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

Transmittal No: 98 LCM-12

Date: February 13, 1998

Division: Office of Children  
and Family Services

TO: Local District Commissioners

SUBJECT: Valmonte Settlement: Posting Requirements of Memoranda  
Pertaining to Administrative Reviews Conducted by the State  
Central Register of Child Abuse and Maltreatment (SCR)

ATTACHMENTS: 97 LCM-58  
95 LCM-39

The purpose of this memorandum is to advise social services districts of a provision in the Valmonte v. Bane settlement that requires districts to post 95 LCM-39 and/or its successor documents in its Income Maintenance and Child Protective Services Offices. 97 LCM-58, concerning the Matter of Walter W. decision is a relevant subsequent document that also must be posted. Both of these documents provide information about the standard of evidence that the SCR employs when it conducts administrative reviews as a result of clearance requests or requests from subjects. Please note that the time period in which a subject must request a hearing, following an administrative review conducted pursuant to a clearance request, is 90 days as set forth in the settlement and not 60 days as previously noted in 95 LCM-39.

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For ease of posting these documents in Income Maintenance and Child Protective Services offices, both of these documents are attached to this memorandum.

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William F. Baccaglioni, Director  
Strategic Planning  
and Policy Development

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

Transmittal No: 97 LCM-58

Date: October 8, 1997

Division: Services and  
Community Development

TO: Local District Commissioners

SUBJECT: Matter of Walter W. Decision

ATTACHMENTS: None

The purpose of this LCM is to inform social services districts and other interested persons of a recent court decision and to outline how the Department will implement that decision. This LCM will apply to all administrative hearings held on or after April 1, 1997, irrespective of when the report of abuse or maltreatment was first made to the State Central Register of Child Abuse and Maltreatment (SCR).

The Decision

On April 1, 1997 the Court of Appeals denied the Department's Motion for Leave to Appeal the January 2, 1997 decision of the Appellate Division in Matter Of Walter W. The Matter Of Walter W. decision held that while for investigation and retention in the SCR proper evidentiary standard remains "some credible evidence", indicated cases proceeding to a hearing must be reviewed at the higher standard of "fair preponderance of the evidence." Reports failing to meet the "fair preponderance of the evidence" standard at the hearing must be expunged (or, for reports made after February 12, 1996, legally sealed).

### Implementation

This decision does not alter social services districts' procedures or responsibilities in the investigation and indication of cases, inasmuch as the standard of "some credible evidence" for investigation and indication is undisturbed. At the point of a hearing, however, the Department must now apply the higher standard of "fair preponderance of the evidence."

Accordingly, requests for expungement (or amendment) made pursuant to Section 422 of the Social Services Law (SSL) will now be subject to administrative review at the SCR at the "fair preponderance of the evidence" level. Indicated cases that do not satisfy the "fair preponderance of the evidence" standard will be expunged or legally sealed. This will mark a significant departure from previous SCR procedures as set forth in 95-LCM-39. Previously, cases meeting the "some credible" but not "fair preponderance of the evidence" standard were retained in the SCR as indicated cases but not released to licensing or provider agencies pursuant to Section 424-a of the SSL.

Similarly, indicated cases which the SCR finds meet the "fair preponderance of the evidence" standard will be forwarded for an administrative hearing. If the evidence adduced at that hearing does not meet the "fair preponderance of the evidence" standard, the case will be expunged or legally sealed. Cases found to satisfy the "fair preponderance of the evidence" standard will be retained in the SCR and will be subject to dissemination to a licensing or provider agency which submits a clearance request pursuant to Section 424-a of the SSL. Implementation of Matter Of Walter W. will alter the result of the administrative hearing process, not the process itself.

### Clearances

Requests for clearances submitted pursuant to Section 424-a of the SSL will be processed in a consistent manner, with one important distinction. Indicated cases for which a request for expungement (or amendment) would be time-barred (i.e., beyond the ninety days after notice of indication to the subject) will continue to be reviewed at both the "some credible" and "fair preponderance of the evidence" standards. Cases not meeting the "some credible" standard will be expunged (or amended). Cases which meet the "some credible" standard, but fail to meet the "fair preponderance of the evidence" standard will be retained in the SCR. However, the SCR will notify the provider or licensing agency submitting the clearance request that the individual cannot be identified as the subject of an indicated report. Because the time in which the subject could have requested expungement or amendment has elapsed, the subject will not be entitled to an administrative hearing to expunge or amend the report. Cases satisfying both the "some credible" and "fair preponderance of the evidence" standards will be retained in the SCR and licensing or provider agencies will be informed that the individual is the subject of an indicated report.

The Department appealed the Appellate Division's decision, in part, because of the concern that implementation of the decision might afford children less protection. Additionally, the availability of an elevated evidentiary standard at the hearing stage might increase the number of requests for hearings, thereby increasing social services district and Department workload. Given the Court of Appeals' denial of the Department's Motion for Leave to Appeal, however, the Department is compelled to implement the decision within the framework established by the court, which results in differential evidentiary standards.

One possible "solution" to this would be to seek statutory amendment of the standard that CPS workers employ to indicate a report, and raise it to a "fair preponderance of the evidence" standard. Any such statutory amendment would not be enacted until at least the 1998 Legislative Session, and there is no guarantee that such a proposal would pass. We would greatly appreciate your views on whether you would support a legislative proposal raising the evidentiary standard for investigation and indication to a "fair preponderance of the evidence" standard. Any thoughts you or staff might have concerning this possible approach can be conveyed to the Director of the Bureau of Policy Planning, Judy Gallo, via phone, (518) 474-9436, Exchange, or OFIS (0FA010).

Finally, implementation of the Matter of Walter W. is occurring while the Department is also implementing some additional requirements arising from the final settlement of the Valmonte lawsuit. In this context, we want you to be aware that there will be amendments made to the notification letters in CONNECTIONS provided to subjects when a report is indicated, requirements concerning posting 95-LCM-39 or its successor, and eventual revisions to the CPS Manual.

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Rose M. Pandozy  
Deputy Commissioner  
Division of Services and  
Community Development

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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:

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| 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 |

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Anona Joseph  
Deputy Commissioner  
Division of Services & Community  
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