



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower      The Governor Nelson A. Rockefeller Empire State Plaza      Albany, New York 12237

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*Commissioner*

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*Executive Deputy Commissioner*

**ADMINISTRATIVE DIRECTIVE**

**TRANSMITTAL:** OMM/ADM 97-1

**TO:**            **Commissioners of  
Social Services**

**DIVISION:** Office of  
Medicaid  
Management

**DATE:** August 27, 1997

**SUBJECT:** District of Fiscal Responsibility

**SUGGESTED  
DISTRIBUTION:**

Medical Assistance Staff  
Adult Services Staff  
Public Assistance Staff  
Fair Hearing Staff  
Staff Development Coordinators

**CONTACT  
PERSON:**

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**ATTACHMENTS:**

None

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
95-ADM-5		311	SSL 62.1	MARG.	93-LCM-12
95-ADM-4		360-3.2	and 62.5	p.390-398	89-LCM-199
94-ADM-9		360-3.5	42 CFR		
87-ADM-22		360-3.6	435.403		
86-ADM-40					
80-ADM-4					
89-INF-43					
88-INF-15					

I. **PURPOSE**

The purpose of this Office of Medicaid Management Administrative Directive (OMM/ADM) is to provide social services districts with the policy on how to determine which district or state is fiscally responsible for providing Medicaid for applicants/recipients (A/Rs) who move from one district to another within New York State or between New York and another state. This OMM/ADM also informs districts of a change in policy regarding A/Rs who enter certain adult homes.

II. **BACKGROUND**

Federal Regulation 42 CFR 435.403 provides that social services agencies must provide Medicaid to eligible residents of the State, including certain residents who are absent from the State. The regulation also prohibits the denial of Medicaid because an individual has not resided in the State for a specified period of time or because he or she did not establish residence in the State prior to entering an institution.

Social Services Law (SSL) Section 62.5(d) provides that the county from which an A/R enters a medical facility remains responsible for providing Medicaid to that individual. Medical facilities include hospitals, nursing homes, intermediate care facilities for the developmentally disabled, psychiatric centers, residential treatment facilities, developmental centers, inpatient substance abuse treatment facilities, and VA hospitals.

Adult homes are not considered medical facilities and are not subject to the medical facility rule contained in Section 62.5(d) of the SSL. In most instances, A/Rs who enter adult homes will be considered residents of the district in which the home is located (the "where found" rule). In the past, certain adult homes were granted an exemption from the "where found" rule, particularly, when that home had some religious or fraternal affiliation. This policy led to inequities across the State in that some homes were granted an exemption while others were not. Therefore, the Department is now adopting a strict interpretation of SSL Section 62.5(d).

Individuals who are Supplemental Security Income (SSI) recipients are automatically eligible for Medicaid. Disputes between districts regarding district of fiscal responsibility (DFR) have resulted in SSI recipients losing Medicaid coverage. Appropriate State Data Exchange (SDX) procedures must be followed to ensure continuous coverage for SSI recipients.

III. **PROGRAM IMPLICATIONS**

A clear and comprehensive DFR policy will reduce unnecessary interjurisdictional dispute fair hearings and ensure that A/Rs receive the assistance to which they are entitled in a timely manner.

In addition, the Department is adopting a strict interpretation of Section 62.5 of the SSL regarding district of fiscal responsibility for residents of adult homes.

IV. **REQUIRED ACTION**

A. **"Where Found" Rule - SSL 62.1 and 365.5**

Except as provided in Section IV.B., a district must provide Medicaid to all eligible persons found in the district, including "Chapter 621" eligibles.

Note: **621 eligibles** are A/Rs who have been released or discharged from an Office of Mental Health (OMH) or Office of Mental Retardation and Developmental Disabilities (OMRDD) facility and who have spent five or more continuous years in such facility. 621 eligibility is determined solely by OMH or OMRDD and is transmitted to the local district by form OMH-5 or OMR-5 respectively. The cost of care for these A/Rs is fully reimbursed by the State and federal government (SSL 365.5).

B. **Exceptions to the "Where Found" Rule**

A district must provide Medicaid to eligible persons found outside such district in the following situations:

1. **Temporary Absence from Legal Residence - SSL 365.1(a):** The social services district where a person has his or her legal residence continues to be responsible for providing Medicaid when the person is temporarily absent from the district. A person's legal residence, or domicile, is the principal and permanent home to which the person, wherever temporarily located, always intends to return. Districts should rely on a person's expression of intent in determining the district of legal residence, unless the person's actions are inconsistent with the expressed intent.

When a person capable of indicating intent leaves his/her district of legal residence, the person will be considered to be temporarily absent from such district if (a) the person enters another district for a specific purpose (such as rehabilitation for alcohol or substance abuse, training, schooling, or vacation) AND (b) the person intends to return to the "from" district when the specific purpose is accomplished AND (c) the person's actions are not inconsistent with this purpose. In this situation, the "from" district continues to be responsible for providing Medicaid as long as the recipient continues to engage in the activity which prompted the temporary absence.

This responsibility continues only until the temporary purpose ends. At that point, the recipient:

- o returns to his/her district of legal residence, or
  - o is considered to have established a new legal residence and is transitioned from the "from" district to the "where found" district, or
  - o becomes a transient (a homeless person without a legal residence) and immediately becomes the responsibility of the "where found" district.
2. **Transition Rule - SSL 62.5(a):** When a recipient **moves** from one district to another and continues to be eligible, the "from" district continues to be responsible for providing Medicaid during the month of move and may continue assistance for the month following the month of move. Thereafter, the "where found" district is the DFR.
3. **Medical Facility Rule - SSL 62.5(d):** The district of legal residence continues to be responsible for providing Medicaid to a person who has entered a medical facility in another district if the person is or becomes in need of Medicaid upon admission to the facility, during the inpatient stay, or upon discharge from the facility. This responsibility continues indefinitely until there is a break in the recipient's need for Medicaid.

When applying these provisions to a Title XIX facility operated or certified by OMH or OMRDD, whether the facility is located within or outside the "from" district, the "from" district or county of origin remains responsible until there is a "break in need".

A **"break in need"** is defined as one calendar month without financial eligibility. As long as an individual remains financially eligible for Medicaid, there is no break in need. If the individual has excess income and submits paid or incurred expenses totaling the amount of excess or pays the excess directly to the district, there is no break in need. If in any month, the individual becomes resource ineligible and is unable to spenddown the excess resources or does not meet an excess income liability, there is a break in need. When a break in need occurs, the DFR may close the case with adequate and timely notice.

**Note:** Medical facilities are defined as hospitals, nursing homes, intermediate care facilities for the developmentally disabled, psychiatric centers, residential treatment facilities, developmental centers, inpatient substance abuse treatment facilities, and VA hospitals.

4. **District Placement - SSL 62.5(b):** When an A/R is placed by a social services district (either the "from" district or any other district) in a formal residential setting in another district, the district in which the A/R legally resided immediately prior to the placement is responsible for providing Medicaid to the individual. A district's involvement, both directly as well as indirectly, in a placement includes any district agency or official entity such as courts, mental health departments, probation departments, school districts, etc. This responsibility continues indefinitely until there is a break in need.

For the purpose of this section, a formal residential setting is a residential program providing room and/or board and other non-medical specialized services or care which has been licensed, certified or approved by an authorized New York State agency.

A/Rs who voluntarily enter a residential setting or choose a particular facility to enter are not considered to have been placed. In this instance, the "where found" district is the DFR unless the move can be considered a temporary absence.

5. **Emergency Temporary Housing - SSL 365.1(a):** When a homeless person is placed by the "where found" district in temporary housing in another district, the placing district continues to be fiscally responsible for providing Medicaid to the recipient as long as the recipient continues in emergency temporary housing.

This fiscal responsibility continues until the recipient leaves temporary housing. At that point, if the recipient remains out-of-district, the recipient is considered to have moved and the transition rule applies.

6. **Domestic Violence - SSL 62.5(f):** When an eligible person enters an approved Shelter for Victims of Domestic Violence located in another district following an incident of domestic violence, the district in which the person legally resided at the time of the incident is fiscally responsible for that person while he/she resides in the approved shelter. This rule applies to persons who had been receiving Medicaid prior to the incident as well as to persons who become eligible due to lack of available income and resources while residing in the approved shelter.

This responsibility continues until the person leaves the approved shelter. If the recipient chooses not to return to the former district of legal residence, such district is responsible for providing Medicaid during the month the recipient leaves the shelter and may continue Medicaid for the following month. The "where found" district is responsible thereafter.

7. **A/R under 21 - 18 NYCRR 360-3.2(g):** The DFR for a child under the age of 21 is the district where the parent(s) or legal guardian(s) resides. The DFR is "frozen" at the district where the parent(s) resided at the time an A/R turned 21 if the A/R is incapable of expressing his/her intent.
8. **Medical Parole - SSL 62.5(g):** The DFR for an inmate released on medical parole is the district from which the inmate was sentenced. This responsibility continues indefinitely until there is a break in need.

The DFR for non-medical parolees released into a non-medical residential setting such as a halfway house will follow the placement rule. The Board of Parole is considered to be acting on behalf of the court who is considered to be acting on behalf of the district. Therefore, the district where the parolee legally resided prior to incarceration will continue to be responsible for providing Medicaid to the parolee until there is a break in need.

9. **Infants Residing with Incarcerated Mothers - 95 ADM-4:** The DFR for an infant residing with an incarcerated mother is the district where the mother most recently legally resided prior to incarceration.
10. **Assisted Living Program (ALP) - 18 NYCRR 505.35(i):** The DFR for an individual residing in an ALP is determined as follows:
  - o for an individual who is Medicaid eligible at the time of admission to an ALP, the district that is fiscally responsible for the individual immediately prior to his or her admission to the ALP will retain fiscal responsibility; and
  - o for an individual who is not Medicaid eligible at the time of admission to the ALP but later becomes Medicaid eligible, the district in which the individual resided immediately prior to admission to the ALP is the fiscally responsible district.

Unless one of these ten exceptions applies, the "where-found" district is fiscally responsible for the A/R. The burden of proof is on the "where-found" district to establish that an exception applies.

**C. Clarification of Treatment of Adult Homes**

In the past, the Department allowed certain adult homes to be treated in a manner similar to medical facilities. This occurred in situations where an adult home attracted individuals from other districts because of some specialized function of the home or because of the home's religious or fraternal affiliation. This interpretation has resulted in inconsistencies throughout the State in the application of DFR policy for residents of adult homes.

In order to address this inconsistency, the Department is adopting a strict interpretation of Section 62.5(d) of the SSL. Effective with the release of this OMM/ADM, a resident of one county who enters an adult home in another county will be considered a resident of the county in which the adult home is located, unless the individual meets one of the exceptions listed in section IV.B. of this OMM/ADM.

This policy change must be implemented prospectively. Districts which are currently providing coverage to residents of adult homes located in another district must continue to provide Medicaid coverage to such recipients until there is a break in need.

**D. Office of Mental Health (OMH) and Office of Mental Retardation and Developmental Disabilities (OMRDD) - SSL 365.7**

1. OMH, district 97, in conjunction with the Department, determines Medicaid eligibility for A/Rs residing in the following settings:

- Psychiatric Centers (PC)
- State Operated Family Care (SOFC)
- Residential Treatment Facilities (RTF)
- State Operated Community Residence (SOCR)
- State Operated Residential Care Centers for Adults (SORCCA)
- Family Based Treatment (FBT)
- Teaching Family Homes (TFH)

2. OMRDD, district 98, in conjunction with the Department, determines Medicaid eligibility for A/Rs residing in the following settings:

- Developmental Centers (DC)
- Small Residential Units (SRU)
- Family Care (FC)
- Intermediate Care Facilities (ICF/DD) - 621s only
- State Operated Community Residence (SOCR) - 621s only
- State Operated Individual Residential Alternatives (SOIRA) - 621s only

3. State responsibility for Medicaid coverage through OMH and OMRDD ends when the individual is discharged from one of the above mentioned living arrangements, unless the individual is admitted to another setting that appears on the above list.
4. Private schools certified by OMRDD are considered Congregate Care Level III facilities. A child under the age of 21 placed in such a school remains the responsibility of the district where the parent(s) or guardian legally resided at the time of placement.

When a child "ages out" of an OMRDD school and is placed in a community residence, the DFR will remain the district where the parent(s) legally resided at the time of placement in the school, unless the A/R or guardian indicates an intent to change residence for purposes other than to obtain available, appropriate care.

5. Social services districts are responsible for determining Medicaid eligibility for individuals in all OMH and OMRDD residential settings other than those listed in D.1. and 2.
  - o If the individual is 621 eligible, the district "where found" is responsible for determining Medicaid eligibility.
  - o If the individual is not 621 eligible, the district "where found" is responsible for determining eligibility unless the individual meets one of the exceptions in section IV.B. of this OMM/ADM.
6. New York State remains responsible for providing Medicaid to individuals placed by OMH or OMRDD in facilities outside the State.
  - o If the individual is 621 eligible, the district in which the OMH or OMRDD facility from which the individual was placed is responsible for determining Medicaid eligibility.
  - o If the individual is not 621 eligible, the district from which the individual was admitted to the OMH or OMRDD facility is responsible for determining Medicaid eligibility.

**E. Supplemental Security Income (SSI) Recipients - SSL 366.1(a)(2)**

When a new SSI case is opened by the Social Security Administration (SSA), Auto-SDX selects a county code according to SSA data. In the automated clearance process (upstate only) one of the following occurs:

- o If the recipient is active and the SSA data matches the county shown on the Welfare Management System (WMS), Auto-SDX will assign the recipient to that district.
- o If the recipient is inactive, Auto-SDX will assign the recipient to the district indicated by SSA.
- o If the recipient is active and the SSA data and WMS file do not match, an SDX interface report will be sent to the WMS district as an exception. The district must take appropriate action to open an MA-SSI case.

If a district does not agree that it is the DFR, the Medicaid case for the recipient **must** remain open while the district investigates the situation to determine the correct DFR. If it is determined that the SDX information is incorrect, the district must submit the DSS-2284, "SDX Change Form", to the Department to initiate a correction. The DSS-2284 should be mailed to:

Office of Medicaid Management  
New York State Department of Health  
P. O. Box 118  
1 Commerce Plaza  
Albany, New York 12260

Attention: SDX

If a district learns of an SSI recipient's move to another district, the former district must submit the DSS-2284 to the Department and the SSA-3911, "Report of Change - SSI Data", to the Social Security Administration to initiate a correction. The former district **must not** close the Medicaid case unless they have secured the agreement of the new district of residence to open the SSI recipient's Medicaid case. Both districts should coordinate the case processing (opening and closing) to prevent errors in the stacking of coverage dates in the Medicaid Management Information System (MMIS). If the new district of residence opens a case before the old district of residence closes the case, the closing will terminate the coverage in MMIS. If agreement to open the case cannot be obtained from the new district, the former district **must** keep the case open until the SDX change occurs as a result of the processing of the DSS-2284 and SSA-3911.

In the event that an SSI recipient loses coverage due to a dispute between districts, the "where found" district **must** provide Medicaid until the dispute is resolved.

If a district learns of an SSI recipient's move out of State, the district must complete and submit the SSA-3911, "Report of Change - SSI Data", to SSA to initiate a correction.

Note: New York City utilizes an automated system to process opening and closing of SSI cases. If the SSA data indicates a New York City address, the case is automatically opened in New York City. No clearance with upstate districts is performed. The DSS-2284 and/or SSA-3911 are used to effect changes.

OMH and OMRDD submit changes to both the Department and SSA via the BPR-572 (OMH) and BRO-572 (OMRDD), "Notice of New SSI Status".

**F. Interjurisdictional Disputes**

In accordance with 80-ADM-4, 86-ADM-40, and 18 NYCRR 311.3(c), the district in which the A/R is found is responsible for providing Medicaid during the pendency of an interjurisdictional dispute. This means that, in the event of a dispute, the **"where found" district must accept and process** the application and, if the A/R is otherwise eligible, provide Medicaid to the A/R during the pendency of the dispute.

This responsibility ends only when the dispute is resolved. **Under no circumstance can an A/R be denied assistance because of an interjurisdictional dispute.** In the event the dispute is resolved in favor of a "where found" district, the district ultimately determined fiscally responsible must reimburse the "where found" district for all assistance and care provided as long as the "where found" district exercised reasonable care in determining the A/R's eligibility.

If the district of fiscal responsibility refuses to reimburse the "where found" district, the State Department of Social Services will make the adjustment through either the RF-2 claim settlement process, if the monies were disbursed for Public Assistance grants, or through Weekly Shares Reports, by adjusting the local shares, if the disbursements were for Medicaid.

In order to make these adjustments, the Department of Social Services requires that the local district send a copy of the Fair Hearing decision along with a cover letter and the dollar amounts involved to: Bureau of Local Financial Operations, New York State Department of Social Services, 40 North Pearl Street - 13th Floor, Albany, NY 12243.

If the district of fiscal responsibility agrees to repay the "where found" district, only the local share needs to be reimbursed, since the Federal and State shares are reimbursed directly, through the claiming process, to the district that provided the care. See the Fiscal Reference Manual, Volume I Chapter 7, pages 15 and 16 for details. For Social Services Block Grant expenditures the non-Federal share should be reimbursed to the district.

For any fiscal claiming questions regarding Interjurisdictional Disputes please contact:

Region I - IV: Roland Levie at 1-800-343-8859, extension 4-7549 or (518) 474-7549, User ID# FMS001,

Region V: Marvin Gold at (212) 383-1733, User ID# OFM270.

#### **G. Courtesy Applications**

When a person applies for Medicaid and the "where-found" district believes that the applicant is the fiscal responsibility of another district, the "where-found" district may take a "courtesy application" and forward it to the other district. In order to provide for consistency among districts and insure that applicants are not denied assistance because of an incomplete or lost application, social services districts **must** follow two guidelines when taking a courtesy application:

1. **Prior to** forwarding a courtesy application, the "where-found" district **must** secure verbal agreement from the alleged "from" district that it will accept and process the courtesy application. **Without such agreement, the "where-found" district must accept and process the application** and, if it chooses, take the other district to an interjurisdictional dispute hearing.

2. When taking a courtesy application, the "where-found" district must fill out all requisite forms completely, and secure sufficient documentation for the "from" district to complete the eligibility determination. The nature of this documentation must be discussed with the "from" district at the time agreement to accept the courtesy application is being secured.

**H. Interstate Residency - 18 NYCRR 360-3.2(g)**

An individual is the responsibility of the state in which he/she is domiciled with the following exceptions:

1. When an A/R is placed in a medical facility in one state by any agency of another state, the state that placed the individual is fiscally responsible. However, the following actions do not constitute state placement:
  - o providing basic information about another state's Medicaid program and availability of services and facilities; and
  - o assisting an individual capable of indicating intent in locating a facility in another state;
2. When an A/R voluntarily places himself/herself in a medical facility in another state, the state where the A/R has intent to establish permanent residency is the state of fiscal responsibility.
3. When an A/R temporarily enters a state for the purpose of obtaining necessary medical care, the state where residency was established prior to seeking medical care is the state of fiscal responsibility.
4. For an SSI recipient, the state fiscally responsible is the state which pays the SSI supplement. When an SSI recipient moves to New York State, New York State will immediately be fiscally responsible. If the recipient has medical expenses, his/her authorization period should be back-dated on WMS to cover the month the recipient arrived in New York State, even though the SDX may not show New York State as fiscally responsible for this time period.

When an SSI recipient leaves New York State and establishes residency in another state, timely and adequate notice of discontinuance must be given.

5. When a child is in receipt of non-IV-E foster care or adoption assistance and is placed in New York State by another state, that state remains responsible for providing Medicaid for the child. When a child is in receipt of IV-E Foster Care or Adoption Assistance and is placed in New York State, New York immediately becomes responsible for providing Medicaid for the child.

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For additional information regarding interstate residency please refer to 18 NYCRR 360-3.2(g).

V. **EFFECTIVE DATE**

This directive is effective September 1, 1997.

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Ann Clemency Kohler  
Director  
Office of Medicaid Management