

+-----+
| LOCAL COMMISSIONERS MEMORANDUM |
+-----+

DSS-4037EL (Rev. 9/89)

Transmittal No: 93 LCM-157

Date: November 5, 1993

Division: Services and
Community
Development

TO: Local District Commissioners

SUBJECT: Trial Discharges of Children from Foster Care

ATTACHMENTS: None

Several months ago we issued 93 LCM-94, in which the Department's position pertaining to transfer of legal custody of children to the commissioner of a social services district in Article 10 cases was outlined. Specifically, the memorandum described why we believe that it is legally inappropriate for the commissioner of a social services district to be given custody of an abused or neglected child and have that child remain in the physical custody of the parent(s). We have received questions as to whether the memorandum was also intended to address the circumstance of a child being placed in foster care and subsequently being discharged to the physical custody of the parent(s), while remaining in the legal custody of the commissioner. 93 LCM-94 was not intended to address this issue. However, we will use this opportunity to outline our general position on what is commonly referred to as "trial discharges" in this release.

Historically, the Department has recognized that trial discharge is an appropriate program option in certain circumstances. Indeed, Section 430.12(f)(4) of Department regulations requires that children discharged or deemed to be discharged to independent living remain in trial discharge for at least six months. (However, the purpose of this requirement was to ensure that a young adult previously residing in foster care, who was without a place to reside, could fall back on the foster care system to avert homelessness). Additionally, Section 628.3(a)(4)(vii) of Department regulations pertaining to standards for foster care payments allows for reimbursement to authorized agencies for up to seven days for a child returned home for trial discharge.

From a legal perspective, trial discharge may be a legitimate option when a child is being returned to a parent(s) after a stay in foster care. From a program perspective, we believe that trial discharge is an appropriate option to use where the case planner has assessed that there is a real possibility that the child's return home and the subsequent family interactions may result in the need for reinstating temporary separation of the child and parent(s). A trial discharge could legally be accomplished either by returning a child home prior to an order of custody expiring or by obtaining a new court order extending custody for the anticipated period of the trial discharge.

While we support the use of trial discharge as an appropriate casework strategy in cases meeting the criteria stated in the previous paragraph, we would like to provide some cautions:

- certainly trial discharge should not be undertaken if the court's custody order does not allow the district to send the child home without the court's explicit direction, or if it would conflict with court limits pertaining to contact (visitation).
- automatic use of trial discharge without the presence of any factors that may indicate the potential for replacement is not appropriate.
- it would not be appropriate to use trial discharge as a threat in relation to the parent's ability to ultimately secure final discharge of the child. If this is the primary means for obtaining appropriate parental conduct, what will happen once the custody reverts back to the parent? If court ordered supervision is really what is necessary, then it should be sought.
- the timespan for the trial discharge should not automatically extend until an existing custody order lapses. We recommend terminating the custody order as soon as the possibility for the need for replacement in the near future has become remote.

In addition we would like to outline a few considerations for good practice in relation to the use of trial discharge:

- the parent and child, if old enough to understand, should be informed about the plan for trial discharge, its implications and its anticipated duration.
- an explanation of the casework reasons for the trial discharge should be documented in the case record.
- in consultation with the social service district's attorney, consideration to notifying the family court of the trial discharge should be undertaken.

- the child's law guardian should be informed of the trial discharge.
- the case planner should maintain a sufficient level of contact and provide assistance as necessary to ensure a positive reunification experience and overcome such possible dynamics as the parent and child's fears of failure.

If questions still remain, please contact your Family and Children Services Regional Office.

Frank Puig
Deputy Commissioner
Division of Services
and Community Development