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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 95 ADM-19

TO: Commissioners of
 Social Services

DIVISION: Health & Long
 Term Care

DATE: October 13, 1995

SUBJECT: Medicaid Eligibility: Change in the Personal Needs Allowance
 for Institutionalized Spouses Receiving Home and Community-
 Based Waivered Services

SUGGESTED
 DISTRIBUTION: Medical Assistance Staff
 Fair Hearing Staff
 Legal Staff
 QA&A Staff
 Staff Development Coordinators

CONTACT
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ATTACHMENTS: There are no attachments to this ADM.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
90 ADM-36		360-4.10(b)	42 CFR	MARG p.	GIS 94MA026
90 ADM-29		(4)	435.217	209	MBL Trans-
89 ADM-47			SSL 366-		mittal 94-2
92 INF-14			3(a) SSL 366- c(4)		95 LCM-70

I. PURPOSE

This Administrative Directive (ADM) advises social services districts of a change in the personal needs allowance (PNA) for institutionalized spouses who receive home and community-based services provided pursuant to a waiver under Section 1915(c) of the Social Security Act (waiver recipients) and who have community spouses.

II. BACKGROUND

Section 366-c of Social Services Law (SSL) requires the use of spousal impoverishment rules in determining the Medical Assistance (MA) eligibility of married waiver recipients. Under spousal impoverishment budgeting, the institutionalized spouse retains a \$50 PNA as of the first full month following the month permanent absence is established. 89 ADM-47, "Treatment of Income and Resources of Institutionalized Spouses/Individuals and Legally Responsible Relatives," instructed social services districts to budget an institutionalized spouse who is in receipt of and expected to receive home and community-based waived services for at least 30 days in the same manner as an institutionalized spouse who is residing in a medical institution or nursing facility.

This policy was later revised in 90 ADM-36, "Questions and Answers - Fall 1989 Medical Assistance Regional Meetings," to reflect the presumption that institutionalized spouses residing in the community have more maintenance expenses than individuals residing in institutions. In accordance with 90 ADM-36, if an institutionalized spouse was residing in the community, a PNA equal to the MA income level for one was used instead of the \$50 PNA amount.

New York State has been notified by the Health Care Financing Administration that if spousal impoverishment rules are used for waiver recipients, then such recipients must be budgeted with the same PNA provided to institutionalized spouses residing in medical facilities. Consequently, waiver recipients subject to spousal impoverishment rules must be budgeted with a PNA equal to \$50 once chronic care budgeting begins.

III. PROGRAM IMPLICATIONS

Under spousal impoverishment budgeting, a waiver recipient must be budgeted with a \$50 PNA as of the first of the month following the month permanent absence is established. This change is in compliance with SSL 366-c(4) and 18 NYCRR 360-4.10(b)(4).

Generally, the use of the spousal impoverishment post-eligibility rules (i.e., \$50 PNA) for waiver recipients will not adversely affect the waiver recipient since more of the waiver recipient's income will be available to the community spouse as part of the community spouse monthly income allowance. However, a small number of cases, where the community spouse is already at the maximum community spouse monthly income allowance amount, will have more income going toward the cost of the waiver recipient's care.

It should be noted that SSL 366-c(8) does provide for a higher community spouse income allowance for circumstances that result in significant financial distress. Such expenses may be of a recurring nature or may represent one-time costs, and may include, but are not limited to: recurring or extraordinary non-covered medical expenses of the community spouse or family members; amounts to preserve, maintain, or make major repairs on the homestead; and amounts necessary to preserve an income-producing asset. An increase of the community spouse monthly income allowance must be established by a fair hearing or court order.

The use of the spousal post-eligibility rules for waiver recipients will affect cases where the waiver recipient and community spouse are not living together. Under spousal post-eligibility rules, the waiver recipient is only allowed to retain income equal to the \$50 PNA. In such cases the waiver recipient may not have adequate income to meet his or her maintenance expenses.

In order to provide additional income to the waiver recipient who is not living with his or her community spouse, the waiver recipient will have the following options:

1. Spousal Budgeting and a PNA of \$50

If the waiver recipient elects to make his or her income and resources available to the community spouse (community spouse monthly income allowance and community spouse resource allowance), then the spousal impoverishment post-eligibility rules will apply and the waiver recipient will retain a \$50 PNA.

2. Community Budgeting

If the waiver recipient does not make his or her income and resources available to the community spouse, MA eligibility may be determined under the medically needy program. In calculating eligibility under the medically needy program the waiver recipient's countable income is compared to the MA income level or Public Assistance Standard of Need, whichever is higher.

If eligibility is determined under the medically needy program, the spouse who is living apart from the SSI-related waiver recipient will be requested to contribute the same amount of income as a community spouse would be requested to contribute. This amount is twenty-five percent (25%) of the spouse's

otherwise available income which exceeds the minimum monthly maintenance needs allowance plus, if appropriate, any family member allowance(s). The spouse will be allowed the SSI-related disregards in determining the amount of resources in excess of the appropriate MA resource level to be requested as a contribution to the cost of medical care. If the spouse does not actually contribute toward the cost of the waiver recipient's care, support may be pursued through the social services district's legal unit.

Note: As advised in Local Commissioners Memorandum (LCM) 95 LCM-70, dated July 10, 1995, certain individuals who participate in the home and community-based services waiver for persons with traumatic brain injuries are to have their MA eligibility determined in accordance with the spousal impoverishment provisions. Spousal budgeting (and the \$50 PNA) will be applicable to any participant in the traumatic brain injuries waiver who is married to a person who is not:

1. in receipt of home and community-based waiver services; or
2. in and expected to remain in a medical institution or nursing facility for at least 30 consecutive days; or
3. in receipt of or expected to receive a combination of services described in 1. and 2. for at least 30 consecutive days; or
4. a participant in the home and community-based services waiver for persons with traumatic brain injuries.

IV. REQUIRED ACTION

In accordance with instructions issued in GIS Message 94 MA026, dated November 10, 1994, social services districts are required to take the following actions in (re)determining MA eligibility for institutionalized spouses receiving home and community-based waived services:

- A. Institutionalized Spouses Residing With Their Community Spouse or Not Living With the Community Spouse But Making Income and Resources Available to the Community Spouse

1. New Cases

Effective January 1, 1995, all persons who first apply for MA as waiver recipients must be budgeted with a PNA of \$50 once chronic care budgeting begins.

Note: Spousal impoverishment budgeting shall be used for a waiver recipient who is either residing with his or her community spouse or not living with the community spouse but choosing to make income and resources available to the community spouse.

2. Undercare Cases

All spousal impoverishment cases involving waiver recipients which are active on or after January 1, 1995 must be rebudgeted using the \$50 PNA. MBL Mass Rebudgeting will identify (via the MBR Exception Report) those budgets with a PIA Code of 3 - MA Level. Identified cases will require review and/or rebudgeting by the worker.

Social services districts are reminded that timely and adequate notice must be given when the budgeting of the PNA results in an increased net available monthly income (NAMI). If the budget change results in an increase in the amount of income available for the community spouse, adequate notice must be given. Social services districts must also send a completed "Institutionalized Spouse Budget Worksheet" detailing the PNA change and any change in the community spouse monthly income allowance.

Note: The "Notice of Intent to Establish a Liability Toward Chronic Care" (DSS-4022), "Notice of Intent to Change the Contribution Toward Chronic Care Costs" (DSS-4021) and the "Budget Worksheet - Institutionalized Spouse Budget Worksheet" (DSS-4350) are being revised to delete reference to the "PNA/MA level" deduction under the chronic care column. Social services districts may continue to use the (10/93) versions of the DSS-4022 and DSS-4021, and the (1/92) version of the DSS-4350, crossing out the "MA level" wording under the chronic care column, until the supply of these forms are depleted. Once the stock is depleted, supplies of the revised mandatory client notices and budget worksheet will be available.

B. Institutionalized Spouses Who Are Not Living With Their Community Spouse and Who Choose Not to Make Income and Resources Available to the Community Spouse

1. New Cases

If a waiver recipient is not living with his or her spouse, and does not make his or her income and resources available to the spouse, social services districts must use community budgeting procedures to determine the waiver recipient's MA eligibility. In such cases the district shall request that the spouse living apart from the waiver recipient complete the revised DSS-939 "Medical Assistance Questionnaire - Responsible Relative" (Attachment G to 89 ADM-47). Upon receipt of the completed form and other necessary documentation/verification, the district shall calculate the requested contribution as outlined in Section III of this ADM. If the contribution is actually being made, the MA case shall be budgeted by counting the amount contributed as unearned income of the waiver recipient.

Social services districts are reminded that an individual can not be denied MA because his or her spouse refuses or fails to make income or resources available to the individual. When a spouse refuses to contribute such income and or resources to the individual, the social services district should pursue a recovery for the cost of care provided through the appropriate legal channels.

If the non-applying spouse fails or refuses to provide information concerning his or her resources necessary to determine if a prohibited transfer has been made, MA eligibility for the otherwise eligible waiver recipient must be authorized.

2. Undercare cases

If after a determination of eligibility for MA under spousal impoverishment rules, a waiver recipient who does not live with his or her community spouse requests a redetermination of eligibility under community budgeting procedures so that they may receive the MA income level instead of the \$50 PNA, such budget change must be made. The budget change shall be made effective the first day of the month following the month that the waiver recipient requested the change. It should be noted that once community budgeting procedures apply, no community spouse monthly income allowance is to be deducted from the waiver recipient's income in determining the amount of income available for the cost of care, not even any court ordered support that the waiver recipient may be ordered to pay to his or her spouse.

V. SYSTEMS IMPLICATIONS

MBL

As of January 1, 1995, the maintenance allowance associated with PIA Code 3 will be \$50. Social services districts are to budget an institutionalized spouse in receipt of home and community-based waived services with a PIA Code 3 - \$50. The continued use of PIA Code 3 will enable the Department to identify institutionalized spouses who are receiving home and community-based waived services.

See MBL Transmittal 94-2 for further information.

VI. EFFECTIVE DATE

This ADM is effective October 13, 1995, retroactive to January 1, 1995.

Richard T. Cody
Deputy Commissioner
Division of Health & Long Term Care