

+-----+
| LOCAL COMMISSIONERS MEMORANDUM |
+-----+

Transmittal No: 93 LCM-12

Date: February 3, 1993

Division: Health & Long Term
Care

TO: Local District Commissioners

SUBJECT: Medical Assistance Residency Requirements

ATTACHMENTS: None

The purpose of this letter is to provide clarification of Medical Assistance (MA) residency requirements for institutionalized individuals who enter institutions in New York State directly from other states. These residency requirements are listed in Section 360-3.2(g) of 18 NYCRR.

Section 360-3.2(g)(1) provides that any person placed in a New York State institution by another state, or by a public or private organization contracting with the other state for such purposes, remains a resident of the state arranging or making the placement.

Section 360-3.2(g)(5) provides that any other individual age 21 and over who is capable of indicating intent, and who is institutionalized in New York State is a State resident if he or she intends to remain in the State permanently or indefinitely. For an individual age 21 years or older who becomes unable to state intent at or after age 21, the state of residence is the state where the individual is residing, unless another state made the placement.

Further, Section 360-3.2(g)(7) provides that an individual cannot be denied MA because he or she has not resided in the State for a specified period, and that an institutionalized individual, who otherwise meets the residency requirements, cannot be denied MA because he or she did not establish residence in the State before entering the institution.

An exception to these rules is any individual receiving a State Supplementary Payment under the Supplemental Security Income (SSI) program. Such an individual is considered a resident of the state making the payment.

A separate provision in 18 NYCRR 360-3.6 addresses the MA eligibility of individuals temporarily in the State. An individual temporarily in the State who requires immediate medical care which is not otherwise available will be eligible for MA if the individual did not enter the State solely to obtain the medical care and the individual meets the eligibility requirements except for State residence, citizenship, or status as an alien permanently residing in the United States under color of law. If eligible, MA will cover outstanding medical bills allowed under the MA program, only after all MA available from the person's state of residence has been used. This is true regardless of whether the individual is institutionalized or in the community.

When a person temporarily in this State applies for MA, the social services district must assist the appropriate social services agency in the person's state of residence in the investigation and arrangements for care, providing the person is eligible for MA in the state of residence.

In cases of disputed residency involving another state which cannot be satisfactorily resolved, your MA Eligibility County Representative should be contacted. If necessary this Department can request the Health Care Financing Agency (HCFA) to investigate and attempt to resolve the disputed residency. However, in accordance with federal regulation 42 CFR 435.403(m), districts are advised that in cases where two or more states cannot resolve a residency dispute, the state where the individual is physically located is the state of residence.

Any questions regarding this release should be directed to Mary C. Mahoney of the Division of Health & Long Term Care at 1-800-342-3715, extension 3-5533. Comments may be directed to User ID AX0960.

Gregory M. Kaladjian
Executive Deputy Commissioner