



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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*Commissioner*

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*Executive Deputy Commissioner*

**ADMINISTRATIVE DIRECTIVE**

**TRANSMITTAL:** 04 OMM/ADM-3

**TO:** Commissioners of  
Social Services

**DIVISION:** Office of Medicaid  
Management

**DATE:** March 30, 2004

**SUBJECT:** Transfer of Resources: Changes in the Medicaid Regional Rates  
for 2004

**SUGGESTED  
DISTRIBUTION:**

Medicaid Staff  
Fair Hearing Staff  
Legal Staff  
Audit Staff  
Staff Development Coordinators

**CONTACT  
PERSON:**

Local District Liaison  
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**ATTACHMENTS:**

County Listing by Region

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
03 OMM/ADM-5		360-4.4	SSL 366	MRG pages:	GIS 03
02 OMM/ADM-2			SSA 1917(c)	353-363	MA/029
96 ADM-8			& (d)		GIS 02
95 ADM-17					MA/032
93 ADM-27			Section		GIS 96
91 ADM-37			13611 of		MA/009
89 ADM-45			OBRA '93		

**I. PURPOSE**

This Administrative Directive (ADM) advises social services districts of the January 1, 2004 revisions to the Medicaid regional rates used to determine the period of limited coverage (penalty period) for persons determined to have made prohibited transfers of assets.

**II. BACKGROUND**

Chapter 170 of the Laws of 1994 amended Section 366.5 of the Social Services Law to set forth the transfer of assets provisions required by the Omnibus Budget Reconciliation Act of 1993. When a person, or the person's spouse, makes a prohibited transfer (as explained in 96 ADM-8), the person may be ineligible for Medicaid coverage of certain services for a period of time.

The period of ineligibility for nursing facility services, or penalty period, is the number of months equal to the uncompensated value of the transferred assets divided by the Medicaid regional rate established for the region in which the individual is institutionalized. The period is intended to approximate the length of stay in an institution that the transferred assets would have purchased. The Medicaid regional rates are generally updated annually, effective January 1.

**III. PROGRAM IMPLICATIONS**

The revised Medicaid regional rates are used to calculate a penalty period for persons who have made prohibited transfers of assets and who apply for Medicaid on or after January 1, 2004.

The Medicaid regional rates effective January 1, 2004 are:

<u>Region*</u>	<u>Monthly Rate</u>
Central	\$5,842
Long Island	\$9,296
New York City	\$8,695
Northeastern	\$6,254
Northern Metropolitan	\$7,902
Rochester	\$6,672
Western	\$5,854

\*See the Attachment for county listing by region.

**IV. REQUIRED ACTION**

As specified in 89 ADM-45, 91 ADM-37, and 96 ADM-8, a penalty period must be established when an institutionalized applicant/recipient (A/R) or the spouse of the A/R has made a prohibited transfer of assets. The Medicaid 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 applies or

reapplies as an institutionalized person.

Social services districts must use the January 1, 2004 Medicaid regional rates to establish the penalty period for any institutionalized person determined to have made a prohibited transfer of assets who has Medicaid eligibility determined for the month of January, 2004 or later.

Example: An A/R who has made a prohibited transfer of assets applies for Medicaid in February 2004, requesting coverage retroactive to January 2004. The Medicaid regional rate in effect for the year 2004 would be used to establish the penalty period. If, however, the A/R requests coverage retroactive to November 2003, the Medicaid regional rate for 2003 would be used.

**A. RECALCULATING THE PENALTY PERIOD**

Districts must recalculate the penalty period for an institutionalized individual who became Medicaid eligible on or after January 1, 2004, if the January 1, 2003 regional rates were used to calculate the penalty period. Districts must review these cases as soon as possible, since a recipient's penalty period will change based on the new rates.

When a penalty period has previously been calculated for a recipient who continues to reside in the community and who is not in receipt of home and community-based waiver services, no recalculation of the penalty period is required until the individual becomes in need of nursing facility services.

When an individual, previously assessed a penalty period, subsequently becomes in need of nursing facility services, the social services district must review the original transfer(s) to determine whether it occurred within the 36 months (60 months for transfers to or from trusts) prior to the month in which the individual is both institutionalized and applying for full Medicaid coverage, including coverage of nursing facility services. There may be instances where the original transfer is outside of the look-back period. In such cases, the institutionalized individual is no longer subject to a transfer penalty.

**B. NOTICE REQUIREMENTS**

Social services districts must provide notices to A/Rs whose Medicaid coverage is being denied, discontinued, limited or changed due to a prohibited transfer of assets. Districts may use the appropriate Client Notice Subsystem reason code, if available, or one of the following manual notices to meet this requirement.

**1. LDSS-4500 (Revised 12/99): "Notice of Decision on Your Medical Assistance Application (Excess Resources-Excess Income-Transfer of Assets)"**

As advised in 95 ADM-17 and GIS 96 MA/009, this notice is a denial of Medicaid coverage of nursing home services for a recipient already in receipt of community coverage who applies for nursing home services but who is ineligible due to a prohibited transfer. The notice also is used to deny Medicaid coverage of nursing home services or community coverage for applicants who are not otherwise eligible and also have transferred assets.

**2. LDSS-4144 (Revised 1/99): "Notice of Acceptance for Medical Assistance with Limited Coverage (Transfer of Assets)"**

As advised in 89 ADM-45, this notice is used to accept institutionalized applicants with income under the Medicaid income standard and community-based applicants, when there has been a prohibited transfer.

**3. LDSS-4145 (Revised 1/99): "Notice of Decision on Your Medical Assistance Application for Nursing Facility Services (Transfer of Assets)"**

As advised in 89 ADM-45, this notice must be used when otherwise eligible institutionalized applicants have income in excess of the Medicaid income standard and there has been a prohibited transfer.

**4. LDSS-4147 (Revised 1/97): "Notice of Intent to Discontinue/Change Medical Assistance Coverage (Transfer of Assets)"**

As advised in 89 ADM-45, this notice is used for undercare cases when coverage is being restricted or the case is being closed due to a transfer or when the individual's period of restricted coverage has expired.

**5. LDSS-4528 (Revised 3/99): "Notice of Change in Limited Coverage Period for an Institutionalized Person"**

Social services districts were advised in 93 ADM-27 to notify recipients of nursing facility services of any changes in limited coverage periods resulting from a change in the Medicaid regional rates. Districts were instructed to use Client Notice Subsystem Reason Code S05 or form LDSS-4528.

**6. "Explanation of the Effect of Transfer of Assets on Medical Assistance Eligibility"**

As advised in 96 ADM-8, this notice must be available to all individuals who wish to establish that a transfer was made for a purpose other than to qualify for nursing facility services. It also must be given to all Medicaid-only applicants at the time of (re)application or when an A/R's (re)application is denied/discontinued due to a prohibited transfer. This notice must be provided with the appropriate notice of decision by the social services district.

**7. LDSS-4022 (Revised 5/99): "Notice of Intent to Establish a Liability Toward Chronic Care"**

If a penalty period had been previously calculated for a recipient who becomes in need of nursing facility services and a determination is made that the transfer occurred prior to the 36 month (60 months for transfers to or from trusts) period immediately preceding the month of application, a note should be added to the notice to indicate that the former transfer(s) is now beyond the 36 month look-back period and does not affect Medicaid eligibility.

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**V. SYSTEMS IMPLICATIONS**

None.

**VI. EFFECTIVE DATE**

The changes in the Medicaid regional rates used for calculating transfer penalty periods are effective April 1, 2004, retroactive to January 1, 2004.

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Kathryn Kuhmerker, Deputy Commissioner  
Office of Medicaid Management