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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 91 LCM-77

Date: May 1, 1991

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 311.4 & 352.8
Filed Regulation Part 516, 504.7, 519.4, 519.5, 519.18

ATTACHMENTS: Attachment I - 311.4 & 352.8 (available on-line)

Attachment II - Part 516, 504.7, 519.4, 519.5, 519.18
(available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 311.4 & 352.8 relating to programs for victims of domestic violence.

The final rule - Filed: 4/29/91 - Effective: 5/15/91.

18 NYCRR Part 516, 504.7, 519.4, 519.5, 519.18 relating to monetary penalties.

The final rule - Filed: 4/23/91 - Effective: 5/8/91.

Michael J. McNaughton
Director, Local District
Policy Communications

A new subdivision (b) is added to section 311.4 to read as follows:

(b) Social services districts must offer and provide emergency shelter and services to victims of domestic violence, as defined in section 452.2(g) of this Title, who are in receipt of or eligible for emergency assistance to needy families, aid to dependent children, home relief or any other form of public assistance and care under sections 131 or 131-a of the Social Services Law, at an approved residential program for victims of domestic violence to the extent that such shelter is necessary and available. The social services district in which a victim of domestic violence was residing at the time of the alleged domestic violence incident is responsible for the costs of shelter, care and services provided to such victim and his or her children at a department approved residential program for victims of domestic violence located in another social services district, if the victim was in receipt of public assistance and care at the time of admission to such residential program or if the victim applies for emergency assistance to needy families, aid to dependent children, home relief or any other form of public assistance and care under sections 131 or 131-a of the Social Services Law, during the time of residency in such program and is found eligible for such assistance and care. If a victim of an alleged domestic violence incident is in a department approved residential program for victims of domestic violence located in a social services district, other than the district in which he or she resided at the time of

the domestic violence incident, he or she may apply for assistance and care in the social services district in which the program is located. The social services district to which such application is submitted must forward the completed application, within five days of its receipt, to the district in which the victim resided at the time of the domestic violence incident. Responsibility for the costs of such shelter, care and services is limited to the period during which the victim and his or her children reside in such program. Responsibility for public assistance and care for any period after termination of such residency must be determined in accordance with the applicable provisions of this section.

Subdivision (a) of section 352.8 is amended to read as follows:

(a) the standard of [assistance shall be and each social services district shall provide] need includes an allowance to be provided by each social services district for persons residing in the following living situations: room and board [,] ; approved residential programs for victims of domestic violence ; maternity homes, family homes or boarding homes , ; family care or residential care facilities[,] ; drug-abuse-control facilities and residential facilities for the mentally disabled. With respect to a family or pregnant woman properly referred and admitted to a shelter for families operated in accordance with the provisions of Part 900 or a shelter for pregnant women operated in accordance with Part 1000 of this Title, the standard of assistance [shall be] is and the social services district making such referral [shall] must pay to the shelter the family's cost of residence in the shelter, for periods of residence authorized by

[Part] Parts 900 and 1000 at a rate established pursuant to [section] sections 900.16 or 1000.16 of this Title. Part 900 [shall govern] governs all costs, payments and allowances for maintenance of persons residing in family shelters and Part 1000 governs all costs, payments and allowances for maintenance of persons in shelters for pregnant women.

A new paragraph (5) is added to subdivision (b) of section 352.8 to read as follows:

(5) A per diem rate to cover the costs of shelter, care and other activities in an approved residential program for victims of domestic violence for persons who are in receipt of public assistance and care at the time of admission to the program or who apply for emergency assistance to needy families, aid to dependent children, home relief or any other form of public assistance and care under sections 131 or 131-a of the Social Services Law, during the time of residency in such program and are found eligible for such assistance and care. This rate must be based upon the reasonable operational expenses of each individual program. The proposed rate must be submitted to the Department and approved as part of the social services multi-year services plan and annual implementation report as required by Part 407 of this Title.

Subparagraph (i) of paragraph (1) of subdivision (c) of section 352.8 is amended to read as follows:

(i) boarding homes or under room and board arrangements or approved residential programs for victims of domestic violence, or facilities certified by the Division of Alcoholism and Alcohol Abuse other than community residences, in the amount of \$45; infirmaries, nursing homes, intermediate care facilities, or similar medical facilities, in the amount of \$40.

(Deleted material [brackets] ; new material underlined.)

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), and 368-c of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby add Part 516, Section 519.4(a)(3), and Section 504.7(h) and amend Sections 519.5(c) and 519.18(g) of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective when the Notice of Adoption is published in the New York State Register.

Dated: April 12, 1991

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on April 23, 1991 adding Part 516, Section 519.4(a)(3), and Section 504.7(h) and amending Sections 519.5(c) and 519.18(g) of the official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on January 30, 1991.

Dated: April 12, 1991

Signed: _____

Commissioner

A new Part 516 is hereby added to read as follows:

Part 516 Monetary Penalties

516.1 Policy, scope and definitions.

(a) Purpose: This Part establishes procedures for imposing monetary penalties against persons who receive or cause to be received by another person payments under the medical assistance program resulting from the commission of certain proscribed acts.

(b) The definitions in Parts 504 and 515 of this Title and the following definitions apply to this Part except as may be provided for herein:

(1) gross and flagrant violation means conduct which substantially impairs the delivery of high quality medical care, services or supplies or which has an adverse effect on the fiscal integrity of the medical assistance (MA) program;

(2) item or service means any and all medical care, services or supplies claimed to have been provided to a recipient of MA and which is listed in an itemized claim for payment;

(3) person means natural person, corporation, partnership, association, clinic, group and other entities, whether or not such person is enrolled in the MA program or is a purveyor of health care;

(4) standards of generally accepted practice means the degree of knowledge, skill and diligence possessed by, or required of, the average member of the profession or specialty which is practiced. Standards of generally accepted practice also include those practices which are accepted as effective and appropriate by the medical and scientific community of this State;

(5) standards of the MA program include but are not limited to the standards set forth in the regulations of the department; and

(6) substantial number of cases means five percent or more of those cases identified in any sample of cases which were the subject of an audit or otherwise reviewed by the department and for which claims were submitted by a person for payment under the MA program.

(c) Basis for monetary penalties. The department may require the payment of a monetary penalty as restitution to the MA program by:

(1) any person who fails to comply with the standards of either the MA program or of generally accepted medical practice as defined in this section in a substantial number of cases and who receives or causes to be received by another person payment from the MA program when such person knew or had reason to know that:

(i) the payment was a result of the provision of or ordering of care, services or supplies which were medically improper, unnecessary or in excess of the documented medical needs of the person to whom they were furnished; or

(ii) the care, services or supplies were not provided as claimed;
or

(iii) the person who ordered or prescribed the care, services or supplies was suspended or excluded from the MA program pursuant to Part 515 of this Title at the time the care, services or supplies were furnished; or

(iv) the care, services or supplies for which payment was received were not, in fact, provided; or

(2) any person who grossly or flagrantly violates the standards set forth in paragraph (1) of this subdivision and who received or caused to be received by another person payment from the MA program when such person knows or had reason to know that:

(i) the payment was a result of the provision of or the ordering of care, services or supplies which were medically improper, unnecessary or in excess of the documented medical needs of the person to whom they were furnished; or

(ii) the care, services or supplies were not provided as claimed; or

(iii) the person who ordered or prescribed the care, services or supplies was suspended or excluded from the MA program pursuant to Part 515 of this Title at the time the care, services or supplies were furnished; or

(iv) the care, services or supplies for which payment was received were not, in fact, provided.

516.2 Amount of penalty.

(a) The department may impose a penalty of not more than \$2,000 for each item of care, service or supply that is the subject of a determination under Section 516.1(c) of this Part.

516.3 Determination of the amount of the penalty.

(a) In determining the amount of the penalty to be imposed, the department must take into consideration the following:

(1) the number and total value of the claims for payment from the MA program which were the underlying basis of the determination to impose a monetary penalty;

(2) the effect, if any, on the quality of medical care provided to recipients of MA as a result of the acts of the person;

(3) the degree of culpability of the person in committing the proscribed actions and any mitigating circumstances;

(4) any prior violations committed by the person relating to the MA program, Medicare or other social services programs which resulted in either a criminal or administrative sanction or penalty; and

(5) any other facts relating to the nature and seriousness of the violations including any exculpatory facts.

516.4 Notification and hearings.

(a) Notice of proposed agency action.

(1) When the department determines to impose a penalty under this Part, the department must first send the person a written notice of proposed agency action.

(i) The notice must be mailed to the person's designated payment address or correspondence address or last known address.

(ii) The notice must state the amount of the penalty, the alleged violation, the relevant regulation, and the facts which support the conclusion that a violation has occurred.

(2) Any person named in the notice of proposed agency action may submit to the department written documentation or written arguments contesting the proposed agency action within 30 days after the date of the notice.

(b) Notice of agency action.

(1) If, after its review, the department determines to impose the monetary penalty, it will send a written notice of agency action advising the person of the final determination at least 15 days before the action becomes effective.

(i) The notice must be mailed to the person's designated payment address or correspondence address or last known address.

(ii) The notice must state the amount of the penalty, the alleged violation, the relevant regulation violated and the facts which support the conclusion that a violation has occurred. The notice must also state the effective date of the penalty and provide information concerning the right to a hearing.

(c) Where a person timely requests a hearing to review the imposition of a penalty, such hearing must be conducted pursuant to the provisions of Part 519 of this Title.

516.5 Effect and enforcement of the penalty.

(a) Any penalty imposed under this Part will be in lieu of requiring a person to refund or repay all or part of any payment from the MA program received by such person or caused to be received by another person as a result of a violation of those acts set forth in section 516.1 of this Part.

(b) Despite the imposition of a penalty, the department may exclude a person who is a provider of care, services or supplies from participating in the MA program pursuant to Part 515 of this Title.

(c) The imposition of any penalty under this Part does not preclude the imposition of any other penalty prescribed by either federal or State law or regulation.

(d) Where the person against whom the penalty was imposed does not pay the penalty, the department may recover the amount of the penalty in the same manner as the recovery of an overpayment as set forth in Part 518 of this Title or by any other means available to the department.

(e) Interest will accrue on the amount of the penalty commencing on the 90th day after the date of the department's notice. Interest will accrue at the rate set forth in section 518.4(c) of this Title.

Section 504.7 is amended by adding a new subdivision (h) to read as follows:

(h) A provider's participation will be terminated where the provider fails or refuses to pay the full amount of any penalty imposed, including any interest thereon, pursuant to Part 516 of this Title on or before the 90th day after the date of the department's notice or, where a hearing has been requested pursuant to Part 519 of this Title, on or before the 90th day after the date of a decision after hearing which affirms the penalty.

Paragraphs (1) and (2) of subdivision (a) of section 519.4 are amended and a new paragraph (3) is added to read as follows:

- (1) imposes a sanction; or
- (2) requires the payment of an overpayment or restitution[.] ; or
- (3) seeks to impose a penalty pursuant to Part 516 of this Title.

Subdivision (c) of section 519.5 is amended to read as follows:

(c) The notice must clearly state the determination made, the basis and specific reasons for the determination, the effect of any action to be taken, the amount of any overpayment or penalty, and the effective date of the action. The notice must also include information concerning the right to a hearing.

Subdivision (g) of section 519.18 is amended to read as follows:

(g) An extrapolation based upon an audit utilizing a statistical sampling method certified as valid will be presumed, in the absence of expert testimony and evidence to the contrary, to be an accurate determination of the total overpayments made or penalty to be imposed. The appellant may submit expert testimony challenging the extrapolation by the department or an actual accounting of all claims paid in rebuttal to the department's proof.