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

Transmittal No: 95 LCM-39

Date: April 12, 1995

Division: Services & Community
Development

TO: Local District Commissioners

SUBJECT: Valmonte Decision: State Central Register of Child Abuse
and Maltreatment (SCR) Procedures- Administrative Reviews

ATTACHMENTS: None

The purpose of this memorandum is to outline for social services districts the Department's plan to implement the U.S. Second Circuit Court of Appeals' March, 1994 decision in Valmonte v. Bane, 18 F.3rd 992.

The Court held that current procedures for advising a prospective employer of an individual's status as a subject of an indicated report of child abuse or maltreatment do not adequately protect Constitutionally protected liberty interests because a subject is not provided with an opportunity for a review of the report using the fair preponderance of the evidence standard of proof prior to dissemination of the information to licensing and provider agencies.

The case was remanded to the district (trial) court, which has not yet issued a final judgment or order implementing the decision. The Department has begun to implement the Court's decision voluntarily in the following manner:

A) Request for expungement/amendment by subject - Whenever the SCR conducts an Administrative Review as a result of a request for expungement by a subject of a report pursuant to Section 422.8 of the Social Services Law (SSL), the SCR review will determine whether the documentation in the record supports the indicated finding by both the some credible evidence and the fair preponderance standards.

Cases which fail to meet the some credible evidence standard will be expunged. Any future clearance request will result in the licensing or provider agency being advised that the individual is not a subject of an indicated case of child abuse or maltreatment.

Cases which meet the some credible evidence standard, but fail to meet the fair preponderance standard will be retained in the SCR as indicated cases. However, the Department will be precluded from notifying a licensing or provider agency which subsequently makes a clearance inquiry that the person about whom the inquiry is made is the subject of an indicated report. The subject will still be entitled to an administrative hearing addressing expungement at the some credible evidence standard.

Cases which meet both the some credible evidence and fair preponderance standards will be retained in the SCR as indicated cases. The subject will be afforded the opportunity for an administrative hearing which will address both the some credible (i.e., retention as an indicated case) and fair preponderance (i.e., dissemination to a licensing or provider agency pursuant to a clearance request) issues. Depending on the outcome of the hearing, the case will be resolved as described above.

B) Clearance Inquiry Matches - Whenever the SCR conducts an Administrative Review in response to a SSL 424-a clearance inquiry, the review will determine whether the documentation supports the indicated finding by both the some credible evidence and the fair preponderance standards.

Cases which meet the some credible evidence standard, but fail to meet the fair preponderance standard will be retained in the SCR as indicated cases. However, the Department in its response to licensing or provider agencies submitting clearance request(s) will be precluded from advising such agencies that the individual screened is the subject of an indicated report of child abuse or maltreatment.

Cases which meet both the some credible evidence and fair preponderance standards will be retained in the SCR as indicated cases. Before a letter advising that the person screened is the subject of an indicated report of child abuse or maltreatment is sent to the licensing or provider agency submitting the clearance request, however, the subject will be afforded the opportunity to request an administrative hearing at the fair preponderance standard except for those cases where an administrative hearing was previously held pursuant to SSL 422(8) or 424-a and the hearing decision determined that the social services district met both the some credible evidence and fair preponderance of the evidence standards. The subject will be notified that he/she will have 60 days to make such request for a hearing. If the Department does not receive a request at the completion of 60 days, the licensing or provider agency will be notified that the individual screened is the subject of an indicated report.

C) SCR and Child Protective Services (CPS) Procedures - The Valmonte decision does not affect the reporting, investigation, indication or retention of indicated reports of child abuse or maltreatment. The standard for retaining cases in the SCR remains some credible evidence. Consequently, there should be no change in your procedures regarding reporting, investigation and indication of cases of child abuse and maltreatment.

D) Requests for Information from SCR - Because the SCR will now be conducting its administrative review at both the some credible and fair preponderance standards, it becomes even more critical that the records and documentation you submit to support the decision to indicate the report are timely and complete. Copies of Family Court petitions and fact finding orders finding the child to be an abused child or a neglected child are critical and must be included in the packet of information submitted to the SCR. In the absence of such material, cases for which there have been Family Court findings of abuse or neglect could be expunged, in derogation of SSL 422(8)(b)(ii).

The timeframes for completion of administrative reviews, as set forth in Sections 422.8(a)(ii) and 424-a(1)(e)(ii) of the SSL will be followed. These sections of law require the Department to immediately request from the local CPS all records pertaining to the indicated report; require the local CPS to forward its records to the SCR within twenty days of receiving the SCR request; and requires that the Department complete its review and make its decision no later than fifteen days after receipt of such materials. This means that the SCR will be reviewing and making its decision based on what information is contained in the record no later than 35 days after requesting the local CPS to forward its records to the SCR.

If you have any questions concerning this LCM or the new procedure for SCR administrative reviews contact Ralph Timber, SCR Post Intake Unit at (518) 474-6270 or User ID: 90A191. If you have any policy related questions contact the appropriate Regional Office:

Syracuse Regional Office, Jack Klump, 315-423-1200	USER ID 89W005
Rochester Regional Office, Linda Kurtz, 716-238-8201	USER ID 0FH010
Albany Regional Office, William McLaughlin, 518-432-2751	USER ID 0FN010
Metropolitan Regional Office, Fred Cantlo, 212-383-1788	USER ID 0FG010
Buffalo Regional Office, Linda Brown, 716-847-3145	USER ID 89D421

Anona Joseph
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