TO:       Local District Commissioners

SUBJECT: The Home and Community Based Services Waiver (HCBS)

ATTACHMENTS: HCBS Waiver Introduction Letter to Social Services Districts (on-line)

CONTACT PERSON: For additional information, contact Linda Kelly at (518) 473-5507, User ID AW3250

This Local Commissioners Memorandum (LCM) provides clarification of two issues described in 92 LCM-170 for the Home and Community Based Services (HCBS) Waiver. The issues are:

1. MA eligibility determination and waiver of parental deeming; and,

2. MA eligibility and enrollment in the HCBS Waiver.

1. Waiver of Parental Deeming

Section 1902 (a)(10)(c)(i)(III) of the Social Security Act waives institutional deeming rules when determining Medical Assistance (MA) eligibility for individuals under the age of 18 participating in the HCBS Waiver. That means that MA can be provided to eligible HCBS waiver participants without regard to parental income and resources.

When determining eligibility for children who are certified to be blind or disabled under the age of 18 years, districts must disregard parental income and resources and apply only the child's income and resources to the MA level of one.

Note: If a determination of disability has not been done, it needs to be part of the application process.

Note: This is not the same procedure as for the Care at Home waivers. The family need not be determined ineligible for MA prior to applying only the child's income and resources to the MA level of one as required by Care at Home III.
2. **Timing of MA Eligibility and HCBS Enrollment**

Some districts have expressed concern regarding the timing of the determination of MA eligibility since parental income and resources will be waived only if the HCBS Waiver applicant is approved for Waiver participation by the OMRDD Developmental Disability Services Office (DDSO). Procedures to be followed are described on page 4 of 92 LCM-170.

Only a small percentage of individuals applying for the HCBS Waiver will be children who, without the waiver of parental income and resources, would not be eligible for Medical Assistance; most applicants will be adults. The OMRDD DDSOs will be referring only those waiver applicants who have met all of the conditions of participation in the HCBS Waiver, and for whom MA eligibility has not been determined, to social services districts.

After MA eligibility is approved by the responsible district, and the DDSO is notified, the DDSO will send a notice to the district which confirms the individual's authorization to participate in the Waiver.

3. **HCBS Waiver Introductory Letter to Social Service Districts**

The letter of introduction of HCBS Waiver applicants to social services districts (originally page 6 of 92 LCM-170) has been revised. The new version, attached, documents that a MA determination will be performed for the applicant only, or if requested for the applicant and his/her family. If an eligibility determination is being requested for the Waiver applicant only, a full financial eligibility determination for the family should not be done. It is understood that without the Waiver parental income and resources will not be disregarded.

4. **HCBS Waivers**

Medicaid regulations traditionally have been biased toward serving individuals with developmental disabilities in institutions rather than in the community. However, the Health Care Financing Administration has expressed its willingness to work with states to develop and use Medicaid waivers to provide cost effective and appropriate services to individuals with disabilities in the community.

Social services districts are encouraged to work collaboratively with OMRDD DDSO and Revenue Management field staff to ensure that local policies and procedures promote access to MA services for individuals with developmental disabilities participating in the HCBS Waiver.

______________________________
Gregory M. Kaladjian
Acting Commissioner
Filing References

Previous ADMs/INFs/LCMs
92 INF-33
92 LCM-170

Social Service Law and Other Legal References
14 NYCRR
   Part 624
   Part 633
   Part 635
   Part 636
18 NYCRR 358-6.4

Miscellaneous References
42 CFR 440.180
   411 Subpart G
42 CFR 431.107
42 CFR Part 455
   Subpart B
Dear Local Social Services District:

This is to notify you that _____________________________ is an applicant for the Department of Social Services/Office of Mental Retardation and Developmental Disabilities (DSS/OMRDD) Home and Community Based Services (HCBS) Waiver and has not yet been determined to be Medicaid eligible.

Participation in the HCBS Waiver is contingent in part upon the individual being eligible for Medical Assistance (MA). Please note that under the HCBS Waiver, MA can be provided without regard to parental income and resources (92 LCM-170). It is not necessary to perform the full financial eligibility determination for the family unless so requested by the family.

++ Please determine Medicaid eligibility only for the applicant indicated at the top of this letter, and send this office a copy of your decision.

++ Please determine Medicaid eligibility for the waiver applicant and family. Please send this office a copy of your decision.

The OMRDD Developmental Disability Services Office (DDSO) upon receiving a notice of acceptance for MA, will complete enrollment for this person and advise you of this individual's enrollment in the HCBS waiver.

++ Yes ++ No

This person is Chapter 621 eligible: ++

Inquiries regarding this individual may be made to _____________________________, Resources and Reimbursement Agent by calling ____________________________.

Sincerely,

If _____________________________ is not authorized or is terminated by the OMRDD DDSO for participation in the HCBS Waiver, it is understood that any new MA determination is to be performed according to usual procedures without benefit of the waiver of parental income and resources.

Signature ___________________________________________

LDSS MA appointment information:

LDSS office: ___________________________ Date: ___________________________

_________________________ Time: ___________________________

Contact Person: ______________________ Phone # ________________________