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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 92 LCM-27

Date: February 13, 1992

Division: Family and Children
Services

TO: Local District Commissioners

SUBJECT: Options for Use of Relatives in Child Welfare Cases

ATTACHMENTS: There are no attachments to this release.

I. Introduction

The purpose of this memorandum is to discuss the options available for utilizing relatives as a resource for children. We are proposing that any of these options might individually be appropriate for families where it is determined that children need temporary care away from their parent(s). Case circumstances should guide the district as to which option best meets a family's needs.

In addition to outlining "front-end" options for utilizing relatives in caring for children, we will discuss longer range permanency planning considerations and the relevant legal and regulatory bases for those courses of action. We hope that this information about the options and considerations which could arise when relatives are involved as a placement resource, will help you to choose the most suitable legal structure for the child-relative relationship, based on the needs of the child, the birth parent(s) and the relatives.

We ask that you review the way you use relatives as a resource for children in order to determine whether there are some "front-end" and longer range options which you are not utilizing. We believe that greater use of the available options would be appropriate in most social services districts. We welcome your comments and suggestions about the contents of this memorandum, especially if you believe a particular option or consideration is inappropriate for your caseload.

Finally, we would like to thank the commissioners and staff of several social services districts who took the time to meet with a team of staff from this Division to discuss how they currently use relatives as a resource for children. Their thoughtful and forthright responses to our discussion questions stimulated our thinking on this subject and helped provide a construct for this memorandum.

II. Background

There are two recent initiatives that have impacted how relatives could or should be utilized to care for children needing to be placed outside of their homes: 1) implementation of a process for "approving" a relative to care for a child in a commissioner's custody (see 86 ADM-33; NYCRR Parts 443 and 444) and 2) implementation of Chapter 744 of the Laws of 1989, which requires courts and social services districts to explore whether there may be a suitable relative to care for a child who needs to be placed out of his or her home. (See Section 1017 of FCA; Sections 384-a, 392, and 398 of the SSL.)

Prior to implementation of these initiatives, it was considered good practice in many instances to involve relatives in out of home placements. This could take several forms. If the commissioner obtained custody, a relative meeting the standards could become a certified foster parent, although no expedited certification process existed. Social services districts were also encouraged to use relatives as an "alternative to placement" when it was not necessary to obtain custody of a child to ensure the child's safety. If the local district filed an abuse or neglect petition, one possible disposition was for the court to place a child in the direct custody of a relative, independent of any role which it might prescribe for the social services district (e.g., supervision). Finally, it was also possible for a relative to make application to Surrogate's Court (and more recently, Family Court) for obtaining guardianship of a child.

The implementation of an approval process for relatives in the third degree provided an expedited process for approving relatives to provide foster care. It also reduced, in a limited way, those requirements which a relative would have to meet in order to be approved. However, implementation of an approval process did not preclude the involvement of relatives in any of the other manners previously described.

Chapter 744 requires the Family Court to direct a social services district to determine whether there are qualified relatives with whom the child could reside. However, such procedures only arise when the court determines that a child needs to be placed outside the child's home for reasons of abuse/neglect or for a voluntary placement. Through the social services district's intervention or involvement outside of the realm of Family Court proceedings or through the relative's direct actions, it is still appropriate, depending upon case circumstances, for relatives to be utilized as an alternative to placement or for the relatives to seek guardianship upon their own initiative.

III. Summary of Policy

Prior to the introduction of such programs as child protective and preventive services, relatives were the primary source of control and intervention to ensure that children are kept safe in their own homes. Other resources included godparents, friends and community groups, including religious congregations. It is not the policy of this Department to supplant these important resources where they exist. Rather, it is our policy to utilize these resources when they provide sufficient protection for a child, either with or without social services district/voluntary agency support. Such support could include the provision of social services or income maintenance, or it could be limited to information or referral, depending upon case circumstances.

If a social services district responds to a child abuse or maltreatment report and finds that a child appears to be in imminent danger, the district must initiate a response that will result in the child being safe from immediate danger. After ensuring a child's immediate safety, the social services district must conduct a thorough assessment and develop a plan to reduce the likelihood of future abuse or maltreatment, when this is assessed to be necessary. It is within this context, when a district is brought into the lives of a family through a CPS report, a request for social services or a PINS petition (or PINS adjustment activity), that we discuss options for utilizing and/or working with relatives.

A. Alternative to Placement - If a child is in imminent danger in his or her own home it may be necessary for the local district to take legal custody of the child and place the child in foster care. Federal and State law, as well as good clinical practice, require that the social services district take reasonable efforts to avert such placement. The provision of a particular service(s) (e.g., intensive home based preservation services) may remove the need to place and should always be considered. Another means for averting the local district's need to assume legal custody could be arranging for or agreeing to a relative assuming care of the child for a period of time. Godparents, friends or other responsible adults (e.g., child's friend's parent) could also be considered for such care.

Utilization of an alternative to placement approach may be the best measure to defuse a dangerous situation if the parent is willing to accept this arrangement; the relative or other person seems capable, upon assessment, of being able to provide adequate short-term protection

and care for the child and the caseworker believes that foster care may either be avoided entirely by employment of this arrangement, or that more time is needed to assess the case circumstances.

The use of relatives or other adults as an alternative to placement is not always appropriate and has inherent limitations:

- 1) The child's parent has to consent to the child's physical relocation because the social services district is not taking legal custody of the child.
- 2) As a result, legal custody still remains with the parent(s), and there is nothing legally to prevent the parent from bringing the child back home at any time. To counter this, the local district could at that point seek to obtain custody through the appropriate legal vehicle, including an emergency removal pursuant to Article 10 of the Family Court Act.
- 3) As a longer term solution, this option appears to be too open and unresolved for most circumstances, although this could be addressed by the relative or other adult attempting to obtain either legal guardianship or custody (see Sections B and D).

B. Relative Direct Custody - If an assessment leads the social services district to conclude that a child should be placed temporarily outside her own home, but either the parent does not concur with this conclusion and/or the social services district believes that the intervention of the family court is warranted, this dispositional alternative may be appropriate. As was the case for "alternative to placement", the district would not have custody of the child and would not be permitted to make foster care payments. The continued involvement of the district and the extent of any involvement in relation to case planning and/or supervision should be determined on a case by case basis. The determination should be based on any relevant court dispositional order, which hopefully would be guided by the district's recommendation to the court, after completing an assessment of the circumstances of the case, of the need for and intensity of government involvement in order to ensure the child's ongoing safety. Again, this alternative could be utilized for a godparent or family friend, if the court chose to grant such person direct custody.

Some considerations that apply to this dispositional option include:

- 1) From a child welfare perspective, it would seem that this option may be most appropriate when it is assessed that the adults involved will responsibly ensure that the child will soon come to live in a permanent and safe environment that will allow the child to develop appropriately. This could mean that the child will be returned to her parent(s) or ultimately remain with the relative or other adult. The key for this option is that it is assessed that this can be worked out between the family members without government taking the lead.

2) Programmatic decision-making should predominate over financial concerns. For example, the decision for the commissioner not to seek custody should be based on an assessment that continued government intervention, in the form of the commissioner's custody, is unnecessary to reach the desired ends discussed in the preceding paragraph. The district should not recommend to the court that a relative or other adult be issued direct custody in order to avoid foster care maintenance and administrative costs.

3) Yet, otherwise ideal relative caretakers may not have the financial resources to make a commitment to care for the child. If such relative would clearly be the best out-of-home resource for the child in terms of the child's development and foster care payments would result in the relative making the necessary commitment, the district should factor this issue into the decision whether to seek custody of the child.

4) When a relative or other adult is given direct custody of a child, the district should provide a level of case planning and services necessary to ensure that the child will remain safe and will be able to develop appropriately in the long term, either in the home of her parent(s) or in the relative's or other adult's home. The services necessary could appropriately range from none to intensive. Depending upon case circumstances, either preventive or protective services may be appropriate.

5) Direct custody to relatives or adults can only be accomplished by order of the court. Districts should engage their Family Court Judge(s), outside the context of any specific case context, in a discussion about this option. The district should describe to the Judge the criteria it will use in deciding whether to recommend this disposition. It would probably be most valuable if this discussion was to be a part of an overall discussion with the Judge(s) about the use of relatives.

C. Approved/Certified Relative Foster Care - There are instances when the social services district must assume temporary legal custody of a child. Consistent with the policy of utilizing relatives to provide temporary care away from birth parents, two previously discussed initiatives have been implemented: an approval process for relatives to become foster parents and a statutory amendment that requires the Family Court to direct local districts to explore the availability of relatives to provide foster care or to assume direct custody of the child, in instances when out of home placement is necessary.

Regulations provide for an expedited emergency approval for a period of up to sixty days. This allows a district to place children in the home of a relative in the 3rd degree or closer, even in most instances when an emergency removal, pursuant to Article 10, must be undertaken (assuming a relative resource can be located in such time).

Chapter 744 of the Laws of 1989 provides that Family Courts give special attention to ascertaining whether a qualified relative is available to provide out-of-home care to a child, when such care is necessary. It also directs the court to place the child directly in the custody of a relative or in the custody of the commissioner, with directions to place the child in the relative's home, when "the court determines that the child may reside with a suitable person related to such child". Thus, the court appears to have some discretion about whether or not a relative is "suitable". Ostensibly, it could find that a relative is physically and intellectually able to care for a child, but the case circumstances raise doubts about the relative's emotional capacities given a particular set of case circumstances.

The Department's policy is that relatives should be actively considered as placement resources when safety considerations require the district to assume legal custody of a child. All other things being equal, the district should give significant preference to recommending to the Court that relatives be considered as a placement resource, if it appears that the relative meets the approval requirements. We suggest that you take the following considerations into account when approving a relative as a foster care provider:

- 1) A thorough assessment must be done to ensure that the relative is willing and capable of providing the child with protection from future abuse/maltreatment; can meet the developmental needs of the child; is in compliance with approval requirements; and will be cooperative in carrying out, if not enthusiastically participate in, the case plan, including work towards achievement of the permanency planning goal.

- 2) It should not be expected that relatives will initially (and perhaps over a longer period) relate to the district staff as would a non-related certified provider. The relative most likely will have a longer history and a more thorough knowledge of the family dynamics than will the caseworker, even if the relative's assessment may not be completely objective. Additionally, cultural and other factors may result in the relative feeling that this is a "family matter" and should be resolved within the family without government intervention. Legal custody may not have the same meaning to the relative as it does to the child welfare provider. A relative should not be ruled out as a placement resource simply on the basis of their lack of initial compliant behavior with every district request. Family ties may appropriately prevent relatives from seeing themselves in absolute partnership with the casework staff.

- 3) It is advisable to address both of the preceding issues directly with the relative prior to and immediately upon placing a child in the commissioner's custody with the relative. Tell the relative that you are aware and respect the special ties that exist between family members and that some deference to this will be given. However, the relative should also be told about the overall case plan and what is expected of him or her. The worker needs to

be astute in assessing the relative's response. The experience of some agencies is that approved relatives may appear somewhat uncommitted or uncooperative at first, but actually become excellent placement resources, capable and willing to work on the case plan. Conversely, a worker assessing a relative's suitability may receive appropriate verbal responses, but it may turn out that the relative has no intention or emotional capability to act consistent with the overall case goals.

4) As in other foster care placements, the service plan should be geared toward remedying those safety factors that have resulted in the need for foster care placement in the first place. This will almost always mean that the caseworker should be making diligent efforts to help the birth parent correct those problems that led to the placement. In the context of placement with a relative, this should include casework directed toward getting the relative to support the birth parent's efforts to get the child back home.

5) If permanency planning efforts to return the child home are proving unsuccessful, it will be necessary to inform the relative, if this had not been discussed previously, about an alternative permanency options for the child (See Section D).

D. Longer Range Permanency Options/Considerations

1) Return Child to Parent(s) - Consistent with casework practice for non-relative foster care placements, the early focus for most relative foster care placements should be to return the child to the birth parent(s). A relative may or may not be predisposed to working to accomplish this end. It is important to make clear to the relative early on, perhaps before the placement is made, that this is the focus of the local district's casework involvement.

The caseworker should take advantage of the relative's knowledge and insights about the birth parent and the child in developing and arranging specific case activities aimed at returning the child but should be objective in using the information received from the relatives, as well as the birth parent and child. It could be tempting for the worker to simply let the relative and birth parent work out a defacto case plan, especially if this results in the child staying indefinitely with relatives who appear to provide better physical and emotional surroundings for the child. While this passive approach is appropriate when the local district does not have custody, it is not sufficient when the district has custody. The district's goal at least in the early months of a relative foster care placement, is to develop a case plan to reunite the child with his/her birth parent.

In order to accomplish this goal, it is critical that the relative care for the child and relate to the child and parent in a manner that supports the child's return to the parent. In some cases, this will be the relative's inclination, and casework activities can support the relative's activities. Sometimes concerted casework

activity will need to be undertaken so that the relative will align with the birth parent's attempts to have the child returned home. If alignment is not feasible, a reexamination of the appropriateness of the placement with the relative should occur. Unless the birth parent is mentally ill, mentally retarded or evidences intent to abandon or surrender his/her child, the district must put forth diligent efforts to reunite the child with the birth parent. This will be more difficult to accomplish if the relative is working at cross purposes with this objective.

Perhaps the primary difference in casework with relative foster care placements is first acknowledging the special relationships that exist in these placements. The uniqueness of the relationship not only involves the child, the primary reason for giving priority to relative placements, but also the birth parent's relationship with the relatives. The caseworker should try to accomplish the case plan by taking advantage of these relationships, when they can have a positive effect, and by confronting and trying to minimize their impact, when these relationships appear unproductive. Whether the relationships are positive or negative, the caseworker needs to be deft in determining whether the case planning activities can be accomplished in a low-key, somewhat behind the scenes manner, whether a more directive style is necessary, or some approach in-between needs to be taken.

2) Adoption - If the casework directed toward reuniting the birth parent and child fails to accomplish this goal, the caseworker should next consider the most legally and emotionally permanent option for the child -- adoption. The issue of relatives adopting has received considerable recent attention at conferences and in the literature. There appears to be little disagreement that if the relative caring for the child is interested in adopting, this should be the direction taken. There has been some dialogue concerning how actively casework should be directed toward pressuring a relative reluctant to adopt, to adopt.

It is Department policy that a social services district/voluntary agency discuss the issue of adoption with the relative in a direct and open manner. The advantages of adoption should be outlined to the relative including the availability of subsidy, the continued support of the district/agency where this is needed, and the likely perceived sense of permanency that the child will receive. Without badgering the relative, a reluctant relative should be given some time to consider the comparative advantages of adoption and be approached at least one more time to discuss the adoption option.

Without trying to make this seem like a more linear process than it is in a real casework-client relationship, if adoption is unequivocally turned down by the relative, the caseworker must assess what is in the best interests of the child. If the relationship between the child and relative was of a sufficient

quality for the caseworker to consider adoption, it is likely that the relationship should be maintained, if the reasons that the relative refused to consider adoption have no correlation with the relative's level of long-term commitment to care for the child. If the child has had a quality relationship with the relative which the relative and child wish to maintain, but the relative for family or cultural reasons does not wish to adopt, it is Department policy to maintain this living arrangement.

Only in instances when the quality of the relationship is not good or where the relative is unable to provide a long-term commitment to care for the child should the casework plan be directed toward having the child adopted by someone other than the relative. This policy of allowing the continuation of the relationship between the child and relative under certain circumstances is clearly distinctive from other foster care placements, and recognizes the importance of the family bond. In such instances, the caseworker should explore the relative's receptivity to becoming the child's guardian as an alternative to adoption.

The district/voluntary agency should not take steps to terminate parental rights unless or until there is an agreed upon plan with the relative that he or she is willing to adopt, or there is a plan consistent with the above considerations for the child to be adopted by a non-relative.

3) Guardianship - A relative or other adult can apply either in Surrogate or Family Court to become a child's guardian. A person who acts in the capacity of a guardian for a child is legally charged with making decisions on behalf of the child such as medical and education choices. When a person is appointed as a guardian for a child, he or she serves in that capacity indefinitely, potentially until the child reaches the age of majority. A parent or other person can ask the court to rescind a guardianship order, but the court will decide this matter solely based on the best interests of the child.

For a relative foster parent, guardianship may serve as an alternative to adoption, should he or she have particular problems with the finality and connotation of adopting a family member. Guardianship is the next most "permanent" legal category, and may be seen by the child as the relative making a greater commitment to him or her than continuation of foster care. The caseworker should honestly explore guardianship with a relative who does not wish to adopt. The following facets of this option should be covered:

- a) Guardianship would result in the termination of court and local district oversight.

b) Foster care payments would cease, in that transfer of guardianship would result in the district's legal custody being terminated. In most instances the relative would be eligible to receive ADC-OTG payments and medical assistance for the child.

c) Foster care casework contacts would cease, unless it was necessary to provide after-care services. However, the family may be eligible for preventive or other supportive services.

4) Long Term Foster Care - Goal of Independent Living - If a relative who is assessed to have a long term, quality commitment to a child neither wishes to adopt nor to assume guardianship for a child, the district may allow the child to remain in foster care. Current regulations permit the establishment of the permanency planning goal of independent living for a child of any age, if the child is living with approved or certified relatives, and it is in the best interest of the child to remain with the relatives. The Department has given consideration to establishing a new permanency planning goal that would recognize more formally such long term foster care for children placed with relatives. Although, establishment of this new goal has not yet been implemented, it is understood and accepted that there are some children who may need to reside with relatives in foster care until they become adults. This should be allowed to occur when it is assessed that the child's development and sense of permanency would be better in the existing placement than it would be if the child were adopted by another person.

Continued casework with such children and relative foster families should be directed toward ensuring the child's continued sense of well-being, as well as assisting the relative foster parent in meeting the foster child's physical and emotional needs. In some cases, an intensive level of case planning will still need to occur regularly or at a specific difficult point in time, while in other cases the caseworker should pursue a less active case planning stance. The Department will be reviewing casework contact requirements to determine if it is desirable to reduce required contacts for this phase of relative foster care cases.

The caseworker should stay attuned to changes in family dynamics that may call for specific service needs of the child being addressed. As the children get older, the relative foster parent may need a greater level of casework assistance. In addition, attention to the independent living requirements will eventually need to be undertaken. It may also be important to continue to support the child and relative in maintaining positive connections

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with the birth parent, even when the goal of returning the child home has been discarded. Finally, despite previous statements indicating a wish not to adopt or assume guardianship, it is conceivable that the relative's circumstances or thinking on the subject might change.

Comments or suggestions concerning the options and considerations discussed in this memorandum may be made to your Family and Children Services Regional Office Director or Jamie Greenberg, Bureau of Policy Planning, 1-800-342-3715, extension 3-1327.

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and Children Services