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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 92 ADM-38

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: September 16, 1992

SUBJECT: Transfer of Resources: Changes in the Medical Assistance
 Regional Rates

 SUGGESTED

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

CONTACT
 PERSON:

| MA Eligibility County Representative at 1-800-342-
 | 3715, extension 3-7581.
 | MA New York City Representative at (212) 417-4853
 | User ID OME060

ATTACHMENTS:

| Attachment - County Listing by Region (available on-
 | line)

FILING REFERENCES

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|-----------------------|-----------------------|-------------|---|-------------|------------|
| 91 ADM-37 | | 360-4.4(c) | Ch. 558 of | | GIS |
| 91 ADM-31 | | | Laws of 1989 | | 92MA008 |
| 91 ADM-17 | | | Section 303 | | |
| 90 ADM-35 | | | (b) of MCCA | | |
| 89 ADM-45 | | | of 1988 | | |
| | | | FSA of 1988 | | |
| | | | SSL 366(5) | | |

I. PURPOSE

This Administrative Directive (ADM) notifies social services districts of the January 1, 1992 revisions to the Medical Assistance (MA) regional rates used to determine the period of limited coverage (penalty period) for persons determined to have made prohibited transfers of resources.

II. BACKGROUND

Chapter 558 of the Laws of 1989 amended Section 366.5 of the Social Services Law to establish new transfer of resources provisions required by the Medicare Catastrophic Coverage Act of 1988. These provisions apply to transfers for less than fair market value made on or after October 1, 1989, as outlined in 89 ADM-45. Persons who make prohibited transfers within or after the 30-month period prior to the date of institutionalization, or the date of application for MA while institutionalized, whichever is later, are ineligible for certain MA covered services for a period of time. 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 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 rates are updated annually, effective January 1st.

III. PROGRAM IMPLICATIONS

A. DEFINITIONS

For purposes of this ADM, the definitions below apply.

1. Limited coverage is coverage of all MA covered care and services except nursing facility services.
2. Nursing facility services are nursing care and related services in a nursing facility; a level of care provided in a hospital which is equivalent to the level of care provided in a nursing facility; or care, services or supplies furnished pursuant to a waiver under Section 1915(c) of the Social Security Act.
3. Penalty period is the period of ineligibility for nursing facility services (not to exceed 30 months) under the MA program because of a prohibited transfer.

4. Prohibited transfer is the voluntary giving or sale of property or assets to another person without receiving something of equal value in return, within or after 30 months of applying for MA coverage for nursing facility services.
5. Uncompensated value is the difference between the fair market value of the resource at the time of the transfer (less any outstanding loans, mortgages or other encumbrances on the resource) and the amount received for the resource.

B. MA REGIONAL RATES

The revised MA regional rates are used to calculate a penalty period for persons who have made prohibited transfers of resources and who first apply for MA on or after January 1, 1992.

The MA regional rates effective January 1, 1992 are:

| <u>Region*</u> | <u>Monthly Rate</u> |
|-----------------------|---------------------|
| Northeastern | \$ 3,654 |
| Northern Metropolitan | \$ 4,392 |
| Western | \$ 3,370 |
| Rochester | \$ 3,727 |
| Central | \$ 3,510 |
| Long Island | \$ 4,851 |
| New York City | \$ 5,330 |

*See the Attachment for county listing by region.

C. TRANSFER PENALTY PERIOD

When calculating the duration of a penalty period, the period begins with the month in which the resources were transferred. The number of months in the penalty period is equal to 30 months, or less if a lesser period results when the total uncompensated value of the transferred resource is divided by the regional rate. If a calculation of the penalty period results in a partial month, the days must be rounded down to the end of the preceding month.

NOTE: In accordance with 91 ADM-17, "Treatment of Medical Assistance Applications When There Are Excess Resources and Outstanding Medical Bills", with the exception of transfers of the community spouse resource allowance, resources transferred in a month for which MA coverage is sought are considered available in that month.

IV. REQUIRED ACTION

As specified in 89 ADM-45 and 91 ADM-37, a penalty period must be established when a federally participating MA-Only applicant/recipient (A/R), or the spouse of the A/R, has made a prohibited transfer of resources. 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.

Social services districts must use the January 1, 1992 MA regional rates to establish the penalty period for any institutionalized person determined to have made a prohibited transfer of resources who has MA eligibility first determined for the month of January, 1992 or later.

A. RECALCULATING THE PENALTY PERIOD

Districts must recalculate the penalty period for an institutionalized A/R who became MA eligible on or after January 1, 1992, if the January 1, 1991 regional rates were used to estimate the penalty period.

Districts must review these cases as soon as possible, since a recipient's penalty period may change 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 until the individual becomes in need of nursing facility services.

B. NOTICE REQUIREMENTS

As specified in 89 ADM-45 and 91 ADM-37, social services districts must provide timely and adequate notice to A/Rs whose MA coverage is being limited due to a prohibited transfer of resources. The notices contained in these ADMs must be used to meet this requirement.

When a social services district recalculates a penalty period for a person in receipt of nursing facility services, who first applied for MA as an institutionalized person on or after January 1, 1992, the district must advise the client of any change in the period. 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 penalty periods.

V. SYSTEMS IMPLICATIONS

None.

VI. EFFECTIVE DATE

The changes in the regional penalty rates are effective October 1, 1992, retroactive to January 1, 1992.

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

ATTACHMENT

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.