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| LOCAL COMMISSIONERS MEMORANDUM |  
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DSS-4037EL (Rev. 9/89)

Transmittal No: 94 LCM-64

Date: June 9, 1994

Division: Commissioner's  
Office

TO: Local District Commissioners

SUBJECT: Policy Changes In Assessment and Testing for HIV  
Infection in Foster Children

ATTACHMENTS: None

In response to increasing numbers of children entering foster care who are believed to be at risk of HIV infection, this Department is taking immediate steps to revise policies regarding assessment and testing of such children.

Current regulations require that all children entering foster care must have a comprehensive medical examination within 30 days of entering care (see 18 NYCRR 441.22). However, there has been no specific regulatory requirement on HIV risk factor assessment and referral for testing. The Child Welfare Administration (CWA) of the City of New York issued a bulletin in September of 1993 requiring agencies to make an assessment of all foster children ages 0 - 2 in CWA's custody for specified HIV infection risk factors. Those identified as having such risk factors are referred to the CWA Pediatric AIDS Unit for a review of the factors and for making arrangements for HIV testing where appropriate.

This LCM is to inform you that the Department will now build on the CWA experience and develop statewide requirements to ensure that all New York foster children who may be HIV-infected are provided with the advantage of early diagnosis and treatment. The Department will develop regulations and guidelines requiring that all foster children, without regard to age, be screened on the basis of a specified list of risk factors within five working days of entry into foster care. This assessment may be provided by caseworkers or by medical personnel when available. If the assessment identifies one or more risk factors, designated social services staff are to be informed immediately so that steps necessary to secure an HIV test may be completed no later than 30 days after the child's entry into foster care.

In all social services districts, the commissioner or designated representative will be responsible for providing or obtaining necessary legal consents and for oversight of arrangements for HIV testing where indicated, with pre-test counseling as required by Public Health Law Article 27-F.

When the child entering foster care and determined to be at risk is already under medical care, or requires emergency medical care, or when the agency caring for the child has in-house medical services, the Department's guidelines will provide that the testing process should be completed earlier than the 30 day limit for the comprehensive medical examination. For all children currently in foster care, the Department will require HIV assessment to be completed at least 30 days prior to the first periodic medical examination scheduled following the adoption of the new regulations, so that an agency referral for testing may be made to the medical provider along with necessary consents.

Written informed consent for HIV testing can be provided by the birth parent(s) of the child where parental rights have not been terminated or surrendered. In addition, the social services commissioner or designated representative may give effective consent to HIV testing for a child placed in protective custody or placed in the custody of such commissioner by the court under Article 10 of the Family Court Act (FCA). The local commissioner also has authority to consent to such tests for children whose custody and guardianship has been surrendered pursuant to Section 383-c or 384 of the Social Services Law (SSL) or has been terminated pursuant to Section 384-b of the SSL. Written parental consent is required prior to testing for children placed voluntarily (Section 384-a of the SSL) or placed as juvenile delinquents (Article 3 of the FCA) or persons in need of supervision (Article 7 of the FCA).

All of the above-referenced standards are contingent upon the child's lack of capacity to consent to HIV testing. Please note that the child with capacity to consent will be required to be assessed for risk factors; however, the child with capacity to consent has the right to make his or her own decision regarding being tested for HIV infection. (See the Department's Administrative Directive, 91 ADM-36, for a discussion of consent issues.)

The new policy and regulations will require that birth parents be informed of an agency recommendation for testing based on the screening for risk factors. If a parent objects, the agency will be expected to meet with the parent (if the parent is available) to discuss the risk factors and urgent need for testing in order to provide early treatment for an HIV-infected child. Again, the social services commissioner can exercise his or her legal authority to request the test when such authority exists, or seek such authority from the appropriate court. We will expect that any discussion with the parent will be completed in a timely manner, permitting the testing to occur no later than 30 days after the child's entry into foster care.

Date June 9, 1994

Trans. No. 94 LCM-64

Page No. 3

Since these policy and regulatory changes will represent a substantial revision of current requirements, we are informing you in advance of our commitment to promulgate regulations and establish guidelines to provide screening, identification and all necessary care and treatment of HIV-infected children in foster care.

Please contact your Services and Community Development Regional Office with any questions about this new policy.

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