



Office of Children and Family Services

Andrew M. Cuomo
Governor

52 WASHINGTON STREET
RENSSELAER, NY 12144

Sheila J. Poole
Commissioner

Informational Letter

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| Contact Person(s): | Deborah Davis, Assistant Director, Bureau of Financial Operations Deborah.Davis@ocfs.ny.gov ; 518-474-0131 |
| Attachments: | Attachment A: <i>Model Legal Services Language</i> |

Filing References

| Previous ADMs/INFs | Releases Cancelled | NYS Regs. | Soc. Serv. Law and Other Legal Ref. | Manual Ref. | Misc. Ref. |
|--------------------|--------------------|-----------------------------------|---|-------------|------------|
| 14-OCFS-INF-03 | 14-OCFS-INF-03 | 18 NYCRR 600.3(b)(8) & (9); 609.4 | Social Services Law 423; State Finance Law § 54-m | | |

I. Purpose

The purpose of this Informational Letter (INF) is to reiterate previous examples and provide additional examples of the circumstances under which costs may be properly claimed for reimbursement through the New York State Office of Children and Family Services (OCFS) through cooperative agreements and purchase of services agreements between the local social services districts (local districts) and other local government entities (referred to hereafter as “cooperative agreements”). These examples originate from the multiple agreements OCFS has reviewed.

II. Background

This INF supersedes and replaces 14-OCFS-INF-03, *County Cooperative Agreements and Claiming Examples*, to provide guidance as to what costs associated with agreements between local districts and other local governmental entities may be properly claimed for reimbursement through OCFS. The information provided in this INF will be applied to all such agreements.

III. Program Implications

The basic principle for cooperative agreements is that the costs of other local government entities that are properly reimbursable through a local district's claims to OCFS are those costs that involve other government entities doing work that is otherwise required to be done by the local district and for which the local district has the legal authority to contract out for the provision of such work. When the other local governmental entity is conducting activities for which it has an independent legal responsibility to conduct, the cost of the activity cannot be reimbursed through OCFS. While this INF discusses the programs, topics, and subject areas where questions have arisen, the same principle applies to the allowability of a local district claiming costs through cooperative agreements or otherwise in other programs, topics and subject areas not discussed herein.

Legal Services – There have been questions as to what legal services may be claimed for reimbursement under funding streams overseen by OCFS when the local district does not have its own counsel but instead receives legal services from the county attorney. A local district that uses the services of the county attorney's office to provide legal services must have in place a cooperative agreement setting forth the functions that the county attorney will provide on behalf of the local district whose costs are properly reimbursable through the state. A local district may enter into an agreement to have the county attorney's office represent the district in any legal matter where the district is authorized to be a party. While the circumstances under which a county attorney may represent a district in most of the areas overseen by OCFS are reasonably straightforward, the costs associated with the county attorney acting as the presentment agency in proceedings under Article 3 (juvenile delinquency) and Article 7 (persons in need of supervision, PINS) of the Family Court Act are not reimbursable through OCFS. However, costs for the county attorney to represent the social services district where the county attorney is bringing a PINS petition on behalf of the social services district instead of as a presentment agency or where the district is a party to the proceeding are reimbursable except, in the latter cases, where the county attorney is also acting as the presentment agency and a conflict of interest arises.

Attachment A to this INF is model language that sets forth the parameters of legal activities to be conducted by a county attorney's office on behalf of a local district that qualify for reimbursement. This language addresses the issues concerning the county attorney acting as the presentment agency discussed above.

Child Protective Services – There are two areas where local districts commonly use cooperative agreements in regard to child protective services (CPS). These are: (1) agreements with local law enforcement agencies concerning law enforcement/CPS interactions and (2) agreements with law enforcement agencies and sometimes others concerning the costs associated with multidisciplinary teams (MDTs) and child advocacy centers (CACs). The principle applicable in both situations is that the costs of law

enforcement agencies and other local government agencies do not become reimbursable through OCFS as CPS costs solely because the activities are carried out in conjunction with CPS.

A cooperative agreement (or portion thereof) that would charge to a local district the costs of law enforcement for working with CPS on investigations or district attorneys for prosecuting criminal cases associated with CPS cases will not be approved by OCFS because the costs of law enforcement doing criminal investigations and district attorneys prosecuting criminal cases are not CPS costs. Those activities are not the legal responsibilities of CPS; they are the legal responsibility of law enforcement agencies and district attorneys. This is the case even where law enforcement is conducting a joint investigation with CPS under a protocol required by Section 424(5-a) or (5-b) of the Social Services Law (SSL). While the statute requires or authorizes joint investigations between CPS and law enforcement in some cases, it does not transform the law enforcement costs into CPS costs.

Cooperative agreements that provide for law enforcement staff to conduct CPS investigations also will not be approved by OCFS. Section 423 of the SSL and the regulations at 18 NYCRR 432.2(b)(1) provide that only CPS may conduct CPS investigations. There is no provision in law for law enforcement to conduct CPS investigations on behalf of a local district CPS, so a cooperative agreement that purports to assign CPS investigative functions to law enforcement is not legally acceptable.

If a cooperative agreement involves law enforcement officers accompanying CPS workers to provide protection where there are concerns for the safety of the CPS workers (e.g., where the household is known to harbor dangerous persons, or the neighborhood is known to be dangerous at certain times of the day), the costs of the protection activities provided by law enforcement staff are a legitimate CPS administrative cost. CPS could hire a private security company to accompany the workers in dangerous situations, so reimbursement for the cost of using law enforcement for that purpose instead is an allowable administrative expense. In such instances, the case record must document the safety concern so there is reasonable assurance that the security need was legitimate. Please note that if the law enforcement officer is accompanying the CPS worker both for safety reasons and as part of a law enforcement investigation (such as in a joint investigation or MDT investigation), then the law enforcement personnel costs would have to be apportioned appropriately between the reimbursable protection activity costs and non-reimbursable investigation activities costs.

The discussion above also holds true for cooperative agreements concerning MDTs and CACs. To the extent that non-CPS members of an MDT or CAC are carrying out their independent legal responsibilities, the costs of the non-CPS members do not transform into CPS costs solely because they are done in the context of an MDT or CAC. Accordingly, those costs are not reimbursable through OCFS as CPS costs. This applies to law enforcement agencies that participate in an MDT or CAC, as well as staff of other county agencies who may be part of an MDT or CAC, such as county mental health department staff.

It is important to note, however, that there are two categories of costs associated with an MDT and CAC that are properly reimbursable through OCFS as CPS costs. First, the costs of those CPS staff assigned to the MDT or CAC are reimbursable as CPS costs because the CPS workers are carrying out a legitimate CPS function. Second, a portion of the

general administrative costs of the MDT or CAC (such as support staff, supplies, and building maintenance) proportional to the extent to which these administrative costs support the CPS workers in carrying out their CPS functions through the MDT or CAC would be properly reimbursed through OCFS as CPS administrative costs. This basically means that the county may cost allocate the administrative costs of the MDT and CAC among the different functions of the MDT or CAC and may claim the CPS portion of the allocation for reimbursement through OCFS. For example, if 40 percent of the staff of a CAC were local district CPS staff, then 40 percent of the general administrative costs of the CAC could be claimed for reimbursement as CPS administrative costs.

Please note also that there may be separate specialized funding available through OCFS outside of the CPS funding stream for costs associated with an MDT or CAC. Where such separate funding has been available, it has been awarded through a competitive procurement process. A local district that receives such separate funding may charge costs to those special funds pursuant to the terms of the memorandum of understanding (MOU) between the local district and OCFS. The terms of the MOU may permit the use of the MOU funds for purposes that would not otherwise be reimbursable through OCFS as CPS costs. In such a case, the local district must be careful to properly allocate and submit the different claims for reimbursement so that reimbursement is not sought under general CPS funding for costs that cannot be properly reimbursed through such CPS funding.

Detention – State reimbursement for detention costs is separate from other local social services district costs and is limited to the district's separate detention allocation. Detention costs are not reimbursed through any other general funding available for social services programs and administration costs.

There are two points to note regarding the availability of detention reimbursement for other local governmental entities.

The first point is that detention reimbursement does not cover court-related costs. Accordingly, costs such as those for diagnostic examinations done pursuant to a court order are not an allowable cost for purposes of reimbursement under the local district's detention allocation.

The second point is an exception to the prior point, involving transportation of youth in detention by law enforcement. Costs for transportation of such youth by law enforcement are reimbursable as a detention cost if done pursuant to a court order. Otherwise, these costs are part of the responsibility of law enforcement and would not be reimbursable through OCFS.

Domestic Violence Services – Only costs directly associated with the provision of core or optional residential or non-residential services to victims of domestic violence provided by approved residential and non-residential services providers may be properly claimed for reimbursement through OCFS. This means that the costs of law enforcement agencies for the investigation and the district attorney's office for the prosecution of cases involving domestic violence are not reimbursable through OCFS.

If, however, staff of a law enforcement agency or district attorney's office are involved in the provision of core services to victims of domestic violence (e.g., assistance in accessing legal remedies and protections, and law enforcement personnel) that meet the regulatory criteria for such services and are providing such services as part of an approved

nonresidential program for victims of domestic violence that provides all of the required core services, those costs would be reimbursable through OCFS.

Foster Care – Costs for transportation of children in foster care by staff of other government agencies (e.g., law enforcement) would be a legitimate cost to claim under a cooperative agreement for those circumstances where it is the responsibility of the social services district to transport children in foster care. In those circumstances the costs of other government entities involved in providing transportation are properly reimbursable through OCFS as a foster care administrative cost.

Probation – The costs of the probation department may be legitimately claimed for reimbursement through OCFS as preventive services funds where the probation department is providing preventive services on behalf of the social services district, provided that

- 1) there is an approved cooperative agreement or purchase of services contract between the local district and the probation department;
- 2) the families in receipt of the services have been properly determined to be eligible for preventive services and authorized by the local district to receive such services;
- 3) the local district provides case management services to the family;
- 4) the provision of preventive services is documented in the family's uniform case record in CONNECTIONS;
- 5) funding is limited to core preventive services and such optional services, if any, as are provided for in the local district's approved Child and Family Services Plan; and
- 6) funding is limited to mandated preventive services and such non-mandated services, if any, as are provided for in the local district's approved Child and Family Services Plan.

There are certain probation activities that do not fall within the provision of preventive services and that are a frequent source of uncertainty. Costs for the following probation department activities are not eligible for preventive services reimbursement through OCFS:

- 1) Presentencing activities, including assessments of alleged juvenile delinquents (JDs) for adjustment services, and assessments of alleged persons in need of supervision (PINS) where the probation department is the lead agency for PINS diversion services
- 2) Court-ordered investigations after JD or PINS adjudications
- 3) Diagnostic assessments for the court after JD or PINS adjudications
- 4) Supervision of adjudicated JDs and PINS placed on probation

5) Activities to revoke the probation of JDs and PINS.

There are two additional points to note regarding probation department costs.

While supervision costs are not reimbursable, if the court orders the provision of services that are included within the types of preventive services included within the local district's approved Child and Family Services Plan, the costs of the probation department for providing the preventive services would be reimbursable if the district opened a preventive services case and followed the requirements listed above. Costs for assessments for PINS diversion are reimbursable as preventive services if the county has designated the local district as the lead agency for purposes of providing diversion services. If the county has designated the probation department as the lead agency for PINS diversion purposes, then these assessment costs are not reimbursable through OCFS. As noted above, these assessment costs are not allowable for JD cases in any circumstance, as assessment of potential JDs is not a social services function.

In addition, a local district may seek reimbursement from OCFS under its capped community optional preventive services funds, if any, for any probation department activities that had been approved for such funding as of October 1, 2008, up to the amount of funds then approved for such purposes and under the local district's capped supervision and treatment services for juvenile program funds for any probation department activities included in its approved plan for such funds.

Protective Services for Adults – The regulations at 18 NYCRR 457.4(a) require the local district commissioner to designate those local district caseworkers who will handle protective services for adults (PSA) cases. Law enforcement staff cannot conduct PSA investigations for the local districts as PSA functions must be conducted by designated caseworkers employed by the local district. Therefore, the costs for law enforcement staff assisting with or working with local district staff on PSA cases cannot be claimed for reimbursement through OCFS.

Raise the Age (RTA) – To be eligible for reimbursement, the law requires that a locality submit a Comprehensive Fiscal Plan for RTA to OCFS and to the New York State Division of Criminal Justice Services (DCJS) that identifies anticipated, eligible incremental RTA-related costs. The Comprehensive Fiscal Plan for RTA must be submitted to and approved by the New York State Division of the Budget (DOB) for an eligible locality to be reimbursed for 100 percent of its costs. All subsequent claims submitted by an eligible locality, except costs where separate guidance has been provided, such as secure and specialized secure detention for non-provider counties and foster care costs reimbursed within the Maximum State Aid Rate, must have been included in an eligible locality's DOB-approved Comprehensive Fiscal Plan for RTA.

Cooperative agreements must exist between the LDSS and local governmental agencies to permit the LDSS to submit claims on behalf of such agencies for costs incurred under the agreements related to RTA. Claims may only be submitted through the LDSS for these agencies in accordance with the DOB-approved Comprehensive Fiscal Plan for the RTA plan. Please also see 19-OCFS-LCM-02, *Raise the Age Claiming*, for additional information regarding claiming for RTA.

Other – The programs, topics, and subject areas discussed above are those which OCFS has identified as sources of questions, confusion, or ambiguity. The basic principle, for cooperative agreements, as noted earlier, is that the costs of other local government entities that are properly reimbursable through a local district's claims to OCFS are those costs related to other government entities doing work which is otherwise legally required to be done by the local district and which the local district has the legal authority to contract out for the provision of such services. When the other government entity is conducting activities for which it has an independent legal responsibility to conduct, the cost of the activity cannot be reimbursed through OCFS.

IV. Contacts

Questions about the allowability of costs, the proper claiming of costs, and approval of cooperative agreements should be directed to Deborah Davis, Assistant Director, Bureau of Financial Operations, at Deborah.Davis@ocfs.ny.gov or 518-473-5958.

/s/ Derek J. Holtzclaw

Issued by:

Name: Derek J. Holtzclaw

Title: Deputy Commissioner for Administration

Division/Office: Administration

ATTACHMENT A

MODEL LEGAL SERVICES LANGUAGE

The County Attorney shall provide certain legal services relating to the presentment of Child Welfare-related matters including, but not limited to: abuse, neglect, voluntary placement, foster care review, permanency proceedings, extensions of placement, termination of parental rights, habeas corpus proceedings, custody matters, adoption matters, administrative hearings, and Juvenile Delinquency and PINS matters where the Department is either directly involved as a litigant or has an interest in the proceeding. The County Attorney shall act as the exclusive legal representative of the Department in these actions and shall advocate for the Department's interests to the extent they do not conflict with the County Attorney's primary statutory obligation as the presentment agency in Juvenile Delinquency or PINS cases. "Certain legal services" shall include, but not be limited to: consultation, conferences, ex parte applications, motion preparation, petition preparation, representation in Family Court, preparation of and service of orders and appeals. The claiming of Federal Financial Participation in Title IV-E cases shall be in accordance with the New York State Office of Temporary and Disability Assistance *Fiscal Reference Manual*.

The County Attorney shall provide certain legal services relating to the presentment of Adult Protective Services and Medicaid matters including, but not limited to: conservatorships, committee appointments, guardian appointments, orders to gain access, and short-term involuntary protective orders. The County Attorney shall act as the legal representative of the Department in any of the above matters and shall advocate solely for the Department. "Certain legal services" shall include, but not be limited to: consultation, conferences, ex parte applications, motion preparation, petition preparation, representation in Family Court, preparation and service of orders and appeals.

For a Juvenile Delinquency case, reimbursement of the County Attorney shall be available only for certain legal services related to the interpretation of applicable sections of the Social Services Law and Family Court Act and the Department's responsibility thereunder. Reimbursement shall not be available for assistance related to process and procedure in Family Court when the County Attorney is acting as the presentment agency. Reimbursement shall only be available for representing the Department as provided for herein. When the County Attorney acts as the legal representative of the Department in these actions, the County Attorney shall advocate for the Department's interests to the extent they do not conflict with the County Attorney's primary statutory obligation as the presentment agency in Juvenile Delinquency or PINS cases. When there is a conflict of interest in representation on these matters, the parties agree that the Department may procure other legal representation. "Certain legal services" shall include, but not be limited to: conferences, ex parte applications, motion preparation, petition preparation, representation in Family Court, preparation of and services of orders and appeals.

For PINS cases, reimbursement of the County Attorney for certain legal services is dependent on the role of the Department in the particular proceeding. If the proceeding is initiated on the petition of the Department, the County Attorney's assistance may be obtained, and reimbursement shall be available. Reimbursement shall also be available when the Department is not the petitioner, but the County Attorney represents the

Department as an interested party. To the extent that assistance is related to the interpretation of Social Services Law and the Family Court Act, reimbursement shall also be available. Reimbursement shall not be available for assistance related to the process and procedures of Family Court when the County Attorney is acting as the presentment agency. Reimbursement shall be available for representing the Department as provided for herein. When the County Attorney acts as the legal representative of the Department in the above instances, the County Attorney shall advocate for the Department's interests to the extent that they do not conflict with the County Attorney's primary statutory obligation as the presentment agency in Juvenile Delinquency or PINS cases. Where there is a conflict of interest in representation on these matters, the parties agree that the Department may procure other legal representation. "Certain legal services" shall include, but not be limited to: consultation, ex parte applications, motion preparation, petition preparation, representation in Family Court, preparation of and service of orders and appeals.