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| LOCAL COMMISSIONERS MEMORANDUM |  
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Transmittal No: 90 LCM-64

Date: May 10, 1990

Division: Medical Assistance

TO: Local District Commissioners

SUBJECT: Confidentiality of Recipient Identifiable Medical Assistance,  
AIDS and HIV-related Data

ATTACHMENTS: Attachment I-Section 2782 and Section 2786 of the Public  
Health Law (Not Available Online)

Attachment II-18 NYCRR 360-8.1 Confidentiality of HIV and  
AIDS related information (Not Available Online)

We have become aware that some social services districts may be disclosing recipient identifiable Medical Assistance (MA) information to outside organizations with the intention of supporting research.

While such disclosure is not precluded in all instances, stringent confidentiality standards do apply to information maintained by a social services district which identifies MA applicants or recipients.

Section 369(3) of the Social Services Law provides:

Any inconsistent provision of this chapter or other law notwithstanding, all information received by public welfare and public health officials and service officers concerning applicants for and recipients of medical assistance may be disclosed or used only for purposes directly connected with the administration of medical assistance for needy persons. (emphasis added)

This provision of State law is responsive to an MA State Plan requirement (Social Security Act, Section 1902(a)(7), 42 USC 1396a(a)(7)). Federal regulations at 42 CFR 431.300 et seq. amplify the requirement.

The operative disclosure standard, then, is one of direct connection with the administration of the MA program. In assessing a requested disclosure of recipient identifiable information for a research purpose, there should be a clear need for recipient identifiable information as well as an articulable, substantive benefit to administration of the MA program.

Additionally, the research should be structured to produce findings and underlying empirical output which are usable in satisfying the MA administration policy interest. A research purpose whose benefit is vague or indirect should be rejected as not satisfying the standard of direct connection. The social services official should also keep in mind that the district assumes a responsibility for imposing appropriate use and disclosure limitations upon the research entity or investigator when disclosing recipient identifiable information. This is an on-going function which requires consistent administrative follow-through to ensure that the recipient identifiable information is used only for the approved MA related research purpose, disclosed only to persons with a need for such information in pursuing the research purpose, and returned to the district or destroyed upon completion of the research. In sum, the instances in which disclosure of recipient identifiable information to an outside organization for a research purpose is supportable under MA confidentiality standards should prove to be infrequent.

In addition to maintenance of MA confidentiality, another concern relating to disclosure of recipient identifiable information is protection of confidential HIV-related information. Article 27-F of the Public Health Law, Sections 2780-2787, establishes a comprehensive scheme for regulation of use and disclosure of information concerning whether a person has been tested for human immunodeficiency virus (HIV) infection, or has HIV-infection, HIV-related illness or acquired immune deficiency syndrome (AIDS). It is possible that some files maintained by the social services district contain confidential HIV-related information.

Permissible disclosures of confidential HIV-related information are set forth in Section 2782 of the Public Health Law and include, among others, disclosure to "a health care provider or health facility when knowledge of the HIV-related information is necessary to provide appropriate care or treatment to the protected individual" and disclosure to "an authorized employee or agent of [a provider of services or a government agency administering a program of health or social services] when reasonably necessary for such supervision, monitoring, administration, or provision of such service." It is highly unlikely that disclosure of confidential HIV-related information for a research purpose could be justified under Section 2782 unless the protected individual expressly consents to such disclosure in accordance with Sections 2782(1)(b) and 2786(1) by use of an informed consent form approved by the State Commissioner of Health. (See attached law and regulations for additional detail.) Accordingly, if a research request for recipient identifiable information were found by the social services official to have a direct connection with MA administration

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and to satisfy the other conditions previously discussed, the social services district would, in addition, have to delete any confidential HIV-related information prior to disclosing the recipient information.

In conclusion, I would like to enlist your involvement to assure continuing protection at the district level of the privacy interests granted to recipients and HIV protected individuals under law. If you or your staff have additional questions concerning this subject matter, I would be happy to respond to them.

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Jo-Ann A. Costantino  
Deputy Commissioner  
Division of Medical Assistance