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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 90 LCM-172

Date: October 25, 1990

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 351.24(c)
Filed Regulation 360-6.4

ATTACHMENTS: Attachment I - 351.24(c) (available on-line)

Attachment II - 360-6.4 (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 351.24(c) relating to monthly reporting.

The final rule - Filed: 10/22/90 - Effective: 11/7/90.

18 NYCRR 360-6.4 relating to recipient restriction program.

The final rule - Filed: 10/17/90 - Effective: 11/7/90.

Michael J. McNaughton
Director, Local District
Policy Communications

Subdivision (c) of section 351.24 is amended to read as follows:

(c) Public assistance cases [shall] must submit monthly report forms to the social services district for any month in which any member of the case receives earned income and for the next succeeding two months. For the purpose of this section, earned income includes income deemed to be available to the public assistance case. The following are exempt from the monthly reporting requirements:

(1) individuals whose sole earnings are from self-employment;

(2) full-time students and part-time students who are not employed full-time;

(3) dependent children who derive earned income from a program carried out under JTPA, irrespective of student status;

(4) individuals whose earned income, including those who have earned income deemed available to them from individuals living with them who also have earned income, has not changed for the six-month period directly preceding the month the agency removes the case from monthly reporting; and

(5) individuals enrolled in the Work Supplementation Program.

(Deleted material brackets ; new 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), of the Social Services Law, I Cesar A. Perales, Commissioner of Social Services, do hereby amend Section 360-6.4, 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: October 17, 1990

Signed: _____
Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on October 17, 1990, amending Section 360-6.4 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 July 18, 1990

Dated October 17, 1990

Signed: _____

Commissioner

The introductory paragraph of section 360-6.4 is amended to read as follows:

360-6.4 Restriction of recipient access to services
(Recipient Restriction Program).

The social services district and the department may restrict a recipient's access to MA care and services if, upon review, it is found that the recipient has received duplicative [drugs or medical care] , excessive , contraindicated or conflicting health care services, [pharmaceuticals,] drugs, or supplies [or contraindicated or conflicting care] . In such cases, the social services district and the department may require that the recipient access specific types of medical care and services through a designated primary provider or providers. The State medical review team (SMRT) designated by the department performs recipient utilization reviews and identifies candidates for the Recipient Restriction Program.

Subdivision (a) of section 360-6.4 is amended by renumbering paragraph (1) as paragraph (3), paragraph (2) as paragraph (5), paragraph (3) as paragraph (2), paragraph (4) as paragraph (6), paragraph (5) as paragraph (4) and paragraph (6) as paragraph (1) and paragraphs (1),(2),(4) and (6) are amended to read as follows:

(a) Definitions. When used in this section:

(1) Good cause for a restricted recipient to request a change of primary provider means the existence of one or more of the following circumstances:

(i) the provider no longer wishes to be the primary provider for the recipient; or

(ii) the provider has closed his/her office or pharmacy, or moved to a location not convenient to the recipient; or

(iii) the provider has been suspended or disqualified from participation in the MA program; or

(iv) the provider is a pharmacist and/or a durable medical equipment (DME) dealer who cannot stock an item for which the recipient has a legitimate prescription or fiscal order ; or

(v) the recipient has moved; or

(vi) other circumstances exist that make it necessary to change providers.

(2) Primary provider is a health care provider enrolled in the MA program who has agreed to oversee the health care needs of the restricted recipient [within the provider's category of service]. The primary provider will provide and/ or direct all medically necessary care and services for which the recipient is eligible , within the provider's category of service or expertise. Primary provider includes physicians, clinics, pharmacies, podiatrists, DME dealers, dentists, and dental clinics.

(3) Recipient is a person who is receiving or who has received MA benefits within the preceding six months, including both current and former recipients.

(4) Recipient information packet (RIP) is the utilization review summary prepared by the [State medical review team. The RIP documents] SMRT documenting the reason(s) for a recommended restriction [and] . It will include a summary pharmacology assessment prepared by the pharmacist documenting

misuse of pharmacy and DME services and [a] summary medical [assessment] assessments prepared by the registered professional nurse documenting misuse of [medical] health care services. [The] A physician must sign the RIP, indicating review and approval of the restriction recommendation.

(5) Restriction is an administrative action limiting an MA recipient's access to specific types of medical care and services through a designated primary provider(s).

(6) [State medical review team] SMRT means a team consisting of a registered nurse, a pharmacist and a physician, all of whom are licensed to practice by the State [of New York], who act for the department to:

(i) analyze recipient use of medical care and services under the MA program;

(ii) make recommendations concerning restrictions on recipient use; and

(iii) prepare recipient information packets.

A new subdivision (b) is added to section 360-6.4 and subdivisions (b) through (h) of such section are relettered subdivisions (c) through (i) and as relettered, are amended to read as follows:

(b) A recipient who is restricted to a primary physician or primary clinic may also be restricted to a primary pharmacy, primary dentist, primary dental clinic, primary podiatrist and primary DME dealer if such additional restrictions would result in a more efficient mechanism to control abuse or misuse of services provided under the MA program.

(1) A primary physician or primary clinic is responsible for providing all medical care to a restricted recipient, either directly or through the referral of such recipient to another medical provider for appropriate services. The primary physician/clinic, dentist or podiatrist and/or primary clinic has the responsibility for ordering the following services for the restricted recipient:

(i) transportation services;

(ii) laboratory services;

(iii) DME services; if the recipient is also restricted to a primary DME dealer, that provider will be the only allowed dispenser of DME services; and

(iv) pharmacy services; if the recipient is also restricted to a primary pharmacy, that provider will be the only allowed dispenser of pharmacy services.

Primary physicians will receive a five dollar management fee, for each month they are the primary provider for a restricted recipient, for the coordination and management of the recipient's care.

(2) A primary pharmacy is responsible for providing all necessary drugs and pharmaceutical supplies to a recipient who has been restricted to such a pharmacy. A primary pharmacy will institute and maintain current patient profiles for its restricted recipients. These profiles must contain, at a minimum, for each recipient: the identity of the prescriber of the drugs and supplies; the strength, quantity and dosage regimen of any drugs; and the dates of service for all drugs and supplies dispensed. These profiles must be made readily accessible to the department and its agents.

(3) A primary dentist or dental clinic is responsible for providing or directing the provision of all dental care for the recipient.

(4) A primary podiatrist is responsible for providing or directing the provision of all podiatric care for the recipient.

(5) A primary DME dealer is responsible for providing all necessary medical appliances and supplies to a recipient who has been restricted to such a dealer and for repairing and adjusting such appliances and supplies.

(c) Responsibilities of the [State medical review team] SMRT. The professional judgment of the [medical review team] SMRT is applied to each case review. Use of professional judgment includes, but is not limited to:

(1) identifying potential hazards to the health of the recipient;

(2) identifying instances in which the misuse of services appears to be caused by the provider. In such instances, the [review team] SMRT will refer the provider to the appropriate agency for quality of care review and/or administrative or criminal action. [It] The SMRT will not recommend that the recipient be restricted;

(3) identifying instances where the recipient may have met one of the conditions of restriction, but it appears to have been an isolated occurrence, or there appears to have been a legitimate reason for the use cited. In these instances, [a restriction will not be recommended] the SMRT will not recommend that the recipient be restricted; and

(4) recommending the type of restriction [which] that will control the misuse most effectively. [No pharmacy restriction will be recommended unless the recipient has received duplicative, excessive, contraindicated or conflicting pharmaceuticals (i.e., drugs, medical supplies or appliances).]

(d) Conditions for restriction. Restrictions will be recommended to the social services district if a recipient displays a pattern of receiving one or more of the following:

(1) Excessive [pharmaceuticals] drugs, supplies or appliances. The recipient has received more of a drug, medical supply or appliance in a specified time period than is necessary, according to acceptable medical practice.

(2) Duplicative drugs, supplies or appliances. The recipient has received two or more similarly acting drugs in an overlapping time frame or has received duplicative supplies or appliances. The drugs, if taken together, may result in harmful drug interaction(s) or adverse reaction(s). Duplicative supplies and appliances, while not harmful, have no medical indication and are therefore unwarranted.

(3) Duplicative [medical care] health care services. The recipient has received health care services from two or more [physicians and/or clinics] providers for the same or similar conditions in an overlapping time frame. Health care services include, but are not limited to, physician, clinic, pharmacy, dental, podiatry and DME services.

(4) Contraindicated care or conflicting care. The recipient has received [pharmaceuticals] drugs, supplies or appliances and/or [medical] health care services which may be

inadvisable in the presence of certain medical conditions or which [conflicts] conflict with care being provided or ordered by another provider.

(5) Medical assistance card loaning. The recipient has used, or has made available to be used, an MA card to obtain services for, or by, an unauthorized person. In such instances, a restriction may be imposed for all eligible categories of services or only for those categories of services deemed appropriate by the SMRT.

(e) Recipient's rights.

(1) Selection of primary provider. The social services district, in consultation with the department, must either designate a primary provider for a restricted recipient or afford the recipient a limited choice of primary providers for the type of services that are to be restricted. If the recipient fails to choose a primary provider when asked to do so, the social services district must designate a single provider in the restriction category for the recipient. A recipient may request a change of primary provider every three months, or at an earlier time for good cause.

(2) Recipient notification. A notice of intent to restrict must be sent to the recipient. The notice must conform with the requirements of Part 358 of this Title. The notice must include the following information:

- (i) the date the restriction will begin;
- (ii) the effect and scope of the restriction;
- (iii) the reason for the restriction;
- (iv) the recipient's right to a fair hearing;

(v) instructions for requesting a fair hearing including the right to receive aid continuing if the request is made before the effective date of the intended action. Part 358 of this Title contains the provisions on instructions for requesting a fair hearing;

(vi) the right of a social services district to designate a primary provider for the recipient;

(vii) the right of the recipient to select a primary provider within two weeks of the date of the notice of intent to restrict, if the social services district affords the recipient a limited choice of primary providers;

(viii) the right of the recipient to request a change of primary provider every three months, or at an earlier time for good cause;

(ix) the right to a conference with a social services district staff person to discuss the reason for and effect of the intended restriction;

(x) the right of the recipient to explain and present documentation, either at a conference or by submission, showing the medical necessity of any [misuse of] services cited as misused in the [recipient information packet] RIP ;

(xi) the name and telephone number of the person to contact to arrange a conference;

(xii) the fact that a conference does not suspend the effective date listed on the notice of intent to restrict;

(xiii) the fact that the conference does not take the place of or abridge the recipient's right to a fair hearing;

(xiv) the right of the recipient to examine his/her case record; and

(xv) the right of the recipient to examine records maintained by the social services district which identify MA services paid for on behalf of the recipient. This information is generally referred to as "claim detail" or "recipient profile" information.

(f) Social services district responsibilities.

(1) Timeliness. The social services district must begin to process a restriction recommendation and contact the recipient within 30 days of receipt of the [State] SMRT's recommendation to restrict.

(2) Reversal, change, or [nonimplementation] non-implementation of restriction by the social services district. The social services district may [change] decide not to follow a restriction recommendation after a conference or upon receipt of additional information only in the following situations:

(i) Administrative reasons.

(a) The recipient's [Recipient's] case is closed for more than three months from receipt of recommendation;

(b) The recipient is institutionalized;

(c) The social services district cannot locate a primary provider of one type to accept responsibility for the recipient and has to substitute another type of provider [(i.e.,) for example, physician for clinic provider []] ;

(d) the recipient participates in another case management or managed care [type] program authorized by the

department which the social services district [considers] believes will benefit the recipient more.

(ii) Medical reasons.

The recipient can demonstrate a medical necessity for the services received. If, after a conference with the recipient or receipt of additional information, the social services district decides [to change] not to follow the [department's] SMRT's recommendation for medical reasons, the steps below must be followed:

(a) the recipient must present the RIP summary to [any treating physician] an appropriate provider(s) listed in the summary. The [physician] provider(s) must submit a statement [which indicates] acknowledging full awareness of all the services, drugs, and supplies listed in the RIP. The [physician] provider(s) must explain why the services, drugs and supplies are medically necessary;

(b) the social services district must contact [the treating physician,] such provider(s) who must submit a statement to verify that he/she saw the RIP summary and that the information on the statement is accurate;

(c) the social services district medical director or a consulting physician having no [vested interest] involvement in the case must sign the case decision [to change] not to follow the [department's] SMRT's recommendation for medical reasons; and

(d) documentation and a summary must be forwarded to the department within 30 days of the date on which the decision [to change] not to follow the recommended restriction is made.

(g) Provider cooperation. The social services district must obtain an agreement from the primary provider that he/she will act as a primary provider. A primary provider must be given written confirmation of the recipient's restriction. Such confirmation must include the following:

- (1) the effective date of the restriction;
- (2) restriction limitations; and
- (3) provisions for handling referrals (not applicable for pharmacy or other ordered service restrictions).

(h) Length of restriction. (1) An initial restriction period will be for [15] 24 consecutive months. After the initial period, the department will determine if the restriction should be continued. A second restriction period will be for three years. Any additional restriction periods will be for [three] six years. If a restriction is to be continued or reinstated, the social services district must notify the recipient by sending a new letter of intent. [Provisions on the] The required content of the notice of intent [are found] is set forth in paragraph [(d)] (2) of subdivision (e) of this section.

(2) Initial and additional restriction periods must be computed without regard to [actual] eligibility for, or receipt of, MA benefits. All periods of ineligibility or voluntary discontinuance of receipt of benefits must be counted in determining the length of the restriction. Recipients who do not remain eligible for benefits or who do not continue to receive them, as well as those who are not receiving benefits at the time of the imposition of the restriction, will be treated similarly to those who remain eligible and continue to receive benefits. (For example,

a recipient who becomes ineligible for benefits prior to the effective date of the restriction period and, upon subsequent reapplication for or redetermination of eligibility, regains eligibility within the restriction period will be eligible for benefits only in accordance with the restriction previously imposed.)

(i) Re-review for compliance with restriction.

The department will monitor the recipient's compliance with a restriction and determine whether an additional restriction period is appropriate. The department will use evidence of MA identification card alterations, services received inappropriately from non-primary providers and other improper actions as the basis for an additional administrative restriction for other than medical reasons. A decision not to continue a restriction will in no way [prejudice] preclude any subsequent decisions to restrict for medical reasons. A recipient restricted for an additional period for [noncompliance] non-compliance will have the same rights and is entitled to all appropriate notices informing him/her of the proposed action. These rights and notices are specified in Part 358 of this Title and subdivision [(d)] (e) of this section.