



New York State
Office of Temporary and Disability Assistance
40 North Pearl Street – Albany, NY 12243-0001

George E. Pataki
Governor

Brian J. Wing
Commissioner

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To: DSS COMMISSIONERS
MEDICAID DIRECTORS
CSEU COORDINATORS

Dear Colleague:

We are writing to provide clarification with regard to two issues that have been raised by local districts and have been reviewed by OTDA's Division of Child Support Enforcement and the New York State Department of Health's Office of Medicaid Management.

ISSUE 1: RECOVERY of CONFINEMENT EXPENSES and PREGNANCY RELATED EXPENSES

In seeking recoveries local districts need to consider the following:

- 1) Confinement 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.
- 2) The father's liability for confinement expenses depends on his legal relationship with the mother and child and on the father's financial circumstances at the appropriate time.
 - a) If the father is **married** to the mother then 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 Medicaid standards at the time of birth; or
3. he was in receipt of TANF or Medicaid at the time of birth (refer to Social Services Law Section 366 (3)(a)).

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 then his liability for the mother's confinement expenses may be determined as the court, in its discretion, may deem proper **at the time of the hearing to establish paternity and support**. (Refer to Family Court Act Sections 514 and 545). However, no confinement expenses should be pursued if the eligibility worker determines that the 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 Division of Child Support Enforcement (DCSE).
- c) If the father is not married to the mother, then his liability for the child's expenses are evaluated in the same manner as explained in 2 (a) (1) through (3).

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.

- 3) Where 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 child support worker should pursue confinement expenses. This will

allow the court to conduct an inquiry into the father's financial circumstances.

- 4) When an eligibility worker refers a case to child support for reasons that include recovery of confinement or pregnancy related expenses, the referral must include documentation of such expenses to the child support program in a format acceptable as evidence to the court. In such instances where testimony is needed to establish liability for or the amount of confinement costs, the local district must arrange for qualified staff to testify regarding the Medicaid expense record. These Medicaid expense records are not needed to establish paternity or pursue prospective medical support.

The issue of pursuing the recovery of birth related costs is currently under review by the federal government. If the laws or regulations change, you will be notified in the future.

ISSUE 2: MEDICAID-ONLY APPLICANT/RECIPIENT COOPERATION WITH CHILD SUPPORT

As a condition of eligibility for Medicaid, individuals applying for medical assistance must cooperate with the State in establishing paternity and obtaining medical support.

There are, however, circumstances in which exceptions to the child support cooperation requirement must be made:

- 1) A woman during pregnancy and during the 60 day postpartum period does not have to cooperate with establishing paternity and obtaining medical support from the father of the unborn child or of a child born out-of-wedlock (refer to Social Services Law Section 366 (3) (a-c);
- 2) Where a parent is applying only for their child and not for him or herself, it is not a condition of the child's eligibility for the parent to cooperate. This does not preclude the support collection unit from filing a petition to establish paternity or from utilizing civil process to compel the parent to provide evidence or testimony in court proceedings if the parent or legal guardian has been given the opportunity to claim good cause and has not done so, or
- 3) If an individual has good cause for refusing to cooperate with child support requirements.

It is important that information about the child support program be made available to all Medicaid-only applicant/recipients at the Medicaid office or at facilitated enrollment sites. This is a key opportunity to make parents aware of the benefits to the family and the legal and financial benefits that come to the child when paternity and support is established. One way to accomplish this is to make available to each Medicaid-only applicant/recipient a copy of the child support services brochure developed by the Division of Child Support Enforcement and available through Document Services by ordering PUB. #1950.

In addition, all Medicaid-only applicant/recipients referred to the child support program must receive an explanation of the good cause exception. DSS Form 4279 “Notice of Responsibilities and Rights For Support” and the DSS 4148A Booklet “What You Should Know About Your Rights And Responsibilities” provide information about the good cause exception and should be used to inform clients.

If you have questions about the Medicaid policy please contact your county liaison in the Office of Medicaid Management’s Bureau of Local District Support at (518) 474-9130 for upstate and (212) 268-6855 for New York City. If you have questions about the specific child support policy, please contact your child support county representative in the Division of Child Support Enforcement at 1-800-343-8859.

We hope this information is helpful to you.

Sincerely,

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