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### Administrative Directive

<b>Transmittal:</b>	09-OCFS-ADM-06
<b>To:</b>	Commissioners of Social Services Directors of Residential Programs for Victims of Domestic Violence
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	March 2, 2009 (revised June 16, 2009)
<b>Subject:</b>	<b>Domestic Violence Services for Undocumented Persons</b>
<b>Suggested Distribution:</b>	Directors of Social Services Accounting Supervisors Domestic Violence Service Providers
<b>Contact Person(s):</b>	Any questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services:  Buffalo Regional Office- Mary Miller (716) 847-3145 <a href="mailto:Mary.Miller@ocfs.state.ny.us">Mary.Miller@ocfs.state.ny.us</a> Rochester Regional Office- Linda Kurtz (585) 238-8200 <a href="mailto:Linda.Kurtz@ocfs.state.ny.us">Linda.Kurtz@ocfs.state.ny.us</a> Syracuse Regional Office- Jack Klump (315) 423-1200 <a href="mailto:Jack.Klump@ocfs.state.ny.us">Jack.Klump@ocfs.state.ny.us</a> Albany Regional Office- Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.state.ny.us">Kerri.Barber@ocfs.state.ny.us</a> Spring Valley Regional Office- Patricia Sheehy (845) 708-2498 <a href="mailto:Patricia.Sheehy@ocfs.state.ny.us">Patricia.Sheehy@ocfs.state.ny.us</a> New York City Regional Office- Patricia Beresford (212) 383-1788 <a href="mailto:Patricia.Beresford@ocfs.state.ny.us">Patricia.Beresford@ocfs.state.ny.us</a> Native American Services- Kim Thomas (716) 847-3123 <a href="mailto:Kim.Thomas@ocfs.state.ny.us">Kim.Thomas@ocfs.state.ny.us</a>
<b>Attachments:</b>	No
<b>Attachment Available Online:</b>	No

**Filing References:**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
94-ADM-11 OCFS 02-INF-06	02-OCFS-INF-06/02-OTDA INF-27, Attachment #1, Q17 06-OTDA INF-34, Part III.A.2.c.ii.2	18 NYCRR Parts 408 and 452	Sections 131-u and 398-e of the Social Services Law		

**I. Purpose**

The purpose of this Administrative Directive (ADM) is to inform local departments of social services (LDSS) and approved residential programs for victims of domestic violence regarding the provisions of the recently enacted Chapter 584 of the Laws of 2008. This law amends section 398-e of the Social Services Law (SSL) to provide that all aliens, including aliens without a satisfactory immigration status, are eligible for residential services for victims of domestic violence. Residential programs for victims of domestic violence are now entitled to be reimbursed by LDSS for the provision of residential services to victims of domestic violence who are undocumented or aliens without a satisfactory immigration status for cash assistance eligibility within the limitations otherwise set forth in OCFS regulations, 18 NYCRR Part 408 and 18 NYCRR §452.9. Chapter 584 went into effect on September 26, 2008.

**II. Background**

Under state law, LDSS are required to provide emergency shelter and services, at approved residential programs for victims of domestic violence, to victims who are eligible for public assistance or who apply for public assistance and care while residing in such a program.<sup>1</sup> State law provides for per diem reimbursement to residential programs for victims of domestic violence for the cost of providing temporary shelter and emergency care and services. However, prior to the enactment of Chapter 584 of the Laws of 2008, state and federal law prohibited state or local per diem reimbursement to residential domestic violence shelters for the cost of shelter and services provided to undocumented aliens or aliens without a satisfactory immigration status. As a result, when such a residential program served an undocumented alien or an alien without a satisfactory immigration status for cash assistance

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<sup>1</sup> SSL § 131-u (Domestic violence services to eligible persons)

eligibility, it usually received no reimbursement for these services. Consequently, some residential programs for victims of domestic violence that had limited financial resources were facing increased pressure to turn away victims who were undocumented aliens or aliens without a satisfactory immigration status because the shelter would not be reimbursed by the LDSS for the cost of their care.

Federal law authorizes a state to enact a law permitting aliens who are not lawfully present in the United States to be eligible to receive state and locally funded services.<sup>2</sup> New York previously enacted SSL§ 398-e to permit undocumented aliens and non-qualified aliens to be eligible for child and adult protective services. Chapter 584 of the Laws of 2008 amends SSL § 398-e to extend this eligibility to include provision of residential services for victims of domestic violence to all aliens, even if they would not be considered “qualified aliens” under federal law.<sup>3</sup> This new law enhances victims’ safety by authorizing shelter reimbursement for services to victims who are otherwise eligible for services under Office of Children and Family Services regulations, regardless of the immigration status of the victims served.

State per diem reimbursement for residential services provided for victims of domestic violence who have a satisfactory immigration status also continues to be available.

### **III. Program Implications**

Chapter 584 of the Laws of 2008 amends the SSL to make an alien, including ones without a satisfactory immigration status or an undocumented alien, eligible for residential services for victims of domestic violence whenever the victim is otherwise eligible for such services pursuant to Sections 408.4 and 452.9 of 18 NYCRR.

Funding for services for domestic violence victims is provided through various federal and state funding streams. Temporary Assistance for Needy Families (TANF) and Safety Net funds are used for victims that meet categorical and financial eligibility for public assistance. Title XX Social Services Block Grant funds are available to reimburse the costs of residential services provided to victims of domestic violence who are citizens or qualified aliens but who are not eligible for public assistance. However, federal TANF And Title XX Social Services Block Grant eligibility rules prohibit federal reimbursement under these funding sources for services provided to aliens who are not “qualified aliens”.

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<sup>2</sup> 8 U.S.C. §1621(d)

<sup>3</sup> A “qualified alien” for this purpose is defined by federal law to include a lawfully admitted alien, an alien granted asylum, a refugee, an alien paroled into the country for a period of at least one year, an alien whose deportation is being withheld, an alien granted conditional entry, an alien who is a Cuban/Haitian entrant, and certain battered aliens. See 8 U.S.C. §1641.

As a result of the new state law, LDSS must now reimburse residential programs for victims of domestic violence at the applicable per diem rate for providing services to victims who are undocumented aliens or aliens without a satisfactory immigration status through services. The state will reimburse the LDSS for 49 percent of the costs (for State Fiscal Year 2008-09), with the remaining 51 percent funded through LDSS funds.

To be eligible for reimbursement, victims will need to continue to apply for public assistance while in a residential program for victims of domestic violence by completing the Common Application for Temporary Assistance (TA), Medical Assistance (MA), Food Stamp Benefits (FS), and Services (S) including Foster Care (FC) and Child Care (CC). The Common Application may be found at:

<http://www.otda.state.ny.us/MAIN/apps/#common>.

### **Required Action**

Local Districts must screen all applicants who are residing in a domestic violence shelter for a satisfactory immigration status for Temporary Assistance (TA) eligibility. Districts must determine TA eligibility and provide benefits to all aliens with a satisfactory immigration status as documented by one of the documents found on the Alien Eligibility Desk Guide (LDSS-4579 Rev. 10/07) Aliens who are unable to document a satisfactory immigration status must be referred to Services for a determination of eligibility for domestic violence services under Chapter 584 of the Laws of 2008. This would include undocumented aliens and aliens who are legally present, but whose immigration status makes them ineligible for TA benefits.

### Qualified Battered Aliens

Local districts are reminded that under the 1994 Violence against Women Act (VAWA) the alien spouses and children of U.S. citizens and Lawful Permanent Residents (LPRs) who are victims of domestic violence may be able to self-petition to obtain lawful permanent residency. These aliens, which include undocumented aliens can be determined to be a “qualified battered alien” and therefore eligible for TA benefits.

Local districts should refer to 06-INF-14 Battered Aliens Eligibility for Benefits for further information regarding qualified battered aliens and the process for making a “qualified battered alien” determination. This INF can be found at:

<http://www.otda.state.ny.us/main/directives/2006/INF/06-INF-14.pdf>

### Citizen Children of Undocumented Aliens

It is not uncommon, for undocumented aliens or other aliens without a satisfactory immigration status to have children who are U.S. citizens. Districts must determine the T.A. eligibility for these citizen children and provide all benefits for which they are eligible. The alien parents of these children without a satisfactory immigration service must be referred to Services for an eligibility determination for domestic violence services.

### Personal Needs Allowance

Undocumented aliens and other aliens without a satisfactory immigration status residing in a domestic violence shelter are ineligible for the Personal Needs Allowance (PNA) that is normally provided residents of domestic violence under TA programs. These aliens remain ineligible for a PNA even if they are determined eligible for domestic violence services.

Any questions related to this ADM should be directed to the OCFS regional directors listed as contact persons on the cover page.

## **IV. Claiming**

### **WMS**

In order to appropriately claim and track Domestic Violence vendor payments made on behalf of non-qualified or undocumented aliens, a new suffix code "Y" has been implemented for use. Suffix code "Y" is allowed as input with Purchase of Service (POS) code "23" (Services to Victims of Domestic Violence" only. Other standard edits regarding Direct vs. POS service apply; i.e. input of suffix "Y" with POS 23 requires input of suffix "Y" with corresponding Direct service (23).

### **BICS**

The BICS composite roll is being enhanced to report these payments as Schedule G FNP. They will roll-up in the Automated Claiming System into the NR column. The payments should then be reported on a DSS-3922

## **V. Effective Date**

The provisions of this ADM were effective on the effective date of the law, September 26, 2008. LDSS reimbursement for residential services provided

for undocumented domestic violence victims and those individuals with an unsatisfactory immigration status should go back to the September 26, 2008, effective date, provided the domestic violence provider has proper documentation.

*/s/ Nancy Martinez*

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**Issued By:**

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