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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 91 ADM-19

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: July 3, 1991

SUBJECT: Funds Set Aside for Burial of MA-Only SSI-Related
 Applicants/Recipients

 SUGGESTED

DISTRIBUTION: Medical Assistance Staff
 Fair Hearing Staff
 Staff Development Coordinators

CONTACT

PERSON: MA Eligibility County Representative 1-800-342-3715,
 extension 3-7581.
 MA Eligibility New York City Representative
 (212) 417-4853.

ATTACHMENTS: Attachment A - Burial Funds of Aged, Certified Blind
 or Certified Disabled Persons
 (Available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
91 ADM-17		360-2.2(f)	SSA Section	MARG pgs.	GIS 90MA050
88 INF-75		360-4.6	1613(d)	315-317	
86 ADM-47		(b)(1)	20 CFR		
84 ADM-9		360-4.7	416.1231		
83 ADM-17		(a)(3)			

I. PURPOSE

This Administrative Directive presents revised Medical Assistance (MA) eligibility policy regarding funds set aside for burial of Supplemental Security Income (SSI)-Related applicants/recipients (A/Rs). The Directive provides clarification of the terms burial "fund", and "held for" related to burial space items; and eliminates the current option to commingle burial funds with other exempt resources.

II. BACKGROUND

Section 1613(d) of the Social Security Act provides for an exclusion from resources of certain funds set aside for burial expenses when determining eligibility for the SSI Program. Aged, blind or disabled A/Rs may set aside up to \$1,500 for their own burial and \$1,500 for a spouse's burial. Interest earned on excluded burial funds and appreciation on the value of excluded burial arrangements are also excluded from resources if left to accumulate. Such funds must be separately identifiable and set aside as burial funds. The Social Security Administration (SSA) had allowed such funds to be commingled or mixed with other nonburial funds. A more recent interpretation by the SSA provides that if burial funds are commingled with nonburial funds, no portion of the funds may be exempt under the burial fund exclusion. This change was designed to eliminate the time-consuming computations that were necessary to determine the amount of interest on the burial portion of the funds since only the interest on the burial reserve portion of the account was exempt.

The SSA has also defined burial funds more restrictively. Nonliquid assets such as livestock or nonexempt real property may no longer be designated as burial funds. Previous policy allowed a broad interpretation of the term "fund". The new provisions define burial funds as revocable burial contracts, burial trusts, other burial arrangements (including amounts paid on installment sales contracts for burial spaces), cash, savings accounts or other financial instruments (such as stocks, bonds, certificates of deposit, etc.) with a definite cash value clearly designated for the individual's (or spouse's, if any) burial expenses and kept separate from nonburial related assets.

Section 1613(a)(2)(B) of the Social Security Act also provides for an exclusion from resources of the value of burial space items held for the A/R, spouse or immediate family member. A burial space item may be excluded when it is held for an A/R by way of a contract. If a burial space is being held by a funeral provider in accordance with a burial agreement, the value of the burial space items (as specified in 88 INF-75) are excluded under the burial space exclusion. The

contract must state that the individual has purchased a particular item for a specified price. As long as the contract results in the A/R's right to the items listed at the values indicated, the items are being held for the A/R and the requirement for exclusion as a burial space is met. Federal regulations provide for a burial space exemption policy which specifies that a burial space held for an individual under contract is not considered "held for" the individual unless the individual currently owns and is currently entitled to the use of the space under the contract. Therefore, a burial space is not considered "held for" an individual if the contract is an installment sales contract (or other similar device), and the A/R will not own or have the right to use the space until final payment is made.

Additional federal clarification specifies that if funds are deposited with a funeral director (pursuant to a pre-paid funeral contract), the burial fund and space exemptions may apply even if the account established with the funds is in the name of the A/R in trust for the funeral home or director.

III. PROGRAM IMPLICATIONS

Comparable changes are necessary to the MA program for SSI-related A/Rs to ensure compliance with federal guidelines regarding the burial fund and space exclusions. Department regulations have been revised to delete the provision of 18 NYCRR 360-4.6(b)(1)(ii) which allowed burial funds to be combined with other nonburial funds of the A/R. A GIS message was sent on November 19, 1990 to advise social services districts of some of these provisions.

IV. REQUIRED ACTION

Burial funds may not be commingled with nonburial funds. If funds set aside for burial expenses are commingled with other nonburial related resources, the burial fund exclusion will not apply to any portion of the funds, nor will the interest be exempt. Separate accounts must therefore be established if an existing account contains a combination of burial and nonburial funds. The \$1,500 burial fund exclusion still applies if the funds are commingled with other burial-related funds. This would most commonly occur if the commingled funds are intended to cover both burial fund and burial space items pursuant to a prepaid funeral agreement or if the entire cash value of non-exempt life insurance is intended to be used for burial expenses (when no prepaid funeral agreement exists). Only \$1,500 of the cash value may be exempt as the A/R's burial fund; however, the non-exempt countable amount over \$1,500 may be considered burial-related (so that the burial fund is not commingled with nonburial funds) if the A/R provides a statement that the entire cash value is intended to be used for burial expenses. Such circumstances should be documented in the case record.

Property that does not meet the new definition of burial fund, as specified in Section II, is no longer exempt as a burial fund. Any recipient who previously had designated a nonliquid asset or other asset which does not now qualify as a burial fund must be advised of the change in policy at the next recertification and be given the opportunity to comply with the new policy.

Recipients must separate commingled funds or convert nonliquid funds unless there is an impediment to the separation or conversion. An impediment is a circumstance beyond the individual's control which makes conversion or separation impossible or impracticable. An impediment would exist if there is a law or regulation, or other valid reason which prevents separation or conversion, or if there are other circumstances beyond the individual's control which prevent this. An impediment exists if an A/R is mentally or physically incapacitated and is unable to authorize someone to segregate or convert the funds on his/her behalf. An impediment may exist if necessary action, or the inaction of another individual over whom the A/R has no control, prevents separation or conversion. Inconvenience or mere unwillingness to convert or separate funds is not an impediment. Any impediment must be documented in the case record and circumstances reviewed at each recertification to determine if the impediment still exists.

Social services districts must review any cases with installment funeral agreements to ensure that the burial space items are being "held for" the A/R as specified in Section II. If burial space items are not "held for" the A/R, the funds may not be excluded under the burial space provision. However, the money paid to date on the installment contract may qualify for the burial fund exclusion subject to the \$1,500 limit. This might occur if the contract is not yet fully paid. Until the purchase price is paid in full, a burial space is generally not considered "held for" an A/R paying on an installment contract. Until all payments are made on the contract, the amounts already paid may be considered toward the burial fund, not the burial space exemption. Once full payment has been made, these items can become subject to the unlimited burial space exclusion as they are being "held for" the A/R. As noted above, funds may be exempt as burial space or burial funds even if the funeral director deposits the funds in the A/R's name in trust for the funeral home. Please note the provisions of this paragraph also apply to ADC-Related and HR-Related A/Rs.

Social services districts must advise affected A/Rs of the actions necessary to qualify for or retain a burial fund or burial space exemption. Districts must also inform A/Rs that they must present the district with documentation that the necessary action has been taken in order to be eligible for the burial exemption. For example, if the A/R needs to establish a new account, or separate funds for the \$1,500 burial fund exemption, the district must advise the A/R to promptly document that the necessary changes have been made, that failure to take the required action may result in loss of the exemption, and that the client may then have resources in excess of

the allowable limits. Districts that waive the face-to-face interview for SSI-Related recipients (in accordance with 86 ADM-47), must ensure that affected persons are informed of the new policy if any actions are necessary by the A/R to retain a burial exemption. Attachment A is a sample brief explanation of the change in commingling policy. This attachment or a locally modified version may be mailed with recertification materials to explain the change.

If the A/R fails to take the necessary actions within the ten day notice period, and no impediment exists, the burial exemption may not be allowed. Eligibility should be determined without the exemption. If excess resources exist, follow procedures set forth in 91 ADM-17, "Treatment of Medical Assistance Applications when There are Excess Resources and Outstanding Medical Bills". If the A/R does take the necessary action within the specified timeframe, the burial exemption will be allowed as if the action had been taken during the retroactive period.

V. SYSTEMS IMPLICATIONS

MBL

This change in policy will not affect current budgeting procedures on MBL. Currently exempt burial reserve and/or cash value of life insurance can be entered on MBL. Enter Resource Code 44 - Cash Value of Life Insurance to be Disregarded for SSI Budgets and/or Resource Code 45 - Burial Reserve to be Disregarded for SSI Budgets and the amount input will be disregarded for SSI-Related budgets.

VI. EFFECTIVE DATE

The provisions of this Administrative Directive are effective July 1, 1991. Current recipients must comply with these revised provisions at the next recertification in order to retain their burial exclusions.

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

Burial Funds
of
Aged, Certified Blind or Certified Disabled Persons

New Medicaid rules require that the \$1,500 burial fund excluded as a resource must be kept separately from other nonburial resources.

This means that if your burial fund is in one account along with other money or resources, you will have to separate the part that is the burial fund. Burial funds may no longer be mixed with any nonburial related resources.

If your burial fund is presently mixed with other nonburial money or resources, you must separate the burial funds and put them in a separate account as soon as possible. After you separate your burial fund, you must promptly show us the changes so that we know the funds are not mixed together.

If you do not separate your burial fund money, you will lose the burial fund exemption since you may be over the allowable Medicaid resource level.

Please call _____ for more information.