

## **Regulations**

**for Certified  
and Approved  
Foster Family  
Boarding Homes**



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**for Designated  
Emergency  
Foster Family  
Boarding Homes**

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New York State  
Office of  
Children and  
Family Services

## **INTRODUCTION**

Children who must be cared for in settings other than their homes who are, therefore, placed in foster homes, are protected by state law and the regulations of the New York State Office of Children and Family Services (OCFS).

Under the law, no person (except certain relatives, legal guardians, and others) may provide board for children in New York State without a certificate to do so. For a relative within the second or third degree of the parent of a child in foster care to receive payment for such child, the relative must be approved as a relative foster parent. These requirements are set by regulations of OCFS as listed in the pages that follow.

### **Certification or Approval of Foster Family Homes**

An authorized child-caring agency – either the local department of social services or a private child-caring agency – issues a certificate or approval to a family desiring to board children who are under the care of the agency, after a home study indicates that the family meets OCFS's certification requirements. Included in the home study process is a criminal history and child abuse and maltreatment background check. The agency supervises the children when they are placed in boarding care and makes plans for their future with the involvement of the child, the child's parents, and the child's foster parent(s). The agency is financially responsible for the needs of the children in foster care.

### **Obtaining Approval to Board**

Persons outside New York City who are interested in obtaining approval to board children should apply to their local department of social services or to a private child-caring agency in their community. Information about such agencies can be secured from local departments of social services or local councils of social service agencies. In New York City, information about authorized agencies can be obtained from the Administration for Children's Services by calling 212-676-WISH (9474).

**PART 443**  
**CERTIFICATION, APPROVAL AND**  
**SUPERVISION OF FOSTER FAMILY BOARDING HOMES**

(Statutory authority: Social Services Law, §§ 20[3][d], 34[3][f], 378[a][2], [5],  
L. 1997, ch. 436; L. 2000, ch. 145)

Sec.

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**Historical Note**

Part (§§ 443.1-443.2) added by renum. Part 472, filed April 26, 1978; repealed, new (§§ 443.1-443.4) filed July 7, 1981; amd. filed Nov. 20, 1985; repealed, new (§§ 443.1-443.12) filed: Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

**§ 443.1 Definitions.**

- (a) *Authorized agency.* The term *authorized agency* refers to an entity defined in paragraphs (a) and (b) of subdivision 10 of section 371 of the Social Services Law.
- (b) *Certificate.* A certificate to board permits an individual to receive remuneration from an authorized agency for the care at board of a child under the age of 18 years, or under the age of 21 years if a student attending a school, college or university or regularly attending a course of vocational or technical training designed to fit him/her for gainful employment, and who entered foster care prior to his/her 18th birthday. Such a certificate may be issued by the public or private authorized agency purchasing such care.
- (c) *[Reserved]*
- (d) *A letter of approval or approval* permits a relative within the second or third degree of the parent(s) or stepparent(s) of a foster child to receive remuneration from an authorized agency for the care at board of a child under the age of 18 years, or under the age of 21 years if a student attending a school, college or university or regularly attending a course of vocational or technical training designed to fit him for gainful employment, and who entered foster care prior to his/her 18th birthday. Such a letter of approval shall be issued by the local commissioner of social services or by an authorized agency, only if the home has been approved by the authorized agency as required by this Part.
- (e) *Foster family home care.* *Foster family home care* is temporary or long-term care of a child whose care and custody or guardianship and custody have been transferred to an authorized agency pursuant to the provisions of section 384 or 384-a of the Social Services Law or who has been placed with a social services official pursuant to article 3, 7 or 10 of the Family Court Act and who is cared for away from his home 24 hours a day in a family home with a foster parent duly certified or approved by an authorized agency or certified or approved by a social services commissioner.
- (f) *Approved home.* An *approved home* is a home in which temporary or long-term care is provided to a child whose care and custody or guardianship and custody have been transferred to an authorized agency pursuant to the provisions of section 384 or 384-a of the Social Services Law or who has been placed with a social services official pursuant to article 3, 7 or 10 of the Family Court Act and who is cared for 24 hours a day in a family home with a foster parent who is a relative within the second or third degree to the parent(s) or stepparent(s) of the child and who is duly approved by an authorized agency as required by this Part.
- (g) *Approved emergency relative foster home.* An *approved emergency relative foster home* is a home in which foster care is provided to a child placed with an authorized agency pursuant to the provisions of article 10 of the Family Court Act and who is cared for 24 hours-a-day in a family home with a foster parent who is a relative within the second or third degree to the parent(s) or stepparent(s) of the child and which is duly approved by an authorized agency in accordance with section 443.7 of this Part.
- (h) *Certified emergency foster home.* A *certified emergency foster home* is a home in which foster care is provided to a child placed with an authorized agency pursuant to the provisions of Article 10 of the Family Court Act and who is cared for 24 hours-a-day in a family home with a foster parent who is either a relative other than one who is

within the second or third degree to the parent(s) or stepparent(s) of the child or is a non-relative with a significant prior relationship with the child's family and which is duly certified by an authorized agency in accordance with section 443.7 of this Part.

- (i) *Relative within the second or third degree.* A relative within the second or third degree to the parent(s) or stepparent(s) of a child refers to those relatives who are related to the parent(s) or stepparent(s) through blood or marriage either in the first, second or third degree in the kinship line. A relative within the second or third degree of a parent includes the following:
- (1) grandparents of the child;
  - (2) great-grandparents of the child;
  - (3) aunts and uncles of the child, including the spouses of the aunts or uncles;
  - (4) siblings of the child;
  - (5) great-aunts and great-uncles of the child, including the spouses of the great-aunts or great-uncles;
  - (6) first cousins of the child, including the spouses of the first cousins;
  - (7) great-great grandparents of the child; and
  - (8) an unrelated person where placement with such person allows half-siblings to remain together in an approved foster home, and the parents or stepparents of one of the half-siblings is related to such person in the second or third degree.
- (j) *Foster family boarding home* means a residence owned, leased or otherwise under the control of a single person or family who has been certified or approved by an authorized agency to care for not more than six children, including all children under the age of 13 whether or not they are received for board, except that up to two additional children may be cared for if such children are siblings, or are siblings of a child living in the home, or are children freed for adoption and placed for adoption with the person(s) who have been certified or approved as foster parents. Such home may exceed these limits only to receive for board a child or children returning to that foster family boarding home pursuant to section 443.6 of this Part.

#### Historical Note

Sec. added by renum. 472.1, filed April 26, 1978; repealed, new filed July 7, 1981; amds. filed: Nov. 20, 1985; Oct. 11, 1988; Jan. 29, 1992; March 30, 1999 as emergency measure; April 29, 1999 as emergency measure, July 28, 1999 as emergency measure; Oct. 25, 1999 as emergency measure; Dec. 22, 1999 as emergency measure; Jan. 21, 2000; repealed, new filed: Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

**§ 443.2 Authorized agency operating requirements.**

- (a) *Outreach.* Authorized agencies operating a foster family boarding home program must seek to recruit persons with the ability and motivation to serve children in need of a substitute family life.
- (b) *Inquiries.* Authorized agencies operating a foster family boarding home program must:
- (1) Respond in writing within 10 days to inquiries from persons interested in becoming foster parents and must have a written procedure for doing this.
  - (2) Offer an appointment to each person inquiring about the program or shall arrange for them to attend an orientation meeting about foster family care.
  - (3) Provide application and medical report forms to persons interested in the program at the time of the initial interview or the orientation meetings.
  - (4) Inform persons who express an interest in becoming, or who apply to become a certified or approved foster parent, that as part of the application process, each applicant and each person over the age of 18 currently residing in the home of the applicant will be required to be fingerprinted for the purpose of a criminal history record check performed by the Division of Criminal Justice Services in accordance with the provisions set forth in section 443.8 of this Part.
  - (5) Inform persons who express an interest in becoming, or who apply to become certified or approved foster parents, that the agency must inquire of the Office of Children and Family Services whether any person who applies for certification or approval to be a foster parent and whether any person 18 years of age or older who resides in the home of such an applicant is the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment.
  - (6) Require applicants for certification or approval to complete the forms which are necessary for the agency to inquire of the Office of Children and Family Services whether the applicant and any person 18 years of age or older who resides in the home of the applicant is the subject of an indicated child abuse or maltreatment report on file with the Statewide Central Register of Child Abuse and Maltreatment. This includes foster parents who are completing a new application in the following situations:
    - (i) an initial application for certification or a letter of approval as a foster parent has been received;
    - (ii) an application for certification or approval as foster parents has expired because it has been pending for six months or more;
    - (iii) a previously certified or approved foster home that was closed is to be re-opened; or
    - (iv) a new adult spouse of a foster parent has come into the home and has applied for certification or approval as a foster parent.
  - (7) Inquire of the Office of Children and Family Services whether the applicant, and any person 18 years of age or older who resides in the home of the applicant, for

certification or approval is the subject of an indicated child abuse or maltreatment report on file with the Statewide Central Register of Child Abuse and Maltreatment.

- (8) Determine, on the basis of the information it has available and in accordance with guidelines developed and disseminated by the Office of Children and Family Services, whether to approve the application if any applicant or any person 18 years of age or older who resides in the home of the applicant is the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment, except that any social services district which had guidelines for the review of persons who are subjects of indicated reports of child abuse or maltreatment in use prior to January 1, 1986 may continue to use the district guidelines in making the required determination.
- (9) If such an applicant is approved, the agency must maintain a written record, as part of the application file, which sets forth the specific reason(s) why the applicant was determined to be appropriate and acceptable to be certified or approved as a foster parent. If the agency denies the application, the agency must furnish the applicant with a written statement setting forth its reason(s) for the denial, including a statement indicating whether the denial was based in whole or in part on the existence of an indicated report. If the denial is based in whole or in part on the existence of an indicated report which names the applicant as a subject, the notice of denial must also inform the applicant, in the form prescribed by the Office of Children and Family Services, that:
  - (i) the applicant has the right, pursuant to section 424-a of the Social Services Law, to request a hearing before the Office of Children and Family Services regarding the record maintained by the Statewide Central Register of Child Abuse and Maltreatment;
  - (ii) a request for such a hearing must be made within 60 days of the receipt of the notice of denial indicating that the denial was based in whole or in part on the existence of the indicated report; and
  - (iii) the sole issue at any such hearing will be whether the applicant has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.
- (10) Reconsider its decision to deny the applicant foster care certification or approval which was based in whole or in part on the existence of an indicated report of child abuse or maltreatment whenever the agency is informed by the Office of Children and Family Services that, as a result of a hearing held pursuant to a request made in accordance with paragraph (8) of this subdivision and section 424-a of the Social Services Law, the Office of Children and Family Services has failed to show by a fair preponderance of the evidence that the applicant committed the act or acts upon which the indicated report is based and that the agency's decision to deny the applicant should be reconsidered. Upon receiving such notification from the Office of Children and Family Services, the agency should review its denial without considering the indicated report.

- (11) Require a joint application to be submitted by married individuals living in the same household.
- (12) Utilize the application form to elicit information including, but not limited to the following:
  - (i) age;
  - (ii) health;
  - (iii) physical functioning;
  - (iv) income;
  - (v) marital status;
  - (vi) employment of the applicants;
  - (vii) information regarding the physical facilities of the prospective foster home;
  - (viii) the names of those persons who will be sharing living accommodations with the child in foster care, including the names of persons 18 years of age or older living in the home;
  - (ix) whether any other application for certification or approval has ever been made, whether such application was accepted or rejected and, if rejected, the reasons therefor.
- (13) Each agency must establish a procedure to review and evaluate the backgrounds of and information supplied by all applicants for certification or approval. As part of this procedure, applicants must be required to submit all of the following information:
  - (i) a statement or summary of the applicant's employment history, including but not limited to any relevant child-caring experience;
  - (ii) names, addresses and, where applicable, telephone numbers of references who can verify the applicant's employment history, work record and qualifications;
  - (iii) names, addresses and telephone numbers of at least three personal references, other than relatives, who can attest to the applicant's character, habits, reputation and personal qualifications and which must be verified in accordance with this section;
  - (iv) a sworn statement by the applicant indicating whether, to the best of the applicant's knowledge, the applicant or any other person over the age of 18 currently residing in the home has ever been convicted of a crime in New York State or any other jurisdiction. If an applicant discloses in the sworn statement that he/she or any other person over the age of 18 currently residing in the home has been convicted of a crime, the agency must determine, in accordance with guidelines developed and disseminated by the Office of Children and Family Services to the extent consistent with section 443.8 of this Part, whether to approve such applicant. If the agency determines that it will approve the applicant to receive a foster care placement, the agency must

- maintain a written record, as part of the application and home study file of such applicant, of the reason(s) why the applicant was determined to be appropriate and acceptable to be certified or approved as a foster parent; and
- (v) completed fingerprint cards for the applicant(s) and each person over the age of 18 currently residing in the home of such applicant(s). The authorized agency must promptly submit such fingerprint cards to the Office of Children and Family Services for forwarding to the Division of Criminal Justice Services to perform a criminal history record check. The authorized agency must use the information obtained through the criminal history record check(s) in accordance with section 443.8 of this Part.
- (14) Acknowledge, within 10 days of receipt of a completed application, receipt of such form and either reject the applicant for home study or accept the applicant for home study. Such acceptance must be conditioned on the submission of an acceptable medical report form.
  - (15) Reject an application for home study only on the basis of information contained in the application or medical report forms or the criminal history record check or the Statewide Central Register of Child Abuse and Maltreatment check. A person whose application is not accepted must be advised in writing of the reason(s) for rejection.
  - (16) Require that a medical report form must be filed with the agency either prior to or after acceptance for a home study. The completion of the home study required by this Part must be conditioned upon the submission of an acceptable medical report form. The medical report form must cover a physical examination of the applicant(s) conducted not more than one year preceding the date that the application is submitted to an authorized agency, and must include the following:
    - (i) a written statement from a physician regarding the foster family's general health, the absence of communicable disease, infection or illness or any physical conditions which might affect the proper care of a foster child; and
    - (ii) the result of a Mantoux skin test for tuberculosis and an additional report of chest X-rays where a physician determines that such X-rays are necessary to rule out the presence of current diseases.
  - (17) If the applicant and the applicant's family have previously completed a medical exam for an adoption study, that medical report will satisfy the requirement of paragraph (16) of this subdivision if the report has been completed within the past year.
  - (18) Unless an application has been rejected prior to submission of the medical report form in accordance with paragraph (16) of this subdivision, within 15 days of receipt of a medical report form an agency must acknowledge receipt of such form and must either accept or reject the applicant for a home study. A person whose application is not accepted based on an unacceptable medical report must be advised in writing of the reasons for such rejection.

- (19) Treat all reopenings of foster homes that have closed as requests for a new certificate or approval. A new application must be completed regardless of how long the home has been closed. The only exception to this requirement is when a reopening occurs for administrative reasons, i.e., when the home should not have been closed initially but because it was, a reopening is necessary.
- (c) *Home Study.* Authorized agencies must complete a home study within four months after acceptance of an application unless delays occur as a result of circumstances beyond the control of the agency or unless the schedule for interviews with the applicant is changed by mutual consent of the applicant and the agency representative.
- (1) A home study and evaluation of the members of the foster family household or the relative's family household must determine compliance with all of the following criteria for certification or approval:
- (i) Age. Each foster parent must be over the age of 21.
  - (ii) Health. Each member of the household of the foster family must be in good physical and mental health and free from communicable diseases. However, physical handicaps or illness of foster parents or members of their household must be a consideration only as they affect the ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases must be evaluated on an individual basis with assistance of a medical consultant when indicated. A written report from a physician on the health of a family, including a complete physical examination of the applicant, must be filed with the agency initially and biennially thereafter. Additional medical reports must be furnished upon the request of either the agency worker or the foster parent. Such reports must conform to the standards set forth in this Part.
  - (iii) Employment. Employment of a foster parent outside the home must be permitted when there are suitable plans for the care and supervision of the child at all times, including after school and during the summer. Such plans must be made part of the foster family record and must receive prior agency approval, unless only one of the two foster parents is working outside the home.
  - (iv) Marital status. The marital status of an applicant may be a factor in determining whether or not a certification or approval will be granted only as it affects the ability to provide adequate care to foster children. Changes in marital status of certificate and letter of approval holders must be reported to the authorized agency and existing certificates or letters of approval may be revoked and new certificates or letters of approval issued consistent with the best interests of the child.
  - (v) Character. Each applicant for certification or approval must be required to provide the agency with the names of three persons who may be contacted for references. The agency must seek signed statements from these persons attesting to the applicant's moral character, mature judgment, ability to manage financial resources and capacity for developing a meaningful relationship with children, or utilize in-person interviews attesting to the same.

- (vi) Ability and motivation. The agency must explore each applicant's understanding of the role of a foster parent and the applicant's ability, motivation and psychological readiness to be a foster parent in accordance with guidelines issued by the office. The agency also must explore the understanding of the other members of the household about foster care and their concept of a foster child's role in the family.
- (2) Authorized agencies must advise applicants at the outset of the home study process that the agency decision to either certify or approve or not to certify or approve them for foster family care will be presented in writing, and that applicants who are rejected will be offered a personal interview in accordance with the provisions of this Part.
- (3) When an authorized agency decides to discontinue a home study or to deny certification or approval upon completion of the home study, it must advise the applicant in writing of the reasons for the agency's decision and must offer an interview to discuss the decision.
- (4) A plan to discontinue a home study or to deny certification or approval for foster family care must be reviewed and approved by one or more supervisory level personnel unless the home study was discontinued at the request of the applicant.
- (5) When an agency denies an application for certification or approval on the basis, in whole or in part, that the Office of Children and Family Services has notified the agency that the applicant is the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment, the applicant may request a hearing in accordance with the provisions of this section and section 424-a of the Social Services Law.
- (6) An application for certification or approval that has been pending for six months due to failure of the applicant to provide information requested or to cooperate with the approval or certification process will be considered expired. This expiration will require a new application for those prospective foster parents who still seek certification or approval.
- (7) When an authorized agency denies an application pursuant to section 443.8 of this Part, the authorized agency must provide to the applicant a written statement setting forth the reasons for such denial, including the summary of the criminal history record provided by the Office of Children and Family Services in accordance with this Part. The authorized agency must also provide a description of the Division of Criminal Justice Services' record review process and any remedial processes provided by the Office of Children and Family Services to any prospective foster parent or prospective adoptive parent. If the applicant is disqualified under section 443.8(e)(1)(i)(b) of this Part for a felony conviction of spousal abuse, then the applicant may apply to the Office of Children and Family Services through an administrative hearing held in accordance with section 22 of the Social Services Law for relief from the mandatory disqualification based on the ground that the offense was not spousal abuse as that term is defined in section 443.8(i) of this Part.

(d) *Foster parent orientation.*

- (1) Authorized agencies must orient applicants who have been accepted for a home study or, in the case of relatives who are in the process of a home study, to:
  - (i) the social, family and personal problems that lead to family breakdown and the need for the placement of children;
  - (ii) the problems and reactions of children upon separation, and the function and responsibility of the foster family in relation to the child, the natural parents, and the agency staff;
  - (iii) the agency policy and practice to have defined goals to achieve permanency for each child entering the foster care system;
  - (iv) the authority of the local social services districts, the Office of Children and Family Services and Family Court to supervise the agency's practice.
  - (v) the nature of the relationship of agency staff to foster parents and children, including definitions of the function and responsibility of the social workers assigned to the children and their families;
  - (vi) the payments to foster parents for care and expenses; the definition of foster family care, certification or approval of the home, and
  - (vii) the rights and responsibilities of a foster parent as defined by a letter of understanding that must be executed at the time of certification or approval.

(e) *Training and placement information.*

- (1) Authorized agencies must provide training to each certified or approved foster parent in a training program approved by the Office of Children and Family Services which will prepare foster parents to meet the needs of children in their care so that the best interests of the children placed by the certifying or approving agency will be met. Such training will, as appropriate, help the foster parent to understand the issues confronting children preparing for independent living; and will, to the extent possible, be coordinated with the independent living program.
- (2) Before a child is placed in a foster home, authorized agencies must prepare the foster parent with appropriate knowledge and skills to provide for the needs of the child. Such preparation must be continued, as needed, after the placement of the child.
- (3) Authorized agencies shall provide basic information to foster parents about each child who is to be placed in the home. Where a child is placed on emergency basis, such information shall be provided within 30 days of placement. Information shall include, but need not be limited to, the following topics:
  - (i) the estimated length of time a child may need to be in placement and the assumptions and knowledge on which the estimate is based;
  - (ii) the health of the child, including the procedure to be followed in obtaining consent for emergency medical treatment in accordance with section 507.5 of this Title and the child's medical history in accordance with the provisions of section 357.3 of this Title;

- (iii) handicaps or behavior problems;
  - (iv) school and educational experiences;
  - (v) the relationship of the child and the natural parents;
  - (vi) requirements and plans for visitation of and by the natural family, including probable location of such visits; and
  - (vii) placement and discharge goals.
- (f) *Recordkeeping.* Authorized agencies must develop a record for each foster parent applicant and each certified or approved foster parent that must include, but not necessarily be limited to:
- (1) the application;
  - (2) medical report(s);
  - (3) summary of the home study;
  - (4) interviews with applicants;
  - (5) personal references;
  - (6) placement/action record listing the names of children placed in the home, with the dates of the children's placement and removal;
  - (7) summary of each annual evaluation made pursuant to section 443.10;
  - (8) physical description of the home, including allocation of space;
  - (9) summary of agency conference that clarifies the basis for each decision that affects the applicant's status with the agency;
  - (10) copies of correspondence with the applicant;
  - (11) report from the Office of Children and Family Services which notifies the agency whether the applicant for certification or approval is the subject of an indicated child abuse or maltreatment report on file with the Statewide Central Register of Child Abuse and Maltreatment;
  - (12) response from the Office of Children and Family Services regarding the criminal history record check(s) conducted in accordance with section 443.8 of this Part;
  - (13) if the prospective foster parent is certified or approved, or if the renewal of a certification or approval of an existing foster parent is not denied, notwithstanding that the authorized agency is notified by the Office of Children and Family Services that the prospective or existing foster parent or any other person over the age of 18 who is currently residing in the home of the prospective or existing foster parent has a criminal history record, a record of the reasons why the prospective or existing foster parent was determined to be appropriate and acceptable to receive a foster care placement; and
  - (14) if the application for certification or approval is granted, notwithstanding that the agency is notified by the Office of Children and Family Services that the applicant is the subject of an indicated child abuse or maltreatment report on file with the Statewide Central Register of Child Abuse and Maltreatment, a record of the rea-

sons why the applicant was determined to be appropriate and acceptable to receive a foster care placement.

**Historical Note**

Sec. added by renum. 472.2, filed April 26, 1978; repealed, new filed: July 7, 1981; Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

**§ 443.3 Certification or approval of foster family homes.**

- (a) *Certification and Approval.* Foster family boarding homes must meet the following health and safety standards and physical plant requirements:
- (1) The physical facilities of the foster home or relative foster home must be in good condition and present no hazard to the health and safety of children.
  - (2) The foster home must be in substantial compliance with all applicable provisions of State and local laws, ordinances, rules and regulations concerning health and safety.
  - (3) The physical space, construction and maintenance of the foster home and premises must be in good repair and kept in a sufficiently clean and sanitary condition so that the physical well-being as well as a reasonable degree of physical comfort is assured the members of the foster family.
  - (4) Separate bedrooms are required for children of the opposite sex over seven years of age.
  - (5) Not more than three persons may occupy any bedroom where children at board sleep.
  - (6) No bed may be located in any unfinished attic or basement.
  - (7) No child above the age of three years may sleep in the same room with an adult of the opposite sex. Children must not sleep together in the same bed with an adult.
  - (8) Each child must have sleeping space of sufficient size for the safety, comfort, and privacy of the child. Each child must have a separate bed or crib of sufficient size and cleanliness for the comfort and well being of the child, with waterproof covering, if needed, and suitable bedding adequate to the season. Bunk beds may be used.
  - (9) There must be an adequate and safe supply of water for drinking and household use. Water from wells, springs or other private sources must be protected against contamination. There must be provision for hot water for washing and bathing.
  - (10) The dwelling must have window barriers, including window screens, guards and/or stoppers above the first floor of the foster home.

- (11) Heating apparatus must be safe and adequate to provide for the reasonable comfort of children in the home.
  - (12) Adequate bathing, toilet and lavatory facilities must be provided and kept in sanitary condition.
  - (13) The home must be free from fire hazards and equipped with at least one smoke detector.
  - (14) No certified or approved foster parent may rent rooms to lodgers or boarders or receive and care for maternity cases, except as part of the foster care program, or receive or care for convalescent cases or conduct any business on the premises which might adversely affect the welfare of children, unless permitted by the authorized agency which certified or approved the home.
  - (15) All firearms, rifles and shotguns, as defined in section 265.00 of the Penal Law, must be securely stored and must be maintained in compliance with applicable State and local standards regarding the licensing, storage and maintenance of such weapons.
- (b) Certified and approved foster parents must execute an agreement with the authorized agency that granted the certificate or letter of approval to operate stipulating that the foster family boarding home parent will:
- (1) enable children received at board to mingle freely and on equal footing with other children in the household and in the community and to be accepted as members of the household and share in its pleasures and responsibilities;
  - (2) arrange for children of school age to attend school regularly as required by the Education Law;
  - (3) never leave children under the age of 10 years alone without competent adult supervision, nor children above that age except as might reasonably be done by a prudent parent in the case of his or her own children;
  - (4) except as permitted by the appropriate authorized agency, never use a foster family boarding home to care for more than two infants under two years of age, including the foster parents' own children, except in those cases where the foster parents have demonstrated the capacity to do so and a sibling group would otherwise have to be separated;
  - (5) provide children with sufficient nutritious, wholesome and properly prepared food, served at regular hours. Foster children must be permitted to eat meals at the table in the same manner as other family members with due consideration to their age and special needs;
  - (6) keep the clothing of children provided by the agency, parent or foster parent in proper condition of repair and cleanliness; endeavor to provide children with a sufficient quantity of clothing, adapted to seasonal conditions, and of such style and quality as not to distinguish them from other children in the community;
  - (7) provide for each child at board sufficient individual toilet articles and towels, suitable to the child's age and gender, and individual drawer and closet space;

- (8) provide a suitable, well-lighted place for children of school age for home study;
- (9) recognize and respect the religious wishes of the natural parents of children in care and endeavor to protect and preserve their religious faith;
- (10) endeavor to cooperate with the agency staff in the implementation or review of each child's service or discharge plan and to inform the agency of any incident or event that affects or may affect the child's adjustment, health, safety or well-being and/or may have some bearing upon the current service plan;
- (11) provide a family atmosphere of acceptance, kindness and understanding and endeavor to give each child the support, attention and recognition that facilitates adjustment to the home and that promotes the child's normal development;
- (12) permit an authorized representative of the agency to enter the home to investigate in good faith a formal complaint regarding care of the foster child;
- (13) inform the agency of any changes in marital status, family composition or number of persons residing in the home and any changes in the physical facilities comprising the foster home;
- (14) agree to cooperate in facilitating regular biweekly visitation or communication between minor siblings or half-siblings who have been placed apart, unless as determined by the agency such contact would be contrary to the health, safety or welfare of one or more of the children or unless the lack of geographic proximity precludes visitation; and
- (15) agree only to redisclose confidential HIV-related information concerning the foster child to persons or entities other than those set forth in article 27-F of the Public Health Law for the purpose of providing care, treatment, or supervision of the foster child boarded out or placed with the foster parent or upon a specific written authorization signed by the commissioner of the social services district or the commissioner's designated representative in accordance with section 2782 of the Public Health Law. Where confidential HIV-related information is disclosed, the following written statement must accompany it:

"This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of HIV-related information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."

The terms AIDS, HIV-related test, HIV-related illness, HIV infection and confidential HIV-related information are defined in section 360-8.1 of this Title.

- (16) Exceptions applicable solely to approved foster boarding homes. Exceptions to the provisions of this Part, other than statutory requirements, may be proposed by the authorized agency as part of the foster boarding home approval process when the authorized agency determines that such exception is necessary to board a fos-

ter child; is in the best interests of the child to effect such boarding arrangement; and is consistent with the health, safety, and welfare of the child. Any exception, however, is tentative only and subject to review and approval by the social service district with legal custody of the foster child who would be boarded out in such home. Such decisions must be made by supervisory staff within the social services district who do not have direct supervisory responsibilities over the case management of the particular foster child. Boarding arrangements will be made contingent on such approval. Upon such review, should it be determined that the exception is not necessary or in the best interests of the child to be boarded, upon notice thereof to the agency, the social services district with legal custody of the foster child who would be boarded out in such home must disapprove the proposed arrangement. All exceptions must be requested in writing by the authorized agency and the social services district must document how the granting of the request relates to the best interests of the child.

- (c) The agreement required pursuant to this Part must include the statement of preference of foster parents as required under subdivision 1-a of section 374 of the Social Services Law and a statement of the foster parent's rights regarding removal of a child from a foster family home as provided under section 443.5 of this Title.
- (d) A certificate must be issued to persons required to receive such certificate in accordance with section 421.24(b)(2)(ii) of this Title if such persons have had an adoptive home study made in accordance with Part 421 of this Title and such persons have been approved to adopt a handicapped or hard-to-place child.
- (e) When a home study has been completed and an authorized agency intends to certify or approve the home, the agency shall:
  - (1) arrange for the foster parents to review the written report of the home study, exclusive of any statement by or based on material provided by references, with the agency's homefinder;
  - (2) give foster parents the opportunity to enter their reaction to the evaluation as an addendum to the report; and
  - (3) arrange for the foster parent and the home finder to sign the evaluation after it has been reviewed and the foster parent addendum has been attached.
- (f) A certificate or letter of approval shall be issued to a certified or approved foster home only after the applicant(s) executes the agreement required by this Part.
- (g) *Maintenance of register and certificate or letter of approval.*
  - (1) Every person who receives, boards or keeps any child under certificate or letter of approval shall keep a record of each child in a register to be provided by the Office of Children and Family Services. Authorized agencies shall provide foster parents with the appropriate forms for maintaining a register of the children placed in the home as required by this Part and section 380 of the Social Services Law.
  - (2) The register and certificate or letter of approval shall be accessible for examination at all reasonable times by the authorized agents of the Office of Children and Family Services, of the authorized agency issuing such certificate or letter of ap-

proval, and of any incorporated society for the prevention of cruelty to children. Certificates, letters of approval and registers are the property of the State and not of the person to whom issued, and shall be delivered upon demand to the issuing agency when renewed, discontinued or revoked.

- (h) *Regular and emergency conferences.*
- (1) Authorized agencies shall assure foster parents providing care for a child that regular conferences shall, whenever possible, be prearranged and held at a mutually convenient time in the foster boarding home at least every 90 days or at such shorter periods as may be required pursuant to this Subchapter.
  - (2) Authorized agencies shall arrange for conferences with foster parents regarding acute problems, emergencies or crisis situations whenever necessary to provide services that are responsive to the problems and that protect the best interests of the child.
  - (3) Authorized agencies shall require foster care workers to explain the purpose of each regular or emergency conference to the foster parent at the beginning of each conference; and, in addition, at each regular conference, identify and discuss concerns of the foster family about the child in placement, obtain an account of the child's placement, relationships and functioning in the home, school and community.
- (i) Authorized agencies shall have a written policy and procedure governing decisions to remove a child from a foster family home and also provide each foster parent with a copy of such policy and procedure upon certification or approval and at the time of recertification or reapproval; the provisions shall conform to the requirements of section 431.10 of this Title.
- (j) Authorized agencies shall provide each foster family boarding home with a manual that summarizes all current agency policies and procedures that have some direct or indirect bearing upon the role and responsibility of a foster parent.
- (k) Authorized agencies shall summarize, in the foster family boarding home record, the action taken pursuant to a decision to remove a child from the home or to a request from a foster family to have the child removed.
- (l) Authorized agencies shall inform each foster parent of the procedure for obtaining administrative review of any grievance or complaint about the agency policy or practice.
- (m) Authorized agencies must establish and maintain a written procedure and practice for advising foster parents of their rights:
- (1) to have their application to adopt a child who has been continuously in their care at least 12 months given preference and first consideration over all other applicants as provided by section 383.3 of the Social Services Law;
  - (2) to intervene, as an interested party, in any court proceeding involving the custody of a child who has been in their care for 12 continuous months or longer;
  - (3) to be given notice and an opportunity to be heard at all permanency hearings for any foster child in the care of the foster parent.

- (n) Authorized agencies must comply with the requirements of sections 378 and 398.6(n) of the Social Services Law regarding the number of children in care and with the requirements of section 373 of the Social Services Law with regard to religious faith.
- (o) *Restrictions and limitations.* Authorized agencies shall not:
- (1) permit persons certified or approved to provide care in a foster family boarding home to provide such care for another agency without obtaining the certifying or approving agency's written consent and approval for each child or minor to be boarded. No person shall be certified or approved by more than one authorized agency;
  - (2) permit use of designated emergency homes for any foster care purpose other than designated emergency foster family boarding home care as defined in section 446.2 of this Title or as an approved respite care and services provider as defined in section 435.2(b) of this Title. An exception may be made by an authorized agency when it determines such exception is necessary to board a child, is in the best interests of the child and is consistent with the health, safety and welfare of other children receiving care in the home. A report on the exception must be made within 15 days of the placement by the agency to the appropriate regional office of the Office of Children and Family Services;
  - (3) initiate action to remove a child from a placement because of change in family composition or circumstances following certification or recertification, or approval or reapproval unless there has been an evaluation of the effect of the change upon the child or children and it is determined that such change is detrimental to the best interests of the child or such change would produce a violation of this Part, the agreement required by section 443.3(b) of this Part or of any statutory requirement.
- (p) *Reimbursement.* With the exception of foster family free home care as defined in section 441.2(j) of this Title, certified and approved foster care parents must be reimbursed for each such child to whom they provide foster care according to the standards established in Part 427 of this Title.
- (q) *Foster Homes.*
- (1) Except as provided by this section, no child under the age of 16, in the case of placement by a parent or legal guardian, or under the age of 18, in the case of placement by a public or private authorized agency, shall be placed or received at board for remuneration in a foster home unless such home is certified or approved as provided by the Social Services Law and this Title.
  - (2) A certificate is not required when children are placed or received at board with relatives within the second or third degree, as set forth in section 443.1(i) of this Part, with legally appointed guardians, at schools and academies meeting the requirements of the Education Law as to compulsory education, and at camps operated for profit for the accommodation of school age children during school vacation periods under permits issued by health officers pursuant to Part 7 of the State Sanitary Code. When a child is placed at board with a relative(s) within the second or third degree, the relative's home must be approved by an authorized agency

as required by this Part and a letter indicating such approval must be issued to the approved foster parent(s).

- (3) No child shall be placed in a foster home, either free or at board, until such home has been visited and careful inquiry made by the agency proposing to make such placement, or its representatives, and a written report filed in the foster parent's case record describing the conditions and suitability of the home and compliance with requirements of law, this Title, and the rules of local departments of health and social services.
- (r) *Applications and Forms.*
- (1) Pursuant to title 1 of article 6 of the Social Services Law, certificates shall be on forms provided by the Office of Children and Family Services.
  - (2) Certificates or letters of approval must specify the name and address and the religious faith, if any, of the person to whom issued, and the maximum number of children to be boarded, and the age and sex of the children to be cared for at board; and will be valid only for the residence as occupied at the time of issue. A certificate or letter of approval issued to married individuals living in the same household must be issued in the name of both individuals.
  - (3) Certificates.
    - (i) Application for certificate or letter of approval to board children shall be made to the authorized agency from which children are to be received upon a form prescribed by the Office of Children and Family Services, or upon a substantially equivalent form approved by the Office of Children and Family Services.
    - (ii) The agency shall make a written record of each application.
    - (iii) Such certificate or letter of approval shall be valid for not more than one year after the date of issue but may be renewed or extended pursuant to the requirements contained in this Part.
  - (4) Before any certificate or letter of approval may be issued, careful investigation of the applicant, including inspection of the premises to be occupied, shall be made and a written report filed in the agency to which the application is made. The investigation and report shall cover all of the requirements of this Part.

#### Historical Note

Sec. filed July 7, 1981; ams. filed: April 26, 1984; Nov. 20, 1985; March 13, 1986; May 22, 1987; Jan. 19, 1988; July 5, 1988; Sept. 27, 1988; Oct. 11, 1988; Aug. 30, 1991; March 30, 1999 as emergency measure; April 29, 1999 as emergency measure; July 28, 1999 as emergency measure; Oct. 25, 1999 as emergency measure; Dec. 22, 1999 as emergency measure; Jan. 21, 2000; Aug. 1, 2000 as emergency measure; Aug. 8, 2000 as emergency measure; repealed, new filed: Sept. 27, 2000 as emergency measure; Dec 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure,

expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

#### § 443.4 Supervision.

Supervision of children placed in foster homes shall be maintained by the placing agency or its representative through visits made to the home at least quarterly in the case of children at board, at least semiannually in the case of children in free homes, or at such shorter period as may be required by this Title. A written record of such visits showing dates and findings of visitations shall be kept by the placing agency. Such supervision shall be continued in each case until the child reaches the age of 21 or is adopted or placed under legal guardianship, or married or transferred to the care of another agency or otherwise discharged.

##### Historical Note

Sec. filed July 7, 1981; repealed, new filed: Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

#### § 443.5 Removal from foster family care.

- (a) Whenever a social services official or another authorized agency acting on his or her behalf proposes to remove a child in foster family care from the foster family home, he/she or such other authorized agency, as may be appropriate, must notify the foster family parents of the intention to remove such child. This notice must be in writing.
- (1) Such notification must be given at least 10 days prior to the proposed effective date of the removal, except where the health or safety of the child requires that the child be removed immediately from the foster family home.
  - (2) Such notification must further advise the foster family parents that they may request a conference with the social services official or a designated employee of the social services district at which time the foster parents, with or without a representative, may appear to have the proposed action reviewed, be advised of the reasons therefor and be afforded an opportunity to submit reasons why the child should not be removed.
  - (3) Each social services official must instruct and require any authorized agency acting on the official's behalf to furnish notice in accordance with the provisions of this section.
  - (4) Foster parents who do not object to the removal of the child from their home may waive in writing their right to the 10-day notice, provided, that such waiver shall not be executed prior to the social services official's or authorized agency's deter-

mination to remove the child from the foster home and the receipt by the foster parents of notification of such determination.

- (b) Upon the receipt of a request for such conference, the social services official shall set a time and place for such conference to be held within 10 days of receipt of such request and shall send written notice of such conference to the foster family parents and their representative, if any, and to the authorized agency, if any, at least five days prior to the date of such conference.
- (c) The social services official shall render and issue his or her decision as expeditiously as possible, but not later than five days after the conference. Written notice of this decision must be sent to the foster family parents and their representative, if any, and to the authorized agency, if any. Such decision shall advise the foster family parents of their right to appeal to the Office of Children and Family Services and request a fair hearing in accordance with section 400 of the Social Services Law.
- (d) In the event there is a request for a conference, the child shall not be removed from the foster family home until at least three days after the notice of decision is sent, or prior to the proposed effective date of removal, whichever occurs later.
- (e) In any agreement for foster care between a social services official, or another authorized agency acting on his or her behalf, and foster parents, there shall be contained therein a statement of a foster parent's rights provided under this section.

#### Historical Note

Sec. added by renum. and amd. 431.10, filed March 31, 1987; amds. filed: March 30, 1999 as emergency measure; April 29, 1999 as emergency measure; July 28, 1999 as emergency measure; Oct 25, 1999 as emergency measure; Dec. 22, 1999 as emergency measure; Jan. 21, 2000; Aug. 8, 2000 as emergency measure; repealed, new filed: Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

#### **§ 443.6 Return to foster family care after interruption in care; return to a family boarding home following placement in a foster care institution.**

- (a) Whenever a social services official, or an authorized agency acting on such official's behalf, determines that it is in the best interests of a child to be placed in the foster family home in which the child was last placed, when such child is returning to the foster care system after an interruption in care or returning to a family boarding home following placement in a foster care institution, the local social services district or the authorized agency shall place the child returning to care or returning to a family boarding home with the child's prior foster parent(s).
- (b) When placement is made in compliance with the provisions of this section, the local social services official or the authorized agency shall waive the restrictions on the

number of children who may reside in a foster family home, notwithstanding subdivisions 3 and 4 of section 378 of the Social Services Law and sections 427.2(d) and 443.3 of this Title.

- (c) The following factors must be considered in all determinations as to whether it is in the best interests of the child to place the child with his/her prior foster parent(s) when such child is returning to foster care or returning to a family boarding home following placement in a foster care institution:
- (1) certification/approval status of the prior foster parent(s);
  - (2) length of time in placement with prior foster parent(s) and quality of relationship that developed during the placement;
  - (3) length of time since placement with the prior foster parent(s);
  - (4) basis for the child's discharge from placement with the prior foster parent(s);
  - (5) willingness of prior foster parent(s) to accept returning child;
  - (6) willingness of child to return to prior foster parent(s);
  - (7) availability of space in the foster home;
  - (8) ability of prior foster parent(s) to care for returning child;
  - (9) proximity to prospective adoptive parents, if return to care was caused by temporary disruption of adoptive placement;
  - (10) proximity to siblings in care, if applicable; and
  - (11) compliance with standards for appropriateness of placement and compliance with other applicable Office of Children and Family Services regulations.
- (d) In the event a child returning to the foster care system has been placed with foster parent(s) other than the prior foster parent(s), the following factors must also be considered in the social services official's or agency's determination of the best interests of the child:
- (1) how well the child is faring in the new placement; and
  - (2) the impact of removal of the child from the new foster parents and return to the foster parents with whom he/she was last placed.
- (e) The local social services district or the authorized agency receiving the child for care or which is placing the child following placement in a foster care institution shall document the basis for determinations which result in placement of the child in a new foster family home, rather than with his/her prior foster parents, in the first assessment summary on the uniform case record after the child is placed in accordance with Part 428 of this Title.
- (f) The local social services official or any authorized agency acting on such official's behalf shall institute a supervisory review process to ensure that all cases in which children are returning to care or are returning to a family boarding home following placement in a foster care institution are properly assessed for a determination as to whether it would be in the best interests of the child to be placed with his/her prior foster parent(s).

**Historical Note**

Sec. added by renum. 431.11, filed March 31, 1987; repealed, new filed: Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

**§ 443.7 Agency procedures for certifying or approving potential emergency foster homes and emergency relative foster homes.**

- (a) A potential foster home or the home of a relative of a foster child may be certified or approved as an emergency foster home under the following circumstances:
  - (1) a child is removed from his or her own home pursuant to section 1021, 1022 or 1024 of the Family Court Act or a child is remanded to foster care pursuant to article 10 of the Family Court Act; and
  - (2) an eligible relative or non relative, identified in subdivisions (g) and (h) of section 443.1 of this Part, is acknowledged by the child's parent(s) or stepparent(s), the court, a representative of the local district or other interested party, as potentially appropriate to provide foster care to the child or such person or relative volunteers to provide foster care to the child. For the purposes of this section, an *eligible non-relative* may include, but is not limited to, a child's godparent, neighbor or family friend.
- (b) Before placing a foster child with a potential caretaker or eligible relative on an emergency basis the authorized agency must:
  - (1) secure a signed and dated statement from the potential caretaker or eligible relative indicating the exact relationship to the child and the child's parent(s), that the potential caretaker or eligible relative is willing to provide foster care for the child and an assurance that the potential caretaker or eligible relative understands that the child is in the legal custody of the commissioner of social services and that by accepting responsibility for providing foster care for the child, potential caretaker or eligible relative agrees to comply with foster care requirements, including, but not limited to those involving the role and authority of the certifying or approving authorized agency and the social services district with legal custody of the child to supervise the placement.
  - (2) perform a home study of the potential caretaker's or eligible relative's home and family on an expedited basis which assesses the potential caretaker's or eligible relative's home to ensure that there is no apparent risk to the health and safety of the child;
  - (3) perform a home study of the potential caretaker's or eligible relative's home and family on an expedited basis which assesses the potential caretaker's or eligible relative's family, focusing on the following factors:

- (i) the family's relationship with the child and the child's parent(s) or stepparent(s);
  - (ii) the care provided to other children in the home by the potential caretaker or eligible relative;
  - (iii) the potential caretaker's or eligible relative's knowledge of the circumstances and conditions that led to the need for the child's foster care placement;
  - (iv) the past role of the potential caretaker or eligible relative in helping and/or protecting the child from and/or preventing occurrences of abuse or maltreatment of the child; and
  - (v) the present ability of the potential caretaker or eligible relative to protect the child placed in its home from abuse or maltreatment and the potential caretaker's or eligible relative's ability to understand the need to protect the child from abuse or maltreatment;
- (4) explain to the potential caretaker or eligible relative the agency's role and authority to supervise the placement;
  - (5) obtain information necessary to contact character references pursuant to this Part; and
  - (6) review agency records to determine whether or not the potential caretaker(s) or eligible relative(s) have a prior history of abuse or maltreatment.
- (c) If the home is found suitable after the requirements of subdivision (b) of this section have been completed, it will be certified or approved as an emergency foster home or an emergency relative foster home for 90 days from the date of placement of the child in the home.
  - (d) The potential caretaker or eligible relative must execute an agreement with the authorized agency within seven days of placement that provides that the potential caretaker or eligible relative will comply with provisions of this Part.
  - (e) Within seven days of placement, the authorized agency must obtain a completed State Central Register Clearance form, and submit such form to the Office of Children and Family Services pursuant to section 422-a of the Social Services Law and section 443.2(b)(8).
  - (f) On the date of the foster child's placement in the certified or approved emergency foster home or within one business day thereof, the authorized agency must provide a sufficient number of blank fingerprint cards for the foster parent(s) and each person over the age of 18 currently residing in such home and a description of how the completed fingerprint cards will be used upon submission to the authorized agency by the foster parent(s). The foster parent(s) must submit the completed fingerprint cards to the authorized agency no later than two weeks following the receipt of such cards.
  - (g) Emergency foster homes and emergency relative foster homes certified or approved on an expedited emergency basis for 90 days, may continue to provide foster care beyond the 90th day of placement if they are finally certified or approved on or before the end of the 90th day or if the provisions of subdivision (h) of this section apply. For an

emergency foster home to receive final certification or approval, all requirements for certification or approval as a foster home as set forth in this Part must be met within 90 days from the date of placement.

- (h) *Continued placement.*
- (1) An emergency foster home certified or approved on an expedited emergency basis for 90 days in accordance with this section may continue to provide foster care beyond the 90th day of certification or approval as an emergency foster home when the foster parent has otherwise satisfied all of the requirements for final certification or approval as a certified or approved foster home except for the completion of the criminal history record check process in accordance with section 443.8 of this Part.
  - (2) Such certified emergency certified foster parent or approved emergency relative foster parent may continue to provide foster care until the completion of the criminal history record check process as set forth in section 443.8 of this Part or unless the certification or approval is otherwise revoked by the authorized agency for cause in accordance with this Part.
  - (3) Upon receipt of the result(s) of the criminal history record check(s) from the Office of Children and Family Services, the authorized agency must make a decision whether to finally certify or approve such emergency foster parent within 60 days of the receipt of such results. If once the criminal history record check process is completed, and the authorized agency determines that the home should continue to be certified or approved, a final certification or approval must be issued for the home.
- (i) *Failure to meet the requirements for certification or approval of the foster home.* Except as set forth in this section, if the emergency foster parent(s) or the relative foster parent(s) fails to meet all requirements for approval pursuant to this Part within 90 days from the date of placement, the authorized agency must:
- (1) provide notice to the foster parents or relative foster parent(s) within the first 90 days of placement if such requirement(s) for certification or approval as a foster home have not been or cannot be met. Such notice must be provided no later than 20 days prior to the expiration date of the emergency certification or approval and must identify the particular problem(s) that constitute a barrier to certification or approval as a foster home;
  - (2) revoke a foster parent(s) or a relative foster parent(s) certification or approval pursuant to section 443.12 of this Part if all requirements for approval are not met within the first 90 days from the date of placement;
  - (3) upon revocation of an approval or certification, remove the child from the home of the relative or foster parent, place such child in a suitable certified foster home or an approved relative foster home, and inform the relative of the right to request a hearing in accordance with the provisions of section 400 of the Social Services Law; and

- (4) remove the child from the home of the foster parent or relative pursuant to section 400 of the Social Services Law and section 443.5 of this Part when health and safety risks to the child warrant such removal and place the child in a suitable certified foster home or an approved relative foster home. At the time the child is removed from the home, the relative or caretaker foster parent must be informed of the right to request a fair hearing in accordance with the provisions of section 400 of the Social Services Law.

#### Historical Note

Sec. filed Oct. 11, 1998: amds. filed: March 30, 1999 as emergency measure; April 29, 1999 as emergency measure; July 28, 1999 as emergency measure; Oct. 25, 1999 as emergency measure; Dec. 22, 1999 as emergency measure; Jan. 21, 2000 repealed, new filed: Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

#### § 443.8 Criminal history record check.

- (a) An authorized agency must perform a criminal history record check with the Division of Criminal Justice Services regarding any prospective foster parent and each person over the age of 18 who is currently residing in the home of such prospective foster parent before the foster parent is finally approved or certified for the placement of a foster child.
- (b) At the time a foster parent applies for renewal of his or her approval or certification, an authorized agency must perform a criminal record history record check with the Division of Criminal Justice Services in accordance with subdivision (d) of this section regarding each person over the age of 18 who is currently residing in the home of such foster parent who has not previously had such a criminal history record check completed.
- (c) The provisions of this section also apply to persons who were certified or approved as foster parents on or before February 11, 1999.
- (d) *Fingerprinting.*
  - (1) The authorized agency must obtain a set of the prospective or existing foster parent's fingerprints and those of each person over the age of 18 who currently resides in the home of such prospective or existing foster parent, and such other information as is required by the Office of Children and Family Services and the Division of Criminal Justice Services.
  - (2) The authorized agency must provide to the applicant sufficient blank fingerprint cards and a description of how the completed fingerprint cards will be used upon submission to the authorized agency.

- (3) The authorized agency or its designee must promptly transmit such fingerprint cards to the Office of Children and Family Services.
  - (4) The Office of Children and Family Services will promptly submit the fingerprint cards to the Division of Criminal Justice Services for its full search and retain processing along with the fee imposed by the Division of Criminal Justice Services.
  - (5) No part of the fee imposed for the processing of the fingerprints with the Division of Criminal Justice Services will be charged to the prospective or existing foster parent or any person over the age of 18 who currently resides in the home of such prospective or existing foster parent who submitted a fingerprint card pursuant to this subdivision.
  - (6) The Division of Criminal Justice Services will promptly provide the Office of Children and Family Services with a criminal history record, if any, on such person.
  - (7) The Office of Children and Family Services will review the criminal history record information and promptly provide the authorized agency with a summary of the criminal history record and notify the authorized agency of the actions that it must or may take regarding the person as set forth in subdivision (e) of this section.
- (e)
- (1) Except as authorized herein and as set forth in this section, the authorized agency must deny an application for certification or approval as a certified or approved foster parent or deny an application for renewal of the certification or approval of an existing foster parent or revoke the certification or approval of an existing foster parent when a criminal history record of the prospective or existing foster parent reveals a conviction for:
    - (i) a felony conviction at any time involving:
      - (a) child abuse or neglect;
      - (b) spousal abuse;
      - (c) a crime against a child, including child pornography; or
      - (d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; unless the applicant for approval or certification as a foster parent or the certified or approved foster parent demonstrates that:
        - (1) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and
        - (2) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child; or
    - (ii) a felony conviction within the past five years for physical assault, battery, or a drug-related offense; unless the applicant for certification or approval as a foster parent or the certified or approved foster parent demonstrates that:

- (a) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and
    - (b) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child.
  - (2) The authorized agency must hold the final determination of an application for certification or approval of a prospective or existing foster parent in abeyance whenever the criminal history record of the prospective or existing foster parent reveals:
    - (i) a charge for a crime set forth in paragraph (1) of this subdivision which has not been finally resolved; or
    - (ii) a felony conviction that may be for a crime set forth in paragraph (1) of this subdivision. An authorized agency may proceed with a determination of such application, in a manner consistent with this subdivision, only upon receiving subsequent notification from the Office of Children and Family Services regarding the status of such charge or the nature of such conviction.
  - (3) The authorized agency may deny an application for certification or approval of a prospective foster parent or deny the renewal or reapproval of an existing certification or approval of an existing foster parent, consistent with the provisions of article 23-A of the Correction Law, when:
    - (i) a criminal history record of the prospective or existing foster parent reveals a charge or a conviction of a crime other than one set forth in paragraph (1) of this subdivision; or
    - (ii) a criminal history record of any other person over the age of 18 who resides in the home of the prospective or existing foster parent reveals a charge or a conviction of any crime.
- (f) When an authorized agency denies an application or revokes a certificate or approval pursuant to this section, the authorized agency must provide to the applicant or existing foster parent a written statement setting forth the reasons for such denial or revocation, including the summary of the criminal history record provided by the Office of Children and Family Services in accordance with subdivision (c) of this section. The authorized agency must also provide a description of the Division of Criminal Justice Services' record review process and any remedial processes provided by the Office of Children and Family Services to any prospective foster parent. If the applicant is disqualified under clause (e)(1)(i)(B) of this section for a felony conviction of spousal abuse, then the applicant may apply to the Office of Children and Family Services for an administrative hearing in accordance with section 22 of the Social Services Law for relief from the mandatory disqualification based on the grounds that the offense was not spousal abuse as that term is defined in subdivision (i) of this section.
- (g)
  - (1) When a criminal history record of the foster parent or of any other person over the age of 18 who resides in the home of such foster parent reveals a charge or conviction

tion of any crime, the authorized agency must perform a safety assessment of the conditions in the household. Such assessment must include:

- (i) whether the subject of the charge or conviction resides in the household;
  - (ii) the extent to which such person may have contact with foster children or other children residing in the household; and
  - (iii) the status, date and nature of the criminal charge or conviction.
- (2) The authorized agency thereafter must take all appropriate steps to protect the health and safety of such child or children, including, when appropriate, the removal of any foster child or children from the home. The authorized agency must document the safety assessment and the steps and actions taken by the authorized agency to protect the health and safety of the child.
- (3) Where the authorized agency denies the application or revokes the certification or approval of the foster parent in accordance with the standards set forth in this section, such authorized agency must remove any foster child or children from the home of the foster parent.
- (h) *Confidentiality.*
- (1) Any criminal history record information provided by the Division of Criminal Justice Services, and any summary of the criminal history record provided by the Office of Children and Family Services to an authorized agency pursuant to this section, is confidential and is not available for public inspection.
  - (2) Nothing in this subsection prevents an authorized agency, the Office of Children and Family Services or other State agency referenced in paragraph (a) of subdivision two of section 378-a of the Social Services Law from disclosing criminal history information to any administrative or judicial proceeding relating to the denial or revocation of a foster parent's certification or approval or the foster child's removal from the home.
  - (3) Where there is a pending court case, the authorized agency which received the criminal history record summary from the Office of Children and Family Services must provide a copy of such summary to the Family Court or Surrogate's Court.
- (i) For the purposes of this section *spousal abuse* is an offense defined in section 120.05 or 120.10 of the Penal Law where the victim of such offense was the defendant's spouse; provided, however, spousal abuse does not include a crime in which the prospective or existing foster parent, who was the defendant, has received notice pursuant to this section and the Office of Children and Family Services finds after an administrative hearing held pursuant to section 22 of the Social Services Law, that he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the prospective or existing foster parent to commit such offense.
- (j) The authorized agency must inform the Office of Children and Family Services either through the child care review service, CONNECTIONS or any other means so specified by the Office of Children and Family Services when a person is no longer certified or approved as a foster parent.

- (k)
- (1) If an authorized agency is informed by the Office of Children and Family Services that a foster parent has a conviction for a crime set forth in paragraph (1) of subdivision (e) of this section, the authorized agency must provide the foster parent during the safety assessment conducted in accordance with subdivision (g) of this section with written notice of the standards and process relating to an exception to the presumptive disqualification of the foster parent as set forth in paragraph (1) of subdivision (e) of this section. Where an authorized agency is informed by the Office of Children and Family Services that an applicant or a certified or approved foster parent had an open charge for a presumptive disqualifying crime and thereafter is informed by the Office of Children and Family Services that such person was convicted of a presumptive disqualifying crime and thereafter is informed by the Office of Children and Family Services that such person was convicted of a presumptive disqualifying crime, within seven days being so informed, the authorized agency must provide the applicant or the certified or approved foster parent with written notice of the standards and process relating to an exception to the presumptive disqualification of such person as set forth in paragraph (1) of subdivision (e) of this section.
  - (2) When an authorized agency proposes to remove a foster child from the home of a certified or approved foster parent because of a conviction for a crime set forth in paragraph (1) of subdivision (e) of this section, such authorized agency must provide the certified or approved foster parent with the notice referenced in paragraph (1) of this subdivision prior to or concurrent with any notice of the right to the conference with the authorized agency as required by section 443.5 of this Part. Prior to or at such conference held in accordance with section 443.5 of this Part, the certified or approved foster parent must be afforded an opportunity to demonstrate why his or her certification or approval should not be denied or revoked based on the standards set forth in paragraph (1) of subdivision (e) of this section.

#### Historical Note

Sec. filed: March 30, 1999 as emergency measure; April 29, 1999 as emergency measure; July 28, 1999 as emergency measure; Oct. 25, 1999 as emergency measure; Dec. 22, 1999 as emergency measure; Jan. 21, 2000; amd. filed Aug. 8, 2000 as emergency measure; repealed, new filed: Sept. 27, 2000; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

**§ 443.9 Concurrent certification/approval of foster parent and approval of adoptive parent**

- (a) At the time of application for certification or approval as a foster parent pursuant to this Part, an applicant is authorized, but not required, to also apply for approval as an adoptive parent as set forth in Part 421 of this Title. Nothing herein may be deemed to require an individual to apply for concurrent certification/approval.
- (b) Except as set forth in subdivision (c) of this section, the standards for studying an individual for approval as an adoptive parent are the same as those for the certification or approval of a foster parent as set forth in this Part. An applicant for concurrent foster home certification/approval and adoptive parent approval will not be required to submit dual documentation to the authorized agency.
- (c) In addition to the standards referenced in subdivision (b) of this section, the authorized agency must apply the marital standards as set forth in section 421.16(d) of this Title.
- (d) When an adoption study has been completed and an authorized agency intends to approve an applicant, it must:
  - (1) prepare a written summary of the study findings and activities, including:
    - (i) significant characteristics of their family members;
    - (ii) the family interaction;
    - (iii) the family's relationship to other persons and the community;
    - (iv) the family's child rearing practices and experiences; and
    - (v) any other material needed to describe the family for adoption purposes;
  - (2) make such written summary available to workers in the agency or other agencies responsible for making placement decisions about children;
  - (3) arrange for the applicant(s) to review this written summary with the exception of any comments by references which have sought confidentiality;
  - (4) give applicant(s) the opportunity to enter their reaction as an addendum to the written summary;
  - (5) arrange for the applicant(s) and the caseworker to sign the summary after it has been reviewed and any addendum has been attached; and
  - (6) provide a dated written notice of approval to applicant.
- (e) When the authorized agency discontinues the adoption home study process by mutual consent:
  - (1) the applicant's record must reflect the discussion leading to such mutual agreement to discontinue; and
  - (2) the applicant must be informed in writing of the discontinuation of the adoption study.
- (f) An authorized agency may reject an applicant during the adoption study process if the applicant does not permit the study to be carried out.

- (g) An authorized agency may reject an applicant if it is determined after a thorough adoption study based on casework principles that the applicant is:
  - (1) physically incapable of caring for an adopted child;
  - (2) emotionally incapable of caring for an adopted child; or
  - (3) that the applicant's approval would not be in the best interests of the children awaiting adoptions.
- (h) A decision to reject an applicant must be made by at least two staff members in conference, one of whom shall be at a supervisory level.
- (i) The record must reflect the names of the participants in the decision and the reason for the decision.
- (j) The agency must inform the applicant in writing that he has not been accepted, stating its reason(s) for rejection. If the rejection is based in whole or in part on the existence of an indicated report of child abuse or maltreatment, that fact and the reasons therefore must be included in the notice.
- (k) The notification must offer the applicant the opportunity to discuss this decision in person with the worker's supervisor.
- (l) The notification must inform the applicant that he or she may apply for a hearing before the Office of Children and Family Services pursuant to section 372-e of the Social Services Law regarding the rejection of the application and must state the procedure to be used for this purpose.
- (m) If the reason for the rejection is based in whole or in part on the existence of an indicated report of child abuse or maltreatment, the agency must comply with the provisions of section 421.16(o) of this Part pertaining to notice of right to a hearing pursuant to section 424-a of the Social Services Law.
- (n) At the conclusion of the adoption study process, the registering agency must update the adoptive parent registry required by section 424.3(a) of this Title, either by noting that an applicant has had the study approved or, in the case of a study resulting in either discontinuation or rejection, removing the applicant from the registry.
- (o) The standards set forth in section 421.18 of this Title relating to the finding of a child and provisions for adoptive placements apply to individuals approved as adoptive parents in accordance with this section.
- (p) If an authorized agency determines that an applicant has not satisfied the standards for approval or certification as a foster parent or approval as an adoptive parent or both, the authorized agency must apply the applicable standards for the denial of an application for approval or certification as a foster parent, as set forth in section 443.3(c) of this Part, and/or the standards for the denial of an application for approval as an adoptive parent, as set forth in subdivisions (f) and (g) of this section.

#### Historical Note

Sec. filed: March 30, 1999 as emergency measure; April 29, 1999 as emergency measure; July 28, 1999 as emergency measure; Oct. 25, 1999 as emergency measure; Dec. 22,

1999 as emergency measure; Jan. 21, 2000; repealed, new filed: Sept. 27, 2000; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

**§ 443.10 Annual renewal of certified and approved foster homes; reopenings and changes in certified and approved foster homes.**

- (a) Agency practice and procedure for annual renewal of a foster home's certificate or letter of approval must include the following:
- (1) a written evaluation of the home and family that uses the criteria for certification or approval as specified in this Part;
  - (2) a written evaluation of the care provided children in the home and the working relationship of the foster parents or relatives with the agency;
  - (3) a written statement from a physician about the foster family's or relative family's health, if it has been two years since the date of the last medical exam, conforming to the standards set forth in this Part;
  - (4) an oral review of the evaluation with the foster parent or relative foster parent before the certificate or approval is renewed; and
  - (5) the completion of a criminal history record check(s), in accordance with section 443.8 of this Title, of the foster parent and each person over the age of 18 who is currently residing in the foster home, where such foster parent, relative foster parent or any other person residing in such home had not previously had a criminal history record check completed.
- (b) Agency practice and procedure for reopening a foster home includes:
- (1) the completion of a new application, including a clearance through the Statewide Central Register of Child Abuse and Maltreatment as required in this Part;
  - (2) the completion of a criminal history record check(s) in accordance with section 443.8 of this Title;
  - (3) an update of the home study which must include a written evaluation of the home that uses the criteria for certification or approval as specified in this Part;
  - (4) a physician(s) written statement concerning the foster family's health or the relative's family health conforming to the standards set forth in this Part, or a physician's report of a medical exam that was completed within the past year; and
  - (5) an oral review of the evaluation with the foster parent before a new certificate or approval is issued.
- (c) Agency practice and procedure when an adult spouse of a foster parent comes into the home and applies for certification or approval include:

- (1) completion of a new application for certification or approval, including a clearance through the Statewide Central Register of Child Abuse and Maltreatment as required by this Part;
  - (2) completion of a criminal history record check(s) in accordance with section 443.8 of this Part;
  - (3) completion of a medical exam for the applicant as required by this Part; and
  - (4) an update of the home study.
- (d) When a foster parent timely submits all documents necessary for renewal, the existing certificate or letter of approval to board will not expire and will remain in effect until the application has been finally determined by the authorized agency unless the certification or approval to board is otherwise revoked by the authorized agency for cause in accordance with this Part.

#### Historical Note

Sec. filed: Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

#### § 443.11 Nonrenewal or revocation of a certificate or letter of approval.

- (a) Agency practice and procedure for nonrenewal or revocation of a foster home's certificate or approval, or for involuntary decertification must include:
  - (1) Advising the foster parents before the expiration date of the certificate or letter of approval that the agency does not plan to renew the certificate or approval.
  - (2) Nonrenewal or revocation of a certified or approved foster parent may be based upon such factors as failure to meet one or more of the criteria for certification or approval set forth in this Part or upon lack of need for a foster home with its particular characteristics.
  - (3) The reasons for nonrenewal or revocation must be specified in a letter postmarked at least 20 days before the expiration date or the decertification date of the certificate or approval.
- (b) Arranging for the foster parent or relative foster parent to meet with an official of the agency to review the decision and the reasons for the agency decision.
- (c) When there is a failure to meet one or more of the criteria required for approval but it is determined that continuity of the family relationships and ongoing care of the child in the relative's home is in the child's best interests and is not inconsistent with the health, safety and welfare of the child, an exception may be made in the same manner and upon

the same conditions as for an initial approval as specified in section 443.3(b)(16) of this Part.

**Historical Note**

Sec. filed: Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

**§ 443.12 Approval of certified or approved foster homes as providers of respite care and services.**

Certified or approved foster homes may be approved as respite care and services providers pursuant to the provisions of Part 435 of this Title.

**Historical Note**

Sec. Filed: Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002.

**§ 444 is repealed.**

**PART 446**  
**DESIGNATED EMERGENCY**  
**FOSTER FAMILY BOARDING HOME CARE**

(Statutory authority: Social Services Law, §§ 20, 34, 378[5], 395;  
L. 1997, ch. 436; L. 2000, ch. 145)

Sec.

- 446.1 Scope
- 446.2 Definition
- 446.3 Establishing a designated emergency foster family boarding home
- 446.4 Reimbursement for designated emergency foster family boarding home care
- 446.5 Mandated training for foster parents providing care in designated emergency foster family boarding homes
- 446.6 Intake for designated emergency foster family boarding homes
- 446.7 Services for children in designated emergency foster family boarding home care

**Historical Note**

Part (§§ 446.1-446.31) added by renum. Part 475, filed April 26, 1978; repealed, filed Nov. 20, 1985; new (§§ 446.1-446.7) filed July 5, 1988 eff. July 26, 1988.

**§ 446.1 Scope.**

This Part adds standards for the establishment and operation of designated emergency foster family boarding homes. Such homes would be exclusively designated to provide temporary care to children who enter foster care in a crisis situation which is expected to be resolved within 60 days. The regulations contain provisions concerning eligibility for designated emergency foster family boarding home care, reimbursement for designated emergency foster family boarding home care, the required training of foster parents who provide designated emergency foster care services and the services to be provided to children receiving care in designated emergency foster family boarding homes.

**Historical Note**

Sec. added by renum. 475.1, filed April 26, 1978; repealed, filed Nov. 20, 1985; new filed July 5, 1988 eff. July 26, 1988.

**§ 446.2 Definition.**

*Designated emergency foster family boarding home care* means care provided in a home certified pursuant to Part 443 of this Title and designated by an authorized agency exclusively for emergency use by children determined eligible under section 446.6(d) of this Part.

The purpose of such designation is to provide temporary care and services to children who enter foster care in a crisis situation which is expected to be resolved within 60 days so that the children can be reunited with their family. A designated emergency foster family boarding home may also be approved as an approved respite care and services provider as defined in section 435.2(b) of this Title.

#### Historical Note

Sec. added by renum. 475.2, filed April 26, 1978; repealed, filed Nov. 20, 1985; new filed July 5, 1988; amd. filed Aug. 30, 1991 eff. Sept. 18, 1991.

### § 446.3 Establishing a designated emergency foster family boarding home.

- (a) A designated emergency foster family boarding home may be established directly by a public authorized agency as defined in section 441.2(c) of this Title or by a voluntary authorized agency, as defined in section 441.2(d) of this Title, through a purchase of service contract with a public authorized agency. A designated emergency foster family boarding home must be certified or approved pursuant to Part 443 of this Title and must be designated exclusively for emergency use by either a public or private authorized agency, provided, however, that a designated emergency foster family boarding home may also be approved and used as a respite care and services provider pursuant to Part 435 of this Title.
- (b) In order for a foster home to be designated exclusively for emergency use, the foster parent must agree to participate in the foster parent training described in section 446.5 of this Part.
- (c) Except as otherwise permitted by paragraph (1) of this subdivision, a designated emergency foster family boarding home must be used exclusively to service children entering foster care on an emergency basis.
  - (1) Pursuant to section 443.3(o)(2) of this Title, an authorized agency may use a designated emergency foster family boarding home for any foster care purpose other than emergency care of children or an approved respite care and services provider when the agency determines such use is necessary in order to place a child, is in the best interests of the child, and is consistent with the health, safety and welfare of other children receiving care in the home. A report on the use of the designated emergency foster family boarding home for other than emergency foster care placements or respite care and services must be made to the appropriate regional office of the Office of Children and Family Services within 15 days of the placement by the agency making the placement.
  - (2) If a child cannot be returned home within 60 days as planned, the emergency foster family home may continue to serve the child as a non-emergency foster family home at a rate not to exceed 100 percent of the maximum State aid rate.
- (d) An authorized agency which supervises a designated emergency foster family boarding home must comply with all applicable requirements of Parts 441 and 443 of this Title.

When such home is utilized as an approved respite care and services provider, the agency must also comply with all applicable requirements of Part 435 of this Title.

#### Historical Note

Sec. added by renum. 475.3, filed April 26, 1978; repealed, filed Nov. 20, 1985; new filed July 5, 1988; amds. filed: Aug. 30, 1991; Sept. 27, 2000 as emergency measure; Dec. 26, 2000 as emergency measure; March 26, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure eff. Sept. 23, 2002. Amended (c)(1)-(2), (d).

#### § 446.4 Reimbursement for designated emergency foster family boarding home care.

- (a) The department will reimburse a public authorized agency for payments made to foster family parents who provide care in designated emergency homes at a rate which will not exceed 200 percent of the maximum State aid rate for children receiving nonemergency foster care services in that district for the first 60 days of a child's placement in a designated emergency foster family boarding home. After 60 days, if the designated emergency foster family home continues to provide care to the child because the child cannot be returned home, the department will reimburse a public authorized agency at the standard State aid rate for children receiving nonemergency foster care services in that district or at the special or exceptional rate for children who qualify for such rates in accordance with the provisions of Part 427 of this Title.
- (b) Reimbursement by the department will be available to a public authorized agency for beds which have been reserved in designated emergency foster family boarding homes in accordance with the provisions of section 609.5(d) of this Title.
- (c) Private authorized agencies which have established designated emergency foster care homes will be reimbursed in accordance with the terms of the purchase of service agreement which has been entered into with a social services district.

#### Historical Note

Sec. added by renum. 475.4, filed April 26, 1978; repealed, filed Nov. 20 1985; new filed July 5, 1988; amd. filed May 18, 1993 eff. June 2, 1993. Amended (b).

#### § 446.5 Mandated training for foster parents providing care in designated emergency foster family boarding homes.

Authorized agencies supervising designated emergency foster family boarding homes must provide foster parents in such homes with training. The training must cover the areas of child development, child discipline, communication, and family systems and must provide emergency foster parents with basic crisis intervention and assessment skills. The training must be provided as follows:

- (a) fifteen hours of training within four months after the foster home is designated exclusively for emergency use; and
- (b) a minimum of six hours of yearly follow-up training which expands upon the areas covered during the initial training.

**Historical Note**

Sec. added by renum. 475.5, filed April 26, 1978; repealed, filed Nov. 20, 1985; new filed July 5, 1988 eff. July 26, 1988.

**§ 446.6 Intake for designated emergency foster family boarding homes.**

- (a) A designated emergency foster family boarding home supervised by a public authorized agency must be available to accept eligible children 24 hours a day, 365 days a year. However, upon written notice by the foster parents to the supervising agency, and if agreed to in writing by such agency and upon good cause shown, an exception to continuous operation of an emergency foster home may be granted if the foster parents intend to be temporarily absent from the home or temporarily unable to accept children for placement in the home.
- (b) A voluntary authorized agency supervising one or more designated emergency foster family boarding homes must have 24-hour-a-day, 365-day-a-year intake capacity or, in the alternative, have the capacity to place eligible children immediately in designated emergency foster family boarding homes when such children are referred to the agency by a social services district after the district's normal business hours. The purchase of service agreement between the local social services district and an authorized agency which provides emergency foster care services after the district's normal business hours must specify the hours during which referrals may be made to the agency for emergency placement of children.
- (c) A voluntary authorized agency supervising a designated emergency foster family boarding home must accept any child who is eligible under subdivision (d) of this section for emergency placements, whenever such a child is referred by a social services district to the agency pursuant to a purchase of service agreement.
- (d) In order for a child to be eligible for designated emergency foster family boarding home placement, a child must be at immediate risk of harm or present an immediate risk of harm to others or himself/herself if not immediately placed into foster care, and the reasons for the placement must meet the necessity of placement standards contained in section 430.10(c) of this Title. In addition, the initial assessment at the time of placement must indicate that the crisis situation which requires the placement of the child in a designated emergency foster family boarding home is expected to be resolved within 60 days.

**Historical Note**

Sec. added by renum. 475.6, filed April 26, 1978; repealed, filed Nov. 20, 1985; new filed July 5, 1988 eff. July 26, 1988.

**§ 446.7 Services for children in designated emergency foster family boarding home care.****(a) Case planning.**

- (1) Case planning, as required by Part 428 of this Title, must be provided for all children who enter care in designated emergency foster family boarding homes. Such planning may be provided by a local district or, through a purchase of service contract, by a voluntary authorized agency supervising a designated emergency foster family boarding home. Case planning must include providing or arranging for, and coordinating and evaluating those services needed by a child and his/her family to help a child in the designated emergency foster family boarding home to return to his/her family.
- (2) Casework contacts between the case planner and the child and between the case planner and the child's parents or guardians must meet the requirements of section 423.4(h) and section 441.21(a)-(c) of this Title.
- (3) The purchase of service contract between a voluntary authorized agency providing designated emergency foster family boarding home care and a social services district must delineate case planning responsibilities, including provisions concerning who has the responsibility for providing or arranging for mandated preventive services during placement and as follow-up services and who has responsibility for timely completion of the family assessment and service plan and other requirements of Part 428 of this Title.

**(b) Provision of mandated preventive services.** Preventive services must be provided to children placed in designated emergency foster family boarding homes because of a crisis situation which is expected to be resolved within 60 days. Such services must include the services identified in section 423.2(b) of this Title which are aimed at reuniting the child receiving care in a designated emergency foster family boarding home with his or her family.**(c) Provision of mandated preventive services as follow-up service.** Preventive services must be provided as a follow-up service for six months, including the time the child was in designated emergency foster family boarding home care, for a child who returns home within 60 days after entering designated emergency foster family boarding home care. These services must include the aftercare requirements identified in section 423.4(h) of this Title.**Historical Note**

Sec. added by renum. 475.7, filed April 26, 1978; repealed, filed Nov. 20, 1985; new filed July 5, 1988 eff. July 26, 1988.

**§ 446.8**

**Historical Note**

Secs. added by renum. 475.8-475.31, filed April 26, 1978; repealed, filed Nov. 20, 1985  
eff. Nov. 20, 1985.





**New York State  
Office of  
Children & Family  
Services**

Capital View Office Park  
52 Washington Street  
Rensselaer, NY 12144-2796

Visit our website at:  
**[www.ocfs.state.ny.us](http://www.ocfs.state.ny.us)**

For child care, foster care and  
adoption information, call:  
**1-800-345-KIDS**

To report child abuse and  
neglect, call:  
**1-800-342-3720**

For information on the  
Abandoned Infant Protection  
Act, call:  
**1-866-505-SAFE**

For information about services  
for the blind, call:  
**1-866-871-3000**  
**1-866-871-6000 TDD**

**State of New York**  
George E. Pataki, Governor



**Office of Children & Family Services**  
John A. Johnson, Commissioner

Pursuant to the Americans with Disabilities Act, the New York State  
Office of Children and Family Services will make this material available in  
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