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| LOCAL COMMISSIONERS MEMORANDUM |  
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(Rev. 9/89)

Transmittal No: 97 LCM-68

Date: December 31, 1997

Division: Strategic Planning  
and Policy  
Development

TO: Local District Commissioners

SUBJECT: PREVENTIVE SERVICES: Reduction/Waiver of Maintenance of  
Effort (MOE) Penalty Amount

ATTACHMENTS: A: Request for Waiver/Reduction of Preventive Services  
MOE Penalty Amount (On-Line)

The purpose of this memorandum is to advise social services districts that under certain conditions a district that has been deficient in meeting its Preventive Services Maintenance of Effort (MOE) requirement amount for any State Fiscal Year may request the waiver or reduction of the district's resultant Preventive Services MOE penalty amount for the subsequent State Fiscal Year. This memorandum sets forth a procedure under which a district choosing to exercise the option to apply for a waiver or reduction of the Preventive Services MOE penalty amount may do so.

Background

Section 153-i of the Social Services Law establishes the Family and Children's Services Block Grant. Section 153-i also establishes a Preventive Services MOE requirement relating to social services district reimbursement under the block grant.

The Preventive Services MOE is set by the statute as eighty percent of the amount expended by the district for Preventive Services from state and local funds and from Federal funds under Title XX of the Social Security Act for Federal Fiscal Year 1993-94. This MOE amount will be reduced in any State Fiscal Year by the amount of any reduction in Federal funding under Title XX applicable to Preventive Services in the district in the parallel Federal Fiscal Year and by fifteen percent of any reduction in the district's Family and Children's Services Block Grant for that State Fiscal Year due to a reduction in the State appropriation for the block grant.

Section 153-i of the Social Services Law also provides for a penalty reduction in a social services district's reimbursement under the Family and Children's Services Block Grant in any State Fiscal Year if in the previous State Fiscal Year the district failed to meet its Preventive Services MOE requirement. The basis for the reduction in reimbursement is the amount by which the district is deficient in meeting the MOE. For State Fiscal Years 1996-97 and 1997-98, the actual amount of the penalty reduction is limited to a percentage of the deficiency with the percentage determined by the county's total population. For State Fiscal Year 1996-97, the reduction percentages are: 0% for counties with populations up to 100,000; 25% for counties between 100,001 and 200,000 in population; and 50% for counties of greater than 200,000 population. For State Fiscal Year 1997-98, the percentages are: 10% for counties up to 100,000 population; 35% for counties between 100,001 and 200,000 in population; and 65% for counties greater than 200,000. For State Fiscal Year 1998-99 and beyond, the reduction in block grant reimbursement for a Preventive Services MOE penalty will be the full amount of any Preventive Services MOE deficiency.

Recognizing that there may be reasons and circumstances that have affected a social services district's ability to meet the Preventive Services MOE requirement in a given year, the statute provides that the Commissioner "may waive or reduce the maintenance of effort requirement for preventive services upon a showing by the local social services district that a substantial change in circumstances results in the maintenance of effort requirement causing a substantial risk of harm to the health and safety of children in the district." The Office of Children and Family Services will apply the reduction/waiver process to the MOE penalty amount.

Districts which had deficiencies in State Fiscal Year 1995-96 and/or which have deficiencies in State Fiscal Year 1996-97 have the option under the statute to apply for a waiver or reduction of the resultant State Fiscal Year 1995-96 and/or State Fiscal Year 1996-97 Preventive Services MOE penalty. The granting of such a waiver or reduction would reduce or eliminate the penalty reduction in the district's State Fiscal Year 1996-97 and/or State Fiscal Year 1997-98 Family and Children's Services Block Grant allocation that would be due to a Preventive Services MOE deficiency.

Districts that were at risk for reduction of their State Fiscal Year 1996-97 Family and Children's Services Block Grant due to a State Fiscal Year 1995-96 Preventive Services MOE deficiency have previously been notified of that deficiency. Upon issuance of this memorandum, these districts will also be notified that they may submit waiver/reduction requests related to the State Fiscal Year 1995-96 deficiency. Districts that have not met their State Fiscal Year 1996-97 Preventive Services MOE requirement and which will be at risk of reduction in their State Fiscal Year 1997-98 Family and Children's Services Block Grant allocation related to such deficiency will be notified of those deficiencies and of their option to request waiver or reduction of their State Fiscal Year 1996-97 Preventive Services MOE penalty amount.

Preventive Services MOE Waiver/Reduction

The option to request a waiver or reduction of the district's Preventive Services MOE penalty amount is available to any social services district which has or expects to have a deficiency in meeting the Preventive Services MOE requirement for any State Fiscal Year. To facilitate requests for a Preventive Services MOE penalty amount waiver or reduction, this memorandum sets forth guidelines for the conditions which may constitute the "substantial change in circumstances" which is causing "a substantial risk of harm to the health and safety of children in the district" and a process for expedited requests for waiver or reduction of the district's Preventive Services MOE penalty amount.

Requests must be in writing signed by the local commissioner and need to describe:

- (1) the substantial change in circumstances underlying the request for waiver or reduction of the MOE penalty amount;
- (2) the substantial risk of harm to the health and safety of children in the district arising from the change in circumstances;
- (3) how the Preventive Services MOE requirement is related to the risk of harm to children in the district; and
- (4) the effect the waiver or reduction of the MOE penalty amount will have on the delivery of Preventive Services in the district.

A format for requests is included with this memorandum as ATTACHMENT A. Districts are encouraged to copy Attachment A and use it as a basis for their requests for a Preventive Services MOE penalty amount waiver or reduction. However, districts are not required to do so and any request that includes the information set forth in this memorandum and outlined in the ATTACHMENT A format will be considered.

Conditions for Waiver/Reduction

For purposes of requesting a waiver or reduction of the Preventive Services MOE requirement amount, the following conditions may constitute "a substantial change in circumstances":

- (1) a substantial change in the need for child protective services including, but not limited to, the number or types of reports of child abuse or maltreatment;
- (2) a substantial change in emergency or court ordered foster care placements;
- (3) a substantial change in the number, duration or types of foster care placements;
- (4) a substantial change in the number or types of children and families needing adoption services;

- (5) a substantial shift in claiming for preventive services cases from state and local funding to federal funding or to state funding other than the family and children's services block grant, or to maximize federal financial support for services;
- (6) a substantial reduction in federal or state funding for child protective services, foster care services, adoption services or preventive services;
- (7) the development and implementation of a managed care system for family and children's services that includes capitated rates or other payment mechanisms for all or a portion of the services provided (either separately or combined) that make it difficult to calculate distinct preventive service expenditures; or
- (8) a substantial change in statutory and/or regulatory provisions regarding staffing, case loads, processing times, or other requirements for child protective services, foster care services, adoption services or preventive services; or
- (9) any other substantial change in circumstances that affects the provision of or the need for child protective services, foster care services, adoption services or preventive services.

Districts which feel they meet one or more of these criteria for waiver or reduction of the Preventive Services MOE penalty amount for a specific State Fiscal Year are encouraged to exercise their option to apply.

Submission of MOE Waiver/Reduction Requests

Send requests for Preventive Services MOE waiver/reduction to:

PREVENTIVE SERVICES MOE WAIVER/REDUCTION REQUEST  
New York State Office of Children and Family Services  
Capital View Office Park  
50 Washington Street  
Rensselaer, New York 12144

Send a copy of your request to the Regional Office serving your district.

Contact Person

For information or questions regarding this memorandum, please contact Judy Gallo, Bureau of Policy Development, phone 518-474-9436, or the Regional Office serving your district.

Transfer Implementation

Chapter 436 of the Laws of 1997 renames the Department of Social Services as the Department of Family Assistance comprised of two independent offices: the Office of Children and Family Services and the Office of Temporary and Disability Assistance. Upon the execution of a Memorandum of

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Understanding and compliance with the Civil Service Laws, responsibility as specified in Chapter 436 will be transferred from the former Department of Social Services to the Office of Children and Family Services (OCFS) and fully integrated with the functions and duties of the former Division for Youth. The allocations contained herein have been approved by all necessary staff of the referenced agencies.

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William Baccaglino  
Director  
Office of Strategic Planning and Policy Development

REQUEST FOR WAIVER/REDUCTION OF PREVENTIVE SERVICES MOE PENALTY AMOUNT

DATE OF REQUEST \_\_\_\_\_

SOCIAL SERVICES DISTRICT \_\_\_\_\_

REQUEST IS FOR    \_\_\_ Waiver of amount  
                          \_\_\_ Reduction of amount   \$ \_\_\_\_\_

For State Fiscal Year \_\_\_\_\_

This request is based on the following condition(s) which causes or are causing a substantial risk of harm to the health and safety of children in the district:

- +++ A substantial change in the need for child protective services including, but not limited to, the number or types of reports of child abuse or maltreatment;
- +++ A substantial change in emergency or court ordered foster care placements;
- +++ A substantial change in the number, duration or types of foster care placements;
- +++ A substantial change in the number or types of children and families needing adoption services;
- +++ A substantial shift in claiming for preventive services cases from state and local funding to federal funding or to state funding other than the family and children's services block grant, or to maximize federal financial support for services;
- +++ A substantial reduction in federal or state funding for child protective services, foster care services, adoption services or preventive services;
- +++ The development and implementation of a managed care system for family and children's services that includes capitated rates or other payment mechanisms for all or a portion of the services provided (either separately or combined) that make it difficult to calculate distinct preventive service expenditures; or
- +++ A substantial change in statutory and/or regulatory provisions regarding staffing, case loads or processing times or requirements for child protective services, foster care services, adoption services or preventive services; or
- +++ Any other substantial change in circumstances that affects the provision of or the need for child protective services, foster care services, adoption services or preventive services.

For each circumstance marked, provide a brief statement describing the circumstance, identifying where applicable any statutory or regulatory provision that applies to the circumstance, and explaining how the circumstance applies to the relationship between the Preventive Services MOE requirement and risk to the health and safety of children in the district caused by the circumstance being cited. Explain the effect the waiver or reduction of the MOE penalty amount will have on the delivery of Preventive Services in the district and how the district plans to meet the Preventive Services MOE requirement in the subsequent State Fiscal Year. (Attach additional sheet if necessary.)

Approved: \_\_\_\_\_  
Commissioner  
\_\_\_\_\_County