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| LOCAL COMMISSIONERS MEMORANDUM |  
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Transmittal No: 92 LCM-8

Date: January 8, 1992

Division: Family and Children  
Services

TO: Local District Commissioners

SUBJECT: New Provisions for Foster Care Placements within the Mental  
Hygiene System as Defined by Chapter 697 of the Laws of 1991

ATTACHMENTS: None

## I. Overview

The purpose of this LCM is to inform you of the provisions of Chapter 697 of the Laws of 1991 which increases access to specialized placements for foster care children. Effective August 2, 1991, Chapter 697 amends Section 398 of the Social Services Law concerning powers and duties of commissioners of social services. The law gives you the explicit authority to reimburse with foster care funds the cost of the placement of children in your care and custody or guardianship and custody in a home or facility operated or licensed by the Department of Mental Hygiene (DMH). Department of Mental Hygiene agencies include the Office of Mental Health (OMH), the Office of Mental Retardation and Developmental Disabilities (OMRDD), the Division of Substance Abuse Services (DSAS) and the Division of Alcohol and Alcohol Abuse Services (DAAA). The law allows the State Director of the Division of the Budget to transfer appropriations across state agencies for this purpose.

## II. Implications

While commissioners of social services have always had the ability to place children in such facilities upon the acceptance of the relevant mental hygiene official, Chapter 697 explicitly permits the payment of foster care funds for placements of foster children in community-based residential programs. Prior to this legislative change, when a local commissioner made the determination that placement in a DMH program was the most appropriate response, no foster care funds (local, state or federal) could be used to support the placement.

The implications of Chapter 697 are primarily fiscal and do not change requirements for placement based on the best interest of the child. However, limited availability of funding for the development and support of both residential and non-residential services for children within the mental hygiene system has often resulted in an inability of local commissioners to obtain these services for children in their custody. This new authority granted to local commissioners provides an opportunity for the child welfare and mental hygiene systems to enhance the capacity and accessibility of specialized services for foster children.

Chapter 697 does not alter any programmatic features, eligibility criteria or intake procedures for residential programs licensed, operated, or certified by DMH agencies. You may continue to request of the DMH agency a placement on behalf of a child in your custody/guardianship. The DMH agency continues to maintain responsibility and authority for determining eligibility for placement within its programs and making intake decisions. You have no responsibility to certify or license the placement facility as the law and current and proposed related memoranda of understanding between the State Department of Social Services and each of the mental hygiene agencies deem the certification granted by the DMH agency as sufficient.

The local commissioner and the representative of the DMH agency will negotiate whether payment of foster care funds will be made. The language of Chapter 697 is permissive, allowing, but not obligating, the local commissioner to provide payment. If you elect to reimburse the DMH agency, there will be both state and local participation in meeting the costs, and, where eligible, there will also be federal participation. The level of reimbursement cannot exceed the state maximum rate for the program. The change in reimbursement options for care and maintenance does not affect the payment for Medical Assistance for a child in a DMH placement who has been determined to be eligible for Medical Assistance. Thus, Medical Assistance will continue to be a state/federal payment, with no local share.

Due to a court settlement (City of New York v. Webb), a specific number of placements by New York City Human Resources Administration in OMRDD programs will not require a local match of foster care dollars. Specific details concerning the fiscal and other aspects of this agreement are contained in a memorandum of understanding between the Department and OMRDD.

The use and reimbursement of a DMH operated or certified placement as a foster care placement does not alter your authority or responsibility in relationship to the child and his/her family. You will continue to be responsible for case management, including the Uniform Case Record, CCRS entry, Family Court proceedings and casework contacts. As with any purchase of service agreement for residential care, you may accept the casework contacts with the child and caretaker by the DMH agency representative as fulfilling local district casework contacts with those parties. However, it is incumbent upon the district to ensure that such contacts are recorded in the Uniform Case Record.

All permanency planning decisions and determination of the necessity of continued placement in your custody remain a responsibility of the district and are to be carried out in accordance with Department Regulations. It is essential to reinforce that the child's status as a foster child remains contingent upon the need for foster care, not the need for reimbursement to flow to DMH facilities. However, it is essential for districts to keep the DMH operated or certified placement agency informed of any actual or imminent changes in a child's status.

Up-to-date information on the child's status and IV-E eligibility will be needed by the placement agency for a number of reasons. Of course, from a casework perspective, it is important to know of impending and actual changes in custody. In addition, because the placement agency will be responsible for opening the medical assistance case for the child, the agency must have documentation of the child's IV-E eligibility.

The Department encourages you to use the increased flexibility in funding to promote cross-system collaboration and to ensure the most appropriate placement for children in your custody. This change is designed to provide greater options, but in no way removes resources or service accessibility previously available to you and children in your custody. DMH agencies retain the ability to accept and finance the placement of non-foster children. Local districts should continue to refer non-foster care children, including those of families receiving Preventive or Child Protective Services, for placement in DMH programs as may be necessary and appropriate. Further, as stated above, ongoing funding of the DMH placement should NOT impact on the commissioner's decision to continue custody of a foster care child placed in a DMH program. DMH agencies retain the ability to maintain a child in their care after the child is discharged from foster care status, assuming continued clinical need for the placement and consent of the parent to whom custody was returned.

### III. State-level Implementation Activities

As the state agency responsible for the administration of IV-E funds in New York State, this Department must enter into a memorandum of understanding (MOU) agreement with each of the State DMH agencies. The MOU must acknowledge that certification and approval standards of these agencies meet federal standards set out in Section IV-E of the Social Security Act and delineate the respective responsibilities for program, fiscal, and permanency-related activities. Such an MOU is a pre-requisite for these placements to receive IV-E reimbursement as a foster care service.

The State Department of Social Services has entered into such an agreement with the New York State Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities. The current MOU with both agencies is limited to placements in family-based care. Until similar agreements are negotiated with DSAS and DAAA, no federal foster care funds may be claimed for such placements. However, this does not preclude a local commissioner from placing a child in a program certified by one of these two agencies. Such placements will be eligible for state and local foster care reimbursement. Similarly, placements in group care programs certified by

OMH and OMRDD are not eligible for IV-E reimbursement under the current MOU. However, discussions are currently ongoing to assess the implications of extending the terms of the MOU with both agencies to include other forms of community-based care. Again, previous placement and funding mechanisms for these programs continue to be in place. In addition, Chapter 697 provides the option for the local commissioners to reimburse the placement costs with foster care funds, but forgo federal participation.

#### IV. Local Implementation Activities

It is necessary for districts to follow specific instructions in processing these cases. In NYC this is necessary, in part, because of OMRDD's responsibilities in the settlement of the City of New York v. Webb lawsuit. In addition, the lack of local participation in Medicaid costs requires that these instructions be followed, thus guarding against any confusion in payment or case tracking. Therefore, districts are requested to follow these instructions to process these cases:

##### All Districts Except of New York City:

1) Children placed for services under the MOU should have a WMS service case (type 40) opened with a purchase of services code 61 for foster care regular service and maintenance authorized in the usual manner. The facility number to be used on the POS line will be available on the CCRS facility file.

CCRS information including activity reporting should be reported for these children as usual by the district.

2) An MA only (case type 20) should NOT be opened in the local district. OMRDD or OMH will authorize MA for these children, as appropriate. The local district will be responsible for providing OMH or OMRDD with necessary documentation to support MA eligibility.

3) For BICS districts, the board and maintenance will be processed in the usual manner.

##### For New York City:

1) Children placed for services under the MOU are to be on a WMS service case (type 40). However a purchase of services code 61 for foster care regular service and maintenance or 62 for foster care emergency service and maintenance IS NOT to be written for these MOU children.

CCRS information including activity reporting IS to be provided for these children as usual. Placement activities should use the facility number which will be available on the CCRS facility file inquiry for the MOU program.

2) MA will be authorized as appropriate by OMR or OMH. CWA must provide OMH or OMRDD the necessary documentation of the child's MA

eligibility. The absence of the purchase of service code 61 foster care regular service and maintenance or 62 foster care emergency service and maintenance will prevent dual eligibility from being posted through SERMA.

3) The CCRS fiscal bill will identify children as pending for payment (pend A) sorted by eligibility code, by agency of placement. No per diem dollars will be identified on the CCRS Fiscal Bill for these children. CCRS Fiscal will list the children who have the CCRS activity placement to the specific facility associated with the dual certified agency on a separate district and agency bill. All CCRS statistical information such as numbers of children in care in New York City or in types of care will include these children.

Identification of Facilities certified by OMH or OMRDD:

Programs which are covered under an MOU as described above will be established on the CCRS facility file as belonging to an agency which will have a name combined from the Voluntary Agency and State Agency, such as "St. CECILIA/OMH". A Unique agency code will be assigned. The agency will be identified as licensed either by OMR (9) or OMH (8). Programs covered by the MOU will be given facility numbers associated to this agency ID.

All districts will need to assure that when children are discharged from care or transferred into other programs WMS/CCRS case information is promptly maintained.

Chapter 697 of the Laws of 1991 and the Memoranda of Understanding already executed are the products of New York State's commitment to greater coordination and integration of services for children and families. I am optimistic that this change will be of significant benefit to you in responding to the increasingly complex service needs of children and families within your districts.

If you have any systems related questions, please contact Jerry Seeley at 1-800-342-3727. If you have other questions, please contact the appropriate Regional Office of the Division of Family and Children Services.

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Joseph Semidei  
Deputy Commissioner  
Family and Children Services