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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 92 LCM-42

Date: March 3, 1992

Division: Medical Assistance

TO: Local District Commissioners

SUBJECT: Medical Assistance Coverage of Emergency Care and Services
Provided to Illegal or Undocumented Aliens

ATTACHMENTS: None

The Department has recently received inquiries regarding the provision of Medical Assistance coverage to aliens who are not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, as detailed in Administrative Directive 88 ADM-4. Section 1903(v) of the Social Security Act (Act) provides that such aliens may, if otherwise eligible, be provided Medical Assistance for care and services necessary for the treatment of an emergency medical condition. The term emergency medical condition is defined in the Act as: "a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (A) placing the patient's health in serious jeopardy, (B) serious impairment of bodily functions, or (C) serious dysfunction of any bodily organ or part."

Federal regulations at 42 CFR 440.255 describe emergency services available to these aliens as services required after the sudden onset of the medical condition. Thus, certain types of care provided to chronically ill persons are beyond the intent of the federal law and are not considered "emergency services". Such care includes alternate level of care in a hospital, nursing facility services, home care (including private duty nursing) and personal care. Other care may be provided when medically necessary to treat an emergency medical condition or the accompanying acute symptoms.

In New York State, pregnant women who are not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law are not restricted to "emergency labor and delivery" as contained in the federal definition. Due to a permanent injunction in the case of Lewis v. Grinker, an otherwise eligible pregnant woman may receive full Medical Assistance coverage for her entire pregnancy and the 60-day postpartum period, regardless of alien status.

A letter clarifying these issues is also being sent to health care providers enrolled in the Medical Assistance Program. The Department is reviewing system edits to ensure that only appropriate claims for emergency care and services are reimbursed.

Any questions regarding this issue should be directed to your MA Eligibility County Representative at 1-800-342-3715, extension 3-7581, or in New York City at 212-417-4853.

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