

**TO:** Local District Commissioners, Medicaid Directors

**FROM:** Kathryn Kuhmerker, Deputy Commissioner  
Office of Medicaid Management

**SUBJECT:** Reporting Immigrant Status and Disclosure of Medicaid Benefits  
Information

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** Local District Support Unit  
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The purpose of this GIS message is to address several issues regarding the State's responsibility in reporting immigrant status and information related to Medicaid benefits. It has recently come to our attention that some individuals are being denied entry into the United States based on the allegation that they had received benefits under PCAP and were thus likely to become a "public charge." The New York State Department of Health has been asked if immigration authorities are receiving information directly from the State Medicaid program or local departments of social services. In addition, there have been instances in which individuals have been asked to repay the value of Medicaid benefits received in the past. This GIS message is intended to clarify the law with respect to the disclosure of information about an individual's receipt of Medicaid benefits. It will also describe why the New York State Department of Health generally may not accept payment from individuals who attempt to repay the State for Medicaid benefits.

Local departments of social services (LDSS) are reminded of the State and federal laws and regulations regarding the disclosure of Medicaid data. The Social Security Act (1902 (a) (7)) and federal regulations at 42 CFR Section 431.301 restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected to the administration of the Medicaid program. State Social Services Law Section 369(4) parallels the federal requirements. In addition, NYCRR Title 18, Section 357 speaks to the confidential nature of records. Administration of the program includes four activities:

- 1) Establishing eligibility;
- 2) Determining the amount of Medical Assistance;
- 3) Providing services for recipients; and
- 4) Monitoring fraud and abuse activities.

Therefore, the State Medicaid Office and the LDSS are not permitted to provide information about the receipt of benefits or the dollar amount of these benefits to the United States Citizenship and Immigration Services (USCIS), the State Department or immigration judges unless that information is directly related to the administration of the Medicaid program. The agency must also obtain written permission from a family or individual, whenever possible, before responding to a request for information from an outside source [42 CFR Section 431.306(d)].

The Centers for Medicare and Medicaid Services (CMS) has determined that USCIS and State Department public charge determinations are not connected to the administration of the State plan, unless such determinations will directly assist the State in recovering outstanding debts from an alien (most commonly involving overpayments or fraud). The mere past receipt of Medicaid, in the absence of an overpayment or fraud, does not create debt. Such benefits would have been legitimately received, and therefore the beneficiary is not indebted to the State.

While the State Medicaid Office and LDSS are prohibited from reporting confidential Medicaid information (protected under Title XIX), Section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), allows the State Medicaid Office and the LDSS to verify immigration status information. **Medicaid may confirm the immigration status of any and all household members applying for Medical Assistance benefits by submitting the information provided on the Medicaid Application, authorized by the applicant/recipient's signature and certification, to the USCIS.** The information received from USCIS may affect household eligibility and level of benefits. The use or disclosure of the information received from USCIS is restricted to persons and organizations directly connected with the verification of immigration status and administration and enforcement of the provisions of the Medical Assistance program.

**NOTE: State Policy is that the LDSS should never report an applicant to USCIS. The only exception to this rule, however, is that if USCIS has issued a final Order of Deportation and the LDSS sees the order, the LDSS must report the individual to the USCIS.**

Finally, although the State Medicaid Office may collect repayments of benefits in cases where those benefits were fraudulently received or an overpayment has occurred; **the State may not require the repayment of Medicaid correctly paid on behalf of immigrants.**