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| LOCAL COMMISSIONERS MEMORANDUM |  
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Transmittal No: 90 LCM-40

Date: March 26, 1990

Division: Commissioner's  
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 360-1.4, 3.3, 4.1, 4.7, 4.8, 3.7 (d)  
Filed Regulation 360-7.7 and 360-7.8

ATTACHMENTS: Attachment I - 360-1.4, 3.3, 4.1, 4.7, 4.8, 3.7 (d)  
(available on-line)  
Attachment II - 360-7.7 and 360-7.8 (available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 360-1.4, 3.3, 4.1, 4.7, 4.8, 3.7 (d) relating to medical assistance eligibility for pregnant women and infants.

Filed as an emergency rule - 12/21/89 - effective 1/1/90.  
Refiled as an emergency rule - 3/20/90 - effective 3/21/90.

The final rule - Filed: 3/20/90 - Effective: 4/4/90.

18 NYCRR 360-7.7 and 360-7.8 relating to medical assistance payment of qualified medicare beneficiaries, medicare cost sharing amounts and medicare coinsurance deductible for ambulance services.

Filed as an emergency rule - 12/21/89 - effective 1/1/90.  
Refiled as an emergency rule - 3/21/90 - effective 3/21/90.

The final rule - Filed: 3/21/90 - Effective: 4/11/90.

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Michael J. McNaughton  
Director, Local District  
Policy Communications

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), 363-a(2), 366.4(m), 366.4(n) and 366.4(o) of the Social Services Law, I Cesar A. Perales, Commissioner of Social Services, do hereby add subdivision (r) to Section 360-1.4, paragraph (15) to subdivision (c) of Section 360-3.3, subdivision (d) to Section 360-3.7 and amend paragraph (5) of subdivision (c) of Section 360-3.3, subdivision (b) of Section 360-4.1, Section 360-4.7 and subdivisions (a) and (c) of Section 360-4.8 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective when the Notice of Adoption is published in the New York State Register.

Dated: March 20, 1990

Signed: \_\_\_\_\_  
Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on, March 20, 1990 adding subdivision (r) to Section 360-1.4, paragraph (15) to subdivision (c) of Section 360-3.3, subdivision (d) to Section 360-3.7 and amending paragraph (5) of subdivision (c) of Section 360-3.3, subdivision (b) of Section 360-4.1, Section 360-4.7

of the Official Regulations of  
the State Department of Social  
Services, being Title 18 NYCRR,  
the express terms of which were  
published in the New York State  
Register on January 10, 1990.

Dated: March 20, 1990

Signed: \_\_\_\_\_

Commissioner

Subdivision (r) is added to section 360-1.4 to read as follows:

(r) Poverty line means the federal income official poverty line applicable to a family of the same size as the applicant's/recipient's family. The federal Office of Management and Budget defines and annually revises federal income official poverty lines in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). Subdivision (b) of section 360-4.7 of this Part contains a schedule of poverty lines.

Paragraph (5) of subdivision (c) of section 360-3.3 is amended to read as follows:

(5) A woman receiving MA on the [last] any day of her pregnancy remains eligible for MA for at least 60 days beginning on the last day of her pregnancy. Her [Eligibility] eligibility will continue until the last day of the month in which the 60th day occurs, regardless of any change in her household's income.

Paragraph (15) is added to subdivision (c) of section 360-3.3 to read as follows:

(15) An infant who is receiving medically necessary inpatient care and services on his or her first birthday and who is eligible for MA because his or her household's income does not exceed 185 percent of the applicable poverty line listed in subdivision (b) of section 360-4.7 of this Part will remain

eligible for such inpatient care and services until the end of his or her inpatient stay.

Subdivision (d) is added to section 360-3.7 to read as follows:

(d) Presumptive eligibility for pregnant women.

(1) A pregnant woman will be presumed eligible to receive the MA care, services and supplies listed in paragraph (9) of this subdivision when a qualified provider determines, on the basis of preliminary information, that the pregnant woman's family income does not exceed 185 percent of the applicable poverty line listed in subdivision (b) of section 360-4.7 of this Part.

(2) For purposes of this subdivision, the pregnant woman's family income will be determined according to section 360-4.6 of this Part relating to financial eligibility for MA. The resources of the pregnant woman's family will not be considered in determining the pregnant woman's presumptive eligibility for MA.

(3) For purposes of this subdivision, a pregnant woman's family includes the pregnant woman, any legally responsible relatives and any legally dependent relatives with whom she resides.

(4) As used in this subdivision, the term "qualified provider" means a provider who:

(i) is eligible to receive payment under the MA program;

(ii) provides one or more of the following types of services:

(a) outpatient hospital services;

(b) rural health clinic services, or

(c) clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician;

(iii) has been found by the department to be capable of making presumptive eligibility determinations based on family income; and

(iv) meets at least one of the following additional criteria:

(a) receives funds under the federal Migrant Health Centers or Community Health Centers programs pursuant to the federal Public Health Service Act;

(b) receives funds under the federal Maternal and Child Health Services Block Grant programs pursuant to Title V of the federal Social Security Act;

(c) participates in the program established under the federal Special Supplemental Food Program for Women, Infants, and Children pursuant to the federal Child Nutrition Act of 1966;

(d) participates in the program established under the federal Commodity Supplemental Food Program pursuant to the federal Agriculture and Consumer Protection Act of 1973; or

(e) participates in the New York State Department of Health's Prenatal Care Assistance Program (PCAP), established pursuant to Article 25 of the Public Health Law (PHL).

(5) A pregnant woman who has been determined presumptively eligible for MA must submit an MA application to the social services district in which she resides within 14 calendar

days after the day a qualified provider determined her to be presumptively eligible.

(6) A qualified provider that has determined a pregnant woman to be presumptively eligible for MA must:

(i) On the day the qualified provider determines the pregnant woman to be presumptively eligible inform her that she must submit an MA application within 14 calendar days to the social services district in which she resides to continue her presumptive eligibility beyond the 14th day;

(ii) assist her to complete the MA application and submit the application on her behalf;

(iii) within five business days after the day the qualified provider determines the pregnant woman to be presumptively eligible, notify the social services district in which the pregnant woman resides of its presumptive eligibility determination on forms the department develops or approves; and

(iv) if the qualified provider participates in PCAP, offer to represent the presumptively eligible pregnant woman during the remainder of the MA eligibility process, including acting as her representative at the personal interview the social services district conducts pursuant to section 360-2.2 of this Part.

(7) A pregnant woman who has been determined presumptively eligible for MA remains presumptively eligible for the period:

(i) beginning on the day on which a qualified provider

determines the pregnant woman presumptively eligible; and

(ii) ending on, and including, the earliest of the following:

(a) the day on which the social services district determines whether the pregnant woman is eligible for MA;

(b) the 45th calendar day after the day a qualified provider determined the pregnant woman presumptively eligible; or

(c) the 14th calendar day after the day the pregnant woman was determined presumptively eligible, if neither the pregnant woman, nor the qualified provider on her behalf, submits an application for MA before such day.

(8) A pregnant woman is eligible for only one period of presumptive eligibility during each pregnancy.

(9) A presumptively eligible pregnant woman is eligible for medical care, services and supplies as follows:

(i) a presumptively eligible pregnant woman whose family income does not exceed 100 percent of the applicable poverty line, as listed in subdivision (b) of section 360-4.7 of this Part, is eligible for all medical care, services and supplies available under the MA program , excluding inpatient and institutional long-term care ; and

(ii) a presumptively eligible pregnant woman whose family income exceeds 100 percent of the applicable poverty line but does not exceed 185 percent of such line, as listed in subdivision (b) of section 360-4.7 of this Part, is eligible for comprehensive prenatal care services available under PCAP, as described in Section 2522 of the Public Health Law, excluding inpatient care.



(10) If a presumptively eligible pregnant woman is subsequently determined to be ineligible for MA, she may request a fair hearing pursuant to Part 358 of this Title to dispute the denial of MA, but her presumptive eligibility period will not be extended by such request.

The introductory language of subdivision (b) of section 360-4.1 is amended to read as follows:

(b) How the process works. (1) For an applicant/recipient other than a pregnant woman or infant younger than one year of age, [Financial] financial eligibility will be determined as follows:

Paragraphs (1)-(6) of subdivision (b) of section 360-4.1 are redesignated as subparagraphs (i)-(vi) and a paragraph (2) is added to such subdivision to read as follows:

(2) For a pregnant woman or infant younger than one year of age who applies for or is in receipt of MA, financial eligibility will be determined as follows:

(i) The size of the applicant's/recipient's MA household will be determined.

(ii) All income available to the applicant/recipient during the period for which eligibility is being determined will be identified. All resources available to the applicant's/recipient's MA household are exempt from consideration.

(iii) Certain amounts and types of income will be disregarded in accordance with the provisions of section 360-4.6 of this Subpart. The remainder is the applicant's/recipient's net

available income.

(iv) The applicant's/recipient's net available income will be compared to the eligibility standards or poverty lines for his/her MA household size. The applicant/recipient is financially eligible if the amounts of his/her net available income do not exceed the applicable eligibility standards or poverty lines. A financially eligible applicant who also meets all other eligibility requirements will be eligible to receive MA.

The introductory language of subdivision (a) of section 360-4.7 is amended to read as follows:

(a) Resources. All resources available to the household of a pregnant woman or infant younger than one year of age are exempt from consideration in determining whether such pregnant woman or infant is medically needy. The following resources are exempt from consideration in determining whether [an] any other MA applicant/recipient is medically needy:

Subdivision (b) of section 360-4.7 is amended to read as follows:

(b) Income. (1) After an applicant's/recipient's household size has been determined, all available income identified and all applicable disregards applied, the applicant's/recipient's net available income will be compared to the appropriate standard, except as provided in paragraphs (2) and (3) of this subdivision. The standard which will be used by the social services district is the MA standard shown on the following schedule, or the Public Assistance (PA) Standard of Need, whichever is higher.

The schedule following subdivision (b) of section 360-

4.7 is repealed and a new schedule is added to read as follows:

Schedule MA-2

Number in

Household	1	2	3	4	5	6	7
*Annual	\$5,700	\$8,200	\$8,500	\$10,200	\$11,900	\$13,600	\$15,300
**Monthly	475	684	709	850	992	1,134	1,275

\*For each additional person after seven add \$1,700.

\*\*For each additional person after seven add \$142.

Paragraphs (2) and (3) are added to subdivision (b) of section 360-4.7 to read as follows:

(2) The net available income of a pregnant woman or infant younger than one year of age will be compared to the highest of the following three items: the applicable MA standard; the applicable PA Standard of Need; or, 100 percent of the applicable poverty line, as listed in the following schedule:

Poverty Lines

Number in

Household	1	2	3	4	5	6	7
*Annual	\$5,980	\$8,020	\$10,060	\$12,100	\$14,140	\$16,180	\$18,220
**Monthly	499	669	838	1,008	1,178	1,348	1,518

\*For each additional person after seven add \$2,040

\*\*For each additional person after seven add \$170

(3) If the net available income of a pregnant woman or infant younger than one year of age exceeds the highest of the

three items listed in paragraph (2) of this subdivision, the social services district will compare it to 185 percent of the applicable poverty line, as listed in the following schedule:

185 Percent of Poverty Lines

Number in

Household	1	2	3	4	5	6	7
*Annual	\$11,063	\$14,837	\$18,611	\$22,385	\$26,159	\$29,933	\$33,707
**Monthly	921	1,236	1,550	1,865	2,179	2,494	2,808

\*For each additional person after seven add \$3,774

\*\*For each additional person after seven add \$314

Subdivision (a) of section 360-4.8 is amended to read as follows:

(a) Financial eligibility. (1) Except as provided in paragraphs (2) and (3) of this subdivision, [An] an applicant/recipient is financially eligible for MA if his/her net available income and net available resources do not exceed the appropriate standards. The standards are found in section 360-4.7 of this [Part] Subpart. Financially eligible applicants/recipients will be authorized to receive MA if they also meet the nonfinancial eligibility requirements. The nonfinancial eligibility requirements are found in Subpart 360-3 of this Part.

(2)(i) A pregnant woman is financially eligible for MA if her net available income does not exceed the highest of the following three items: the applicable MA standard; the applicable PA Standard of Need; or, 100 percent of the applicable poverty line listed in subdivision (b) of section 360-4.7 of this Subpart.

(ii) A pregnant woman is financially eligible for comprehensive prenatal care services available under the Prenatal Care Assistance Program, as listed in Public Health Law Section 2522, if her net available income exceeds the highest of the three items listed in subparagraph (i) of this paragraph but does not exceed 185 percent of the applicable poverty line listed in subdivision (b) of section 360-4.7 of this Subpart.

(iii) A pregnant woman who is financially eligible for MA or comprehensive prenatal care services must also meet the non-financial eligibility requirements found in Subpart 360-3 of this Part.

(3) An infant younger than one year of age is financially eligible for MA if his or her net available income does not exceed 185 percent of the applicable poverty line listed in subdivision (b) of section 360-4.7 of this Subpart. The infant must also meet the nonfinancial eligibility requirements found in Subpart 360-3 of this Part.

Paragraph (4) of subdivision (c) of section 360-4.8 is amended to read as follows:

(4)(i) Federally non-participating persons described in paragraph 360-3.3(b)(7) of this Part whose net available income exceeds the appropriate income standard cannot become eligible for MA by incurring medical expenses equal to or greater than the amount of their excess income.

(ii)(a) A pregnant woman whose net available income exceeds 185 percent of the applicable poverty line listed in subdivision (b) of section 360-4.7 of this Subpart:

(1) cannot become eligible for comprehensive prenatal care services listed in Section 2522 of the Public Health Law by incurring medical expenses equal to or greater than the amount by which her net available income exceeds 185 percent of such line; and

(2) cannot become eligible for full MA coverage by incurring medical expenses equal to or greater than the amount by which her net available income exceeds 100 percent of such line.

(b) A pregnant woman whose net available income exceeds 100 percent of the applicable poverty line listed in subdivision (b) of section 360-4.7 of this Subpart but does not exceed 185 percent of such line cannot become eligible for full MA coverage by incurring medical expenses equal to or greater than the amount by which her net available income exceeds 100 percent of such line.

(c) An infant younger than one year of age whose net available income exceeds 185 percent of the applicable poverty line listed in subdivision (b) of section 360-4.7 of this Subpart cannot become eligible for MA by incurring medical expenses equal to or greater than the amount by which his or her net available income exceeds 185 percent of such line.

(d) A pregnant woman or infant described in clauses (a)-(c) of this subparagraph can become eligible for full MA coverage only by incurring medical expenses equal to or greater than the amount by which the pregnant woman's or infant's net available income exceeds the higher of the applicable MA standard or PA Standard of Need.

Deleted material [bracketed]; inserted material underlined

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20.3(d), 34.3(f), 363-a.2, 367-a.1 and 367-a.3 of the Social Services Law, I Cesar A. Perales, Commissioner of Social Services, do hereby amend Sections 360-7.7 and 360-7.8, of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective when the Notice of Adoption is published in the New York State Register.

Dated: March 21, 1990

Signed: \_\_\_\_\_  
Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on, March 21, 1990, amending Sections 360-7.7 and 360-7.8

of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on

Dated: March 23, 1990

Signed: \_\_\_\_\_  
Commissioner

Subdivisions (a)-(d) of section 360-7.7 are amended to read as follows:

(a) The MA program will pay [,] on behalf of MA recipients, including qualified Medicare beneficiaries defined in subdivision (g) of this section, the amount of any deductible or coinsurance liability incurred under Part A of Title XVIII of the Social Security Act.

(b)(1) Except as otherwise provided in paragraph (2) of this subdivision, [The] the MA program will pay [,] on behalf of MA recipients, including qualified Medicare beneficiaries, the amount of any deductible or coinsurance liability incurred under Part B of Title XVIII of the Social Security Act if the Medicare Part B payment is less than the established MA fee. The [department] MA program will pay only the difference between the Medicare Part B payment and the lower of the MA fee or the Medicare approved amount.

(2) The MA program will pay on behalf of MA recipients, including qualified Medicare beneficiaries, the full amount of any deductible or coinsurance liability incurred for ambulance services provided under Part B of Title XVIII of the Social Security Act.

(c) Before the MA program will pay any Medicare Part B deductible or coinsurance liability, the MA recipient or qualified Medicare beneficiary must assign to the provider any Part B benefit payment to which [he/she] he or she is entitled [to the provider]. A provider of a Medicare Part B benefit must accept



assignment from such recipient or beneficiary of his or her right to receive the Medicare Part B payment.

(d) [A provider of care, services or supplies covered under Medicare Part B and the MA program must accept assignment from an MA recipient of that person's right to receive Medicare Part B payments.] [The] A provider of a Medicare Part B benefit must not seek to recover any Medicare Part B deductible or coinsurance amounts from [such] an MA recipient or qualified Medicare beneficiary.

A new subdivision (g) is added to Section 360-7.7 to read as follows:

(g) Qualified Medicare beneficiaries. (1) As used in this section and section 360-7.8 of this Subpart, the term qualified Medicare beneficiary means a person:

(a) who is entitled to hospital insurance benefits under Medicare Part A;

(b) whose income does not exceed 100 percent of the poverty line, as defined in section 360-1.4 of this Part, applicable to a family of the size involved;

(c) whose resources do not exceed twice the maximum amount of resources that the person may have to be eligible for Supplemental Security Income benefits; and

(d) who meets the non-financial eligibility requirements contained in Subpart 360-3 of this Part.

The title of section 360-7.8 is amended to read as follows:

[Payment] Payments of premiums under [Medicare Part B] Title XVIII of the Social Security Act (Medicare) [for certain recipients of public assistance or care].

Subdivisions (a) and (b) of section 360-7.8 are relettered subdivisions (b) and (c), newly relettered subdivision (b) is amended and a new subdivision (a) is added to read as follows:

(a) Payment of Medicare Part A monthly premiums will be made by the MA program for a qualified Medicare beneficiary, as defined in subdivision (g) of section 360-7.7 of this Subpart, beginning with the month following the month he or she applies for MA payment of these amounts.

(b) Payment of Medicare Part B premiums will be made [under] by the MA program if a recipient is:

(1) enrolled in a voluntary insurance program under Medicare Part B;

(2) receiving cash grants as an eligible recipient of public assistance;

(3) receiving chronic care in a medical institution; [or]

(4) receiving care in a public home[.] ; or

(5) a qualified Medicare beneficiary, as defined in subdivision (g) of section 360-7.7 of this Subpart. The MA program will pay the Medicare Part B monthly premiums for a qualified Medicare beneficiary beginning with the month following the month he or she applies for MA payment of these amounts.

Deleted material [bracketed]; new material underlined.