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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 92 ADM-19

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: May 11, 1992

SUBJECT: Absent Parent/Legally Responsible Relative Subrogation

SUGGESTED
 DISTRIBUTION:

Child Support Enforcement Unit
 Third Party Resources Unit
 Staff Development Coordinators

CONTACT
 PERSON:

Fred Perkins, Third Party Resources Unit,
 1-800 342-3715, extension 3-0149

ATTACHMENTS:

Attachment 1 - Listing of attachments available on
 line

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
82 ADM-17			SSL 366 (3)(a)&(b) (4)(h) 367-a(2)(b) InsLaw 3212 (e)(3)&(4)		

I. PURPOSE

This administrative directive (ADM) informs social services districts of a new subrogation law that pertains to legally responsible relatives who agree or are court-ordered to provide health insurance benefits or medical care to their dependents.

II. BACKGROUND

A. DEFINITION OF TERMS

Responsible Relative - As used in this ADM, a legally responsible relative is a person who is legally responsible for the support and welfare, including health care, of his or her dependents who are applying for or are receiving Medical Assistance (MA). The responsible relative can be a member of the MA case, a non-applying household member, or be an absent parent or other legally responsible relative who is court ordered to provide medical coverage.

Subrogation - As used in this ADM subrogation means that the social services district succeeds to whatever rights the legally responsible relative had with respect to his or her health insurance or other liable third party benefits. A local social services department "steps into the shoes" of the legally responsible relative.

B. Historically, the absent parent/responsible relative has retained significant control concerning the payment by the health insurance company for the claims of his or her dependents. Many health insurance policies are established with provisions for payment directly to the insured (in this case, the absent parent/responsible relative) or to the provider of service (e.g., doctor or hospital) if the insured/responsible relative so directs through an assignment of the claim. Since it is often not in the interest of the absent parent/responsible relative to cooperate in making the health insurance payment available to pay for his or her dependent's medical bills, MA is often used in place of the health insurance to guarantee that medical services are provided.

The absent parent's/responsible relative's non-payment has had two effects. One is that it creates a situation where health insurance should be available, but in reality is not. This can cause harassment of the MA recipient by the provider for non-payment and can potentially limit the recipient's access to health care. Secondly, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires MA to pay for the dependent's medical bills if they are not paid to the provider by the absent parent's/responsible relative's health insurance within 30 days of the date of the dependent's receipt of services. As a result, it is in the MA program's best interest to avoid paying the dependent's medical bills by using the absent parent's/responsible relative's insurance.

With enactment of SSL Section 366(3)(b), the social services district is now able to redirect the insurance payment to the provider and prevent the recipient from being harassed.

III. PROGRAM IMPLICATIONS

Social Services Law (SSL) Section 366(3)(b), as added by Section 16 of Chapter 165 of the Laws of 1991, expands the subrogation rights which already existed for social services districts with respect to MA recipients. Now social services districts are subrogated to any rights that a responsible relative, whether absent from the home or in the home, may have to obtain reimbursement from a third party for the costs of medical care provided to his or her dependents who are eligible for MA. Subrogation in this context means that the social services district has all of the rights granted to an insured individual by his or her insurance carrier. The law creates additional rights for social services districts, which enable the district to direct the payment from the insurance carrier to the social services district. The district may then direct payment to the provider of medical services rather than to the insured or the policyholder. Payment may be directed to a provider who does not otherwise participate in medical health insurance plans of the insurance carrier.

In addition, this law permits the Department or social services districts to enroll the dependents of legally responsible relatives as beneficiaries of the legally responsible relative's health insurance policy when the legally responsible relative is court-ordered to provide medical support. The consent or cooperation of an absent parent or other legally responsible relative is not necessary or required.

By implementing the process described in Section IV, Required Action, a social services district will facilitate the use of third party resources by increasing their availability. This will ultimately result in a reduction of MA expenditures.

MA providers throughout the State will be notified of this law and its implications for them by letter (Attachment A) shortly after your receipt of this ADM. A list of Third Party Resources (TPR) Workers and their telephone numbers will be attached to the provider letter. Providers will be instructed to contact TPR workers in those situations in which such providers wish to receive directly the insurance company payment for their services.

IV. REQUIRED ACTION

A. To direct payments to a provider of services to MA recipients:

Situation:

An MA provider contacts you and states that the insured, whether the MA recipient or absent parent/ responsible relative, is or has been uncooperative in turning over insurance payments to the provider.

Action:

1. Review Attachments B and C and, using these as examples, prepare originals that are specific to your district on your district's letterhead paper.
2. Obtain the information from the provider that is necessary for you to complete your subrogation notice, then mail your completed district's version of Attachments B and C to the provider.
3. Maintain a copy of each document in the recipient's file.

B. To enroll dependents in an absent parent's insurance plan:

Situation:

A legally responsible relative/absent parent is court-ordered to provide medical support for, or cover his or her dependents with health insurance that is available through the employer. The TPR Unit has been notified by the custodial parent, a dependent, a medicaid provider or through some other source that the absent parent is no longer covering the dependents with health insurance coverage.

Action:

- 1.a) The TPR worker will refer the ADC, IV-E, or MA-Only absent parent case to the CSEU for enforcement of the court-ordered health insurance.
- b) The TPR worker will further notify the CSEU whether or not family coverage is currently available through the employer and whether the absent parent is or is not going to cooperate in enrolling the dependents onto his/her health plan. If family coverage is available, the TPRU will advise the CSEU that it will enroll the dependent(s) onto the non-cooperative absent parents' employer sponsored family health insurance plan.
- c) The CSEU will be responsible for notifying the absent parent that his/her dependent(s) will be manually added to his/her health insurance plan as directed in the court order.
2. If enrollment of the dependents in the insurance plan must be done by the absent parent's/responsible relative's employer, send your district's version of Attachment D to the employer. Otherwise, send it to the insurance company.
3. Maintain a copy of Attachment D in the recipient's file and follow-up with the insurance carrier/employer within a reasonable period of time if they do not respond to your letter.
4. When you receive confirmation that the dependents have been added to the insurance policy, enter the insurance coverage into the Department's centralized database.

NOTE: TPR staff and CSEU staff should review and adhere to the Required Action section of 89 ADM-23, "Pursuit of Medical Support and Exchange of Third Party Health Insurance Information".

- C. To obtain insurance identification cards for dependents:

Situation:

A legally responsible relative/absent parent refuses to provide insurance identification cards which are necessary for the dependents to use the available health insurance.

Action:

1. See step IV.,B.,1.
2. Send your district's version of Attachment E to the employer or insurance carrier, whichever is responsible for providing identification cards.
3. Maintain a copy of your correspondence in the recipient's file and follow-up with the employer or insurance carrier within a reasonable period of time if they do not respond to your letter.

V. SYSTEMS IMPLICATIONS: None.

VI. EFFECTIVE DATE: This Administrative Directive is effective June 1, 1992.

Jo-Ann A. Costantino
Deputy Commissioner
Division of Medical Assistance

Listing of Attachments

- Attachment A Notice to Medicaid Providers Advising Them of New Subrogation Law
- Attachment B Letter to Provider from Local Social Services Department Transmitting Subrogation Notice and Designating the Provider as the Department's Billing Agent
- Attachment C Insurance Carrier Subrogation Notice
- Attachment D Insurance Carrier/Employer Dependent Enrollment Notice
- Attachment E Insurance Carrier Request for Identification Cards

Dear Provider:

The New York State Department of Social Services is pleased to advise you that a new law has been enacted which will enable us to help you to receive reimbursement from insurance carriers in certain circumstances when you were not able to receive that reimbursement in the past. An example of such a circumstance is when the insurance company will pay only the policyholder who was a legally responsible relative and the policyholder failed to forward the payment to you.

Social Services Law (SSL) Section 366(3)(b), as added by Section 16 of Chapter 165 of the Laws of 1991, expands the subrogation rights which already exist for social services districts with respect to their Medical Assistance (MA) recipients. It now makes the Department and social services districts subrogated to any rights that a legally responsible relative, whether absent or in the home, may have to obtain reimbursement from a third party for the costs of medical care provided to his or her dependents who are eligible for MA. Subrogation in this context means that the social services district has all of the rights granted to an insured individual by his or her insurance carrier. The law also creates additional rights for social services districts and permits directing the payment from the insurance carrier to the social services district. The district may direct payment to the provider of medical services rather than to the insured or the policyholder. Payment may be directed to a provider who does not otherwise participate in medical health insurance plans of the insurance carrier.

Effective immediately, when you encounter a situation where you historically have not received an insurance payment either directly or through the cooperation of an MA recipient or a legally responsible relative, you can now receive that payment by following the steps described below.

1. Contact the Third Party Resources worker in the social services district which is fiscally responsible for the MA recipient/patient. A list of the Third Party Workers, which includes phone numbers, is enclosed for your convenience.

2. Advise the Third Party Worker that you would like to be paid directly by the insurance carrier for your claims because the legally responsible relative or MA recipient has been uncooperative in the past in paying you the insurance payment that they received for your service. You will need to identify the MA recipient who is being treated in order for the local social services district to assist you.
3. The Third Party Worker will complete and furnish you with two forms, examples of which are enclosed.
 - a.) An Authorization to Act As Agent (Attachment I): This letter will transmit to you the Subrogation Notice needed to send to the insurance carrier or other liable third party payor. It will also authorize you to act as the claiming and billing agent for the social services district and directly receive the payment on its behalf.
 - b.) Subrogation Notice to Insurance Carrier (Attachment II): This advises the insurance carrier of the subrogation law and directs them to send payment to you for the claims you have submitted. Depending upon your relationship with the insurance carrier, you may or may not be required to furnish this letter with each future claim for the specific patient. However, this procedure can only be followed for services provided while the patient is an MA recipient.

In addition to assuring receipt of payment for your services, your cooperation in billing the insurance company could provide you with a higher reimbursement rate than the MA rate for the same service.

Any questions concerning this law and these practices should be directed to the social service district which is responsible for MA recipients for whom reimbursement will be requested.

Sincerely,

Ben Mastrototaro
Associate Commissioner
Division of Medical Assistance

(District LETTERHEAD)

(Date)

(Provider Name)
(Street Address)
(City, State, Zip)

Dear Medicaid Provider:

Per your request, we are providing the enclosed subrogation notice which directs an insurance carrier or other liable third party to pay you directly for the services provided and being claimed.

By virtue of this letter, the (District Name) Department of Social Services is hereby designating you as its official agent for claiming third-party reimbursement from the within-named insurance company(ies) or third party payors for medical services you have provided to the New York State Medical Assistance client(s) indicated.

Keep a copy of this letter and the subrogation notice sent for each patient/client in his or her file, and attach a copy of it to each claim you submit to the carrier. This will help insure payment being made directly to you.

Your compliance and cooperation in this billing is required by Title 18 of the New York Codes, Rules and Regulations, Section 540.6(e)(3)(iv). This provision requires that Medicaid providers seek reimbursement from liable third parties before submitting a claim to the New York State Medical Assistance program.

Should you experience any problems, or have any questions, call me at the below-listed telephone number.

Thank you for your understanding and cooperation with us in this effort to help contain Medical Assistance costs.

Sincerely,

(Third Party Worker Name)
(Title)
(Unit/Department)
(Telephone Number)

Enclosure

Subrogation Notice To Insurance Carrier
To Recognize and Pay Provider, As Agent
of (District Name) Department of Social Services

Dear Insurance Claims Processor:

By the authority of New York State Social Service Law Sections 366(3)(b), 366(4)(h), 366(3)(a) and 367-a(2)(b), together with Insurance Law Section 3212(e)(3) and (4), the New York State Department of Social Services and county social services districts, as well as the New York City social services district, are subrogated to any rights that an individual may have to obtain reimbursement from a third party for the costs of medical care provided for himself or herself and to any rights a legally responsible relative may have relating to his or her dependents, or other persons, when an individual is court ordered, or agrees to provide, health insurance or other medical care coverage for applicants for, recipients of, or persons otherwise entitled to receive, medical assistance.

By virtue of this letter, notice is hereby given to

_____, _____, _____,
Insurance/3rd Party Name Street Address City, State, Zip

that, pursuant to the above referenced laws, the (District Name) Department of Social Services is hereby exercising its right to be subrogated to benefits due and owing, or which become due and owing to

_____, _____, _____, _____,
Insured Name Sex Policy No. Group No./Group Name

on behalf of

_____, _____, _____,
_____.Medicaid Client Name Sex Date of
Birth Relationship

Further notice is hereby given that

_____, _____, _____,
Provider Name Street Address City, State, Zip

has been directed by the (District Name) Department of Social Services to act as the department's agent for claiming reimbursement; therefore, please make payment for the attached claims for medical services directly to the provider, as herein authorized.

So that our Department may monitor the disposition of this claim, please mail a copy of your Explanation of Benefits Statement to the Social Services official listed below.

Your assistance and cooperation with the (District Name) Social Services Department in this matter is greatly appreciated. Should you have any questions, or require additional information, please do not hesitate to contact me.

Sincerely,

(Copy of District Seal)

(Third Party Worker Name & Title)
(Unit)
(Dist. Name Dept. of Social Services)
(Street Address)
(City, State, Zip)
(Telephone Number)

Dated: _____

(District Name) Department of Social Services
Notice for the Exercise of Subrogation Rights
To Enroll Dependents Onto Insurance Plan

Dear (Employer or Insurance Carrier):

Pursuant to Social Services Law Sections 366(3)(b), 366(4)(h), 366(3)(a) and 367-a(2)(b), together with Insurance Law Section 3212(e)(3) and (4), this agency is subrogated to any rights that a legally responsible relative may have, to obtain reimbursement from a third party for the costs of medical care provided to his or her dependents, or other persons, where the responsible relative is court ordered, or agrees to provide, health insurance or other medical care coverage for these dependents, and such dependents are applicants for, recipients of, or otherwise entitled to receive, medical assistance.

I certify that there is a current support order that meets the criteria established in Social Services Law 366(3)(b)(iii) and that a copy of that order can be made available upon request.

By virtue of this certification and above referenced laws, I am hereby requesting that the following dependents of

_____	_____	_____	_____
Insured's Name	Policy/Group #	Social	Security
Number			Number

be added to his/her insurance policy or other medical benefits plan:

_____	_____	_____	_____
Name	DOB	Name	DOB

_____	_____	_____	_____
Name	DOB	Name	DOB

Please notify me when this coverage becomes effective. If you have any questions, you may contact me at (District Phone # _____).

Sincerely,

(District TPR Worker)
(Title)
(Unit/Office)
(Address)

(District Name) Department of Social Services
Notice for the Exercise of Subrogation Rights
To Obtain Insurance Identification Cards

Dear (Employer or Insurance Carrier):

Pursuant to Social Services Law Sections 366(3)(b), 366(4)(h), 366(3)(a) and 367-a(2)(b), as well as Insurance Law Section 3212(e)(3) and (4), this agency is subrogated to any rights that a legally responsible relative may have, to obtain reimbursement from a third party for the costs of medical care provided to his or her dependents, or other persons, where the responsible relative is court ordered, or agrees to provide, health insurance or other medical care coverage for these dependents, and such dependents are applicants for, recipients of, or otherwise entitled to receive, medical assistance.

I certify that there is a current support order that meets the criteria established in Social Services Law 366(3)(b)(iii) and that a copy of that order can be made available upon request.

By virtue of this certification and above referenced law, this social services district is exercising its rights of subrogation and requesting that you provide a health insurance identification card for the policy of

Insured Name	Policy/Group #	Social Security Number
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Please send the identification card to my attention at the address listed below.

If you have any questions, you may contact me at (TPR Worker Phone Number).

Sincerely,

(TPR Worker Name)
(Title)
(Unit/Office)
(Address)