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GENERAL INFORMATION SYSTEM
DIVISION: Office of Medicaid Management

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GIS 03 MA/012 - Spousal Impoverishment Figures

04/15/03

TO: Local Commissioners, Medicaid Directors

FROM: Betty Rice, Director
Division of Consumer and Local District Relations

SUBJECT: Spousal Impoverishment Figures for 2003 and Revised "Information Notice to Couples with an Institutionalized Spouse" and "Spousal Impoverishment Income and Resource Amounts" Chart

EFFECTIVE DATE: January 1, 2003

CONTACT PERSON: Local District Liaison
Upstate (518) 474-8216 NYC (212) 268-6855

The Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration, has informed the Department that due to an increase in the consumer price index, the federal maximum Community Spouse Resource Allowance (CSRA) increased to \$90,660 effective January 1, 2003. The State's minimum CSRA will remain unchanged at \$74,820. Therefore, in determining the Community Spouse Resource Allowance on and after January 1, 2003, the community spouse is permitted to retain resources in an amount equal to the greater of the following amounts:

1. **\$74,820** (the State minimum Community Spouse Resource Allowance); or
2. the amount of the spousal share up to **\$90,660** (the new federal maximum).

"Spousal share" is the amount equal to one-half of the total value of the countable resources of the couple as of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse on or after September 30, 1989.

Please note that the following family member allowance amount and the figure used in the family member allowance calculation are based on the actual, rather than the estimated, federal poverty level. Effective January 1, 2003, the annual figure for 100 percent of the federal poverty level for a household of two increased to \$12,120. This figure multiplied by 150 percent and then divided by 12 equals \$1,515. Therefore, social services districts must use **\$1,515** to calculate the family member allowance, as follows:

1. Subtract the otherwise available income of the family member from \$1,515 (the remainder is entered on line 19a of page 5 of the Institutionalized Spouse Budget Worksheet);
2. Divide the remainder (amount entered on line 19a of the worksheet) by 3, and round up to the nearest dollar. This is the family member allowance (the amount is entered on line 20 of the worksheet).

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If a family member has no otherwise available income, the family member allowance is **\$505**. All spousal impoverishment cases involving a family member that are active on or after January 1, 2003 must be recomputed using the new family member allowance formula.

In addition, effective January 1, 2003, the Community Spouse Minimum Monthly Maintenance Needs Allowance (MMMNA) increased to **\$2,267**. The increased MMMNA, family member allowance, federal maximum CSRA and State minimum CSRA must be used when completing an assessment of a couple's resources and income.

Any increases in the MMMNA and family member allowance and/or changes in the NAMI of the institutionalized spouse are to be made effective January 1, 2003. Timely and adequate notice must be provided. The increased MMMNA and family member allowance must also be used effective January 1, 2003 in determining any requested contribution of income from a community spouse or from a spouse living apart from an SSI-related applicant/recipient.

As of December 2, 2002 Upstate and January 6, 2003 in New York City, MBL supported \$2,267 as the MMMNA for budgets with Effective From Dates of January 1, 2003 or later.

The informational notice, "Information Notice to Couples with an Institutionalized Spouse" and "Spousal Impoverishment Income and Resource Amounts" chart have been revised, effective January 1, 2003. The updated notice and chart are attachments to the electronic mail version of this GIS message. Social services districts must make the revised notice and updated chart available to all persons requesting such information and are required to include the notice with all Medicaid applications involving an institutionalized spouse.

This is also to inform you that the Human Resources Administration (HRA) Infoline telephone number for New York City residents listed in the "Information Notice to Couples with an Institutionalized Spouse" has changed. New York City residents, calling from within New York City, should call **1-877-472-8411** toll free. If calling from outside the five boroughs, the number is **(718) 557-1399**.

Any questions concerning this message should be directed to your local district liaison, upstate at (518) 474-8216 or in New York City at (212) 268-6855.

(Rev. 2/03)

Information Notice to Couples with an Institutionalized Spouse

Medicaid is an assistance program that may help pay for the costs of your or your spouse's institutional care or home and community-based waiver services. The institutionalized spouse is considered medically needy if his/her resources are at or below a certain level and the monthly income after certain deductions is less than the cost of care in the facility.

Federal and State laws require that spousal impoverishment rules be used to determine an institutionalized spouse's eligibility for Medicaid. These rules protect some of the income and resources of the couple for the community spouse.

Who is an institutionalized spouse?

If you or your spouse is:

- (1) in a medical institution or nursing facility and expected to remain in such an institution/facility for at least 30 consecutive days; or
- (2) in receipt of home and community-based waiver services and expected to receive such services for at least 30 consecutive days; or
- (3) in a medical institution/nursing facility or in receipt of home and community-based waiver services, and expected to receive a combination of institutional services and home and community-based waiver services for at least 30 consecutive days;

and

- (4) married to a person who is not described in items 1-3, these income and resource eligibility rules for institutionalized spouses may apply to you or your spouse.

If you wish to discuss these eligibility provisions, please contact your local department of social services.

Even if you have no intention of pursuing a Medicaid application at this time, you are urged to contact your local department of social services to request an assessment of the total value of your and your spouse's combined countable resources. It is to the advantage of a community spouse to request such an assessment to make sure that allowable resources are not depleted by your or your spouse's cost of care. To request such an assessment, you may call your local department of social services or send in the completed "Request for Assessment" section of this notice. New York City residents, calling from within New York City, should call the Human Resources Administration (HRA) Infoline toll-free at 1-877-472-8411. If calling from outside the five boroughs, the HRA Infoline number is (718) 557-1399.

Information About Resources

Effective January 1, 1996, the community spouse is allowed to keep resources in an amount equal to the greater of the following amounts:

- (1) \$74,820 (the State minimum spousal resource standard); or

- (2) the amount of the spousal share up to the maximum amount permitted under federal law.*

For purposes of this calculation, "spousal share" is the amount equal to one-half of the total value of the countable resources of you and your spouse as of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse on or after September 30, 1989. The most recent continuous period of institutionalization means the most recent time you or your spouse meets the criteria listed in items 1 through 4 (page one, definition of institutionalized spouse) on or after September 30, 1989. In determining the total value of the countable resources, we will not count the value of your home, household goods, personal property, the car and certain funds established for burial expenses.

The community spouse may be able to obtain additional amounts of resources to generate income when the otherwise available income of the community spouse, together with the income allowance from the institutionalized spouse, is less than the maximum community spouse monthly income allowance,* by requesting a fair hearing or commencing a family court proceeding against the institutionalized spouse. Your own attorney or local Office for the Aging can give you more information regarding this.

Either spouse or a representative acting on their behalf may request, at the beginning or any time after the beginning of a continuous period of institutionalization, an assessment of the couple's countable resources. Upon receipt of such request and all relevant documentation, the local district will assess and document the total value of the couple's countable resources and provide each spouse with a copy of the assessment and the documentation upon which it is based. If the request is not filed with a Medicaid application, the local department of social services may charge up to \$25.00 for the cost of preparing and copying the assessment and documentation.

Information About Income

You also may request an assessment/determination of:

- (1) the community spouse monthly income allowance* (an amount of up to \$2,267 a month for 2003, if the community spouse has no income of his/her own); and
- (2) a family allowance for each minor child, dependent child, dependent parent or dependent sibling of either spouse living with the community spouse* (an amount of up to \$505 as of January 1, 2003, if the family member has no income of his/her own).

The community spouse may be able to obtain additional amounts of the institutionalized spouse's income, due to exceptional circumstances resulting in significant financial distress, than would otherwise be allowed under the Medicaid program by requesting a fair hearing or commencing a family court proceeding against the institutionalized spouse. Significant financial distress means exceptional expenses which the community spouse cannot be expected to meet from the monthly maintenance needs allowance or from amounts held in resources. These expenses may include, but are not limited to: recurring or extraordinary non-covered medical expenses (of the community spouse or dependent family members who live with the community spouse); amounts to preserve, maintain, or make major repairs on the homestead; and amounts necessary to preserve an income-producing asset. Social Services Law 366-c.2(g) and 366-c.4(b) require that the amount of such support orders be deducted from the institutionalized spouse's income for eligibility purposes. Such court orders are only effective back to the filing date of the petition.

*See the "Spousal Impoverishment Income and Resource Amounts" attachment for the current dollar amounts.

Your own attorney or local Office for the Aging can give you more information regarding this.

If you wish to request an assessment of the total value of your and your spouse's countable resources, a determination of the community spouse resource allowance, community spouse monthly income allowance, or family member allowance(s) and the method of computing such allowances, contact your local department of social services. New York City residents, calling from within New York City, should call the Human Resources Administration (HRA) Infoline toll-free at 1-877-472-8411. If calling from outside the five boroughs, the HRA Infoline number is (718) 557-1399.

Additional Information

For purposes of determining the Medicaid eligibility of the institutionalized spouse, a community spouse must cooperate in providing necessary information about his/her resources. Refusal to provide the necessary information shall be reason for denying Medicaid for the institutionalized spouse because Medicaid eligibility cannot be determined. If denial of Medicaid would result in undue hardship for the institutionalized spouse and an assignment of support is executed or the institutionalized spouse is unable to execute such assignment due to physical or mental impairment, Medicaid shall be authorized. However, if the community spouse refuses to make such resource information available, then the Department, at its option, may refer the matter to court.

Undue hardship is a situation where:

- (1) a community spouse fails or refuses to cooperate in providing necessary information about his/her resources;
- (2) the institutionalized spouse is otherwise eligible for Medicaid;
- (3) the institutionalized spouse is unable to obtain appropriate medical care without the provision of Medicaid; and
 - (a) the community spouse's whereabouts are unknown; or
 - (b) the community spouse is incapable of providing the required information due to illness or mental incapacity; or
 - (c) the community spouse lived apart from the institutionalized spouse immediately prior to institutionalization; or
 - (d) due to the action or inaction of the community spouse, other than the failure or refusal to cooperate in providing necessary information about his/her resources, the institutionalized spouse will be in need of protection from actual or threatened harm, neglect, or hazardous conditions if discharged from an appropriate medical setting.

An institutionalized spouse will not be determined ineligible for Medicaid because the community spouse refuses to make his or her resources in excess of the community spouse resource allowance available to the institutionalized spouse if:

- (1) the institutionalized spouse executes an assignment of support from the community spouse in favor of the social services district; or

- (2) the institutionalized spouse is unable to execute such assignment due to physical or mental impairment.

Contribution from Community Spouse

The amount of money that we will request as a contribution from the community spouse will be based on his/her income and the number of certain persons in the community depending on that income. We will request a contribution from a community spouse of 25% of the amount his/her otherwise available income exceeds the minimum monthly maintenance needs allowance plus any family member allowance(s). If the community spouse feels that he/she cannot contribute the amount requested, he/she has the right to schedule a conference with the local department of social services to try to reach an agreement about the amount he/she is able to pay.

Pursuant to 366(3)(a) of the Social Services Law, Medicaid MUST be provided to the institutionalized spouse, if the community spouse fails or refuses to contribute his/her income towards the institutionalized spouse's cost of care. However, if the community spouse fails or refuses to make his/her income available as requested, then the Department, at its option, may refer the matter to court for a review of the spouse's actual ability to pay.

Request For Assessment

Date _____

Institutionalized Spouse's Name _____

Current Address _____

Telephone Number _____

Community Spouse's Name _____

Current Address _____

Telephone Number _____

I/we request an assessment of the items checked below:

- Couple's countable resources and the community spouse resource allowance
- Community spouse monthly income allowance
- Family member allowance(s)

Signature of Requesting Individual

Address and telephone # if different from above

Check if you are a representative acting on behalf of either spouse. Please call your local department of social services if we do not contact you within 10 days of this request.

Note: If an assessment is requested without a Medicaid application, the local department of social services may charge up to \$25 for the cost of preparing and copying the assessment and documentation.

(Rev. 2/03)

SPOUSAL IMPOVERISHMENT INCOME AND RESOURCE AMOUNTS

Federal Maximum Community Spouse Resource Allowance

\$90,660 – January 1, 2003

\$89,280 – January 1, 2002

NOTE: A higher amount may be established by court order or fair hearing to generate income to raise the community spouse's monthly income up to the maximum allowance.

NOTE: The State Minimum Community Spouse Resource Allowance is \$74,820.

Community Spouse Minimum Monthly Maintenance Needs Allowance is an amount up to:

\$2,267 – January 1, 2003

\$2,232 – January 1, 2002

if the community spouse has no income of his/her own.

NOTE: A higher amount may be established by court order or fair hearing due to exceptional circumstances that result in significant financial distress.

Family Member Allowance for each family member is an amount up to:

\$505 – January 1, 2003

\$498 – January 1, 2002

if the family member has no income of his/her own.

If the institutionalized spouse is receiving Medicaid, any change in income of the institutionalized spouse, the community spouse and/or the family member may affect the community spouse income allowance and/or the family member allowance. Therefore, the social services district should be promptly notified of any income changes.