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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 97 ADM-9

TO: Commissioners of Social Services
 Executive Directors of Voluntary
 Authorized Agencies

DIVISION: Services and
 Community
 Development

DATE: May 6, 1997

SUBJECT: Foster Care and Child Day Care: Policy on the Provision of
 Both Services by an Individual

SUGGESTED
 DISTRIBUTION:

Directors of Services
 Children's Services Staff
 Foster Home Finding Staff
 Family Day Care Registration Staff
 Staff Development Coordinators

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ATTACHMENTS:

Child Day Care Regional Managers (available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
	87 ADM-38	18 NYCRR Parts 416 417 443 444	SSL 378 SSL 390		

I. PURPOSE

There have been significant changes to the child care system in New York State since October of 1987. Recently, questions have been raised regarding "dual certification" of family day care homes and whether it is permissible for foster care homes to also provide family or group family day care services. The purpose of this Administrative Directive (ADM) is to advise social services districts of the Department's policy regarding the dual approval of a home to provide both foster care and family day care (FDC) or group family day care (GFDC) services. This directive outlines the parameters within which an individual may provide both foster care and child day care, as well as the roles of the Department and social services districts and/or voluntary agencies in approving such certifications and licenses or registrations.

II. BACKGROUND

In October of 1987, the Department issued 87 ADM-38, entitled "Dual Certification of Family Day Care and Family Foster Care Homes," which provided social services districts with the flexibility to allow them to dual certify families willing to provide both types of services. At that time, social services districts certified both family day care homes and foster care homes.

Later in 1987, Section 416 of 18 NYCRR was promulgated. Section 416 established standards for the operation of group family day care homes. Group family day care homes are licensed by the Department. The primary difference between family day care and group family day care is that the maximum capacity of a group family day care home is 12 children, while the maximum capacity of a family day care home is 6 children. Group family day care providers must have an assistant present whenever more than six children are in attendance. This is a rapidly expanding segment of the child day care provider base in New York State.

In 1990, changes to Section 390 of Social Services Law (SSL) created the registration system for family day care homes. Registration replaced the two-tiered system in which some family day care homes were State-licensed while others were county-certified. Since the implementation of registration, all family day care homes in New York State are registered with the Department.

III. PROGRAM IMPLICATIONS

Since family day care homes are no longer certified by social services districts, the concept of "dual certification" is outdated. The policy set forth in this ADM permits an individual who is certified as a foster care provider also to be registered as a family day care provider or licensed as a group family day care provider. Similarly, currently registered family day care providers or licensed group family day care providers may be

certified as foster boarding homes. In addition, new applicants for foster care certification may seek family day care registration or group family day care licensure and vice versa.

This policy would allow capable individuals who want to provide both foster care and child day care services to do so. Failure to allow this may force some individuals to go to work outside the home, thus losing them to the child care system entirely. While not all foster parents or child day care providers have the skills and abilities needed to fulfill the responsibilities of both functions simultaneously, some may have that capacity. Each provider's capability to do both must be evaluated on a case-by-case basis.

If an individual chooses to provide both foster care and child day care services, the statutory and regulatory requirements relative to each must be met. Foster care certification is the responsibility of social services districts and voluntary authorized agencies, while child day care licensing and registration are the responsibility of the Department. When an individual is providing both services, each agency retains the same responsibilities for oversight, monitoring, technical assistance and enforcement as it would have if the individual were only providing a single service. With the exception of those situations where the social services district certifies foster homes and has a contract with the Department to administer registration activities, it will be necessary for the individual seeking to provide both types of services to work with two different agencies to obtain approvals to provide both services.

A. Maximum capacity of foster homes

The maximum capacity of a certified foster home is set forth in Section 378(4) of SSL. The general rule is that not more than six foster children and non-foster children under the age of thirteen may reside in a certified foster home. Two exceptions to this general rule are:

- 1) up to two additional children if such children are siblings or half-siblings, are siblings or half-siblings of a child living in the home, are children freed for adoption who have been placed for adoption with the person to whom such certification is issued, or are minor parents who are foster children and the minors' children; and
- 2) when in the child's best interests, a child who is returning to foster care or is being placed from a more restrictive foster care setting to the foster home in which the child had previously resided in accordance with the provisions of Section 398(6)(n) of the SSL. This standard also applies to the placement of a minor parent who is a foster child and the minor parent's child or children.

Since children enrolled in a family day care or group family day care home do not reside in that home, it is not a violation of State statute or regulations if the provision of child day care results in more than six children being in care in the home for some portion of the day.

B. Maximum capacity of family day care homes

The maximum capacity of a registered family day care home is set forth in Section 417.1(f)(3) of 18 NYCRR as follows:

- "(i) Except for children in the legal custody of or boarded out with the provider who attend school in kindergarten or a grade level higher than kindergarten, all children present must be counted in determining maximum capacity even if they are relatives or are present three hours per day or less.
- (ii) No more than two children under the age of two may be cared for at any one time.
- (iii) When any child who is less than two years of age is present, the maximum capacity is five, except as provided in subparagraph (v) of this paragraph.
- (iv) When all children present are at least two years of age, maximum capacity is six, except as provided in subparagraph (v) of this paragraph.
- (v) an additional two children who are of school-age may be provided care if: the school-age children receive the care primarily before or after the period such children are ordinarily in school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session; and, that the additional school-age children attend kindergarten or a school grade level higher than kindergarten. The registration for such capacity for additional school-age children may not be issued until the department inspects the home to determine whether the provider can care adequately for seven or eight children."

The above definition must be applied when determining the maximum capacity of a certified foster home which also is registered as a family day care home. For purposes of family day care maximum capacity, foster children are counted as if they were the provider's own children. Therefore, while preschool-aged foster children are counted as part of the registered capacity, school-aged foster children are not.

C. Maximum capacity of group family day care homes

The maximum capacity of a licensed group family day care home is set forth in Section 416.1(f)(3) of 18 NYCRR as follows:

- "(i) Except for children in the legal custody of or boarded out with the provider who attend school in kindergarten or a grade level higher than kindergarten, all children present must be counted in determining maximum capacity even if they are relatives or are present three hours per day or less.
- (ii) No more than four children under the age of two may be cared for at any one time. No more than six children under the age of three may be cared for at any one time.

- (iii) When any child who is less than two years of age is present, the maximum capacity is 10, except as provided in subparagraph (v) of this paragraph.
- (iv) When all children present are at least two years of age, maximum capacity is 12, except as provided in subparagraph (v) of this paragraph.
- (v) An additional two children who are of school-age may be provided care if: the school-age children receive the care primarily before or after the period such children are ordinarily in school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session; and, the additional school-age children attend kindergarten or a school grade level higher than kindergarten."

These definitions must be applied when determining the maximum capacity of a certified foster home which also is licensed as a group family day care home. For purposes of group family day care capacity, foster children are counted as if they were the provider's own children. Therefore, while preschool-aged foster children are counted as part of the licensed capacity, school-aged foster children are not.

IV. REQUIRED ACTION

A. Applicant responsibilities

An individual who wishes to provide both foster care and child day care services must:

1. submit an application with each regulating agency in accordance with the requirements for both types of care which the individual wishes to provide. Applicants for foster care certification must apply to the appropriate social services district or voluntary authorized agency in accordance with the requirements of Section 444.3 of 18 NYCRR. Applicants for a family day care registration must apply to the Department or the Department's designee in accordance with Section 417.2 of 18 NYCRR. Applicants for a group family day care license must apply to the Department in accordance with Section 416.2 of 18 NYCRR; and
2. comply satisfactorily with all regulations which apply to the operation of a foster home as detailed in Section 444.5 of 18 NYCRR and a family day care home (18 NYCRR, Part 417) or group family day care home (18 NYCRR, Part 416), as applicable. Where there are overlapping regulations between the foster care program and child day care program, the provider must meet the more stringent requirement.

B. Inter-agency communication

The Department recognizes that much can be learned through open communication between the various agencies which are involved with a provider. This type of consultation will ensure that each agency is apprised of circumstances, such as special needs or behaviors of individual children, which may impact the approval of a certification, license or registration. Such communication is strongly encouraged.

When a social services district learns that an applicant for foster care certification is currently registered as a family day care provider or licensed as a group family day care provider, it must notify the applicable BECS Regional Offices. The Attachment to this ADM identifies the counties served by each BECS Regional Office. Similarly, when a BECS Regional Office or registration contractor learns that an applicant for a license or registration is currently certified to provide foster care services, it must notify the social services district or voluntary authorized agency which issued the certification.

Department staff, social services districts, and voluntary authorized agencies also are encouraged to communicate whenever either has concerns regarding the quality of care that children are receiving. Concerns involving possible regulatory violations must be reported to the appropriate regulating agency. When social services district or voluntary authorized agency staff believe they have observed a violation of child day care regulations, such alleged violation must be reported by contacting the appropriate BECS Regional Office (see the Attachment) or by calling the Department's toll-free child care complaint line, at 1-800-732-5207. Similarly, the Department or its designees may observe possible violations of the applicable foster care regulations. When staff of the Department or its designees believe they have observed such a violation, the alleged violations must be reported to the social services district or voluntary authorized agency which issued the foster care certification.

Sometimes the concerns of either the Department, a social services district or a voluntary authorized agency do not involve possible regulatory violations. In such cases, consultation between the agencies involved with the provider is desirable. Such consultation is useful in identifying: 1) the training and technical assistance needs of the provider; 2) the most appropriate agency to take the lead in the provision of such support; and 3) resources available to assist in meeting the provider's needs.

C. Determining maximum capacity

Social services districts and voluntary authorized agencies have the discretion to determine how many foster children are placed in a certified foster home that also provides family or group family day care services. This decision should be based on the abilities of the foster parent, the structure of the home and the demands of the particular children in placement at a particular time. Another factor to be considered may be the number of day care children who are enrolled with

the provider at the time that placement of an additional foster child is being considered. Social services districts and voluntary authorized agencies may obtain this information through a conversation with the provider or by making a home visit. If the presence of an additional foster child will put the provider over the maximum capacity on his or her family day care registration or group family day care license, it is the provider's responsibility to reduce the program's enrollment.

Similarly, the Department has the discretion to determine the maximum capacity of a family day care home or group family day care home, particularly with respect to the approval of additional school-aged children. Such capacity also must be determined on a case-by-case basis. In making this decision, the Department or its designee should consider the results of its inspection, the abilities of the child day care provider, the size and structure of the home, and the number of children residing in the home who are present during the hours that child day care is provided and the needs of such children.

D. Foster care home studies and child day care inspections

Pursuant to Section 444.3 of 18 NYCRR, a careful investigation must be made of a prospective foster home, including an inspection of the premises. This function is performed by either a social services district or a voluntary authorized agency. Group family day care homes also must be inspected prior to issuance of a license. The Department conducts such inspections for all group family day care applicants outside New York City. In New York City such inspections are conducted by the New York City Department of Health under a contract with the Department. No inspection of family day care homes is required prior to the issuance of a registration.

Since the responsibility for the various inspections is held by different agencies, a single individual would not be inspecting for both foster care certification and group family day care licensing purposes. Each "inspector" will be viewing the home in terms of compliance with the applicable program standards. Therefore, it is not appropriate for either agency to rely on an inspection done by the other.

E. Screening against the State Central Register

Section 424-a of the SSL establishes the requirement that, at the time of application, prospective foster parents, family day care providers and group family day care providers must be screened against the State Central Register of Child Abuse and Maltreatment (SCR) for indicated cases of child abuse and/or maltreatment. When a currently certified foster care home applies for a child day care license or registration, the Department or its designee must ensure that the applicant completes an SCR Clearance Form (DSS-3370) identifying the appropriate clearance category. The same process must be followed by social services districts and voluntary authorized agencies when a currently licensed or registered child day care provider applies for foster care certification.

If it is known that an individual is applying concurrently for foster care certification and a family day care registration or a group family day care license, the involved agencies may coordinate the submission of one SCR Clearance Form (DSS-3370). If this option is chosen, the clearance category which should be used is "W", or "R" if applying for approval as relative foster parents. Such clearance requests should be sent to the address for "Services Information Systems" as specified for All Foster Care clearances on Form 3370. When the SCR clearance is being coordinated, the agency submitting the clearance must obtain written permission from the applicant to share the screening results with the other involved agency.

V. SYSTEMS IMPLICATIONS

This ADM has no systems implications.

VI. ADDITIONAL INFORMATION

No changes are being made in the method of payment to providers as a result of this ADM. Social services districts and voluntary authorized agencies should continue to pay the established rates to certified foster homes.

In addition, for care provided to eligible children, social services districts may make child day care subsidy payments to licensed and registered child day care providers for the amount the provider charges up to the local market rate as set forth in 18 NYCRR Section 415.9. However, it must be noted that family and group family day care providers may not receive child day care subsidy payments for care provided at their licensed or registered sites to either their own children or foster children who reside with them.

VII. EFFECTIVE DATE

The effective date of this ADM is April 30, 1997.

Rose M. Pandozy, Deputy Commissioner
Services and Community Development

BUREAU OF EARLY CHILDHOOD SERVICES
REGIONAL OFFICES

BUFFALO REGIONAL OFFICE Chautauqua, Cattaraugus, Allegany, Erie,
Wyoming, Genesee, Niagara and Orleans Counties

Carolyn Huffman, Regional Day Care Manager
NYS Dept. of Social Services
295 Main Street 8th floor
838 Ellicott Square Building
Buffalo, New York 14203
(716) 847-3828; UserID AX9150

ROCHESTER REGIONAL OFFICE Monroe, Wayne, Livingston, Ontario, Yates,
Seneca, Schuyler, Steuben and Chemung Counties

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SYRACUSE REGIONAL OFFICE Tioga, Broome, Chenango, Cortland, Tompkins,
Cayuga, Onondaga, Madison, Herkimer, Oneida,
Oswego, Lewis, Jefferson and St. Lawrence
Counties

Carol Russ, Licensing Supervisor
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ALBANY REGIONAL OFFICE Delaware, Greene, Columbia, Rensselaer, Albany,
Schoharie, Otsego, Schenectady, Montgomery,
Saratoga, Fulton, Washington, Warren, Hamilton,
Essex, Franklin and Clinton Counties

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YONKERS REGIONAL OFFICE Sullivan, Ulster, Dutchess, Orange, Putnam,
Rockland and Westchester Counties

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HEMPSTEAD REGIONAL OFFICE Nassau and Suffolk Counties

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Day Care Programs in the five boroughs of New York City are administered by
the:

BUREAU OF DAY CARE
NEW YORK CITY DEPARTMENT OF HEALTH
2 Lafayette Street
New York, New York 10013
(212) 676-2444