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 | ADMINISTRATIVE DIRECTIVE |  
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TRANSMITTAL: 97 ADM-23

TO: Commissioners of  
 Social Services

DIVISION: Temporary  
 Assistance

DATE: October 30, 1997

SUBJECT: Public Assistance (Family Assistance/Safety Net Assistance)  
 Changes Resulting from The Welfare Reform Act of 1997

SUGGESTED  
 DISTRIBUTION:

Income Maintenance Directors  
 Food Stamp Directors  
 Medical Assistance Directors  
 CAP Coordinators  
 Employment Coordinators  
 Staff Development Coordinators  
 Director of Administrative Services

CONTACT  
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ATTACHMENTS:

Attachment I - List of Attachments (available on  
 line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
see attachment	see attachment	see attachment	see attachment	see attachment	see attachment

I. PURPOSE

This directive advises social services districts (SSDs) of the provisions and requirements of the 1997/98 State Budget and the Welfare Reform Act (WRA) of 1997 as they relate to public assistance programs and their impact, where applicable, on Food Stamp (FS) and Medical Assistance (MA) eligibility.

II. ORGANIZATION AND CONTENT

The changes resulting from the 1997/98 State Budget and the WRA of 1997 cover a variety of areas. Where possible, the Medical Assistance and Food Stamps implications are identified along with the discussion of the public assistance changes.

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III. BACKGROUND

The 1997/98 State Budget and the WRA of 1997 made several changes to Social Services Law which affect public assistance eligibility and State reimbursement and, where applicable, FS and MA eligibility. These changes are described below.

IV. PROGRAM IMPLICATIONS

The Welfare Reform Act of 1997, Family Assistance and Safety Net Assistance were created and a definition of public assistance (PA) was added to include Family Assistance (FA), Safety Net Assistance (SNA) and Veterans Assistance. References in the law and regulations to Aid to Dependent Children and Home Relief will refer to Family Assistance and Safety Net Assistance as appropriate.

Family Assistance is New York's federally funded public assistance program and Safety Net Assistance is New York's state and locally funded program. These two programs are discussed under separate ADMs. In addition to these changes, this Act set into law several changes which cross both program areas. The implications will vary depending upon the specific change.

V. REQUIRED ACTION

A. EARNED INCOME DISREGARDS

1. Program Implications

Several changes were made to the calculation of earned income applicable to PA cases. Sections 352.18, 352.19, and 352.20 of Department regulations have been revised to reflect these changes. The earned income disregards of \$30 & 1/3, \$30 and the adult care disregard have been eliminated. However, the \$90 standard work disregard was retained. In place of the eliminated disregards, there is a new enhanced earnings disregard under which a percentage of a family's earned income must be disregarded. The percentage of earnings that will be disregarded is now 42%. This amount will be updated annually beginning in 1998 to reflect revised poverty level guidelines issued by the United States Bureau of the Census. This new enhanced disregard is applicable to all Family Assistance households. In addition, Safety Net Assistance households, which include a dependent child which is applying for or receiving SNA, are also eligible to receive the new enhanced disregard. The new process is illustrated below.

Eligibility

ABEL will perform three eligibility tests. Two of these are the same tests that had previously been performed. Only one additional test is new. The tests are:

Gross income test - This has not changed. Gross income can still not exceed 185% of the standard of need. If it does, the applicant or recipient household is ineligible.

Needs test - This has not changed. Net income can still not equal or exceed the standard of need after deducting the \$90 work disregard and 42% of the remainder of earned income. If net income equals or exceeds need, the recipient is ineligible.

In addition, an applicant's eligibility for public assistance must be determined without application of the percentage earned income disregard unless the applicant is reapplying and has been off assistance not more than four months. However, if the applicant would be eligible for assistance without the percentage disregard, the percentage disregard is granted in determining net income. (In other words, the disregard cannot make an applicant eligible who otherwise would not be, unless he or she has only been briefly separated from assistance).

Poverty level test - This is new under the WRA. Gross earned and unearned income cannot exceed the 1996 monthly poverty level. This provision only applies to recipients living in housing for which a shelter allowance is provided under subdivisions (a), (b), (c), or (d) of section 352.3 or under 352.8(b)(1) of Department Regulations. These subdivisions apply to people renting an apartment, living in their own home, living in Section 8 housing, living in public housing and certain types of room and board. It does not apply to recipients residing temporarily in hotel/motels, domestic violence shelters, AIDS housing, congregate care facilities, etc. If a recipient residing in housing to which this provision applies, and has gross earned and unearned income in excess of the poverty level the recipient is ineligible.

#### Benefit Amount

For recipients who are eligible, the benefit amount is still based on application of net income against needs. The disregards from earnings are the \$90 work disregard and 42% of the remainder. After these are budgeted against need, the remainder is the recipient's deficit. This is the grant amount to which the recipient is entitled.

There is an exception. The 42% disregard is only available from earned income up until earnings equal the poverty level. This means that individuals living temporarily in hotel/motels, domestic violence shelters, AIDS housing, congregate care facilities, etc. will only receive the 42 % disregard from earnings up until the poverty level.

While the percentage of earnings disregarded is initially 42%, it will be adjusted in June of each year, commencing in 1998, to reflect the most recently issued poverty guidelines.

2. Required Action

Effective November 1, 1997, all FA and SNA households with a dependent child that meets the FA eligible child age requirements, found in 369.2(c) of the regulations, and with earned income budgeted must be rebudgeted utilizing the new disregards.

Applicants

An applicant's eligibility for public assistance must be determined without application of the percentage earned income disregard unless not more than four months have elapsed since such person was off assistance. If eligible without the percentage disregard, the new enhanced disregard is granted in calculating the net earned income.

Recipients

WMS will complete a mass rebudgeting to adjust the benefits of public assistance recipients affected by the percentage disregard. Most cases will have their grant increase with the new enhanced disregard. Very few cases will have their grant decrease. Appropriate notice will be sent to all cases receiving a grant increase that WMS rebudgets. Attachment III to this directive is a copy of the increase letter. Decrease notices will be an exception to the MRB/A and must be manually sent.

Examples

Example #1: NYC Eligible Recipient Family

A three person family is residing in a private apartment with heat included in the rent and has gross earnings of \$1,000.00 monthly. The Gross Income Test limits eligibility to those applicants with gross income less than 185% of the Standard of Need. Since the gross income limit in this instance is \$1,067.45, the gross income test is passed.

Total gross income (earned and unearned) cannot exceed the poverty level for the family size. Since the poverty level for a family of three as of June 1996 is \$1,081.66, the poverty level income test is passed.

\$1,000.00	Gross Earnings	\$577.00	standard of need
- (\$90.00)	Standard Disregard	-(527.80)	net earned income
\$910.00	(remainder)	\$49.00	net grant
-(382.20)	(42% of remainder)	\$1,000.00	gross earned income
\$527.80	net earned income	\$1,049.00	grant + earned income

Example #2: Albany County Ineligible due to Gross Income Limit

A three person family is residing in a private apartment with heat included in the rent and has gross earnings of \$1,000.00 monthly. The Gross Income Test applies, limiting eligibility to those applicants with gross income less than 185% of the Standard of Need. Since the gross income limit in this instance is \$991.60, the gross income test is failed. (If not for the gross income test, the family would have passed the poverty level income test since gross earnings of \$1000 were below the Poverty Level limit of \$1,081.66.)

\$1,000.00	Gross Earnings
- \$991.60	Gross Income Limit
\$8.40	GROSS SURPLUS

Example #3: Ulster County Ineligible due to Poverty Level Income Test

A three person family is residing in a private apartment with heat included in the rent and has gross earnings of \$1,135.00 monthly. The Gross Income Test applies, limiting eligibility to those applicants with gross income less than 185% of the Standard of Need. Since the gross income limit in this instance is \$1,185.85, the gross income test is passed.

Total gross income (earned and unearned) also cannot exceed the poverty level for the family size. Since the poverty level for a family of three as of June 1996 is \$1,081.66, the poverty level income test is failed. The family is \$53.34 over the limit.

\$1,135.00	Gross Earnings
-\$1,081.66	Poverty Income Limit
\$53.34	GROSS SURPLUS

Example #4: Onondaga County Eligible but with a limitation on the percentage disregard

A three person family is temporarily residing in a hotel/motel at a monthly cost of \$1,140.00 and has gross earnings of \$1,500.00 monthly. Because the living situation is not subject to subdivisions (a), (b), (c), or (d) of section 352.3 or 352.8(b)(1) of Department Regulations, the Standard of Need is composed of the shelter cost of \$1,140.00 plus a Basic Allowance of \$238.00, an Energy Allowance of \$30.00 and a Supplemental Energy Allowance of \$23.00, for a total of \$1,431.00. The Gross Income Test applies, limiting eligibility to those applicants with gross income less than 185% of the Standard of Need. Since the gross income limit in this instance is \$2,647.35, the gross income test is passed.

The Poverty Level Income Test does not apply in this situation because the family is in a living situation (Hotel/Motel Temporary) not subject to subdivisions (a), (b), (c), or (d) of section 352.3 or 352.8(b)(1) of Department Regulations. However, in such circumstances the percentage income disregard will not be applicable to earnings in excess of the poverty level. Since the poverty level for a family of three as of June 1996 is \$1,081.66, the earnings above that amount are not disregarded.

\$1,500.00	Gross Earnings	\$1,431.00	standard of need
- (\$90.00)	Standard Disregard	993.50	net earned income
\$1,410.00	(remainder)	\$437.00	net grant
-\$416.50)	42% disregard (of	\$1,500.00	gross earned income
	poverty level minus	\$1,937.00	grant + earned income
	the \$90 disregard)		
\$993.50	net earned income		

Example #5A: Monroe County Eligible Recipient Family

A three person family is residing in a private apartment with heat included in the rent and has gross earnings of \$1,080.00 monthly. The Gross Income Test applies, limiting eligibility to those applicants with gross income less than 185% of the Standard of Need. Since the gross income limit in this instance is \$1,172.90, the gross income test is passed.

Total gross income (earned and unearned) cannot exceed the poverty level for the family size. Since the poverty level for a family of three as of June 1996 is \$1,081.66, the poverty level income test is passed.

\$1,080.00	Gross Earnings	\$634.00	standard of need
- (\$90.00)	Standard Disregard	-(574.20)	net earned income
\$990.00	(remainder)	\$59.00	net grant
-\$415.80)	(42% of remainder)	\$1,080.00	gross earned income
\$574.20	net earned income	\$1,139.00	grant + earned income

Example #5B: Monroe County Ineligible Applicant Family

A three person family is residing in a private apartment with heat included in the rent and has gross earnings of \$1,080.00 monthly. The Gross Income Test applies, limiting eligibility to those applicants with gross income less than 185% of the Standard of Need. Since the gross income limit in this instance is \$1,172.90, the gross income test is passed.

Total gross income (earned and unearned) cannot exceed the poverty level for the family size. Since the poverty level for a family of three as of June 1996 is \$1,081.66, the poverty level income test is passed.

The family has not previously been on public assistance.

\$1,080.00	Gross Earnings	
- (\$90.00)	Standard Disregard	
\$990.00	(remainder)	
\$634.00	Needs	
(\$356.00)	NET INCOME SURPLUS:	Family is not eligible without the 42% earnings disregard.

3. Food Stamps Implications

The Food Stamp program must determine eligibility and benefit levels based on the available public assistance to the food stamp household. All rules regarding treatment of PA income still apply to the Family Assistance and Safety Net Assistance programs. Food Stamp households are still entitled to a 20% earned income disregard from their gross earned income.

4. Medical Assistance Implications

Effective November 1, 1997, when an individual in an allowable household applies for Medicaid under the Low Income Families (LIF) group, the earned income disregards described in this section will be applied. Similar to public assistance, an applicant's eligibility for Medicaid must be determined without application of the 42% earned income disregard unless in one of the four preceding months the individual was in receipt of Medicaid. If a public assistance applicant/recipient fails any of the three eligibility tests, the case must be referred for a separate Medicaid eligibility determination.

Mass rebudgeting - In rebudgeting public assistance recipients to determine ongoing eligibility, if a recipient is determined to be eligible for public assistance the individual will also be determined eligible for ongoing Medicaid. The notice sent to individuals where there is a grant increase will include information regarding the individual's continued Medicaid eligibility. Decrease notices, which will be an exception to the MRB/A and must be manually sent, must include information concerning the individuals continued Medicaid eligibility. The Medicaid citation to be included in the notice is Social Services Law Section 366.

5. Notices Requirements

Attachment III to this directive is a copy of the increase letter. Decrease notices will be an exception to the MRB/A and must be manually sent.

Those cases that are not automatically adjusted by WMS must be manually rebudgeted. Recipients must be provided notice of the change in budgeting. When rebudgeting exceptions to the mass rebudget, workers must prepare a manual notice to the client. This notice should include the following language:

"Your public assistance grant has changed due to a new State law on how we count income. The law directs that we cannot count a percentage of your earned income exceeding \$90.00. Right now the percentage we cannot count is 42%."

The regulation cite is 352.20.

#### 5. Systems Implications

All of the budgeting changes explained above became available on Upstate ABEL as of September 22, 1997. A Mass Rebudgeting/Reauthorization (EID MRB/A) was completed on September 29, 1997, rebudgeting earned income cases with a 42% disregard. Complete details of the ABEL changes and a description of the EID MRB/A are contained in ABEL Transmittal 97-3, issued September 12, 1997.

### B. RESOURCE LIMITS

#### 1. Program Implications

There have been several changes made to the resource test applied in determining public assistance (FA and SNA) eligibility. Section 352.23 of Department regulations has been revised to reflect the changes. Under the new resource policy, the following are changed:

- o The amount of real and personal property, including liquid assets, which a household can own and still qualify for PA, increases from \$1000 to \$2000.
- o A new provision allows households in which any member is age 60 and over to own up through \$3000 in resources.
- o A household is allowed to own one automobile with a FAIR MARKET VALUE not to exceed \$4,650, instead of the previous \$1500 EQUITY VALUE limit for an automobile. Any amount by which the fair market value of the automobile exceeds \$4,650 will count towards the PA resource limit.
- o The length of the exemption period for non-homestead real property which a household is trying to sell is decreased from 9 months to 6 months.
- o Tangible personal property necessary for business or employment purposes is exempt from the resource test.

- o Individual development accounts, (see Section K of this directive).
- o Earned Income Tax Credits are exempt as income or resources.

The following resource policy has not changed:

- o Home which is the usual residence of the assistance unit.
- o Basic maintenance items essential to day-to-day living.
- o One burial plot per household member.
- o One funeral agreement per household member up to an equity value of \$1,500 per household member.

Example #1

An Allegany County family of three (no one age 60 or over) applies for PA on October 20, 1997. At the eligibility interview on October 25, 1997, the examiner learns that the family owns a 1995 Ford Taurus with fair market value of \$10,000. Under the new resource policy the first \$4,650 is exempt leaving \$5,350 to be applied against the \$2,000 assets test. This makes the family ineligible for public assistance.

Example #2

An Oneida County family of three (no one age 60 or over) is applying for FA on November 3, 1997. At the eligibility interview, the examiner learns that the only asset the family has of any value is a bank account of \$2,700. Since this is over the resource limit of \$2,000, assistance for November is denied.

Example #3

A Herkimer County husband and wife, age 62 and 61 respectively, apply for SNA benefits on November 15, 1997. The family provides the following list of assets:

- o \$1,500 savings account,
- o \$250 cash on hand,
- o \$450 US Savings Bonds,
- o \$300 valued TV,
- o \$200 valued dryer, and
- o \$300 valued washing machine.

At the eligibility interview the worker reviews the assets. The TV, dryer and washing machine are considered basic maintenance items of a limited value essential to day-to-day living and are therefore exempted. There has been no change in this provision. The other three remaining resources are countable liquid assets that total \$2,200 in value. As both the husband and wife are 60 years of age or over, the \$3,000 limit applies to this family. Since this amount is under the \$3,000 limit, the family passes the resource test.

## 2. Required Action

Districts must begin applying the new PA resource limits when determining eligibility effective November 1, 1997.

## 3. Food Stamps Implications

Although the PA resource limits now coincide with FS program resource limits and some of the changes to PA resource determination now are similar to the FS treatment of those resources, they are not identical. Even though the PA household is allowed to own one automobile with a fair market value of \$4,650 or less, the additional potential automobile exemptions are more general and are not identical to FS. For specific exemption criteria for licensed motor vehicles for FS purposes, see FSSB XVI-D-All, all other excludable resources, including income producing property, for FS determination are specified in XVI-C.

## 4. Medical Assistance Implications

Generally, the new resource provisions contained in this section must be applied when determining Medicaid eligibility for low income families with children and single individuals/childless couples. The following two exceptions should be noted:

- The resource limit is \$3,000 for all LIF households. The resource limit for single individuals and childless couples mirrors the public assistance resource limit.
- Non-exempt real property is a countable resource. The six-month exemption period for liquidation of real property does not apply to Medicaid applicants/recipients.

As under current processing procedures, LIF households that are ineligible under the public assistance resource limit will need to be referred for a separate Medicaid eligibility determination. In addition, if a LIF household has non-exempt real property in excess of the Medicaid resource limit, the case will need to be referred for a separate Medicaid eligibility determination.

Single individuals and childless couples whose resources exceed the public assistance resource limit are ineligible for Medicaid and a separate eligibility determination is not required.

5. Notices Requirements

CNS will be modified to reflect these changes.

A new PA case reason code, UI6, is being added for use in situations where a PA household's resource limit has decreased from \$3,000 to \$2,000, resulting in the PA case being ineligible due to excess resources, when the household no longer contains an elderly individual.

In instances where a single individual/childless couple is eligible for public assistance but ineligible for Medicaid due to non-exempt real property the Medicaid language to be used on a manual notice of decision is as follows:

This is because you have non-exempt real property over the resource limit of (\$2,000/\$3,000). Medicaid can not exempt real property for a six-month period when you are trying to sell the property. This decision is based on Department Regulation 360-4.8.

6. Systems Implications

Effective November 1, 1997, WMS will support the ability to allow no Medicaid coverage for active individuals in a public assistance case. On WMS screen 05, Medicaid Coverage Code 04 (No Coverage-Ineligible Medicaid) must be entered when an individual is active for public assistance but not eligible for Medicaid. For Undercare Maintenance transactions, the entry of Coverage Code 04 will be require the entry of Medicaid Coverage "From" and "To" Dates. Further information will be provided under separate cover.

C. ABSENCE OF MINOR

1. Program Implications

The Welfare Reform Act of 1997 amended Section 131 of the Social Services law to create a limit on how long a minor can be considered absent from his/her home without good cause and still remain a member of that household for PA purposes.

A minor must not be considered a member of the household if he/she is expected to be absent without good cause for 45 consecutive days or more. The parent/caretaker relative must be sanctioned if they do not notify the local district within 5 days of when it becomes clear that the minor will be absent for 45 consecutive days or more.

Minor children who are absent from the home for less than 45 days are not subject to the good cause provisions as long as it is determined that the parent or relative retains full responsibility for control of the child.

For the Child Assistance Program (CAP), the entire CAP case must be closed if a parent fails to notify the district within 5 days of when it becomes clear that the minor will be absent for 45 consecutive days or more.

## 2. Definitions

a. A minor is a child who is not yet eighteen years old, or who is eighteen and is a full time student, regularly attending a secondary school or in the equivalent level of vocational or technical training.

b. Good cause for purposes of this provision includes:

i. absence for placement in foster care- if the goal stated in the child service plan is the return of the child to a member of the household and return is expected within a reasonable time\*.

ii. attendance at school- if it is in the best interests of the child to return home and return is expected within a reasonable time\*.

iii. hospitalization- if it is in the best interests of the child to return home and return is expected within a reasonable time\*.

iv. attendance at camp.

v. visits to friends or relatives if the child will return within a reasonable time\*.

\* NOTE: "Reasonable time" is not being defined in order to allow workers to use professional judgement in making a determination of what constitutes reasonable time in individual case circumstances. Eligibility workers are strongly urged to consult with services workers for foster care cases and other cases in which services is involved.

## 3. Required Action

When the SSD district learns that a minor is, or is expected, to be absent from a PA household, the local district must:

- a. Determine whether the minor is expected to be absent from the household 45 consecutive days, or more, without good cause. If so, the local district must:
  - provide timely and adequate notice to the household that the absent child is being removed from the PA household;
  - remove the child from the case budget effective with the first semi-monthly payment due to the household following the expiration of the 10 day notice period;
  - determine if an overpayment has been made in accordance with PASB Section XII-A and initiate recoupment, if appropriate, in accordance with PASB Section XIX-A; and
  - change case category, if appropriate.
  
- b. Determine whether the child's parent or caretaker relative notified the SSD within 5 days of the date it became clear to that individual that the absent child would be absent for 45 consecutive days, or more. If the parent or caretaker relative did not inform the local district within the required 5 day period, the local district must:
  - i. provide timely and adequate notice to the parent or caretaker relative (usually the case head) that that person is being removed from the PA household for a period equal to the number of calendar months (a partial month counts as a whole month) the temporarily absent child was absent prior to the district being informed.
  - ii. remove the parent or caretaker relative from the PA household for the appropriate sanction period noted above;
  - iii. determine if an overpayment has been made in accordance with PASB Section XII-A and initiate recoupment, if appropriate, in accordance with PASB Section XIX-A; and
  - iv. change case category, if appropriate

In order to end the specified sanction period, the sanctioned parent or caretaker relative must request the local district to add them back onto the PA case.

For the CAP program, districts must close the entire CAP case when the parent did not inform the district within the required 5 day period.

4. Food Stamps Implications

Food stamp policy remains unchanged in regard to the treatment of temporarily absent individuals from the public assistance case.

5. Medical Assistance Implications

There is no 45 day time limit on temporary absence for minors for Medicaid. Any individual who is denied public assistance based on the removal of an absent child from the case or due to the removal of a parent or caretaker relative who did not inform the district within the required 5 day period must have a separate Medicaid eligibility determination made.

6. Notice Requirements

The reason language paragraphs below are for use when a recipient is affected by the temporary absence. Districts that produce public assistance closing and denial notices through the CNS will, by using the appropriate reason code, produce the required reason language.

Districts that use manual notices must use the appropriate State mandated (or approved local equivalent) notice:

DSS-4014: "Action Taken on Your Recertification: PA, FS, MA, Coverage and Services".

DSS-4015: "Notice of Intent to Change Benefits: PA, FS, MA Coverage and Services" (Timely and Adequate).

When a full explanation of the action will not fit on the notice, an attachment will be needed. Include enough information on the notice to identify the reason for the action and refer the recipient to the attachment for a full explanation. When an attachment is needed, the Regulatory citation must appear on the notice.

- a. Parent fails to notify district of minor's absence-Reason code-N20

This is because you/Name did not notify us within five days of when Name/you knew that (NAME) would be absent from the household for 45 consecutive days or more. Name/you will not be eligible to receive assistance for (Time Period). Name/you may apply for a cash grant at any time, but Name/you cannot get a cash grant before (sanction duration + 1 day).

This decision is based on Department Regulation 351.2(k) and 352.30(d).

- b. For CAP - Parent fails to notify district of minor's absence.

This is because you/NAME did not notify us within five days of when NAME/you knew that (NAME) would be absent from the household for 45 consecutive days or more. Because of this, your CAP Case is being closed.

This decision is based on Department regulation 351.2(k), 352.30(d) and 366.4(i).

D. INELIGIBLE INDIVIDUALS

1. Program Implications

The Welfare Reform Act of 1997 amended section 131 of the Social Services Law to make certain individuals ineligible to receive public assistance.

The provisions below apply to individuals, not households. Persons found to be ineligible under the provisions below shall be treated as sanctioned individuals and budgeted according to Department Regulation 352.30(d) and PASB Section XII-H.

97 ADM-8 required districts to recategorize individuals to PG-ADC who were found to be ineligible because of changes to federal law. These individuals are now ineligible for all public assistance. However, those individuals who were identified as drug felons as specified in 97 ADM-8 are once again eligible to receive federally funded benefits and must be recategorized to FA, if otherwise eligible.

2. Required Action

a. TEEN PARENT EDUCATION PARTICIPATION

Persons under the age of eighteen, not married, who have a child, but no children under 12 weeks old in their care, and who do not participate in educational activities directed toward the attainment of a high school diploma or its equivalent are ineligible for PA. The individual's ineligibility will continue unless he or she participates in educational activities directed toward the attainment of a high school diploma or its equivalent or an alternative educational or training program directly related to employment approved by the SSD. The remainder of the household may, if otherwise eligible, receive PA.

A SSD may exempt the minor parent from this requirement if it has been determined by a medical, psychiatric or other appropriate professional that the minor parent lacks the requisite capacity to successfully complete the course of study.

A minor parent is not subject to this requirement during any period of time in which enrollment in required educational activities is not available.

Verification of school attendance should be done through the normal means. SSDs may continue to use the "School Attendance Verification" form, DSS-3708 to verify attendance in school.

#### Food Stamps Implications

This provision does not apply to the food stamp program except that, as specified in 96 ADM-83, FS benefits to a household cannot increase as a result of non-compliance in a means tested program. Since the failure of a parent under eighteen to meet the educational participation requirement would constitute non-compliance with a means tested program, the FS recipient household would be required to be budgeted at the PA income benefit level they had received before the teen parent non-compliance.

#### Medical Assistance Implications

This provision does not apply to the Medicaid program. Teen parents who are denied public assistance based on education participation requirements must have a separate Medicaid eligibility determination made.

#### Child Assistance Program

When a minor parent fails to comply with this requirement, the entire CAP case is ineligible.

#### Notice Requirements

The reason language paragraph below is for use when a recipient is affected by this provision. Districts that produce PA closing and denial notices through the CNS will, by using the appropriate reason code, produce the required reason language.

SSDs that use manual notices must use the appropriate State mandated (or approved local equivalent) notice:

DSS-4013: "Action Taken on Your Application: Public Assistance, Food Stamps, Medical Assistance and Services";

DSS-4014: "Action Taken on Your Recertification: PA, FS, MA, Coverage and Services";

DSS-4015: "Notice of Intent to Change Benefits: PA, FS, MA Coverage and Services" (Timely and Adequate).

When a full explanation of the action will not fit on the notice, an attachment will be needed. Include enough information on the notice to identify the reason for the action and refer the recipient to the attachment for a full explanation. When an attachment is needed, the Regulatory citation must appear on the notice.

Minor parent has not completed a high school education-Reason Code-F76

This is because (you/NAME) are under the age of eighteen, not married, have a child at least twelve weeks of age in his/her/your care and are unwilling to participate in educational activities directed toward attaining a high school diploma or an alternative educational or training program.

This decision is based on Department Regulation 351.2(k).

Minor parent has not completed a high school education - CAP

This is because (you/NAME) are under the age of eighteen, not married, have a child at least twelve weeks of age in his/her/your care and are unwilling to participate in educational activities directed toward attaining a high school diploma or an alternative educational or training program. Because of this, your CAP case is being closed.

This decision is based on Department Regulation 351.2(k) and 366.4(i).

b. PERSONS IN RECEIPT OF SIMULTANEOUS BENEFITS

Persons who have been convicted in a federal or State court of making a fraudulent statement or representation regarding his or her place of residence in order to receive PA, MA, or FS simultaneously from two or more states, or Supplemental Security Income (SSI) in two or more states are ineligible for PA for a period of ten years, beginning on the date of the individual's conviction. This does not apply to any month beginning after the President of the United States grants a pardon to the individual. The remainder of the household may, if otherwise eligible, receive PA. See Section M of this directive for information on criminal matches.

Child Assistance Program

When a CAP case member is subject to this provision, the entire CAP case must be closed.

#### Food Stamps Implications

Local districts were notified of this change for the FS program in 96 LCM-83. However, information on criminal matches found in Section M of this directive was not previously released.

#### Medical Assistance Implications

The 10 year disqualification period does not apply to Medicaid. If, however, an individual is found to have been a resident of another state, the district may pursue a recovery of Medicaid paid on his/her behalf.

#### Notice Requirements

The reason language paragraph below is for use when a recipient is affected by this provision. SSDs that produce PA closing and denial notices through the CNS will, by using the appropriate reason code, produce the required reason language.

SSDs that use manual notices must use the appropriate State mandated (or approved local equivalent) notice:

DSS-4013: "Action Taken on Your Application: Public Assistance, Food Stamps, Medical Assistance and Services";

DSS-4014: "Action Taken on Your Recertification: PA, FS, MA, Coverage and Services";

DSS-4015: "Notice of Intent to Change Benefits: PA, FS, MA Coverage and Services" (Timely and Adequate).

When a full explanation of the action will not fit on the notice, an attachment will be needed. Include enough information on the notice to identify the reason for the action and refer the recipient to the attachment for a full explanation. When an attachment is needed, the Regulatory citation must appear on the notice.

In Receipt of Simultaneous Benefits (10 year sanction)-Reason code M97

This is because (you/NAME) have been convicted of having fraudulently misrepresented your identity or residence in order to receive multiple public assistance benefits at the same time. Because of this, you are ineligible to receive public assistance for 10 years. This ten year period begins on (DATE).

This decision is based on Department Regulations 351.2(k)(2) and 359.9(d)(1).

In Receipt of Simultaneous Benefits (10 year sanction) - CAP

This is because (you/NAME) have been convicted of having fraudulently misrepresented your identity or residence in order to receive multiple public assistance benefits at the same time. Because of this, your CAP case is being closed. (You/NAME) will also not be eligible to receive public assistance for 10 years. This ten year period begins on (DATE).

This decision is based on Department Regulations 351.2(k)(2), 359.9(d)(1) and 366.4(i).

c. FLEEING FELONS/PROBATION/PAROLE VIOLATORS

Persons who are fleeing to avoid prosecution or custody or conviction under the laws of the place from where they are fleeing for a crime or for an attempt to commit a crime which is a felony under the laws of the place from where they are fleeing, or which, as is the case in the State of New Jersey, is a high misdemeanor in such a State are ineligible for PA and FS. In addition, no PA or FS will be given to any individual who is violating a condition of probation or parole imposed under federal or State law. The remainder of the household may, if otherwise eligible, receive PA and FS. See Section M of this directive for information on criminal matches.

A person is violating a condition of probation or parole only if:

- o the person is currently an absconder from probation or parole supervision and a warrant alleging such a violation is outstanding, or
- o the person has been found by judicial determination to have violated probation or by administrative adjudication by the division of parole to have violated parole, or
- o the person is violating a condition of probation or parole imposed under federal law.

An individual who is identified as being a probation/parole violator is considered as such until it is verified that he or she has been restored to probation or parole supervision or released from custody, or until the person's maximum period of imprisonment or supervision has expired.

Note: Probation or parole includes conditional release.

Child Assistance Program

When a CAP participant is subject to this provision, the entire CAP case must be closed.

Food Stamps Implications

SSDs were notified of this change for the FS program in 96 LCM-83. However, information on criminal matches found in Section M of this directive was not previously released.

Medical Assistance Implications

This provision does not affect Medicaid applicants/recipients.

Notice Requirements

The reason language paragraph below is for use when a recipient is affected by this provision. Districts that produce PA closing and denial notices through the CNS will, by using the appropriate reason code, produce the required reason language.

SSDs that use manual notices must use the appropriate State mandated (or approved local equivalent) notice:

DSS-4013: "Action Taken on Your Application: Public Assistance, Food Stamps, Medical Assistance and Services";

DSS-4014: "Action Taken on Your Recertification: PA, FS, MA, Coverage and Services";

DSS-4015: "Notice of Intent to Change Benefits: PA, FS, MA Coverage and Services" (Timely and Adequate).

When a full explanation of the action will not fit on the notice, an attachment will be needed. Include enough information on the notice to identify the reason for the action and refer the recipient to the attachment for a full explanation. When an attachment is needed, the Regulatory citation must appear on the notice.

Fleeing Felon-Parole/Probation Violator-Reason Code F35

This is because (you/NAME) are currently in violation of parole or probation or (you/NAME) are currently fleeing to avoid prosecution, custody or confinement after a felony conviction.

This decision is based on Department Regulation 351.2(k)(3).

Fleeing Felon-Parole/Probation Violator - CAP

This is because (you/NAME) are currently in violation of parole or probation or (you/NAME) are currently fleeing to avoid prosecution, custody or confinement after a felony conviction. Because of this, your CAP case is being closed.

This decision is based on Department Regulation 351.2(k)(3) and 366.4(i).

E. DISCLOSURE OF INFORMATION

1. Program Implications

The Welfare Reform Act of 1997 amended Section 136 of the Social Services Law to require local districts to disclose certain information to law enforcement officials.

Department Regulation 357.3 has been amended to require SSDs to provide addresses of recipients of FA, SNA or CAP to a federal, state or local law enforcement officer under the conditions listed in paragraph 2 below. See Section M of this directive for information on criminal matches.

In addition, a social services official may report known or suspected instances of physical or mental injury, sexual abuse or exploitation, sexual contact with a minor or negligent treatment or maltreatment of a child to a law enforcement agency or other appropriate agency or official.

A social services official may also communicate with the federal immigration and naturalization services regarding the immigration status of any individual.

2. Required Action

a. The conditions under which the SSD would be required to disclose information include the following:

- i. the officer furnishes the SSD with the recipient's name; and,
- ii. the officer's duties include the location or apprehension of the recipient; and,
  - o the officer notifies the SSD that the recipient is fleeing to avoid prosecution, custody or confinement after conviction of a crime or an attempt to commit a crime which is a felony under the laws of the place from which the recipient is fleeing. In the case of New Jersey the crime is a high misdemeanor under the laws of New Jersey; or,

- o the officer notifies the SSD that the recipient is violating a condition of probation or parole imposed under a federal or state law; or,
    - o the officer notifies the SSD that the recipient has information that is necessary for the officer to conduct his official duties.
  - b. The conditions under which the SSD may disclose information include the following:
    - i. a social services official knows or suspects instances of physical or mental injury, sexual abuse or exploitation, sexual contact with a minor or negligent treatment or maltreatment of a child.
    - ii. communication with the federal immigration and naturalization services regarding the immigration status of any individual.
- 3. Food Stamps Implications

SSD were notified of this change for the Food Stamp program in 96 LCM-83. However, information on the criminal matches found in Section M of this directive was not previously released.

4. Medical Assistance Implications

The disclosure of information provisions contained in this section do not apply to recipients of Medicaid who are not in receipt of public assistance.

5. Notice Requirements

None

F. INTENTIONAL PROGRAM VIOLATION (IPV)

1. Program Implications

The Welfare Reform Act of 1997 amended Section 145-c of the Social Services law to change the penalties for IPVs.

The penalty for IPVs will be based on the number of previous offenses and the dollar value of the offense.

2. Required Action

- a. For PA IPV's (Family Assistance or Safety Net Assistance), in addition to considering how many IPV's have been committed, the dollar value of the offense will be taken into account when a PA-IPV disqualification period is determined. The penalties for PA-IPV's are as follows:

6 Months Disqualification

- first offense, and
- offense is less than \$1,000

12 Months Disqualification

- second offense, or
- offense is between \$1,000 and \$3,900

18 Months Disqualification

- third offense, or
- offense is greater than \$3,900

5 Year Disqualification

- fourth or subsequent offense

Example: A Safety Net recipient with no prior disqualifications for an IPV is convicted of an offense in an amount of \$4,000. This individual is now ineligible for all PA programs for a period of 18 months. The remaining household members may, if otherwise eligible, receive PA.

- b. Budgeting of Disqualified Individuals - The income and resources of the disqualified individual, but not his or her needs, must be considered in determining the remaining case members' eligibility and degree of need for PA.
- c. Revised IPV Document Pages - Attachments IV, V, VI, VII, and VIII revise pages of IPV documents previously provided in 96 ADM-5.
- d. District Reporting Requirements - District reporting requirements remain the same.

3. Food Stamps Implications

SSDs were notified of changes to FS IPV's in 96 LCM-83.

4. Medical Assistance Implications

For Medicaid purposes, only single individuals, childless couples or parents in intact households, who are over age 21 and under age 65 (no certified disability), and who are disqualified for public assistance because of an IPV, are also ineligible for Medicaid until the PA disqualification period ends. For all other public assistance applicant/recipients who are disqualified for an IPV, a separate Medicaid eligibility determination must be made.

5. Child Assistance Program

When a CAP participant is subject to an IPV, the entire CAP case must be closed.

6. Notice Requirements

Individual Notices

SSDs must use the notice attached to 96 ADM-5 when disqualifying an individual for an IPV.

7. Systems Implications

WMS IPV Reason Codes will be modified as necessary.

G. MINOR PARENTS

1. Program Implications

The Welfare Reform Act of 1997 amended Section 131 of the Social Services Law with respect to the eligibility of pregnant minors and minor parents who are required to live with their parents, guardian or in an adult supervised situation but will not comply.

2. Required Action

An individual who is a pregnant minor, or a minor residing with and providing care for his or her dependent child, is affected by the requirement that the individual must live with a parent, legal guardian or adult relative if he or she is:

- under the age of 18; and
- not married,

unless one of the exceptions listed in paragraph a. below is found to exist.

- a. Exceptions: The individual (and minor child) will not be required to live in the household of a parent, legal guardian, or other adult relative when:
  - i. the individual has no living parent, legal guardian, or other appropriate adult relative whose whereabouts is known; or
  - ii. the individual has no parent, legal guardian, or other adult relative who will allow the individual (and child) to live in his or her home; or

- iii. the individual (or child) has been subjected to serious physical or emotional harm, sexual abuse or exploitation in the residence of the parent, guardian or relative; or
- iv. substantial evidence exists of imminent or serious harm if the individual (or child) were to reside in the same residence with the individual's parent, guardian or relative; or
- v. it is in the best interest of the child to waive the requirement. Best interest will be determined by the social services district on a case by case basis.

Note: When an individual and child is subject to one of the exceptions in this paragraph, paragraph b, regarding alternative living arrangements, must be applied.

- b. Alternative Living Arrangements - When an exception applies to the requirement that an individual (and child) live with a parent, guardian or adult relative, and unless the individual's current living arrangement is appropriate, the social services district must locate or assist the individual in locating an adult supervised supportive living arrangement.

An adult supervised supportive living arrangement are those that meet the standard as stated in paragraph (d) below. These include but are not limited to:

- i. maternity homes; and
- ii. second chance homes. Second chance homes are defined as a facility which provides teen parents with a supportive and supervised living arrangement in which they are required to learn parenting skills, including child development, family budgeting, health and nutrition and other skills to promote long-term economic independence and well-being of their children.

- c. Individual's Current Living Arrangement:

The social services district may determine if the individual's current living arrangement is appropriate by considering such factors as:

- the individual's involvement in educational activities;
- the availability, at or near the individuals residence, of child care which enables the individual to take part in educational activities;
- the individual's ability to properly manage his or her grant.

- other persons living in the dwelling unit with the individual.

These and other factors specific to the individual and child will be viewed together and support the decision that the individual's behavior appears to be responsible and would justify a continuation of that living arrangement.

When the SSD determines that factors exist which prevent the current living arrangement from being considered appropriate, the SSD may offer the individual the opportunity to locate a more appropriate arrangement and may assist the individual with expenses related to the move. However, when no appropriate arrangement is located by the individual, and the SSD will then require the individual to live in an adult supervised supportive arrangement, the arrangement must meet the standard stated in paragraph (d) below. Only when the individual will not live in such an arrangement can the SSD deny assistance to the individual.

d. Standards

In the case of formal adult supervised supportive living arrangements such as maternity homes and second chance homes, the arrangements must meet the appropriate licensing or certification requirements set by the Office of Family and Children Services for that kind of facility.

e. Grant Restriction

There is no change to the current policy that the individual's grant should be paid to the adult in an adult supervised living arrangement, if possible.

f. Referral to Child Protective Services (CPS)

If the individual alleges that one of the circumstances in paragraph b.3 or 4 exists, the SSD cannot deny assistance to the minor for refusing to live with the parent, guardian or adult relative unless a CPS investigation is conducted under Section 432 of Department Regulation and results in a contrary finding. However, the SSD can explore whether or not the individual (and child) should live in an alternative adult supervised supportive living arrangement and CAN deny assistance to the individual for refusal to live in an appropriate alternative arrangement.

If, after a CPS investigation and determination that the report is unfounded, the individual (and child) will be required to return to the home of the parent, guardian or relative whose home was the subject of the investigation, the individual (but not the individual's child) may be denied

assistance for still refusing to live there. In such an instance, the individual is entitled to a fair hearing within 30 days if the request is made timely.

g. Penalty for Non-Compliance

The individual is ineligible. The individual's minor child may receive assistance.

3. Food Stamps Implications

Food Stamp policy remains unchanged in the treatment of minor parents with respect to their living arrangements.

4. Medical Assistance Implications

There is no requirement for minor parents or pregnant minors to live with their parents, adult relatives, or in an adult supervised situation for Medicaid. Any individual who is denied public assistance based on this living arrangement requirement must have a separate Medicaid eligibility determination made.

5. Notice Requirements

The reason language paragraph below is for use when an individual is sanctioned because the minor parent or pregnant minor will not comply with the requirements of this provision. SSD's that produce PA closing and denial notices through the CNS will, by using the appropriate reason code, produce the required reason language when the sanction of the individual results in a denial or closing.

Districts that use manual notices must use the appropriate State mandated (or approved local equivalent) notice:

DSS-4013: "Action Taken on Your Application: Public Assistance, Food Stamps, Medical Assistance and Services";

DSS-4014: "Action Taken on Your Recertification: PA, FS, MA, Coverage and Services";

DSS-4015: "Notice of Intent to Change Benefits: PA, FS, MA Coverage and Services" (Timely and Adequate).

When a full explanation of the action will not fit on the notice, an attachment will be needed. Include enough information on the notice to identify the reason for the action and refer the recipient to the attachment for a full explanation. When an attachment is needed, the Regulatory citation must appear on the notice.

Use of the following CNS codes will produce the correct language as follows:

Living Arrangements - FA Pregnant/Minor Parent - (No Health/Safety Claim) - Reason Code N49

This is because an unmarried individual, under the age of 18, pregnant or residing with and providing care for a minor dependent child cannot get public assistance for himself or herself unless the individual (and child) resides in an approved suitable living arrangement.

An approved suitable living arrangement is available with (PARENT/GUARDIAN OR ADULT SUPERVISED RESIDENCE). You do not reside there and cannot get public assistance.

This decision is based on Department Regulation 369.2.

Living Arrangements - FA Pregnant/Minor Parent - (Health/Safety Claim Denied) Reason Code N50

This is because an unmarried individual, under the age of 18, pregnant or residing with and providing care for a minor dependent child cannot get public assistance for himself or herself unless the individual (and child) resides in an approved suitable living arrangement.

An approved suitable living arrangement is available with (PARENT/GUARDIAN). You do not reside there and cannot get public assistance.

This agency has investigated the claim that the home offered by (SPECIFY PARENT OR GUARDIAN) is not suitable. The agency found that living in that home will not jeopardize your health and safety.

This is based on Department Regulation 369.2.

CNS does not support CAP yet. Manual notice language for CAP is as follows:

This is because an unmarried individual, under the age of 18, pregnant or residing with and providing care for a minor dependent child must reside in an approved suitable living arrangement. An approved suitable living arrangement is available with (Parent/Guardian) you do not reside there and therefore your family cannot get CAP.

This is based on Department regulation 366.4.

## 6. Systems Implications

The new definition of CNS codes N49 and N50 will be updated on ELIB, file drawer SYS001, "CNS Code Cards" file.

H. ALIENS

1. Program Implications

PRWORA established new alien eligibility criteria for public assistance benefits and designated a group of aliens as qualified aliens. In addition, they extended special eligibility to a subset of qualified aliens we have identified as specially qualified aliens.

Districts were notified of the new criteria in directive 97 ADM-8. Since publication of that ADM laws were passed that modify the alien eligibility criteria by adding Cuban and Haitian entrants and Amerasian immigrants to the specially qualified and qualified alien designation.

The Welfare Reform Act of 1997 amended the Social Services Law by adding a new Section 122.

As a result of this change, specially qualified aliens are able to receive PA, if otherwise eligible. Qualified aliens who entered the United States before August 22, 1996 are able to receive PA, if otherwise eligible.

However, most aliens who entered the country on or after August 22, 1996 are ineligible for family assistance benefits for at least five years. Most qualified aliens, however, may receive safety net assistance.

Citizen children of non-citizen parents, if otherwise eligible, can receive public assistance benefits.

Illegal aliens are not eligible for PA.

The definitions of each group is as follows:

2. Definitions

a. a "qualified alien" is:

- i. a refugee admitted under Section 207 of the Immigration and Nationality Act;
- ii. an asylee granted asylum under Section 208 Of the Immigration and Nationality Act;
- iii. a person whose deportation was withheld under Section 241(b)(3) or 243(h) of the Immigration and Nationality Act;
- iv. a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

- v. an alien admitted into the United States as an Amerasian immigrant as described in section 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Act of 1996 (8 U.S.C. 1612(a)(2)(A));
  - vi. a person lawfully admitted for permanent residence in the United States;
  - vii. a person paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act for a period of at least one year;
  - viii. a person granted conditional entry into the United States under Section 203(a)(7) of the Immigration and Nationality Act;
  - ix. a battered spouse and dependents meeting the criteria of Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. To be a qualified alien under this provision, an alien must demonstrate that:
    - o The Immigration and Naturalization Service or the Executive Office for Immigration Review has granted a petition or application filed by or on behalf of the alien or the alien's child under one of several subsections of the INA; and
    - o the alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien or by a member of the spouse's or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty and in the case of a battered child, the alien did not actively participate in the battery or cruelty; and
    - o there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought (defined under the Federal Register, Vol. 62, No. 142, pages 39874 - 39875.); and
    - o the battered alien or child no longer resides in the same household as the abuser.
- b. A "specially qualified alien" is:
- i. a refugee admitted under Section 207 of the Immigration and Nationality Act, for a period of five years from the date the person was admitted into the United States as a refugee;

- ii. an asylee granted status under Section 208 of the Immigration and Nationality Act, for a period of five years from the date that the asylee was granted status;
- iii. a person for whom deportation was withheld, under Section 241(b)(3) or 243(h) of the Immigration and Nationality Act, for a period of five years from the date that the deportation was withheld;
- iv. a Cuban Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980) for a period of five years from the date such status was granted;
- v. an alien admitted into the United States as an Amerasian immigrant as described in Section 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(A)) for a period of five years from the date the person was admitted into the United States;
- vi. a person lawfully admitted for permanent residence into the United States who has worked for forty quarters as defined under Title II of the federal social security act, or can be credited with such qualifying quarters exclusive of any quarter after December 31 1996 in which such person received any federal means tested assistance whose entry into the United States was at least five years earlier or who entered the United States prior to August 22, 1996;
- vii. any qualified alien who is on active duty, other than duty for training, in the United States Armed Forces or who has received an discharge characterized as honorable and not on account of alienage, or their spouse or unmarried dependent child of any such alien who is also a qualified alien.

### 3. Required Action

#### a. Eligibility Criteria

No person except a citizen or a specially qualified alien shall be eligible for the federal food stamp program, family assistance, safety net assistance, child assistance program or services funded under Title XX of the federal social security act, except as follows:

- i. A qualified alien, who is not a specially qualified alien, who was a lawful resident of the United States before August 22, 1996, or who was a lawful resident of the United States on or after August 22, 1996, for

five or more years is, if otherwise eligible, eligible for family assistance, CAP, safety net assistance and services pursuant to Title XX of the federal social security act, but shall be ineligible for the federal food stamp program.

- ii. A qualified alien, who is not a specially qualified alien, who entered the United States on or after August 22, 1996 but who was a legal resident of the United States for less than five years shall, if otherwise eligible, be eligible for safety net assistance, but shall be ineligible for family assistance, CAP or food stamps.
- iii. An alien whose status is not within the meaning of the term qualified alien but who is otherwise permanently residing in the United States under color of law, (PRUCOL) (see 88 INF-77) is, if otherwise eligible, eligible for safety net assistance.
- iv. A person paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act for a period of less than one year is, if otherwise eligible, eligible for safety net assistance.
- v. Nothing herein shall preclude the receipt by an alien of community based non-cash assistance in accordance with the directions of the United States Attorney General.
- vi. Any alien, including an alien who is not a qualified alien, is eligible for adult protective services and services and assistance relating to child protection to the extent that such person is otherwise eligible pursuant to this Section and the Regulations of the department.
- vii. An alien is eligible for additional State payments for aged, blind and disabled persons under social services law only to the extent that such person is not ineligible for federal SSI benefits due to alien status.

b. Referral Requirements

Any applicant or recipient who has been determined to be ineligible for family assistance, CAP, or safety net assistance because he or she is an alien unlawfully residing in the United States or because he or she failed to furnish evidence that he or she is lawfully residing in the United States shall be immediately referred to the United States Immigration and Naturalization Service, or the nearest consulate of the country of the applicant or the recipient for such service or consulate to take appropriate action or furnish assistance.

c. Reporting Requirement

Each social services district shall report to the Office of Temporary and Disability Assistance, the name and address and other identifying information known to it with respect to any alien known to be unlawfully in the United States, on the form provided in Attachment IX. The form should be sent monthly, within 10 days from the end of the month the information was obtained. The form should be sent to:

NYS Office of Temporary and Disability Assistance  
Division of Temporary Assistance  
40 North Pearl Street  
Albany, NY 12243

The information the district provides to the Office of Temporary and Disability Assistance will be transmitted to the federal government according to federal law and regulation.

d. Documentation Requirements

At each application and at each recertification for the federal food stamp program, family assistance, CAP, safety net assistance, or services funded under Title XX of the Social Security Act, the applicant/recipient must provide documentation to the social services district for each member of the applying/recipient household of the person's United States citizenship or immigration or alien status granted by the United States Immigration and Naturalization Service (INS).

Any member of the applying/recipient household who is not a United States citizen must provide the social services district, as a condition of eligibility, with documentation as to the alien status granted to them by INS.

In addition, all applicants/recipients who were lawfully admitted for permanent residence must provide the district, as a condition of eligibility, with documentation regarding their lawful entry into the United States prior to August 22, 1996. If the alien documents that they were lawfully admitted for permanent residence on or after August 22, 1996 the alien must also document the number of quarters of qualified employment they worked or can be credited with. The SSD can verify the majority of the previous quarters to credit a non-citizen by use of WMS (Main Menu choice 26, SSA 40 Quarter Data Exchange).

All non-citizens who are serving in the United States Armed Forces or veterans discharged under honorable conditions from the United States Armed Forces and their spouses and unmarried dependent children must, as a condition of eligibility, provide documentation that they are qualified aliens.

The applicant/recipient is responsible for providing the required documentation. However, if he/she cannot provide the needed documentation, the district must provide reasonable assistance to help the applicant/recipient to obtain the documentation. Once the documentation has been provided, the district is not required to obtain it again unless the applicant/recipient has an immigration status that can be changed.

Districts must review and analyze the citizenship/alien status documentation provided by the applicant/recipient and make an eligibility determination consistent with the documentation provided.

This Department will publish information to help districts review and evaluate an aliens INS documentation and immigration status, under separate cover.

#### 4. Food Stamps Implications

Social services districts were notified of the PRWORA changes to the federal Food Stamp program in GIS Messages 96 TA/DC031 9/17/96, 96 TA/DC039 10/2/96, 97 LCM-21 3/3/97, and 97 ADM-5 3/11/97. Additionally, districts were notified of their option to participate in a state and locally funded Food Assistance Program extending eligibility to certain non-citizens who were not eligible for the federal program solely due to the non-citizens provisions of PRWORA. This eligibility was only extended to certain non-citizens who were otherwise eligible for the federal food stamp program, who were living in the United States on August 22, 1996 and who met certain criteria as specified in GIS Message 97 TA/DC015; further information on program requirements and budget information was provided in GIS Messages 97 TA/DC020, and 97 TA/DC021.

#### 5. Medical Assistance Implications

Qualified aliens who are eligible for family assistance are eligible for Medicaid.

Qualified aliens who are not "specially qualified aliens" and who enter the United States on or after August 22, 1996 are not eligible for full Medicaid benefits during their first five years with a qualifying status. Such aliens may receive coverage for emergency services if otherwise eligible. Such individuals may be eligible for public assistance benefits in the safety net assistance program.

Aliens who are not qualified aliens, but who are determined to be permanently residing in the United States under color of law are not eligible for full Medicaid benefits, but may receive coverage for emergency services, if otherwise eligible. Such individuals may be eligible for public assistance benefits in the safety net assistance program.

Aliens eligible for safety net assistance who are not eligible for full Medicaid benefits must be coded in WMS with Medicaid Coverage Code 04, "No Coverage - Medicaid Ineligible". If the individual requires Medicaid coverage for care and services necessary for the treatment of an emergency medical condition, a separate Medicaid eligibility determination is required.

NOTE: Alien status is never a factor of eligibility for pregnant women. Thus, a pregnant woman who is otherwise eligible for safety net assistance may receive full Medicaid benefits (Medicaid Coverage Code 01) until the end of the month in which the sixty day postpartum period ends.

Further information about citizenship/alien status requirements for Medicaid-only applicants/recipients will be published by the New York State Department of Health under separate cover.

#### 6. Notice Requirements

Districts will notify those individuals who cannot verify that they are a United States citizen or that they have been granted an alien status that makes them eligible to receive Family Assistance, CAP or Safety Net Assistance of their ineligibility by using individual reason code F92-Failure to Provide Proof of Citizenship or Eligible Alien Status.

Since the language for reason code F92 is in the process of being modified to reflect the new regulations you should use the following language on the manual notice you send:

"This is because persons cannot get family assistance benefits, CAP benefits or safety net assistance benefits unless they are a citizen or an alien with certain kinds of immigration status. You are not a citizen of the United States or such an alien. The types of aliens who may be able to get family assistance benefits or safety net assistance include:

- aliens admitted to the United States as a refugee within the last five years, under Section 207 of the Immigration and Nationality Act (INA); or
- aliens granted asylum within the last five years, under Section 208 of the Immigration and Nationality Act (INA); or

- aliens whose deportation has been withheld within the last five years, under Section 241(b)(3) or 243(h) of the Immigration and Nationality Act (INA); or
- aliens who are granted Cuban and Haitian entrant status (as defined in Section 501 (e) of the Refugee Education Assistance Act of 1980) within the last five years; or
- aliens admitted into the United States as Amerasian immigrants as described in Section 402(a)(2)(A)(i)(V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996(8 U.S.C. 1612(a)(2)(A)) within the last five years; or
- permanent resident aliens who have worked for 40 (Social Security) qualifying quarters. A qualifying quarter includes any quarter worked by the alien as well as any worked by their parent while the alien; was under 18 and any quarter worked by a spouse during marriage, if the alien remains married or the spouse is deceased. Quarters earned after December 31, 1996 do not count if the alien receives any Federal means-tested public benefits during these quarters; or
- qualified aliens who are veterans with an honorable discharge or who are on active military duty, not for training, in the armed forces of the United States or their spouses or unmarried dependent children of such veterans or aliens if they are also qualified aliens; or
- qualified aliens who lawfully entered the United States prior to August 22, 1996 or who entered the United States more than five years ago; or
- aliens considered to be permanently residing in the United States under color of law, as such term was used on August 21, 1996 by the Administration for Children and Families; or
- aliens paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act(INA) for a period of less than one year.

If you think you have the type of alien status which makes you eligible for family assistance, CAP or safety net assistance benefits, we suggest that you contact one of the legal advocate groups listed in the Legal Assistance section of this notice to discuss your status and your rights.

This decision is based on Department Regulation 349.3.

For aliens who are being denied safety net assistance because of their alien status, and for PRUCOL aliens who are eligible for safety net assistance but are not eligible for full Medicaid benefits, the Medicaid language on a manual notice of decision will be as follows:

This is because you are not a citizen or a qualified alien. Qualified aliens include:

- persons lawfully admitted for permanent residence;
- persons admitted as refugees;
- persons granted asylum;
- persons granted status as Cuban and Haitian entrants;
- persons whose deportation has been withheld;
- persons paroled into the United States for at least one year;
- persons granted conditional entry; or
- persons determined to be battered or subject to extreme cruelty in the United States by a family member.

Persons who are not citizens or qualified aliens may receive Medical Assistance coverage only for the treatment of emergency medical conditions, or for medical services provided to pregnant women, if they are otherwise eligible.

Should you require Medical Assistance as a result of an emergency medical condition or pregnancy, you may replay.

This decision is based on Section 122 of Social Services Law.

For qualified aliens who enter the United States on or after August 22, 1996 and who are not "specially qualified aliens" the Medicaid denial language on a manual notice of decision will be as follows:

This is because you are a qualified alien who entered the United States on or after August 22, 1996.

Qualified aliens who enter the United States on or after August 22, 1996, may receive Medical Assistance coverage during their first five years in the United States only for the treatment of emergency medical conditions, or for medical services provided to pregnant women, unless the alien is:

- admitted as a refugee;
- granted asylum;
- a Cuban and Haitian entrant;
- a person whose deportation has been withheld;
- a qualified alien on active duty in the Armed Forces of the United States, or the spouse or unmarried dependent child of the alien;
- a qualified alien who is a veteran of the Armed Forces of the United States, or the spouse or unmarried dependent child of the veteran.

You may reapply for Medical Assistance after you have resided in the United States for five years, or if you require coverage as a result of an emergency medical condition or pregnancy.

This decision is based on Section 122 of Social Services Law.

## 7. Systems Implications

Districts will be notified when the revised language is supported by CNS.

### I. ALIEN SPONSORSHIP

#### 1. Program Implications

Prior to the passage of the PRWORA of 1996, the obligation of a sponsor to provide for the financial support of the sponsored alien could not be legally enforced. Under PRWORA the alien sponsorship agreement will become a legal document that is enforceable in either federal court or state court. The federal government is in the process of designing such an alien sponsorship agreement that will meet the new legal requirements of PRWORA.

When New York State is notified that INS has implemented the new sponsorship agreement we will notify districts so that they can put into effect the new alien deeming requirements of PRWORA. Until notified, districts must continue the alien deeming procedures contained in 93 ADM-13.

When the new federal sponsorship agreement is implemented districts will have to deem the income and resources of a sponsor as described below.

#### 2. Required Action

a. Except as provided in paragraph b or c of this Section, all the income and resources of a sponsor of an alien, who has signed an affidavit of support pursuant to section 213a of the Immigration and Naturalization Act, and all the income and resources of such sponsor's spouse is deemed available to such alien for purposes of determining the eligibility of such alien for family assistance or CAP.

b. A sponsor's income and resources will no longer be deemed available to the alien when the alien:

- achieves United States citizenship through the naturalization process; or,

- has worked 40 qualifying quarters of coverage as defined under Title II of the Social Security Act or can be credited with such qualifying quarters as provided under federal law and, in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefit during any such period.
- c. If the social services district determines that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's own income plus any cash, food or housing or other assistance provided by other individuals, including the actual amount of income and resources provided by the sponsor or sponsor's spouse, the agency must:

- budget the amount of income and resources the sponsor or the sponsor's spouse actually contributes to the alien for a period beginning on the date of such determination and ending 12 months after such date, and;

NOTE: a new determination may be made every twelve months.

- notify the Office of Temporary and Disability Assistance of each such determination including the names and other known information about the sponsor and the sponsored alien involved using the form contained in Attachment X.
- The form should be sent monthly, within ten days from the end of the month the first PA benefits were granted. The form should be sent to:

NYS Office of Temporary and Disability Assistance  
Division of Temporary Assistance  
40 North Pearl Street  
Albany, NY 12243

The information the district provides to the Office of Temporary and Disability Assistance will be transmitted to the federal government according to federal law and regulation.

- d. An alien sponsor's income and resources cannot be deemed to an applicant or recipient of safety net assistance. However, social services districts must pursue and budget actual contributions from sponsors.
- e. The social services district may not apply alien deeming for a 12 month period with respect to battered aliens and their children described in Section 421(b)(1)(A) of PRWORA and may not thereafter apply such alien deeming if;

- the alien demonstrates that the battery or cruelty has been recognized by a court order or order of an administrative law judge or the immigration and naturalization service; and
  - the battery or cruelty bears substantial connection to the need for benefits; and
  - the person responsible for such battery or cruelty does not reside in the same household as the individual who was subject to the battery or cruelty.
- f. If and to the extent that family assistance or CAP benefits, safety net assistance, emergency assistance to aged, blind or disabled adults, or emergency assistance to needy families with children is paid to or on behalf of an alien for whom an affidavit of support pursuant to section 213a Immigration and Nationality Act has been signed, the district must request reimbursement by the sponsor in the amount of such assistance. If the sponsor does not within forty-five days of such request indicate a willingness to commence payments, the district may commence an action against the sponsor pursuant to the affidavit. Indications of a willingness to pay may include only: payment in full, commencement of substantial periodic payments, entry into a payment agreement or a written assurance of payments on a reasonable basis. Oral assurance of payment is not sufficient.

Remedies available to enforce an affidavit of support include all the remedies described in sections 3201, 3202, 3204, 3205 of Title 28 of the United States Code, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under state law; however, no action shall be brought more than ten years after assistance is last given.

### 3. Food Stamps Implications

Neither federal or state law have changed the sponsored alien process for the federal food stamp program. Therefore, the "Sponsored Aliens" procedures contained in the Food Stamp Source Book pages XII-D-1 to XII-D-5 remain in effect.

### 4. Medical Assistance Implications

Information concerning alien sponsorship and Medicaid eligibility will be published by the New York State Department of Health under separate cover.

5. Notice Requirements

The reason language paragraph below is for use when a recipient is affected by this provision. Districts that produce PA closing and denial notices through the CNS will, by using the appropriate reason code, produce the required reason language.

Social services districts that use manual notices must use the appropriate State mandated (or approved local equivalent) notice:

DSS-4013: "Action Taken on Your Application: Public Assistance, Food Stamps, Medical Assistance and Services";

DSS-4014: "Action Taken on Your Recertification: PA, FS, MA, Coverage and Services";

DSS-4015: "Notice of Intent to Change Benefits: PA, FS, MA Coverage and Services" (Timely and Adequate).

When a full explanation of the action will not fit on the notice, an attachment will be needed. Include enough information on the notice to identify the reason for the action and refer the recipient to the attachment for a full explanation. When an attachment is needed, the Regulatory citation must appear on the notice.

Excess Income-Deemed Income of Alien Sponsor-F33

This is because your household's countable income of \$\_\_\_\_\_ is more than the limit of \$\_\_\_\_\_for a household of\_\_\_\_\_.

The income of an alien's sponsor must be counted against the alien's public assistance allowance for 12 months beginning on (DATE).

Excess Resources-Deemed Resources of Alien Sponsor-U44

This is because there is a limit on the amount of resources a public assistance case can have. Your resources are over the limit. The resources of an alien's sponsor must be counted against the alien's public assistance allowance for 12 months beginning from (DATE).

J. REQUIREMENTS FOR SCREENING, ASSESSMENT AND TREATMENT FOR APPLICANTS/RECIPIENTS WITH ALCOHOLISM AND/OR SUBSTANCE ABUSE PROBLEMS

1. Program Implications

Social services districts will have to develop/enhance procedures for screening all head of household and all adult applicants and recipients of public assistance (including CAP) for alcoholism or substance abuse, arrange to have the Office of Alcohol and Substance Abuse Services (OASAS) credentialed drug and/or alcohol counselors assess all adults and head of households identified through the screening process to determine whether they are unable to work because of alcohol and/or substance abuse, and refer all individuals who are determined unable to work to mandated treatment. Additionally, all individuals and members of households with individuals identified as abusing drug and/or alcohol and unable to work must receive assistance through the non-cash safety net assistance program. The non-cash component of safety net assistance applies to persons determined to be abusing drugs and/or alcohol effective January 1, 1998.

These requirements have direct implications for social services districts' intake and undercare procedures for public assistance.

There are potential fiscal implications which include the hiring of additional staff to screen applicants/recipients and to monitor and track treatment, and hiring or contracting with credentialed drug and alcohol counselors to complete required assessments.

A new subdivision (i) has been added to Section 351.2 of Department regulations to reflect the new and revised requirement for screening, assessment and treatment for alcohol and substance abuse.

Since individuals responsible for the care of children may be identified as having drug and/or alcohol problems, linkages with protective services may be necessary.

2. Required Action

A. DEFINITIONS

The SSD must use the following definitions for purposes of Alcoholism and Substance Abuse screening, assessment and treatment requirements:

- i. Adult: - An adult is considered any individual in the household age 18 or older who is applying for or in receipt of public assistance. Individuals age 18 who are participating in a full-time secondary school, or in the equivalent level of vocational or technical training, are not considered adults for purposes of screening, assessment and treatment for alcoholism and/or substance abuse.

- ii. Appropriate Treatment Program: - To be considered an appropriate treatment program, the program must:
  - a. be licensed or certified by the Office of Alcoholism and Substance Abuse Services or operated by the United States Department of Veterans Affairs and be determined by the social services official to meet the rehabilitation needs of the individual;
  - b. develop a treatment plan for the individual which includes an expected date of availability for work related activities and provide a copy of such plan to the SSD responsible for payment;
  - c. provide, at a minimum of every three months, a treatment progress report for each recipient of public assistance to the SSD responsible for payment; and
  - d. request the approval of the local district responsible for payment, prior to changing an individual's level of treatment care.

B. NOTIFICATION TO APPLICANTS/RECIPIENTS OF ALCOHOLISM AND SUBSTANCE ABUSE REQUIREMENTS FOR PUBLIC ASSISTANCE

The SSD must notify all adult and head of household applicants and recipients at the time of application or, for persons already receiving PA at the time of recertification that if they fail to participate in the screening or assessment process they are ineligible for public assistance and other members of the household shall, if otherwise eligible, receive assistance through the non-cash safety net assistance program. All affected applicants/recipients must also be notified that they may be sanctioned if they fail to participate in, or, if participating, fail to complete, an or substance abuse treatment program or fail to document compliance with rehabilitation treatment requirements. Applicants/recipients should also be notified that they may forfeit any personal needs allowance accumulated by the treatment program if they leave a residential treatment program prior to completion.

Attachment XI "Notification to Applicant/Recipients of Alcoholism and Substance Abuse Requirements for Public Assistance" must be reproduced locally and provided to applicants/recipients as explained above until Book 1, the DSS-4148A: "What You Should Know About Your Rights and Responsibilities (When Applying for or Receiving Social Services)" of the three booklet set is revised to include such language.

C. SCREENING

i. Responsibility of SSD:

a. APPLICANTS

The SSD must screen all heads of households and all adult household members applying for public assistance using the DSS-4571: "Alcohol/Substance Abuse Screening Instrument" (Attachment XII). This form must be reproduced locally until the printed version is available.

b. RECIPIENTS

1) Implementation - The SSD must screen all heads of households and all adult recipients of public assistance using the DSS-4571: "Alcohol/Substance Abuse Screening Instrument" no later than the next recertification.

2) Undercare - The SSD must screen all heads of households and adult recipients of public assistance, using the DSS- 4571 "Alcohol/Substance Abuse Screening Instrument", at a minimum whenever there is evidence to indicate potential alcohol and/or substance abuse, unless the recipient is actively participating in alcoholism and/or substance abuse treatment in accordance with 18 NYCRR 351.2(i).

Additionally, SSDs may routinely screen recipients of public assistance using the DSS-4571: "Alcohol/Substance Abuse Screening Instrument" on a schedule determined by the SSD provided the policy is applied consistently and is no more frequently than every six months. For example, a SSD may opt to screen all Safety Net Assistance recipients at each recertification, but may screen Family Assistance recipients only when there is evidence of potential alcohol and/or substance abuse.

Besides physical signs, evidence of potential alcohol and/or substance abuse can include, but is not limited to, missing a WEP assignment and tardiness to WEP assignments.

c. INSTRUCTIONS FOR ADMINISTERING THE DSS-4571  
"Alcoholism/Substance Abuse Screening Instrument"

- 1) All questions on the screening form should be checked "Yes" or "No". The instrument may be given verbally by reading each question to the client and recording the "Yes" or "No" client response on the instrument, or handed to the client for completion. After the questions are answered, the client must sign and date the form.
- 2) All persons who score two or more "Yes" answers to the screening form must be referred for assessment.
- 3) A copy of the completed DSS-4571 must be maintained in the case file. If an applicant/recipient is referred for assessment a copy of the DSS-4571 must be forwarded to the person conducting the assessment.

ii. Responsibility of applicants/recipients:

Heads of households and adult applicants and recipients of public assistance must participate in the screening process. A person who fails to participate in the screening process, without good cause, is ineligible for public assistance. Other members of a household that contains a person who failed to participate in the screening process shall, if otherwise eligible, receive public assistance through the non-cash safety net assistance program.

Good cause is when a verified unforeseen circumstance occurs that is beyond the applicant's or recipient's control such as illness or a death in the family.

D. ASSESSMENT

i. Responsibility of social services districts:

- a. The SSD must conduct a formal assessment, which may include drug testing at SSD option, to be performed by a person who bears an alcohol and/or substance abuse counselor credential, which is currently in good standing, issued by OASAS, to assess individuals for alcoholism and/or substance abuse whenever:
  - 1) the screening process indicates that there is reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs;

- 2) there is evidence to indicate that an applicant or recipient is abusing or dependent on alcohol and/or drugs.
- 3) an individual was deemed exempt from the screening process as a result of their participation in an appropriate treatment program. Such assessment must be conducted as soon as possible but no later than the next recertification; and
- 4) a recipient requests to be reassessed to enable movement from non-cash safety net assistance to cash assistance.

The assessment may be performed directly by a credentialed alcoholism and substance abuse counselor employed by the SSD or the SSD may contract out the assessment function.

b. The assessment must determine:

- 1) If the individual is abusing alcohol and/or drugs; and
- 2) If abuse is found, whether the individual is able to work or not, and
- 3) If abuse is found and the individual is unable to work because of the abuse, the appropriate level of care.

c. If the assessment determines that the individual is not abusing alcohol and/or drugs, the eligibility process should continue in accordance with existing procedures.

d. If the assessment determines that the individual is abusing alcohol and/or drugs but is able to work, the eligibility process should continue in accordance with existing procedures. (Treatment is no longer required as a condition of eligibility unless the individual is determined unable to work.)

e. If the assessment determines that the individual is unable to work by reason of his or her alcoholism or substance abuse, the individual must be referred to an appropriate treatment program. The individual must attend such treatment if treatment is available. The individual and the individual's household, if otherwise eligible, must receive assistance through the non-cash safety net assistance program.

- f. The local district making the referral to treatment can require in-district treatment unless a court of competent jurisdiction has ordered placement into a different facility. When residential treatment is appropriate for a single custodial parent, the district shall make diligent efforts to refer the parent to a program that would allow the family to remain intact for the duration of the treatment.
- g. When the SSD determines that an individual or individuals category of assistance or method of benefit disbursement must be changed to non-cash safety net assistance, the district will make such change after providing timely and adequate notice.

ii. Responsibility of applicants/recipients:

Heads of households and adult applicants and recipients of public assistance must participate in the assessment process. A person who fails to participate in the assessment process without good cause is ineligible for public assistance. Other members of a household that contains a person who failed to participate in the assessment process shall, if otherwise eligible, receive public assistance through the non-cash safety net assistance program.

Good cause is when a verified unforeseen circumstance occurs that is beyond the applicant's or recipient's control such as illness or a death in the family.

E. TREATMENT

i. Responsibility of social services districts:

- a. Refer each head of household and adult applicant or recipient determined unable to work by reason of their alcoholism and/or substance abuse to an appropriate treatment program.
- b. Maximize use of available United States Veterans Administration Hospital treatment programs.
- c. Provide applicants/recipients referred to treatment with the DSS-4524: "Notice About Signing The Required Consent For Disclosure Of Medical And Non-Medical Records From Alcoholism And Drug Abuse Treatment Programs" and the DSS-4525: "Consent For Disclosure of Medical And Non-Medical Records From Alcoholism And Drug Abuse Treatment Programs". An individual who refuses to sign and/or withdraw a required consent is ineligible for public assistance. Other household members, if otherwise eligible, must receive non-cash safety net assistance.

- d. Maintain ongoing contact with treatment programs and monitor the individual's progress and attendance at least every three months, in order to identify any applicant/recipient who fails without good cause to participate in, or complete, a required treatment program. The SSD must also identify any applicant/recipient who leaves such program prior to completion. Completion of the program must be solely determined by the guidelines and rules of the treatment program. The SSD must establish and monitor attendance parameters. For example, the SSD may require weekly attendance reports and immediate reporting of non-attendance.
- e. Consider an applicant or recipient to have good cause for failing to participate in or failing to complete a treatment program when:
  - 1) the SSD, the facility, and the applicant or recipient agree that the applicant or recipient is in need of a different program than the one in which he or she was referred originally, or, which he or she is attending and the applicant or recipient has enrolled in another treatment program which the SSD has determined appropriate; or
  - 2) a verified unforeseen circumstance occurs that is beyond the applicant's or recipient's control such as illness or a death in the family.
- f. After proper notice, sanction applicants or recipients who fail without good cause to participate in, or complete, an appropriate treatment program (outpatient and residential programs) as required by Department regulation 351.2(i).

Such sanctions must remain in effect until the failure ceases but not less than:

- 1) 45 days in the first instance of non-compliance;
- 2) 120 days in the second instance; and
- 3) 180 days in the third and subsequent instances.

A sanction may end, and an otherwise eligible individual may receive assistance through the non-cash safety net assistance program, if the sanctioned individual returns to required treatment prior to the end of the disqualification period and is receiving care in an OASAS certified congregate care level II facility, or a United States Veterans Hospital drug and/or alcohol residential program.

During the drug/alcohol sanction period, the sanctioned individual is not eligible for emergency or immediate need assistance, however, the remainder of the household may be eligible to receive safety net assistance. Similarly, during the sanction period the SSD must not start the clock for the 45 day safety net assistance program waiting period. The 45 day waiting period starts with the first public assistance application following the end of the sanction period. Safety Net Assistance can be granted to meet an emergency during this 45 day waiting period.

- g. The personal needs allowance of all public assistance recipients required to participate in an appropriate residential treatment program as required by Department regulation 351.2(i) must be restricted to the treatment program as a conditional payment. The district must also make arrangements with the programs to recover, as an overpayment, any accumulated personal needs allowance monies left in the account of public assistance recipients who leave such program prior to completion. Completion of the program is to be determined by the guidelines and rules of the treatment program.

ii. Responsibility of applicants/recipients:

Heads of households and adult applicants and recipients of public assistance must participate and comply with required treatment or complete appropriate treatment, provide written consent on the DSS-4525: "Consent for Disclosure of Medical and Non-Medical Records from Alcoholism and Drug Abuse Treatment Programs" and document compliance with the treatment program. A person who fails to sign a required consent or withdraws a required consent is ineligible for public assistance. A person who fails to participate or comply with required treatment or fails to complete required treatment or document compliance with required treatment may be sanctioned from public assistance as outlined in this Administrative Directive.

F. BUDGETING

As outlined in this Administrative Directive, applicants/recipients who fail to comply with the requirements for screening, assessment and/or treatment for alcohol and/or substance abuse are either ineligible or durationally sanctioned from public assistance.

Any remaining eligible public assistance individuals in the household would be budgeted under the non-cash safety net assistance program using cooperative budgeting methodology. That is, the public assistance grant for the remaining eligible individuals is determined by reducing the household's original full

public assistance grant (inclusive of the ineligible/sanctioned individuals) by the ineligible/sanctioned individuals pro-rated share of the grant. In the event the ineligible individual has income, that income is applied in determining the household's full public assistance grant.

For example, a household of three individuals in Schenectady County (rent maximum of \$224.00 with gas heat) is eligible for a monthly public assistance grant of \$573.00. If one individual fails to comply with drug/alcohol abuse screening, the remaining two individuals are eligible for a public assistance grant calculated to 2/3 of the full \$573.00 public assistance grant which would equal \$382.00.

The \$382.00 public assistance grant would be issued to the two person public assistance household on a non-cash basis under the safety net assistance program.

### 3. Food Stamps Implications

This provision does not apply to the food stamp program except that as specified in 96 ADM-83 the FS household cannot have an increase in benefits as a result of non-compliance with requirements of a means tested program. Since the failure of an adult or PA head of household to participate in the screening/assessment or in treatment as required would constitute a non-compliance with a means tested program the recipient FS household would be required to be budgeted at the PA income benefit level they had received before the non-compliance.

### 4. Medical Assistance Implications

For purposes of Medicaid eligibility, only single individuals, childless couples and parents in intact households, who are over age 21 and under age 65 (no deprivation or certified disability) must comply with drug/alcohol screening, assessment and recommended treatment requirements. Individuals who fail to participate in the screening/assessment process and/or fail to participate in an appropriate treatment program, without good cause, are ineligible for Medicaid. When an individual complies with the recommended treatment requirements, Medicaid coverage shall be authorized, if otherwise eligible.

### 5. Notices Requirements

For the PA durational sanctions, the following language should be used:

This action is being taken..."Because when a person is determined to be unable to work because of an alcohol or substance abuse problem, the person must take part in and complete an appropriate rehabilitation program.

Also, the person must be able to document his/her compliance with the treatment program.

This is a requirement unless the person has good reason for not taking part. A good reason would be:

- illness or death in the family, or other verified unforeseen circumstance beyond your control, or
- the social services district, the rehabilitation program and the person agree that the person needs a different program and the person has enrolled in the appropriate program.

You did not take part in and complete the rehabilitation program or did not document your compliance with the rehabilitation program as required and did not tell us a good reason for not doing so.

You cannot get public assistance for 45/120/180 days from (Date of Refusal), the date that you refused to take part in, or complete or document your compliance with an appropriate rehabilitation program.

You may be able to get public assistance before the sanction period ends only by going into required treatment and that treatment is an in-patient rehabilitation program certified by the New York State Office of Alcoholism and Substance Abuse Services or the United States Veterans Administration."

This decision is based on Department Regulation 351.2(i).

Effective December 1, 1997, Reason Codes F44 (Failure to Comply with Drug/Alcohol Screening), F45 (Failure to Comply with Drug/Alcohol Assessment) and F46 (Failure to Comply with Release of Treatment Information) will be available. Until such time, SSDs should use individual reason codes Y98 or Y99 on WMS, and keep track of these so that when reason codes F44, F45 and F46 become valid, the codes can be changed, as appropriate.

For screening, assessment and consent requirements, the following language should be used:

This action is being taken..."Because adults who apply for public assistance must agree to be screened for an alcohol or substance abuse problem. They must also agree to be assessed for an alcohol or substance abuse problem, which may include drug testing, by a counselor certified by the Office of Alcoholism and Substance Abuse Services. This assessment would be required, if it is indicated through the screening process or if the adult exhibits signs of an alcohol or

substance abuse problem, or he or she is already participating in an alcohol or substance abuse treatment program. In addition, an adult who is required to be in treatment for an alcohol or substance abuse problem must sign, and not revoke, a consent to disclose treatment information to the local social services district.

F44 - You did not take part in or complete the alcohol/substance abuse screening requirement.

F45 - You did not take part in or complete the alcohol/substance abuse assessment requirement.

F46 - You did not sign or you revoked the consent for release of treatment information to the local social services district.

You cannot receive public assistance until you agree to do so."

This decision is based on Department Regulation 351.2(i).

#### 6. Systems Implications

Individual Reason Codes MX1, MX2 and MX3 (durational sanction codes) should be entered on screen 03 for an applicant who is required to participate in an appropriate drug/alcohol treatment program and refuses, or leaves an appropriate drug/alcohol treatment program, without good cause as required by subsection 2, paragraph E of Section J of this directive. Individual reason codes GX1, GX2 and GX3 should be entered, as appropriate, for recipients. The above codes should also be used for individuals sanctioned for failing to document compliance with the treatment program as required by Department Regulation 351.2(i).

#### 7. Fiscal Implications

For purposes of drug/alcohol screening, assessment and monitoring for individuals in the family assistance program, a statewide allocation of the federal Temporary Assistance for Needy Family (TANF) block grant has been established. The Office of Temporary and Disability Assistance has established district specific allocations. These allocations will be provided in a separate letter. Assessments must be completed by alcohol and/or substance abuse professionals credentialed by the Office of Alcoholism and Substance Abuse Services. As such, social services districts may utilize these funds to add such credentialed individuals to their staff or to contract with appropriate public/private agencies for these services.

For individuals in the safety net assistance program who are not eligible for TANF funding, costs for screening, assessment and monitoring services will be shared on a 50% State and 50% local basis. These costs are not included in the local district administrative cap.

Administrative costs for drug/alcohol screening, assessment and monitoring should be reported as an F17 function code expenditures and claimed on the Schedule D-17 "Distribution of Allocated Costs to Other Reimbursable Programs" (DSS-3274). The costs from the Schedule D-17 are to be brought forward to a DSS-3922 form entitled, "Financial Summary for Special Projects" labelled "Drug/Alcohol Assessment" and reported on the appropriate lines.

For individuals eligible for TANF funding the costs will be reported in the Total Column and claimed at 100% Federal Share. Costs for individuals not eligible for TANF funding will be reported in the Total Column with 50% State Share and 50% Local Share. Reimbursement is available up to the limit of the allocation with these costs being outside the local district administrative cost cap. Expenditures above the local districts allocation will be treated as regular Eligibility/Income Maintenance administrative costs and will be subject to all limits and caps.

In addition to the TANF block grant funds available for screening, assessment and monitoring, additional federal TANF block grant funds have also been allocated for treatment of families with drug/alcohol. It is anticipated that the Office of Temporary and Disability Assistance will procure proposals from local social services districts who are interested in establishing new, or augmenting current treatment programs within their districts which provide drug/alcohol counseling/services to families. Further information will be forthcoming regarding this component.

K. INDIVIDUAL DEVELOPMENT ACCOUNTS

1. Program Implications

The Welfare Reform Act of 1997 established the right of family assistance recipients to establish and maintain independent development accounts (IDAs). These accounts are trusts which allow recipients of family assistance to set aside funds, outside of the resource limits, for the purposes of postsecondary education, first home purchases and business capitalization.

2. Definitions

- a. Eligible educational institution. An "eligible educational institution" means the following:

- o an institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 as such sections were in effect on August 26, 1996, or
  - o an area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act as such sections were in effect on August 26, 1996.
- b. Post-secondary educational expenses. A "Post-secondary educational expenses" means:
  - o tuition and fees required for the enrollment or attendance of a student of in eligible educational institution, or
  - o fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.
- c. Qualified acquisition costs. The costs of acquiring, construction, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing cost.
- d. Qualified business. Any business that does not contravene any law or public policy.
- e. Qualified business capitalization expenses. Qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.
- f. Qualified expenditures. Expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.
- g. Qualified first-time home buyer. A taxpayer (and, if married, the taxpayer's spouse) who has no present ownership interest in a principle residence during the 3-year period ending on the date of acquisition of the principal residence.
- h. Date of acquisition. The date that a binding contract to acquire, construct, or reconstruct the principal residence is entered into.
- i. Qualified plan. A "qualified plan" means a business plan which:
  - o is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity, and
  - o includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and

- o may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

- j. Qualified principal residence. A principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986), the qualified acquisition costs of which do not exceed 100 percent of the area purchase price applicable to such residence (determined in accordance with paragraphs (2) and (3) of section 143(e) of the Internal Revenue Code.

### 3. Required Action

- a. Purposes for an Individual Development Accounts

An individual development account may be established by or on behalf of an individual eligible for Family Assistance for the purpose of enabling the individual to accumulate funds for a qualified purpose as specified below:

- i. Postsecondary education expenses. Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution.
- ii. First home purchase. Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due.
- iii. Business capitalization. Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

- b. Establishment of an Individual Development Account

An individual development account is a trust created in the United States by or on behalf of an individual eligible for FA and funded through periodic contributions by the establishing individual and matched by or through a qualified entity which is listed below:

- i. An organization which meets the definition of not-for-profit under the Internal Revenue Code of 1986 and is exempt from taxation under section 501(c)(3) of the Code, or
- ii. A social services district acting in cooperation with an organization described in (a) above. However, neither the state nor social services districts shall be required to make or match contributions.

The State or social services district is not required to administer any individual development account and is not required to contribute funds to any account. Any contributions made by local districts to these accounts are non-reimbursable. An individual may only contribute to an individual development account amounts which are derived from the disregarded portion of reported earned income. Funds may only be withdrawn for one of the three reasons given above.

An individual development account is disregarded for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized under family assistance for the period during which the person maintains or makes contributions into the account. Contributions by the individual can only be made while the individual is receiving FA.

In addition, individual development accounts are exempt as a resource for all public assistance (FA and SNA), food stamps and medical assistance programs.

c. Penalties for Unauthorized Withdrawals

The following penalties will be imposed on the family assistance recipients who withdraw funds from individual development accounts for purposes other than specified above.

- i. The matching funds are subject to the conditions specified by the terms of the trust, if these funds are still available to the qualified entity.
- ii. Penalties assessed under the terms of the trust by the qualified entity must be paid, if these funds are still available.
- iii. All moneys retained by the recipient, including matching funds, are treated as unearned income in the month the funds are withdrawn.
- iv. The account is considered closed and any moneys left in the account after settlement of any penalties under (a) and (b) above are considered as unearned income as of the date of the unauthorized withdrawal. Any moneys retained in the following month is considered a resource in that month.
- v. The account holder and his/her legal spouse are prohibited from establishing any other individual development accounts in the future.

d. Additional Provisions

The following provisions apply.

- i. If the account holder dies, the account may be transferred to a contingent beneficiary subject to the conditions of the trust.
- ii. The total of all deposits by the recipient of family assistance paid into an individual development account in a calendar year cannot exceed the amount of the earned income disregarded in calculating the amount of assistance for the recipient's household.
- iii. The account holder may, subject to the terms of the trust, transfer available moneys from one individual development account to another without penalty under the family assistance program.

3. Food Stamps Implications

IDAs are also exempt (by federal law) from consideration as an FS resource.

4. Medical Assistance Implications

In accordance with the provisions contained in this section, individual development accounts are disregarded in determining eligibility for Medicaid for low income families with children.

L. SANCTION BUDGETING

1. Program Implications

The WRA of 1997 provides penalties for non-compliance with drug/alcohol screening, assessment or rehabilitation requirements and employment requirements of Part 385. The new penalty is a pro-rata reduction of benefits rather than removing the incremental needs of the sanctioned persons grant as described in Department Regulation 352.30(d).

2. Required Action

Non-compliance with drug/alcohol or employment requirements will result in the pro-rata reduction of the benefits that the entire public assistance household would otherwise be eligible to receive.

Therefore, when a person(s) who is required to be in the public assistance household fails or refuses, without good cause, to comply with drug/alcohol or employment requirements, the households benefit will be calculated and then reduced pro-rata. See Systems Implications below.

For CAP, there is no pro-rata sanction budgeting. When a CAP case member fails to comply with an eligibility requirement; the entire CAP case is ineligible for CAP. The household would revert to FA and the appropriate sanction budgeting methodology would then apply.

The following examples will illustrate how this policy will affect households.

Example 1:

A FA household of four includes two parents who have both been non compliant with work rules. The SSD will determine the FA benefit by determining the benefit for four then providing a benefit of one-half ( $\frac{1}{2}$ ) of the benefit for four.

Example 2:

A FA household consists of a mother, her two (2) children and her 30 year old brother who is included as an Essential Person (EP). The EP refuses to comply with work rules. For this case, because the brother is not required to be included in the FA household, his needs must be deleted. The household count and the case count are reduced by 1. The mom and her children receive a FA benefit for 3.

Example 3:

A FA household of four has one parent who will not comply with required alcohol treatment. The case is transferred to SNA. The household benefit is three-quarters of the benefit for four.

Example 4:

A FA household consists of a woman, her two children and the woman's 30 year old brother. The brother refuses necessary drug treatment. The brother is not required to be in the FA household. Therefore, his needs are deleted and the sister and her children receive an FA benefit for three (3).

Example 5:

An FA household consists of a woman, her two (2) children from a previous relationship, her boyfriend and their common child. The common child had no deprivation under the old ADC program so the boyfriend and child were EPs and are still coded that way. The boyfriend has refused to cooperate with drug/alcohol screening.

In this case, because there is no longer a deprivation requirement for FA eligibility, the child and the boyfriend are not EPs, but are required to be in the FA household. Therefore, the boyfriend's non-compliance results in the case being transferred to SNA. The SNA benefit equals four-fifths (4/5) of the benefit for 5. (See the examples in the Safety Net Assistance ADM to understand how the benefit is provided.)

This sanction budgeting methodology applies only to D/A and employment rules including Milne sanctions (see 92 ADM-20 for correct sanction budgeting in all other sanction situations such as failure to comply with IV-D, failure to sign a lien, failure to enroll in employee group health insurance plan, etc.).

3. Food Stamps Implications

For non-compliance with Drug/Alcohol requirements as specified in 96 ADM-83 the FS household cannot have an increase in benefits due to non-compliance with a means tested program. The recipient FS household would be required to be budgeted at the PA income benefit level they had received before the non-compliance.

For non-compliance, without good cause, with work registration or work requirements the FS individual would be sanctioned according to the progressive period schedule (2, 4, or 6 months) depending on the number of prior FS employment sanctions, see FSSB IX-I-5.

In no circumstance would the FS household have an individual both sanctioned and be budgeted at the higher PA level before the non-compliance for the individual's singular act of non-compliance.

4. Medical Assistance Implications

Single individuals, childless couples and parents in intact households, who are at least 21 years of age but under age 65 (no deprivation or certified blindness or disability), and who fail to comply with drug/alcohol requirements are ineligible for Medicaid. The sanction budget methodology does not apply to Medicaid. For purposes of determining Medicaid eligibility for any other household member(s), the ineligible individual and his or her income/resources are included in the budget.

## 5. Notices Requirements

For any household with a member currently sanctioned and whose non-compliant member has reached the end of any durational period that was imposed, the new sanction budgeting will be done at next contact, if the sanctioned member is still refusing to comply with employment or drug/alcohol (D/A) screening, assessment or treatment requirements.

The following notice reason language is for use on the State mandated notice of intent (or approved local equivalent).

"This is because (Name) was previously told about a sanction for refusing to cooperate with (Worker: state employment or the appropriate D/A refusal). (Name) can receive assistance again if willing to cooperate. Since (Name) will not cooperate, the new method of sanction budgeting is being applied to your case. Under this method, we figure your household's public assistance benefit including the sanctioned individual. Then we reduce the benefit pro-rata. For example; if one member of a 2 person household is sanctioned, the household's public assistance benefit will be one half of the benefit for 2."

This decision is based on Department Regulation 352.30(d).

## 6. Systems Implications

The budgeting changes outlined above will soon be available on Upstate ABEL. Complete details of the changes will be contained in a forthcoming ABEL Transmittal.

## M. CRIMINAL MATCHES

### 1. Program Implications

This Department and the Division of Criminal Justice Services (DCJS) have entered into an agreement to cooperate in the sharing of information in order to implement federal requirements for the ineligibility for PA and FS benefits of criminals who are fleeing to avoid prosecution, custody or confinement after conviction. This directive also presents recommendations for procedures for SSDs notification of local law enforcement agencies when an applicant or recipient of PA or FS is matched with the DCJS file.

The New York State legislation extends the penalties mandated for FA to all public assistance programs in the State. The following categories of individuals are now ineligible for public assistance (FA and SNA) in New York State:

- o Fugitive felons.

- o Probation and parole violators.
- o Persons convicted for misrepresenting their identity or place of residence in order to receive PA, SSI, MA, or FS simultaneously in two or more states. Such persons are ineligible for ten years, beginning with the date of conviction.

The specific program implications of these penalty criteria are explained in Section D of this directive. Sections III, 1(b), (c) and (d) of 97 ADM-8 are cancelled. These sections specified recategorization of the above types of individuals from ADC to PG-ADC; they are now ineligible for any PA program.

## 2. Required Action

- a. Section 136 of the Social Services Law authorizes SSDs to provide to law enforcement officials the addresses of fugitive felons, parole and probation violators. It was amended by the Welfare Reform Act of 1997 to also authorize the provision of addresses of persons that have information that is necessary for a law enforcement officer to conduct his or her duties.
- b. Under the agreement between DSS and DCJS, when a positive match is made between a WMS individual and a DCJS individual, the SSD will report the individual's address to law enforcement officials. (see Section E of this directive). In addition, the SSD must also take action to deny the applicant or close the recipient's case if the individual's criminal status makes him or her ineligible. SSDs should therefore plan for controlling receipt of the match information and for appropriate follow-up on the application or PA case.
- c. It is recommended that the SSD designate the local fraud/investigative unit (IU) as the controlling unit for "hits" on the DSS/DCJS match. The IU should receive the monthly BICS match report and any matches there or through the Recipient Identification and Client History (RICH), (see WMS Implications below) should be referred to the IU prior to any action on the application or case. It will be the responsibility of the IU to evaluate the match report and, if appropriate, to contact the local sheriff or State Police with the report of the individual's whereabouts. This report should be made only for individuals who are fleeing felons or probation or parole violators, not for those convicted of fraud. The IU should establish a recommended procedure from the local law enforcement regarding the normal sequence of referral - for example, sheriff first, then State Police, depending upon the crime and/or local law enforcement arrangements.

- d. The investigation unit should obtain a timely follow-up report from the law enforcement agency within 48 hours, or a reasonable equivalent arranged with the law enforcement unit. This report should establish whether the individual had been taken into custody, had fled, or if the referral had been found erroneous. It should also establish the basis for notification to the individual of the PA or FS action to be taken. After obtaining a report from the law enforcement agency, the investigation unit should evaluate whether a notice can now be sent. Worker safety as well as successful completion of the law enforcement action must be given paramount importance in this decision and carefully coordinated.

### 3. Food Stamp Implications

SSDs were informed in 96 LCM-83 and 97 ADM-4 of new federal penalties for certain categories of criminals in the FS program. The following are disqualified from receiving FS:

- o Persons trafficking in FS.
- o Persons who commit fraud to receive multiple FS benefits (10 years).
- o Fleeing felons.
- o Persons violating a condition of parole or probation.

### 4. Systems Implications

System support for tracking the criminal categories outlined above is available through a newly developed matching subsystem titled Recipient Identification and Client History (RICH). Details of the operation and content of this support will be explained in a future directive. Under an agreement with the Division of Criminal Justice Services (DCJS), this Department will match files provided by DCJS against the WMS file of recipients and the AFIS input for applicants for both PA and FS programs. The DCJS data includes information on fleeing felons and parole and probation violators. In addition, this Department has begun to contact local District Attorneys and request that they supply information concerning individuals who have been convicted of fraud in misrepresenting their identity or residence in order to receive duplicate PA or FS, and also on individuals convicted of trafficking in food stamps. When a match occurs between a WMS applicant or recipient and the files from DCJS or the District Attorneys, a match report will be made to the local district. The report will be provided monthly through BICS for recipients. For applicants, a weekly hardcopy report will be provided through RICH.

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VI. EFFECTIVE DATE

The provisions of this directive are effective November 1, 1997 or at next client contact unless otherwise specified in a particular Section of this directive.

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Patricia A. Stevens  
Deputy Commissioner  
Division of Temporary Assistance