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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 90 ADM-35

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: October 16, 1990

SUBJECT: Increases in Spousal Impoverishment Income and Resource
 Amounts and Medical Assistance Regional Rates for
 Transfer of Resources

 SUGGESTED

DISTRIBUTION: Medical Assistance Staff
 Public Assistance Staff
 Adult Services Staff
 Fair Hearing Staff
 Legal Staff
 Staff Development Coordinators

CONTACT

PERSON: Questions concerning this Administrative Directive
 should be directed to your MA Eligibility County
 Representative by calling 1-800-342-3715, extension
 3-7581 or your New York City Representative at
 (212) 587-4853.

ATTACHMENTS:

Attachment I - County Listing by Region (available on-
 line)
 Attachment II - DSS-4021: Notice of Intent to Change
 the Contribution Toward Chronic Care Costs (not avail-
 able on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
89 ADM-47		358-3.1(g)	Ch. 558 of		89 MA044
89 ADM-45		358-5.2(d)	Laws of 1989		90 MA009
90 INF-19		360-1.4	Section 303		90 MA010
		360-2.6(c)	(a)&(b) of		90 MA018
		360-4.3(f)	MCCA of 1988		
		360-4.4	FSA of 1988		
		360-4.9(c)	SSL 366-c		
		360-4.10	SSL 366		

I. PURPOSE

The purpose of this release is to advise social services districts of:

- A. The January 1990 increase in the federal Consumer Price Index (CPI) and its impact on the maximum community spouse resource allowance (CSRA) and minimum monthly maintenance needs allowance (MMMNA) used in determining Medical Assistance (MA) eligibility of institutionalized spouses.

Revision of the MMMNA also affects the calculation of any requested contribution from income of a community spouse or of a spouse living apart from an SSI-related applicant/recipient (A/R).

- B. The annual increase in the federal income official poverty line (poverty line) and its impact on the family member allowance used in determining the eligibility of institutionalized spouses, effective July 1, 1990.

When applicable, the new family member allowance formula is used to determine the amount of income requested as a contribution from a community spouse or a spouse living apart from an SSI-related A/R.

- C. The January 1, 1990 increase in the MA regional rates used to determine the period of restricted coverage for persons determined to have made a prohibited transfer of resources on or after October 1, 1989.

II. BACKGROUND

- A. Chapter 558 of the Laws of 1989 added a new Section 366-c to Social Services Law (SSL) regarding the treatment of income and resources of institutionalized persons and their spouses. Chapter 558 of the Laws of 1989 was enacted to implement the federal provisions of the Medicare Catastrophic Coverage Act of 1988. Under SSL Section 366-c, effective October 1, 1989, in determining the MA eligibility of an institutionalized spouse, the community spouse is allowed to retain up to \$60,000 of the couple's countable resources, and up to \$1,500 in monthly income. A larger resource or income amount can be established by a court order or a fair hearing.

SSL Section 366-c requires that the \$60,000 maximum CSRA be increased annually, and allows the \$1,500 MMMNA to be increased annually, by the same percentage as the percentage increase in the CPI. Consequently, effective January 1, 1990 the maximum CSRA was increased to \$62,580 and the MMMNA was increased to \$1,565 based on a 4.3 percent increase in the CPI. The \$1,565 MMMNA also will be used in determining the amount of any contribution to be requested from the income of a community spouse or of a spouse living apart from an SSI-related A/R.

- B. Section 366-c of SSL provides: if an institutionalized spouse or community spouse has dependent family members who are living with the community spouse and whose otherwise available income is below a calculated family allowance amount, income must be set aside to meet the needs of the family members before applying any income to the institutionalized spouse's cost of care.

In accordance with the provisions of SSL Section 366-c, the family allowance amount established for each family member is an amount equal to one-third of the amount by which one-twelfth (1/12) of the applicable percentage of the poverty line for a family of two exceeds the amount of the family member's otherwise available monthly income. Effective July 1, 1990, the poverty line for a family of two increased from \$8,020 to \$8,420. This increased figure is used to calculate the family member allowance(s) for all spousal impoverishment cases involving a dependent family member.

- C. Chapter 558 of the Laws of 1989 amended SSL Section 366.5 to set forth new transfer of resources provisions required by the MCCA. These provisions apply to transfers for less than fair market value, which are made on or after October 1, 1989. Under the new provisions, persons who make prohibited transfers within or after the 30-month period prior to institutionalization, or prior to the date of application for MA while institutionalized, whichever is later, are ineligible for certain MA covered services for a period of time (see 89 ADM-45). The period of ineligibility is either (i) 30 months, or (ii) a number of months equal to the uncompensated value of the transferred resource divided by the MA regional penalty rate established for the region in which the person is institutionalized, whichever is less. The period is intended to approximate the length of stay in an institution which the transferred resources would have purchased. The MA regional penalty rates will be updated annually, effective January 1.

III. PROGRAM IMPLICATIONS

A. Maximum CSRA and MMMNA Increases

In accordance with the provisions of SSL Section 366-c, higher resource and income levels will be established for a community spouse of an institutionalized MA A/R. The new figures effective January 1, 1990 are:

1. \$62,580 - Maximum Community Spouse Resource Allowance
2. \$1,565 - Minimum Monthly Maintenance Needs Allowance

These increased figures may result in more spouses becoming eligible for MA coverage for institutional care and services. In addition, the MMMNA increase will raise the income standard for a community spouse and will also raise the level used in determining any requested contribution from income from a community spouse or of a spouse living apart from an SSI-related A/R.

B. Family Member Allowance

Under the provisions of SSL 366-c, a higher family member allowance was established effective July 1, 1990, for a minor child, dependent child, dependent parent, or dependent sibling of the institutionalized spouse or community spouse, who is residing with the community spouse and who has over 50% of his/her maintenance needs met by the community spouse and/or the institutionalized spouse. The family allowance for each family member is an amount equal to one-third (1/3) of the amount by which one-twelfth (1/12) of the applicable percentage of the poverty line for a family of two exceeds the amount of the family member's otherwise available monthly income.

The poverty line for a family of two is \$8,420 effective July 1, 1990. One-twelfth of 122% (applicable percentage) of \$8,420 equals \$856. Therefore, the maximum family member allowance for a family member with no other available income is calculated as follows:

$$\frac{\$856-0}{3} = \$285 \text{ (rounded down to nearest dollar)}$$

A higher family member allowance will also affect the amount of income which may be requested as a contribution from a community spouse or from a spouse living apart from an SSI-related A/R.

NOTE: The increased MMMNA and CSRA figures and the new family member allowance must be used when completing an assessment of a couple's resources and income.

C. MA Regional Rates

The increased MA regional rates are used to calculate a period of restricted coverage for persons who have transferred resources on or after October 1, 1989 and who apply or reapply for MA on or after January 1, 1990.

The MA regional rates effective January 1, 1990 are:

MA REGIONAL RATES

<u>Region*</u>	<u>Monthly Rate</u>
Northeastern	\$3,450
Northern Metropolitan	4,111
Western	3,226
Rochester	3,580
Central	3,339
Long Island	4,575
New York City	5,128

*See Attachment I for county listing by region.

IV. REQUIRED ACTION

A. Maximum CSRA and MMMNA Increases

As advised in a GIS message dated December 13, 1989 (90 MA009), social services districts must use the increased maximum CSRA and MMMNA figures when determining the MA eligibility of an institutionalized spouse (as defined in 89 ADM-47) for January, 1990 or after. The increased income amount shall also be used in calculating any requested contribution from income from a community spouse or spouse living apart from an SSI-related A/R.

In determining the resources of an institutionalized spouse, the community spouse shall be allowed to retain up to \$62,580 of the couple's total combined countable resources, unless a higher amount was established by court order or fair hearing. This updates the \$60,000 amount set forth in 89 ADM-47. When performing an assessment of a couple's resources for any month beginning January 1, 1990 or after, social services districts shall use the increased maximum CSRA.

Effective January 1, 1990, the increased MMMNA must be used in determining the available income of an institutionalized spouse when an MA application is filed or when completing an assessment. All cases involving an institutionalized spouse active on or after January 1, 1990 must have their eligibility

recomputed based on the new MMMNA figure of \$1,565. Budgeting as described in 89 ADM-47 should be followed for computing the amount of the community spouse monthly income allowance. Any increases in the amount of income available for the community spouse or changes in the institutionalized spouse's net available monthly income (NAMI) are to be made effective January 1, 1990.

Social services districts must also use the new MMMNA amount to (re)calculate the requested contribution from income of a community spouse or spouses living apart from an SSI-related A/R as set forth in Section IV.G. of 89 ADM-47.

B. Family Member Allowance

Effective July 1, 1990, social services districts must use \$856 instead of \$815 in the family member allowance formula. To calculate the family member allowance:

1. Subtract the otherwise available income of the family member from \$856;
2. Divide the result by 3, and round down to the nearest dollar.

All spousal impoverishment cases involving a family member which are active on or after July 1, 1990, must be recomputed utilizing the new family member allowance formula. Any increases in the family member allowance, or changes in the NAMI of the institutionalized spouse, are to be made effective July 1, 1990. A higher family member allowance will also affect the amount of income which may be requested as a contribution from a community spouse or from a spouse living apart from an SSI-related A/R.

Dependent members of an unmarried institutionalized person's family must be allowed income up to the MA income level, or the PA Standard of Need, whichever is higher.

C. MA Regional Penalty Rate Increases

As specified in 89 ADM-45, a period of restricted coverage or ineligibility for nursing home level of care or services must be established when an MA-Only A/R who is subject to FP treatment of resources has made a prohibited transfer of resources on or after October 1, 1989, and within or after the 30-month period prior to institutionalization or prior to the date of application for MA while institutionalized, whichever is later. The MA regional rate used to determine the penalty period is the rate for the region in which the individual is institutionalized. Districts must use the rate in effect for the year in which the individual first applies as an institutionalized person.

For persons determined to have made a transfer of resources on or after October 1, 1989, and where eligibility is being determined for an institutionalized person for the month of January, 1990 or after, the January 1, 1990 MA regional penalty rates (see page 5) must be used to establish the period of restricted coverage. As noted in GIS message 90 MA018, dated April 2, 1990, it may be necessary to recalculate the period of restricted coverage for an A/R who required nursing facility services or alternate level of care in a hospital on or after January 1, 1990 if the January 1989 MA regional rates were used to estimate the penalty period. Social services districts must review such cases as soon as possible, since a recipient may no longer be subject to restricted coverage based on the new rates. When a penalty period has previously been calculated for an A/R who continues to reside in the community and who is not in receipt of home and community-based waived services, no recalculation of the penalty period is required.

D. Notice Requirements

1. New Instructions for the DSS-4021

Until the revised DSS-4021 is available, social services districts must make the following modifications:

a. When there is a change in the amount of one of the items used in the calculation of MA eligibility, and the result is no change in liability, social services districts must modify the DSS-4021 as follows:

- (1) Mark the "REDUCE" box;
- (2) Fill in the income amounts;
- (3) At the end of the first sentence following the "REDUCE" box, add "(see below)";
- (4) At the bottom of the DSS-4021 add "There is no change in the contribution toward the cost of care."

b. When there is a change in the community spouse monthly income allowance and/or family member allowance, social services districts must modify the DSS-4021 by adding at the bottom of the notice "Community spouse: The income allowance has changed from \$_____ to \$_____, effective _____."

A sample DSS-4021 is included in this Directive (Attachment II).

2. Notice Requirements

- a. As specified in 89 ADM-45, social services districts must provide timely and adequate notice to A/Rs whose MA coverage is being restricted due to a prohibited transfer of resources. The notices contained in 89 ADM-45 must be used to meet this requirement.

When a social services district recalculates a period of restricted coverage for persons in receipt of nursing facility level of care or home and community-based waived services, who applied for or reapplied for MA as an institutionalized person on or after January 1, 1990, the district must advise the client of any change in the period of restricted coverage. The DSS-4147 "Notice of Intent to Discontinue/Change Medical Assistance Coverage" must be used to notify the client of any revised calculations or expired periods of restricted coverage.

- b. When there is a change in MA liability resulting from the MMMNA increase, an up-dated "Institutionalized Spouse Budget Worksheet" detailing current income information, a copy of the revised MBL budget, the DSS-4021 "Notice of Intent to Change the Contribution Toward Chronic Care Costs", and, if appropriate, the "Notice to Spouse (Undercare)" must be provided. Social services districts are reminded that they must also send the provider a copy of any client notice reflecting an adjustment in the NAMI, in order to allow providers to bill MMIS appropriately.
- c. When a social services district changes the amount of one of the items used in the calculation of MA eligibility (even if the result is no change in liability), the district must send the modified DSS-4021, the updated "Institutionalized Spouse Budget Worksheet" and a copy of the revised MBL Budget.
- d. When the change involves an increase or decrease in the community spouse monthly income allowance or family member allowance, the community spouse must be sent a copy of the up-dated budget worksheet, the modified DSS-4021, and a copy of the revised MBL Budget.

V. SYSTEMS IMPLICATIONS

A. MBL Upstate

As of February 26, 1990, MBL has supported \$1,565 as the maximum MMMNA.

The calculation of a couple's countable resources, the maximum CSRA, and family member allowance(s), must be done utilizing the "Institutionalized Spouse Budget Worksheet". Any resources attributed to the institutionalized spouse should be entered on MBL using the appropriate Categorical Code (CTG) and Chronic Care Indicator (I). The total amount of the family member allowance should be entered on MBL as Additional Allowance Code 19.

VI. EFFECTIVE DATE

This Administrative Directive is effective November 1, 1990. The increases in the maximum community spouse resource allowance, the minimum monthly maintenance needs allowance, and the MA regional rates are effective retroactive to January 1, 1990. The new family member allowance formula is effective retroactive to July 1, 1990.

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

ATTACHMENT I

COUNTY LISTING BY REGION

NORTHEASTERN

Albany
Clinton
Columbia
Delaware
Essex
Franklin
Fulton
Greene
Hamilton
Montgomery
Otsego
Rensselaer
Saratoga
Schenectady
Schoharie
Warren
Washington

WESTERN (Buffalo)

Allegany
Cattaraugus
Chautauqua
Erie
Genesee
Niagara
Orleans
Wyoming

LONG ISLAND

Nassau
Suffolk

ROCHESTER

Chemung
Livingston
Monroe
Ontario
Schuyler
Seneca
Steuben
Yates
Wayne

NORTHERN METROPOLITAN
(New Rochelle)

Dutchess
Orange
Putnam
Rockland
Sullivan
Ulster
Westchester

NEW YORK CTTY

Bronx
Kings (Brooklyn)
NY (Manhattan)
Queens
Richmond (Staten Island)

CENTRAL(Syracuse)

Broome
Cayuga
Chenango
Cortland
Herkimer
Jefferson
Lewis
Madison
Oneida
Onondaga
Oswego
St.Lawrence
Tioga
Tompkins

1. Use the region in which the facility is located, or if the A/R is not institutionalized, use the region in which the individual resides.
2. For out of state facilities, use the region closest to the location of the facility.