Care for Placements in Certain Non-OCFS-Licensed Programs |
| Contact Person(s): | See Page 6 |
| Attachments: | No |
| Attachment Available Online: | 92 LCM-008 can be found at : http://www.ocfs.state.ny.us/main/policies/external/1992/#LCM |

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to provide information to social services districts (local districts) to prevent local districts from claiming Title IV-E foster care maintenance funds for children in their care who are in specialized placements in certain facilities licensed by agencies other than the Office of Children and Family Services (OCFS) that are not Title IV-E eligible placements. This LCM addresses only those factors regarding the eligibility of the *facility* in which an otherwise Title IV-E eligible foster child is being placed.

Eligibility for Title IV-E payments must not be a determinant in placement decisions. All placements must be made based on each child's specific needs.

II. Background

Federal Law

Title IV-E foster care maintenance payments are available where a child satisfies the eligibility criteria set forth in section 472 of the Social Security Act (SSA) and federal regulation 45 CFR 1356.21. Included in the Title IV-E eligibility requirements is a standard relating to placement and care responsibility of the child. [In New York, placement and care equates to legal custody.] Pursuant to section 472(a)(2)(B) of the SSA, the child's placement and care must be the responsibility of either: 1) the state agency administering the Title IV-E State Plan, or 2) any other public agency with which the state agency administering the Title IV-E State Plan has made an agreement.

Even if an individual child satisfies all of the court-related and non-court-related Title IV-E eligibility requirements set forth in federal statute and regulation, the child must also be placed in a Title IV-E eligible home or facility for the placement to be Title IV-E eligible. The child must be placed either in a foster family home or in a child care institution. For the purpose of this LCM, the relevant federal program is a child care institution. Section 472(c) of the SSA defines "child care institution" as a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent."

New York State Law and Policies

In 1992, the New York State Department of Social Services, the predecessor to OCFS, issued Local Commissioners Memorandum 92 LCM-008, "New Provisions for Foster Care Placements within the Mental Hygiene System as Defined by Chapter 697 of the Laws of 1991," which addressed the placement of foster care children within the mental hygiene system. Such placements are authorized by section 398(6)(g)(2) of the Social Services Law (SSL). The LCM informed local districts that Chapter 697 of the Laws of 1991, which enacted section 398(6)(g) of the SSL, newly permitted the use of state foster care funds to reimburse the cost of placing children in certain homes or facilities operated or licensed by the Office of Mental Retardation and Developmental Disabilities (OMRDD), the Office of Mental Health (OMH), and the Office of Alcoholism and Substance Abuse Services (OASAS). Such placements remain subject to the admission standards established by those other state agencies. Local districts were encouraged to use the increased

flexibility in funding to promote cross-system collaboration and to support the most appropriate placement for each child.

Later that year, OCFS entered into MOUs with OMH, OMRDD, and OASAS to comply with federal Title IV-E eligibility requirements relating to placement and care, as noted above. These MOUs acknowledge that the certification and approval standards of these agencies meet federal standards, delineate responsibilities for the respective agencies, and authorize the use of federal and State foster care funds to pay for the placement of foster care children needing special placements in some of their programs. The MOUs specify the particular types of community based / family centered programs licensed by these agencies to which a social services district can board out foster care children and retain eligibility for federal Title IV-E or TANF-EAF funds and/or state funds in accordance with section 153-k of the SSL. The MOUs do not reflect all residential programs licensed by OMH, OMRDD or OASAS. Placements in those residential programs not referred to in the MOUs are not eligible for Title IV-E foster care maintenance funds, even if the children are otherwise Title IV-E eligible.

The MOU between OCFS and OMRDD specifies the following types of OMRDD-licensed programs that are Title IV-E eligible:

- Family care providers
- Community residences

The MOU between OCFS and OMH, which was updated in 2004, specifies the following types of OMH-licensed programs that are Title IV-E eligible:

- Family-based treatment programs
- Children and youth community residences
- Children's crisis residences, which are community residences
- Teaching family homes, which are community residences

The MOU between OCFS and OASAS specifies the following type of OASAS-licensed programs that are Title IV-E eligible:

- Residential chemical dependency programs for youth

Federal Clarification of Eligible Placements

Recently, at the request of a local district, OCFS raised the issue of eligible placements with the federal Administration for Children and Families (ACF) of the Department of Health and Human Services, inquiring about the Title IV-E eligibility of a foster care child placed in a residential program licensed by a state agency other than OCFS. The child was in the legal custody of a local district. The particular program is operated by a private agency licensed as a private residential school by OMRDD. Note: private residential schools are not one of the categories of residential programs listed in the MOU between OCFS and OMRDD. ACF informed OCFS that the facility, licensed

as a private residential school by a state agency other than OCFS, does not satisfy the federal definition of a child care institution, making placements in such a residential program ineligible placements for Title IV-E maintenance claims. Thus, Title IV-E foster care maintenance payments for children residing in comparable facilities licensed as a private residential school may not be claimed, even if the children have otherwise met the other requirements for Title IV-E foster care eligibility.

Recent Developments Identifying Errors in Claims

Through an internal audit, OCFS has recently become aware that some local districts have been filing Title IV-E foster care maintenance claims for otherwise Title IV-E eligible children in their care who are placed in private residential schools licensed by OMRDD -- similar to the program previously discussed -- that, based on the above referenced federal position, do not meet the requirements of the definition of "child care institution." Staff in these local districts may have been unaware that the placements do not meet the criteria for Title IV-E foster care maintenance payment eligibility. The Title-IV-E-ineligible facilities are listed in CONNECTIONS, and currently there is no mechanism that would enable the Benefit Issuance and Control System (BICS) to identify these facilities as ineligible for Title IV-E, and thus the claims for Title IV-E maintenance payments were not system rejected by BICS.

III. Program Implications

Effective immediately, local districts should review their claims to prevent the filing for Title IV-E foster care maintenance reimbursements for children placed in ineligible Title IV-E facilities, such as private residential schools licensed by OMRDD or other congregate residential programs licensed by OMH, OMRDD or OASAS not expressly addressed in any of the above referenced MOUs between OCFS and one of the noted state agencies. If local districts have previously submitted claims for children currently in placements that are ineligible for Title IV-E maintenance reimbursement, they must make retroactive claiming adjustments.

In order to identify whether a prospective or current placement is eligible for Title IV-E foster care maintenance payments, local district staff should obtain a copy of the license of the program in which the child is or may be placed, and they should identify which state agency licenses the facility. If the license is issued by OMRDD, OMH, or OASAS, the local district must determine whether the placement falls within one of the categories of community-based residential programs noted in the MOUs referenced above.

Out-of-State Placements

Specialized placements of foster care children in out-of-state programs do not fall under the parameters of the MOUs between OCFS and OMH, OMRDD, or OASAS. In order to determine whether a specialized placement in an out-of-state program is Title IV-E eligible, local district staff may follow an analytical process similar to that for in-state placements:

- First, they should obtain a copy of the license for the program in order to ascertain which agency in the state in which the program is located licenses the program.
- They should determine whether the program is licensed by the state agency that administers the Title IV-E State Plan in the state in which the program is located.
- If it is not licensed by that agency, then they should determine whether the program is licensed by another public agency with which the state agency administering or supervising the administration of the Title IV-E State Plan in that state has made an agreement and, if it is, whether the program in which the child has been placed falls within the parameters of that agreement.
- Last, if the licensing agency is either the state agency administering the Title IV-E State Plan or an agency with which it has an applicable agreement, local district staff must determine if the placement facility is an eligible placement facility for Title IV-E foster care maintenance reimbursement (i.e., it is either a foster care home or it meets the definition of “child care institution”).

Whenever local district staff think that a child might be eligible for Title IV-E foster care maintenance reimbursements for an out-of-state placement, they should consult with their regional office lead to discuss the circumstances and determine how to proceed. Whenever local district staff have *any* doubt as to the eligibility of any specialized placement for Title IV-E reimbursements, they should *consult with their regional office*.

Programs Identified as Ineligible Placements

OCFS has identified several programs, all of which are licensed by OMRDD, which, based on the direction given by ACF, are ineligible placements for receipt of Title IV-E foster care maintenance payments. This list is not inclusive of all specialized placement facilities that are not eligible for Title IV-E payments, but consists of programs that OCFS has identified for which local districts have recently mistakenly filed Title IV-E foster care maintenance claims for Title IV-E income-eligible children residing at these programs. Starting immediately, local districts placing otherwise Title IV-E eligible foster care children in any of these facilities **MUST NOT** claim Title IV-E foster care maintenance payments for these children. Additionally, they

must make retroactive claiming adjustments if they have previously submitted Title IV-E claims for children who are currently placed in any of these facilities.

Placements Ineligible for Title IV-E for Foster Care Maintenance Funds

Anderson School - License # 00C15251
4885 Route 9; P.O. Box 367
Staatsburg, New York 12580

Center for Developmental Disabilities, Inc. - License # 00C15245
72 South Woods Road
Woodbury, New York 11797

The Devereux Foundation of New York - License # 00C05460
P.O. Box 40
Red Hook, New York 12571

Ferncliff Manor for the Retarded - License # 00C05513
1154 Saw Mill River Road
Yonkers, New York 10710

Maryhaven Center of Hope, Inc. - License # 00C05504
51 Terryville Road
Port Jefferson Station, New York 11776

Pathfinder Village, Inc. - License # 00C05468
3 Chenango Road
Edmeston, New York 13335

Springbrook - License # 00C05492
2705 State Highway 28
Oneonta, New York 13820

Coding Information

The following guidance is offered for coding foster care cases when the child is in a placement in a facility that is not licensed by OCFS:

- When a child is placed in any of the above residential schools, local district staff must not encode the child as “02,” the eligibility code for Title IV-E, in the Welfare Management System (WMS).
- If the child is eligible for EAF, the child should be encoded as “04.”
- When the child is federally non-participating (FNP), the child should be encoded “08” or “14.”

OCFS recognizes the problems created by the inability of BICS to automatically identify when foster care placement facilities are not eligible for claiming Title IV-E funding. OCFS staff is currently in the process of enhancing BICS to support proper financial claiming for these facilities. In the interim, local districts should confirm that payments to these facilities are not claimed as Title IV-E.

Please note that local districts must always act in the best interests of the children in their care. Decisions about the placements for children must be made based on the specific needs of individual children, regardless of eligibility for Title IV-E payments.

IV. Contact Information

Please contact regional offices for assistance in determining the Title IV-E eligibility of placements.

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/s/ Nancy W. Martinez

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