



# Office of Children and Family Services

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## Administrative Directive

<b>Transmittal:</b>	21-OCFS-ADM-17
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development Child Welfare and Community Services
<b>Date:</b>	August 13, 2021
<b>Subject:</b>	<b>Role and Responsibility of the Qualified Individual in New York State</b>
<b>Suggested Distribution:</b>	Directors of Social Services Legal Staff Finance Staff Child Welfare Supervisors Foster Care Supervisors CONNECTIONS Implementation Coordinators
<b>Contact Person(s):</b>	See section VII.
<b>Attachments:</b>	Attachment A: <i>LDSS Attestation – Qualified Individual Meets Established Criteria</i> , Attachment B: <i>Qualified Individual Model Contract</i>

### Filing References (*check on these – be sure they are correct and there are no typos*)

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
21-OCFS-ADM-04			42 USC §§672 & 675a; Social Services Law §§371(22) & 409-h; Part L of Chapter 56 of the Laws of 2021		

### I. Purpose

The purpose of this Administrative Directive (ADM) is to detail and describe the role and responsibility of the Qualified Individual (QI) in New York State (NYS), to provide a format for a Local Department of Social Services (LDSS) to attest to QI qualifications if needed (Attachment A), and to distribute a QI model contract template (Attachment B) for the purchase of QI services.

The QI must assess a child to determine the appropriateness of a placement in a Qualified Residential Treatment Program (QRTP). The assessment will determine whether the child's needs can be met with family members, in a foster family home or in a specified setting<sup>1</sup>, including a QRTP level of care. Per Social Services Law (SSL) section 409-h, the assessment to determine appropriateness of placement in a QRTP can be completed prior to a child's placement in the QRTP but must be completed within 30 days of the placement in the QRTP. If the assessment is not completed within 30 days after the placement is made, local departments of social services (LDSSs) **will not** be able to claim Title IV-E reimbursement for maintenance costs for the entirety of the placement in the QRTP. This ADM provides guidance regarding the role, functions, and requirements of the QI.

## II. Background

The Family First Prevention Services Act (FFPSA) was enacted as part of the federal Bipartisan Budget Act of 2018 (P.L. 115-123) on February 9, 2018. FFPSA reforms federal financing to prioritize family-based foster care, preferably with kin, over residential care by limiting federal reimbursement for certain residential placements. FFPSA creates a congregate care setting known as a QRTP. The Office of Children and Family Services' (OCFS) policy, *Qualified Residential Treatment Programs (QRTPs) and QRTP Exceptions in New York State* (21-OCFS-ADM-04) provides an overview of these programs. In order to claim Title IV-E for a youth placed in a QRTP, the FFPSA requires, among other things, an assessment of a child by a QI, utilizing an age appropriate, evidence-based, validated, functional assessment tool. The assessment must be conducted in conjunction with the family and permanency team within 30 days of placement in a QRTP.

The term "Qualified Individual" means a trained professional or licensed clinician acting within their scope of practice who has current or previous relevant experience in the child welfare field. Provided, however, that such individual may not be an employee of OCFS and such individual may not have a direct role in case management or case-planning decision-making for the child for whom the assessment is being conducted. This excludes an employee of an LDSS and any person connected to any placement setting in which children are placed by an LDSS or OCFS from being the QI in accordance with SSL section 409-h(5). NYS has submitted a request for a federal waiver for this provision to allow OCFS to authorize LDSSs employees and contracted individuals or organizations to perform the functions of the QI. This request is pending, and OCFS will inform LDSSs of the result of the request.

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<sup>1</sup> SSL section 409-h (c)(i)-(iv) defines specified setting as:

- A QRTP.
- A setting specializing in providing prenatal, post-partum, or parenting supports for youth.
- In the case of a child who has attained 18 years of age, a supervised setting in which the child is living independently.
- A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, a sexually exploited child, in accordance with SSL section 447-a.

To fulfill the FFPSA requirement of QI services, LDSSs must negotiate and enter a contract with at least one QI in the LDSS' county or a contiguous county.

OCFS has developed a model contract (Attachment B) for use by all LDSSs which elect to purchase QI services rather than providing such services directly contingent upon OCFS receiving the federal waiver referenced above. The model contract can be modified to cover additional details or to reflect in greater detail the specifications and terms under which payment will be made for services rendered.

### **III. Program Implications**

Effective 9/29/21, a child placed in a QRTP must be assessed by a QI for appropriateness of placement in a QRTP, and if approved timely, Title IV-E funding may be available for eligible children. The QI's assessment will determine whether the child's needs can be met with family members, in a foster family home, and/or if the child's needs meet the criteria for a QRTP level of care. If the QI's assessment is not completed within 30 days after the placement of a child into a QRTP is made, the Title IV-E agency cannot claim Title IV-E foster care maintenance payment (FCMP) for the duration of the placement in the QRTP.

FFPSA enacted restrictions on Federal Financial Participation (FFP) for children in foster care placed in a federally defined Child Care Institution (CCI).<sup>2</sup> Title IV-E agencies (LDSS or OCFS with care and custody or custody and guardianship of the child) may claim Title IV-E for FCMP paid on behalf of an otherwise Title IV-E-eligible child placed in any CCI for up to two weeks. Title IV-E agencies may claim administrative costs for the duration of the child's placement in a CCI, regardless of whether the CCI is a specified setting.

After two weeks, Title IV-E FCMPs for a child placed in a CCI are only available if that CCI is one of the following specified settings:

- a QRTP, as defined in section 472(k)(4) of the Social Security Act (Act) and subject to additional requirements in section 475A(c) of the Act as described below;
- a setting specializing in providing prenatal, post-partum, or parenting supports for youth;
- in the case of a youth who has attained 18 years of age, a supervised setting in which the youth is living independently; or
- a setting providing high-quality residential care and supportive services to a child or youth who has been found to be, or is at risk of becoming, a victim of sex trafficking, in accordance with section 471(a)(9)(C) of the Act.

### **IV. Required Action**

LDSSs are required to facilitate the role and function of the QI in preparation for FFPSA and corresponding NYS requirements, effective September 29, 2021. LDSSs may elect to contract with individual(s) and/or agencies on the list established from the letter of interest (LOI) issued by OCFS or they may procure the services of the QI independently, including contracting with a voluntary authorized agency (VA) or employing the QI. LDSSs will need to attest, by signing the attestation form provided by OCFS (Attachment A), that individuals

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<sup>2</sup> 42 USC §672.

who are procured outside of the LOI meet the established criteria. The following is the QI criteria established by OCFS:

**QI Requirements:**

- The QI must have a professional clinical license, in accordance with 14 NYCRR 823.6, and/or a social work license, in accordance with section 7704 of New York State Education Law, AND at least 2 years of experience in child welfare. To meet the requirement of two (2) years of experience in the child welfare field, applicants must have worked for or under contract with a child welfare program in their professional capacity as a licensed clinician for a minimum of two (2) years within the last fifteen (15) years. Child welfare programs include, but are not limited to, an LDSS, a VA, a residential agency serving youth or families, a community-based provider, and/or other entity that addresses issues of child safety as they pertain to abuse and neglect, and provides or coordinates services for children and families to address challenges such as substance abuse, mental health, and domestic violence.
  - Professional clinical licensure can include the following: physician, psychiatrist, psychologist, nurse practitioner, psychoanalyst, registered nurse, clinical social worker, marriage and family therapist, mental health counselor, master social worker, or creative arts therapist
- A QI must successfully complete training requirements for either the CASII or the CANS prior to provision of the service and provide verification of such.
- A QI must complete OCFS required training. Information regarding required training will be provided at a future date.
- A QI must utilize a decision-making guide developed and approved by OCFS. This guide will be issued at a later date.

**QI Objectivity:**

- A QI cannot be employed by or associated with the QRTP where youth are referred.
- A QI cannot be the child's case manager or case planner as defined in 18 NYCRR 428.2.
  - OCFS regulations define "case planning" to include the ability to authorize and coordinate the provision of services (see 18 NYCRR 428.2).
  - While the QI may evaluate and make recommendations regarding services for children in foster care in NYS, the QI cannot authorize or coordinate the direct provisions of any services.
  - However, the QI may conduct case assessment activities which are required in the context of case planning as per section 471(a)(16) of the Act.

**QI Required Tasks:**

Prior to a child's placement in a QRTP, but within 30 days of the start of a placement in a QRTP of a child in the care and custody or the custody and guardianship of the LDSS or the OCFS that occurs on or after 9/29/21, a QI must:

- Assess the strengths and needs of a child using a federally approved, age-appropriate, evidence-based, validated, functional assessment tool
  - OCFS has selected the Child and Adolescent Needs Assessment (CANS) and/or the Child and Adolescent Services Intensity Instrument (CASII) for this purpose.

- Conduct interviews with family and child to obtain or clarify any information needed to complete functional assessments and formulate child-specific, short-term and long-term mental and behavioral health goals.
  - Make a determination of the most effective and appropriate level of care for the child in the least restrictive setting, including whether consistent with the short-term and long-term goals for the child as specified in the child's permanency plan.
  - Indicate if the needs of the child can be met with family members or through placement in a foster family home.
  - Indicate whether a QRTP placement is appropriate or not.
- Develop a list of child-specific short-term and long-term mental and behavioral health goals
- Complete the assessment in collaboration with the LDSS (or OCFS, if the youth is in OCFS custody), QRTP, and family and permanency team to gather information to formulate the final determination.
  - Family and permanency team means all appropriate biological family members, relative, and fictive kin of the child, as well as professionals (as appropriate) who are a resource to the family of the child, such as teachers, medical or mental health providers who have treated the child, or clergy.
  - If the child is age 14 or older, the team must also include the members of the permanency planning team for the child that are selected by the child in accordance with the Title IV-E case planning requirements SSL section 409-h(1)(b).
- Provide recommendations in writing regarding whether the needs of the child can be met with family members and/or through placement in a foster family home.
- If the QI determines that the child's needs cannot be met with family members and/or through placement in a foster family home, the QI must
  - document the reasons why the child's needs cannot be met by the parents/caregivers in the home, or with a relative or fictive kin caregiver in a foster home, or in a non-relative foster family home setting, and why such a placement is not the most effective and appropriate level of care for the child;
    - A shortage or lack of foster family homes **may not** constitute circumstances warranting a determination that the needs of the child cannot be met in a foster family home.
  - document which congregate residential setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals specified in the permanency plan;
  - document why the recommended placement in a QRTP is the setting that will provide the most effective and appropriate level of care for the child in the least restrictive environment;
  - document how that placement is consistent with the short-term and long-term mental and behavioral goals as specified in the permanency plan; and
  - provide written reports with recommendations within thirty (30) days of the child's placement in the QRTP.

- The following must also be documented by the LDSS in the child's case plan:
  - the reasonable and good faith effort to identify and include all the individuals on the child's family and permanency team;
  - all contact information for members of the family and permanency team, as well as contact information for other family members and fictive kin who are not part of the family and permanency team;
  - evidence that meetings of the family and permanency team, including meetings relating to the assessment are held at a time and place convenient for family;
  - if reunification is the goal, evidence demonstrating that the parent from whom the child was removed provided input to the members of the family and permanency team;
  - evidence that the assessment is determined in conjunction with the family and permanency team;
  - the placement preferences of the family and permanency team relative to the assessment that recognizes children should be placed with their siblings unless there is a finding by the court that such placement is contrary to their best interest; and
  - if the placement preferences of the family and permanency team and child are not the placement setting recommended by the QI conducting the assessment, the reasons why the preferences of the team and of the child were not recommended.

### Completion of Assessment

- The QI (or their designee) is required to promptly, but no later than five (5) days following the completion of the assessment, provide the assessment, determination and documentation to
  - the court,
  - the parent or guardian of the child,
  - and to the attorney for the child and the attorney for the parent, if applicable.
- A written summary detailing the assessment findings must be provided to the LDSS or OCFS with care and custody or custody and guardianship of the child and to the parties to the proceeding redacting information necessary to comply with federal and NYS confidentiality laws. [SSL section 409-h(2)]
  - Entity with custody of the child (LDSS; OCFS) must file a motion for a 60-day court review.
- This documentation must be maintained in the *Title IV-E Eligibility Documentation File (OCFS-2125)* as it is required for the federal Title IV-E Foster Care Eligibility Reviews as well as the monitoring conducted by the Title IV-E Unit in the OCFS Bureau of Financial Operations. The OCFS-2125 will be updated to reflect the documentation requirements.
- Where the QI determines that the placement of the child in a QRTP is not appropriate after the assessment, the child's placement **must**
  - continue until the court has an opportunity to hold a hearing to consider the QI's assessment and make an independent determination as required by SSL section 393, or Family Court Act (FCA) sections 353.7, or 756-b, 1055-c, 1091-a, or 1097, as applicable;

- provided, however, that nothing herein will prevent a motion from being filed pursuant to FCA section 355.1 (new hearing; staying or terminating an order), FCA section 764 (petition to terminate placement), or FCA section 1088 (continuing court jurisdiction).
- If the QI determines that the child's placement in a QRTP is not appropriate, the court may only approve the placement if it finds, and states in the written order, that
  - circumstances exist that necessitate the continued placement of the child in the QRTP;
  - there is not an alternative setting available that can meet the child's needs in a less restrictive environment; and
  - continued placement in the QRTP is in the child's best interests.<sup>3</sup>

### Title IV-E Reimbursement

The following provides an overview of the various key decision-making points that pertain to Title IV-E reimbursement. This is based on a child otherwise being deemed Title IV-E eligible.

- Child is placed in a QRTP. without a QI assessment:
  - If the assessment by the QI is not completed prior to placement or within 30 days after the placement in the QRTP, there will be no federal reimbursement for any portion of that placement in the QRTP for maintenance costs.
- Child is placed in a QRTP and an assessment is completed within 30 days of placement:
  - If the QI determines placement in a QRTP is **not** appropriate, the LDSS may claim Title IV-E foster care maintenance payments from the date of placement in the QRTP up to 30 days after assessment determination is completed. Please note that per the enacted NYS legislation, the child must remain in the QRTP until the 60-day court review and hearing has occurred.
  - If the QI determines placement in a QRTP is appropriate, the LDSS may claim Title IV-E reimbursement from the date of placement in the QRTP until 60 days from the date of placement in the QRTP, pending outcome of the 60-day court review.
- 60-day court review is NOT completed within 60 days of placement:
  - If the QI determines placement in the QRTP is appropriate and the judicial review is **not** completed within 60 days of the placement in the QRTP, the LDSS may only claim Title IV-E maintenance costs for the first 60 days of the placement.
- 60-day court review is completed within 60 days of placement:
  - If the QI determines that placement in the QRTP is **not** appropriate and the court orders that the child remain in that placement, the LDSS may **only** claim

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<sup>3</sup> For JD cases, this finding is that continued placement in the QRTP serves the child's needs and best interests, or the need for the protection of the community.

For PINS cases, this finding is that it would be contrary to the welfare of the child to be placed in a less restrictive setting and that continued placement in the QRTP is in the child's best interests.

Title IV-E foster care maintenance payments up to 30 days after assessment determination was completed by the QI.

- If the QI determines that placement in the QRTP is appropriate and the court approves the determination within the required 60-day time frame, the LDSS may continue to claim Title IV-E reimbursement, so long as the approval for long-term placement in the QRTP has been documented in the child's case record and the child otherwise satisfies other applicable Title IV-E eligibility requirements. Please note that if this approval is not documented in the child's case record, the LDSS may no longer claim Title IV-E reimbursement.

## V. Systems Implications

OCFS is utilizing the CONNECTIONS database to collect and store information and assessments facilitated by the QI. Specifically, the CONNECTIONS uploads feature will be utilized as mechanism for capturing needed documentation related to the role and function of the QI.

The QI decision will need to be recorded in CONNECTIONS Activities. Additional guidance on Activities entries will be provided at a later date.

Forms will be stored in the Health Services tab and only persons with a role in the case or with business functions of "maintain" or "view health" will have access to the information.

The following category will be created in CONNECTIONS:

- Family First

The following subcategories will be created for the Family First forms:

- 30-day QDM form
- 30-day assessment tool
- Long-Stayer Review (LSR) forms
- Treatment reports
- Psychiatric/Psychological assessments
- Substance abuse evaluations
- Educational assessments and reports (Individualized Educational Plan, psycho-social assessments, etc.)
- Family Team Meeting (FTM) form

## VI. Contacts

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## **VII. Effective Date**

Information contained in this ADM and the model contract for the purchase of QI services becomes effective immediately upon release of this ADM.

**/s/ Lisa Ghartey Ogundimu**

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**/s/ Thomas R. Brooks**

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