

**TO:** Local District Commissioners, Medicaid Directors, and Child Support Directors

**FROM:** Judith Arnold  
Director, Division of Coverage and Enrollment

**SUBJECT:** Child Support Enforcement and Medicaid Recoveries

**EFFECTIVE DATE:** Immediately

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The purpose of this GIS is to clarify the recovery and child support referral policy for children with an absent parent, and to further clarify the policy regarding the recovery of confinement and birth-related expenses for pregnant women and their newborns.

#### **SUPPORT ORDERS**

Support orders typically direct a non-custodial parent to pay all or a portion of the child's health care expenses not covered by insurance. This is consistent with Family Court Act (FCA) §413, which requires that such non-covered expenses be prorated between the parents in the same proportion as each parent's income is to the combined parental income.

Based on a 2001 court decision, it has been argued that if a support order requires a non-custodial parent to pay his or her pro rata share of health care expenses not covered by insurance, this obligates the non-custodial parent to reimburse the Medicaid program for his or her pro rata share of all Medicaid expenditures made on behalf of the child. **This is NOT correct. Districts should not be making a referral to the Child Support Unit based on that rationale. If a non-custodial parent is meeting his or her medical support obligations under FCA §§ 413 and 416 (discussed below):**

- a) such parent does not have an obligation to repay the cost of Medicaid provided to the child, assuming such Medicaid is otherwise correctly paid; and
- b) a referral should not be made to Child Support to pursue such a recovery.

**Note:** This applies only to the parent's general obligation to provide medical support to a child; separate rules govern when Medicaid pursues a third-party recovery from a father for the mother and child's confinement and pregnancy-related expenses.

In 2002, subsequent to the court decision in question, FCA §416 was amended regarding the obligations of parents to provide health insurance coverage for a child. (This amendment did not alter the parents' general duty under FCA §413 to pay a pro rata share of a child's unreimbursed health care expenses.) Under §416, as amended, support orders must require legally responsible relatives to make use of any health insurance coverage available to cover the child on whose behalf a petition is brought. The cost of providing such health insurance for the child is prorated between the parents.

If neither parent has health insurance available, FCA §416 requires the court to direct the custodial parent to apply for Medicaid or Child Health Plus for the child. If the child is eligible for one of those programs, the parents' obligation is to pay the cost of any required premium or family contribution, such as co-payments, that are the responsibility of the recipient under the Medicaid or Child Health Plus programs, which cost shall be prorated between the parents.

**Note:** The parents are not required to pay the cost of premiums typically paid by the Medicaid program for an eligible recipient, such as managed care premiums or premiums paid under Medicaid rules for private, cost-effective health insurance.

A direction by the court to seek Medicaid or Child Health Plus for the child does not eliminate the parents' obligation to utilize for the child's benefit any health insurance coverage that may subsequently become available.

#### **CONFINEMENT EXPENSES**

Districts that seek recoveries of confinement and pregnancy-related expenses are reminded that recoveries must not be pursued during a woman's pregnancy, during the 60-day period beginning on the last day of the pregnancy or during the remainder of the calendar month in which the 60th day occurs.

The father's liability for the mother's confinement expenses depends on his legal relationship with the mother and on the father's financial circumstances at the appropriate time.

- a) If the father is **married** to the mother, he is **not** liable to pay confinement expenses for the mother and child if:
1. The father's income was considered available in determining the pregnant woman's/mother's Medicaid eligibility; or
  2. The father's income and resources were at or below the Medicaid standards at the time of birth; or
  3. The father was in receipt of TANF or Medicaid at the time of birth.

If any of the above circumstances apply, the father cannot be held liable for confinement expenses.

- b) If the father is **not married** to the mother, his liability for the mother's confinement expenses may be determined by the court, in its discretion, based on the father's ability to pay **at the time of the hearing to establish paternity and support**. Therefore, no confinement expenses should be pursued if the eligibility worker determines that the unwed father currently has income and resources at or below the applicable Medicaid standards or is currently on TANF or Medicaid. If paternity and responsibility for prospective medical support has already been established and it is determined that the father's financial circumstances do not warrant pursuit of confinement expenses, the eligibility worker should not refer the case to the Child Support Unit.

Regardless of whether the father is married to the mother, his liability for the **child's** birth-related expenses are evaluated in the same manner as explained in a) 1 through 3 above.

The following chart summarizes the legal relationship and the applicable statutory authority.

Marital status:	Expenses of:	When ability to pay measured:	Statutory basis:
Married	Mother	Time of Birth	SSL 366
Married	Child	Time of Birth	SSL 366
Unwed	Mother	Time of Hearing	FCA 514&545
Unwed	Child	Time of Birth	SSL 366

**NOTE:** This chart only deals with the recovery of Medicaid furnished for the mother's confinement expenses and the child's birth-related expenses paid for the child before the child leaves the hospital. Regardless of marital status, there is legal authority to pursue an order of medical support prospectively against the absent father of a child receiving Medicaid.

In cases when the father is not in receipt of Medicaid or TANF and his income and resources are unknown and cannot be determined for the relevant period of time, the Medicaid worker should refer the case to the Child Support Unit and the child support worker should pursue confinement expenses. This will allow the court to conduct an inquiry into the father's financial circumstances.

When an eligibility worker refers a case to the Child Support Unit for reasons that include recovery of confinement or pregnancy-related expenses, the referral must include documentation of such expenses.