



STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany,

New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner
Commissioner

Dennis P. Whalen
Executive Deputy

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 04 OMM/ADM-4

TO: Commissioners of
Social Services

DIVISION: Office of
Medicaid Management

DATE: April 13, 2004

SUBJECT: Spousal Impoverishment Allowance Increases for 2004

**SUGGESTED
DISTRIBUTION:**

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

**CONTACT
PERSON:**

Local District Liaison
Upstate: (518) 474-8216
New York City: (212) 268-6855

ATTACHMENTS:

- I. Revised "Information Notice to Couples with an Institutionalized Spouse"
- II. "Spousal Impoverishment Income and Resource Amounts" Chart for 2004

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
03 OMM/ADM-7		360-4.3(f)	SSA 1924	MRG Pages	GIS 03 MA/027
01 OMM/ADM-4		360-4.9	SSL 366-c	225-227,	GIS 03 MA/012
00 OMM/ADM-1		360-4.10		230-231,	MBL Transmittal
96 ADM-11				238,	03-4
91 ADM-33				331-334	
91 ADM-27					
90 ADM-29					
89 ADM-47					
92 INF-14					

I. PURPOSE

This Administrative Directive (OMM/ADM) advises social services districts of the January 1, 2004 increases in the following amounts:

1. the maximum protected resource allowance for a community spouse;
2. the community spouse's minimum monthly maintenance needs allowance; and
3. the family member allowance.

These amounts are used in determining the Medicaid eligibility of an institutionalized spouse.

The ADM also includes a revised "Information Notice to Couples with an Institutionalized Spouse." The definition of an institutionalized spouse is amended to include a person who is receiving institutional or noninstitutional services under a Program of All-inclusive Care for the Elderly (PACE) program as defined in sections 1934 and 1894 of the federal Social Security Act.

II. BACKGROUND

A. Maximum Community Spouse Resource Allowance

Section 366-c of the Social Services Law (SSL) specifies the rules to be used in determining the Medicaid eligibility of an institutionalized person with a spouse in the community. Section 366-c, as amended by Chapter 81 of the Laws of 1995, provides that community spouses must be allowed to retain resources equal to one-half of the couple's total countable resources (spousal share), but not less than \$74,820 and not more than the maximum community spouse resource allowance permitted under federal law.

The maximum community spouse resource allowance, which is increased each year by the same percentage as the annual increase in the federal consumer price index, was \$90,660 in 2003. Effective January 1, 2004, the maximum community spouse resource allowance is \$92,760.

B. Minimum Monthly Maintenance Needs Allowance

Section 366-c of the SSL provides that community spouses must be allowed to retain a specified amount of monthly income, referred to as the minimum monthly maintenance needs allowance (MMMNA). The MMMNA, which is increased each year by the same percentage as the annual increase in the federal consumer price index, was \$2,267 in 2003. Effective January 1, 2004, the MMMNA is \$2,319.

C. Family Member Allowance

Section 366-c of the SSL provides that in determining the amount of an institutionalized spouse's income to be applied toward the cost of care, a family member allowance (FMA) must be deducted for each family member living with the community spouse. A family member allowance is established 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 percent of his or her maintenance needs met by the community spouse and/or the institutionalized spouse.

The family member allowance equals one-third of the amount by which one-twelfth of 150 percent of the federal income official poverty line for a family of two exceeds the otherwise available monthly income of the family member. Effective January 1, 2004, the maximum family member allowance (i.e., if a family member has no otherwise available income), based on the federal poverty level, is \$521.

III. PROGRAM IMPLICATIONS

A. Maximum Community Spouse Resource Allowance

The spousal share is an amount equal to one-half of the total value of the countable resources of the community spouse and the institutionalized spouse as of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse on or after September 30, 1989. This definition of spousal share supersedes the definition provided in 96 ADM-11.

Continuous period of institutionalization means at least 30 consecutive days of institutional care in a medical institution and/or nursing facility, or receipt of home and community based waiver services, or a combination of institutional and home and community based waiver services. Absence from a medical institution/facility or discontinuance of home and community based waiver services or PACE services for 30 consecutive days is the criteria used to determine if a continuous period of institutionalization has been broken.

Effective January 1, 2004, the minimum community spouse resource allowance is \$74,820, and the maximum community spouse resource allowance is \$92,760. As a result, in cases where the spousal share is less than \$74,820, the community spouse will be permitted to retain up to \$74,820 of the couple's total countable resources. In cases where the spousal share exceeds \$74,820, the community spouse is allowed to retain resources in an amount equal to the spousal share but not to exceed \$92,760. In order for the spousal share to be more than \$74,820, the total countable resources of the couple would have to be more than \$149,640.

When the first month of the most recent continuous period of institutionalization is prior to the month for which Medicaid coverage is sought, use of the spousal share figure will require social services districts to complete two assessments of a couple's resources. The first assessment will determine the total countable resources of the couple for purposes of establishing the spousal share. This assessment must be based on the resources of the couple as of the beginning of the most recent continuous period of institutionalization. The second assessment will determine the total countable resources of the couple for the month Medicaid coverage is sought. The spousal share amount, as determined by the first assessment, is used in the second assessment to determine the community spouse resource allowance and the Medicaid eligibility of the institutionalized spouse.

The following examples illustrate when two resource assessments will be required:

1. When an institutionalized spouse is admitted to a nursing home in March, 2003, the couple's total countable resources are \$222,000, and the spousal share (one-half of the couple's total countable resources) is \$111,000. The institutionalized spouse later applies for Medicaid in June, 2004, requesting coverage effective June, 2004. In June, 2004, the couple's total countable resources are \$146,000. The spousal share, however, is \$111,000, which is one-half of the couple's total countable resources of \$222,000 in March, 2003, the date of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse. In this case, the spousal share of \$111,000 would be capped at the maximum community spouse resource allowance of \$92,760 for 2004.

In the example, the first snapshot of the couple's total countable resources is taken in year 2003, the beginning of the most recent continuous period of institutionalization. When the individual applies for Medicaid in 2004, the district must use the spousal share (one-half of the couple's total countable resources as of the beginning of the most recent continuous period of institutionalization) established in year 2003 to determine the community spouse resource allowance in 2004, when Medicaid coverage is sought. The district uses the spousal share that is based on the resources that the couple previously had at the beginning of the most recent continuous period of institutionalization, not based on one-half of the couple's total countable resources that they have when they apply for Medicaid, to determine the community spouse resource allowance.

2. When an institutionalized spouse is admitted to a nursing home in March, 2003, the couple's total countable resources are \$242,000. The institutionalized spouse is discharged from the nursing home in March, 2004, subsequently is readmitted in June, 2004, and applies for Medicaid in June, 2004, requesting coverage effective June, 2004. In June, 2004, the couple's total countable resources are \$172,000.

As the applicant was absent from an institution for 30 consecutive days, the continuous period of the institutionalization, that had begun in March, 2003, ended. The spousal share would be based on one-half of the couple's total countable resources in June, 2004, the beginning of the most recent continuous period of institutionalization. The spousal share in June, 2004 is calculated as \$86,000 (one-half of the couple's total countable resources of \$172,000), not \$121,000 (one-half of the couple's total countable resources in March, 2003). The community spouse resource allowance, therefore, would be \$86,000.

B. Minimum Monthly Maintenance Needs Allowance

Effective January 1, 2004, the MMMNA is \$2,319. Institutionalized spouses must be allowed, on a monthly basis, to transfer sufficient income to bring the community spouse's monthly income up to \$2,319. In addition, the increased MMMNA must be used in determining the amount of any contribution to be requested from the income of a community spouse or a spouse living apart from an SSI-related applicant/recipient (A/R).

It should be noted that SSL Section 366-c(8) continues to provide for a higher community spouse income allowance based on exceptional expenses resulting in significant financial distress. As advised in 89 ADM-47, such expenses may be of a recurring nature or may represent major one-time costs, and may include, but are not limited to: recurring or extraordinary non-covered medical expenses of the community spouse or family members; amounts to preserve, maintain, or make major repairs on the homestead; and amounts necessary to preserve an income-producing asset. Any increase of the community spouse monthly income allowance must be established by fair hearing or court order.

C. Family Member Allowance

Effective January 1, 2004, the family member allowance will be calculated by subtracting the amount of the family member's otherwise available income from \$1,562, dividing the result by three, and rounding up to the nearest dollar. The maximum family member allowance (where the family member's otherwise available income is zero) is:

$$\frac{\$1,562}{3} = \$521 \text{ } (\$520.66 \text{ rounded up})$$

As advised in 89 ADM-47, a family member allowance is first made up of the community spouse's income in excess of the MMMNA. If the community spouse's excess income is insufficient to provide the family member allowance, all or part of the allowance, as necessary, is subtracted from any available income of the institutionalized spouse.

A larger family member allowance will reduce the amount of an institutionalized spouse's or community spouse's income that is available to meet the cost of care. In addition, a larger family member allowance will reduce the amount of income that may be requested as a contribution from a spouse living apart from an SSI-related A/R.

IV. REQUIRED ACTION

A. Maximum Community Spouse Resource Allowance

For new cases with budgeting periods beginning January 1, 2004, social services districts must use the minimum community spouse resource allowance of \$74,820 and the maximum community spouse resource allowance of \$92,760 to determine the amount of resources that a community spouse is allowed to retain. In applying these two figures (the State minimum community spouse resource allowance and the federal maximum community spouse resource allowance) to the community spouse resource allowance formula, the applicable allowance is to be determined by taking the greatest of the

Date: April 13, 2004

Trans. No. 04 OMM/ADM-4

Page No. 6

following amounts:

1. \$74,820; or
2. the amount of the spousal share, but not to exceed \$92,760; or
3. the amount established for support of the community spouse pursuant to a fair hearing or court order.

In order to determine whether a couple's spousal share is applicable in determining the community spouse's resource allowance, social services districts must first determine if the total countable resources of the couple were more than \$149,640 as of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse. This information can be obtained at the face-to-face interview or questions can be included on a separate agency letter that accompanies the Medicaid application/recertification form.

Note: If an institutionalized spouse or community spouse fails to provide documentation/verification of resources for the beginning of the most recent continuous period of institutionalization, the social services district shall use the State minimum spousal resource standard of \$74,820 to determine the community spouse resource allowance.

Social services districts should also note that although a couple's resources may be less than \$149,640 as of the beginning of the most recent continuous period of institutionalization but greater than \$149,640 at the time of Medicaid application, the determination of the spousal share must be based on the resources of the couple as of the beginning of the most recent continuous period of institutionalization.

Once documentation is received and the spousal share determined, the spousal share is compared to \$92,760. If the spousal share is less than or equal to \$92,760, the maximum community spouse resource allowance is the amount of the spousal share. If the amount of the spousal share exceeds \$92,760, the maximum community spouse resource allowance is capped at \$92,760. As instructed in 96 ADM-11, social services districts must use the insert page to the "Institutionalized Spouse Budget Worksheet" (Attachment I to 96 ADM-11), when the amount of the spousal share or maximum community spouse resource allowance is used as the community spouse's maximum community spouse resource allowance.

In determining the resources of an institutionalized spouse when the institutionalized spouse or community spouse does not claim to have resources in excess of \$149,640 as of the beginning of the most recent continuous period of institutionalization, the community spouse must be permitted to retain up to \$74,820 of the couple's total countable resources.

When determining an institutionalized spouse's eligibility for any month beginning January 1, 2004 or after (even if the individual was institutionalized prior to January 1, 2004, but did not apply for Medicaid), social services districts must use the minimum community spouse resource allowance of \$74,820 and the maximum community spouse resource allowance of \$92,760 as applicable to determine the amount of resources that a community spouse is allowed to retain.

Note: Eligibility is determined based on the resource allowances in effect for the earliest month coverage is sought. For example, if an applicant has been institutionalized since February, 2003 and applies for Medicaid in March, 2004, requesting coverage effective March, 2004, the spousal impoverishment rates in effect for the year 2004 would be used to determine Medicaid eligibility. If this applicant requested coverage retroactive to December, 2003, the resource allowances in effect for the year 2003 would be used.

The following examples, based on 2004 figures, illustrate how to calculate the community spouse resource allowance. For purposes of these examples, the beginning of the most recent continuous period of institutionalization of the institutionalized spouse is also the month of application.

1. A couple has total countable resources of \$40,000 with a spousal share (one-half of the couple's total countable resources) of \$20,000. The community spouse resource allowance is \$40,000. The community spouse is allowed to keep all of the couple's total countable resources of \$40,000, as the couple's total countable resources are below the State minimum community spouse resource allowance of \$74,820.
2. A couple has total countable resources of \$80,000 with a spousal share (one-half of the couple's total countable resources) of \$40,000. The community spouse resource allowance is \$74,820 as the spousal share is less than the State minimum community spouse resource allowance of \$74,820. The community spouse is allowed to keep \$74,820 out of the couple's total countable resources of \$80,000.
3. A couple has total countable resources of \$100,000 with a spousal share (one-half of the couple's total countable resources) of \$50,000. The community spouse resource allowance is \$74,820 as the spousal share is less than the State minimum community spouse resource allowance of \$74,820. The community spouse is allowed to keep \$74,820 out of the couple's total countable resources of \$100,000.
4. A couple has total countable resources of \$150,000 with a spousal share (one-half of the couple's total countable resources) of \$75,000. The community spouse resource allowance is \$75,000 as the spousal share is between the State minimum community spouse resource allowance of \$74,820 and the federal maximum community spouse resource allowance of \$92,760. The community spouse is allowed to keep \$75,000 out of the couple's total countable resources of \$150,000.
5. A couple has total countable resources of \$300,000 with a spousal share (one-half of the couple's total countable resources) of \$150,000. The community spouse resource allowance is \$92,760 as the spousal share is greater than the federal maximum community spouse resource allowance of \$92,760. The community spouse is allowed to keep \$92,760 out of the couple's total countable resources of \$300,000.

B. Minimum Monthly Maintenance Needs Allowance

Effective January 1, 2004, social services districts must use the increased MMMNA amount of \$2,319 in determining the Net Available Monthly Income (NAMI) of an institutionalized spouse or when completing an assessment. All cases involving an institutionalized spouse active on or after January 1, 2004 must have eligibility recomputed based on the new figure of \$2,319. The budgeting procedures contained in 89 ADM-47 and 91 ADM-27 must be followed for computing the amount of the community spouse's monthly income allowance. Any increase in the amount of income available for a community spouse or decrease in an institutionalized spouse's NAMI is to be made effective January 1, 2004.

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

C. Family Member Allowance

Effective January 1, 2004, the family member allowance will be calculated by subtracting the amount of the family member's otherwise available income from \$1,562, dividing the result by three, and rounding up to the nearest dollar. The maximum family member allowance is \$521.

All spousal impoverishment cases involving a family member which are active on or after January 1, 2004 must be recomputed using the appropriate family member allowance formula.

Effective January 1, 2004, the revised family member allowance must be used in determining any contribution from income from a community spouse or from a spouse living apart from an SSI-related A/R.

Note: The new family member allowance must also be used when completing an assessment of a couple's resources and income.

D. Definition of an Institutionalized Spouse

The definition of an institutionalized spouse is amended to include a person who is receiving institutional or noninstitutional services under a PACE program as defined in sections 1934 and 1894 of the federal Social Security Act.

An institutionalized spouse means a person who is:

1. In a medical institution or nursing facility and is likely to remain there for at least 30 consecutive days; or
2. Receiving home and community based services provided pursuant to a waiver under section 1915(c) of the federal Social Security Act and is likely to receive such services for at least 30 consecutive days; or

3. Receiving institutional or noninstitutional services under a PACE program as defined in sections 1934 and 1894 of the federal Social Security Act;

AND

4. Married to a spouse who does not meet any of the criteria set forth under (1) through (3).

Waiver services refer to the waivers that New York State has obtained to provide specialized services (to avoid institutionalization) for several home and community based waiver services programs including the Long Term Home Health Care Program, Home and Community Based Services Waiver for Persons with Traumatic Brain Injuries (HCBS/TBI Waiver), and OMRDD Home and Community Based Services (HCBS) Waiver. Note that the Program of All-inclusive Care for the Elderly (PACE) is a New York Medicaid State Plan Service, not a waiver service.

Districts should be cognizant that a spouse receiving regular home care services does not meet the criteria for an institutionalized spouse. This is because the spouse is neither receiving home and community based waiver services nor is receiving institutional or noninstitutionalized services under a PACE program.

E. Notice Requirements

1. When a social services district changes the amount of one of the items used in the calculation of Medicaid eligibility (even if the result is no change in liability), the district must send to the institutionalized spouse (or authorized representative) and the community spouse:
 - a. an updated "Institutionalized Spouse Budget Worksheet" detailing current income information;
 - b. a copy of the revised MBL budget;
 - c. the DSS-4021 "Notice of Intent to Change the Contribution Toward Chronic Care Costs";
 - d. LDSS 4807 "Health Care Programs for New Yorkers"; and
 - e. if appropriate, the "Notice to Spouse (Undercare)."

Social services districts are reminded that they must also send the provider a copy of the LDSS-4021, "Notice of Intent to Change the Contribution toward Chronic Care Costs" to allow providers to bill MMIS appropriately.

2. The "Information Notice to Couples with an Institutionalized Spouse" (Attachment I) and the "Spousal Impoverishment Income and Resource Amounts" chart (Attachment II) have been revised. The definition of an institutionalized spouse has been amended in the notice to include persons receiving institutional or noninstitutional services under a Program of All-inclusive Care for the Elderly (PACE) as defined in sections 1934 and

1894 of the federal Social Security Act. Social services districts must make available the updated "Information Notice to Couples with an Institutionalized Spouse"(revised 12-03), along with the updated "Spousal Impoverishment Income and Resource Amounts" chart, to all persons requesting such information and are required to include this notice with all Medicaid applications involving an institutionalized spouse.

V. **SYSTEM IMPLICATIONS**

MBL

As of December 1, 2003 Upstate and December 29, 2003 in New York City, MBL supported \$2,319 as the MMMNA when a budget effective From Date of 01/01/04 or later has been entered. The amount of court ordered support in excess of \$2,319 should be entered on MBL as Additional Allowance Code 19.

The calculation of a couple's countable resources, the amount of resources the community spouse is permitted to retain, and family member allowance(s) must be done using 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 23.

VI. **EFFECTIVE DATE**

The spousal impoverishment allowance increases are effective May 1, 2004, retroactive to January 1, 2004.

Kathryn Kuhmerker, Deputy Commissioner
Office of Medicaid Management