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

Transmittal No: 93 LCM-140

Date: October 15, 1993

Division: Services and  
Community  
Development

TO: Local District Commissioners

SUBJECT: Preventive Services/Housing Services:  
Clarification of policy regarding children with a  
goal of Independent Living

ATTACHMENTS: There are no attachments to this LCM

The purpose of this Local Commissioners Memorandum is to clarify Department policy regarding the provision of housing services as a mandated preventive service to discharge a foster care youth to independent living, including foster care children over the age of 18. It is our policy that any child in Trial Discharge status, including those over 18, may receive the full range of preventive services, including housing services, if the services are intended to avert the child's placement in a foster care home or facility.

Chapter 339 of the Laws of 1993, effective 7/21/93, amends Section 409-a(5)(c) of the Social Services Law to clarify that foster children with the permanency goal of discharge to independent living may be eligible for housing services as a preventive service. The Legislature determined that there was a need for such an amendment because of apparent confusion over the original intent of the preventive services housing regulations, promulgated under the authority of Chapter 542 of the Laws of 1988.

A discrepancy between information contained in the Department's Preventive Services Program Manual and the governing regulations at 423.2(c)(1) and 423.2(c)(2) may have lead to an incorrect policy interpretation concerning use of preventive services housing services for foster children with a goal of Independent Living. This inaccuracy appears in the Preventive Services Program Manual entry at Chapter IV, Section B.2.b, Page 2; and Chapter V, Section C.5, Page 2; these entries will be revised to reflect the correct policy through the next regular update of the program manual.

The Preventive Services Manual indicates that a child receiving housing services as a mandated preventive service can only receive such services prior to the child's 18th birthday. This interpretation applies to the provision of preventive services to avert the need for foster care placement, since a child may not enter foster care for the first time if he or she is eighteen years old or older. However, it is not an applicable condition for the provision of preventive services to foster children with a goal of Independent Living and in a Trial Discharge status.

Section 409 of the Social Services Law defines preventive services to include supportive and rehabilitative services to children and families for the purpose of enabling a child who has been placed in foster care to return to his or her family at an earlier time than would otherwise be possible. Department regulation 423.2(c)(1) provides a definition of family for the purposes of preventive services which includes "a child who does not live with his/her parents and needs services to prevent return to foster care." The post-discharge standards for the goal of Independent Living requires that "every child discharged to independent living or deemed to have been discharged to independent living must remain in a status of trial discharge for at least six months after discharge and must remain in the custody of the local commissioner during the entire period of trial discharge. Trial discharge may continue at the discretion of the district up to the age of 21 if the reassessment and service plan review indicates either the need for continued custody or a likelihood that the child may need to return to foster care." [18NYCRR 430.12(f)(4)(a)]

The trial discharge status allows for the replacement of a foster child in the custody of the local Commissioner in a foster care home or facility at any age up to the age of 21 when the child is judged to be unable to continue living independently. This replacement option allows a district to provide preventive services to some children over the age of 18. Therefore, a child in Trial Discharge status may receive the full range of preventive services if the services are intended to avert the child's placement in a foster care home or facility.

Furthermore, Department regulation 423.2(c)(2) provides a definition of family for the limited purpose of authorizing housing services. The definition specifically includes "a child with a goal of independent living who is to be discharged from foster care prior to his or her 18th birthday or who is placed in trial discharge status after his or her 18th birthday". The regulation therefore allows the provision of the specific preventive service in the form of housing services to children over the age of 18 with a goal of Independent Living as long as the child remains in a Trial Discharge status which includes remaining in the legal custody of the local commissioner. Once a foster child who is over the age of 18 is no longer in the legal custody of the local commissioner, he or she is no longer in a trial discharge status and reverts to a supervision status (see Department regulation 430.12(f)(4)(b)) and is therefore no longer eligible for preventive services housing services.

The 36 month limitation of eligibility for the receipt of housing services would continue to apply. However, the overriding limitation of Trial Discharge status until the age of 21 at the district's discretion could limit the provision of housing services to a shorter period of time, dependent on the age of the child at the inception of the Trial Discharge period and the time at which housing services are initiated. A loss of custody would similarly terminate a child's eligibility for preventive services housing services.

If there are any questions, please contact the appropriate regional office of the Office of Family & Children Services:

Metropolitan, Fred Cantlo, Dir., [0fg010] 212-383-1788  
Albany, John O'Connor, Dir., [rof015] 518-432-2751  
Syracuse, Jack Klump, Dir., [89w005] 315-423-1200  
Rochester, Linda Kurtz, Dir., [0fh010] 716-238-8201  
Buffalo, Linda Brown, Dir., [89d421] 716-847-3145

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Frank Puig  
Deputy Commissioner  
Division of Services and Community  
Development