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INFORMATIONAL LETTER

TRANSMITTAL: 90 INF-19

TO: Commissioners of  
 Social Services

DIVISION: Medical  
 Assistance

DATE: April 18, 1990

SUBJECT: Revised "Information Notice to Couples With An  
 Institutionalized Spouse"

SUGGESTED Medical Assistance Staff  
 DISTRIBUTION: Public Assistance Staff  
 Adult Services Staff  
 Fair Hearing Staff  
 IV-D Staff  
 Staff Development Coordinators

CONTACT PERSON: MA County Representative 1-800-342-3715, extension 3-  
 7581; New York City Representative at (212) 587-4853.

ATTACHMENTS: Revised "Information Notice To Couples With An  
 Institutionalized Spouse"  
 (Attachment available on-line.)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
89 ADM-47		360-4.10	Ch. 558 of the Laws of 1989 S303(a) of MCCA of 1988 S608(d) of FSA		GIS 90MA010 GIS 89MA044

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89 ADM-47 contains the "Information Notice to Couples With An Institutionalized Spouse" (Attachment A). This notice provides the maximum community spouse resource allowance, the maximum community spouse monthly income allowance and the maximum family member allowance effective October 1, 1989.

The notice requires updating to reflect the January 1, 1990 increase in the maximum community spouse resource allowance and maximum community spouse income allowance, and the July 1, 1990 increase in the family member allowance. Attached is the revised "Information Notice to Couples With An Institutionalized Spouse" which must be utilized in place of the "Information Notice to Couples With An Institutionalized Spouse" contained in 89 ADM-47.

The Division of Medical Assistance is issuing a mailing to Medicaid providers notifying them and including a copy of the revised notice.

If you have any questions, please contact your Medical Assistance County Representative.

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

INFORMATION NOTICE TO COUPLES WITH AN INSTITUTIONALIZED SPOUSE

Medicaid is an assistance program that may help pay for the costs of your or your spouse's institutional care or home and community-based waived services. The institutionalized spouse is considered medically needy if his/her resources are at or below a certain level and the monthly income after deductions is less than the cost of care in the facility.

The federal Medicare Catastrophic Coverage Act of 1988 and implementing State legislation require that income and resource eligibility rules for institutionalized spouses which are effective October 1, 1989, be utilized to determine that spouse's eligibility for Medicaid. These rules protect some of the income and resources of the couple for the community spouse.

If you or your spouse is:

- (1) in a medical institution or nursing facility and expected to remain in such institution/facility for at least 30 consecutive days; or
- (2) in receipt of home and community-based waived services and expected to receive such services for at least 30 consecutive days; or
- (3) in a medical institution/nursing facility or in receipt of home and community-based waived services, and expected to receive a combination of institutional services and home and community-based waived services for at least 30 consecutive days;

AND

- (4) married to a person who is not described in items 1-3, these income and resource eligibility rules for institutionalized spouses may apply to you or your spouse.

If you wish to discuss these eligibility provisions which are effective October 1, 1989, please contact your local department of social services.

Even if you have no intention of pursuing a Medicaid application at this time, you are urged to contact your local department of social services to request an assessment of the total value of your combined countable resources. You may call your local department of social services or send in the completed section of this notice to request such an assessment. New York City residents should call (718) 291-1900 (HRA Info Line). Under the October 1, 1989 Medicaid resource eligibility requirements, the community spouse is allowed to keep up to \$60,000 of your and your spouse's countable resources, unless a higher amount is established by a court order or fair hearing. This maximum community spouse resource allowance of \$60,000\* will also be increased annually for changes in the Consumer Price Index.

In order to determine the community spouse resource allowance, the combined countable resources of you and your spouse at the time of MA application will be utilized for Medicaid eligibility purposes. In determining the total value of the countable resources, we will not count the value of your home, household goods, personal property, the car and certain funds established for burial expenses. It is, therefore, to the advantage of community spouses to request such an assessment to make sure that allowable resources are not depleted by your or your spouse's cost of care.

\* See the attached Table for the current dollar amounts.

Either spouse or a representative acting on their behalf may request at the beginning or any time after the beginning of the continuous period of institutionalization, an assessment of the couple's countable resources. Upon receipt of such request and all relevant documentation, the local district will assess and document the total value of the couple's countable resources and provide each spouse with a copy of the assessment and the documentation upon which it is based. If the request is not filed with a Medical Assistance application, the local social services department may charge up to \$25.00 for the cost of preparing and copying the assessment and documentation.

You may also request an assessment/determination of:

\*\* (1) the community spouse monthly income allowance\* (an amount of up to \$1,500 a month for 1989, if the community spouse has no income of his/her own, or a greater amount as established by court order or fair hearing); and

(2) a family allowance for each minor child, dependent child, dependent parent or dependent sibling of either spouse living with the community spouse\* (an amount of up to \$271 a month for 1989, if the family member has no income of his/her own).

If you wish to request an assessment of the total value of your and your spouse's countable resources, a determination of the community spouse resource allowance, community spouse monthly income allowance, or family allowance(s) and the method of computing such allowances, contact your local social services department. Residents of New York City should call (718) 291-1900 (HRA Info Line).

For purposes of determining the Medicaid eligibility of the institutionalized spouse, effective October 1, 1989, a community spouse must cooperate in providing necessary information about his/her resources. Refusal to provide such information shall be reason for denying Medical Assistance for the institutionalized spouse because Medical Assistance eligibility cannot be determined. If denial of Medical Assistance would result in undue hardship for the institutionalized spouse and an assignment of support is executed or the institutionalized spouse is unable to execute such assignment due to physical or mental impairment, Medical Assistance shall be authorized. However, if the community spouse refuses to make such resource information available then the Department may, at its option, refer the matter to court.

\* See the attached Table for the current dollar amounts.

\*\* The community spouse may be able to obtain additional amounts of the institutionalized spouse's income than would otherwise be allowed under the Medical Assistance Program by commencing a family court proceeding against the institutionalized spouse. Such court orders are only effective back to the filing date of the petition. Social Services Law 366.2(a)(7) requires that the amount of such support orders be deducted from the institutionalized spouse's income for eligibility purposes. Your own attorney or local Office for the Aging can give you more information in this regard.

Undue hardship is a situation where:

(1) a community spouse fails or refuses to cooperate in providing necessary information about his/her resources;

(2) the institutionalized spouse is otherwise eligible for Medical Assistance;

(3) the institutionalized spouse is unable to obtain appropriate medical care without the provision of Medical Assistance; and

(a) the community spouse's whereabouts are unknown; or

(b) the community spouse is incapable of providing the required information due to illness or mental incapacity; or

(c) the community spouse has lived apart from the institutionalized spouse immediately prior to institutionalization.

An institutionalized spouse will not be determined ineligible for Medical Assistance because the community spouse refuses to make his or her resources in excess of the maximum community spouse resource allowance available to the institutionalized spouse if:

(1) the institutionalized spouse executes an assignment of support from the community spouse in favor of the social services district; or

(2) the institutionalized spouse is unable to execute such assignment due to physical or mental impairment.

The amount of money that we will request as a contribution from the community spouse will be based on his or her income and the number of persons in the community depending on that income. We will request a contribution from a community spouse of 25% of the amount his/her otherwise available income exceeds the minimum monthly maintenance needs allowance plus any family allowance(s). If the community spouse feels that he/she cannot contribute the amount requested, he/she has the right to schedule a conference with the local department of social services to try to reach an agreement about the amount he/she is able to pay.

Pursuant to 366(3)(a) of the Social Services Law, Medicaid MUST be provided to the institutionalized spouse, if the community spouse fails or refuses to contribute his/her income towards the institutionalized spouse's cost of care.

However, if the community spouse fails or refuses to make his/her income available as requested then the Department may, at its option, refer the matter to court for a review of the spouse's actual ability to pay.

Date \_\_\_\_\_

Request for Assessment

Institutionalized Spouse's Name \_\_\_\_\_

Current Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone # \_\_\_\_\_

Community Spouse's Name \_\_\_\_\_

Current Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone # \_\_\_\_\_

I/we request an assessment of the items checked below:

- Couple's countable resources and the community spouse resource allowance.
- Community spouse monthly income allowance.
- Family allowance

\_\_\_\_\_  
Signature of requesting individual

\_\_\_\_\_

\_\_\_\_\_  
Address and telephone # if different  
from above

Check  if you are a representative acting on behalf of either spouse.  
Please call your local department of social services if we do not contact  
you within 10 days of this request.

NOTE: If an assessment is requested without a Medical Assistance  
application, the local department of social services may charge up to \$25  
for the cost of preparing and copying the assessment and documentation.

SPOUSAL IMPOVERISHMENT INCOME AND RESOURCE AMOUNTS

Maximum Community Spouse Resource Allowance

\$60,000 - Effective October 1, 1989

\$62,580 - Effective January 1, 1990

Note: A higher amount may be established by court order or fair hearing.

Maximum Community Spouse Monthly Income Allowance is an amount of up to:

\$1,500 - Effective October 1, 1989

\$1,565 - Effective January 1, 1990

if the community spouse has no income of his/her own.

Note: A higher amount may be established by court order or fair hearing.

Family Member Allowance - for each family member is an amount of up to:

\$271 - Effective October 1, 1989

\$285 - Effective July 1, 1990

if the family member has no income of his/her own.