
ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 91 ADM-27

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: August 13, 1991

SUBJECT: Federal Compliance: MA Eligibility Changes Relating to
 Resource and Income Exemption Standards and Household Size

 SUGGESTED

DISTRIBUTION: | Medical Assistance Staff
 | Public Assistance Staff
 | Fair Hearing Staff
 | Staff Development Coordinators

CONTACT

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

ATTACHMENTS: | Attachment A - Listing of all attachments
 | (available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
91 ADM-4	86 ADM-46	360-4.2	SSL 366.2	<u>MARG</u>	GIS
90 ADM-42		360-4.6	Chapter 938	pp. 7.1, 8,	Messages
90 ADM-36		360-4.7	of the Laws	16, 130.1,	91MA014
90 ADM-35			of 1990	135, 138.1,	91MA011
90 ADM-9				154.1, 155,	91MA009
89 ADM-47				158, 285,	90MA063
89 ADM-38				411, 412	89MA006
89 ADM-21					MBL
88 ADM 38				<u>Fiscal</u>	Transmittal
88 INF-75				<u>Reference</u>	91-1 and
87 ADM-4				<u>Manual,</u>	91-2
86 ADM-46				Vol. I,	
85 ADM-33				pp. 29-32,	
83 ADM-17				Vol. II,	
				pp. 16-21	

I. PURPOSE

This Administrative Directive advises social services districts about changes in the Medical Assistance (MA) eligibility requirements which were enacted by Chapter 938 of the Laws of 1990. Pursuant to Chapter 938, resource exemption standards are being reduced and certain income exemptions are being eliminated. In addition, the method for determining household size is revised for Supplemental Security Income (SSI)-related adult applicants/recipients (A/Rs).

This Administrative Directive also advises social services districts of actions to be taken as a result of the Doe v. Perales litigation in Federal District Court for the Western District of New York. In response to the Doe litigation, the Department will implement the provisions of Chapter 938 relating to the change in the MA resource level on a prospective basis, after verifying the current resources of recipients and providing them with timely and adequate notice of any reduction in or loss of benefits as a result of the change in the resource level. In addition, the Department will implement this provision of Chapter 938 with respect to new applicants only after it has provided the Medical Advisory Committee (MAC) with an opportunity to comment on the change and only after implementing regulations have been promulgated.

II. BACKGROUND

On April 3, 1989 Health and Human Services (HHS) partially disapproved the Department's proposed Title XIX State Plan Amendment (SPA) 85-25. One of the problems with the State Plan Amendment was that by applying income deductions not federally mandated, the medically needy income standards could exceed federal financial participation (FFP) limits. Under federal law and regulations, the State is not allowed to claim FFP for services rendered to recipients whose income exceeds the FFP limits. The FFP limit for income is 133 1/3 percent of the highest amount ordinarily paid under the Aid to Dependent Children (ADC) program to households with no income or resources. Chapter 938 of the Laws of 1990 amends Section 366.2(a) of the Social Services Law (SSL) to insure that the Department's medically needy income standards comply with the FFP requirement.

Chapter 938 eliminates the liquid resource exemption in the amount of \$500 for each person, up to \$2000 per family, granted to federally participating (FP) individuals for burial reserves. This amendment reduces the MA resource standard for all household sizes. The new MA-only resource standard is equal to one-half of the appropriate MA income standard.

Chapter 938 eliminates the income exemptions for income taxes and support payments to dependents that are required to be made pursuant to court order. As a result, only health insurance premiums and

amounts mandated under federal law will be considered to be exempt income. Federal old-age, survivors and disability insurance (FICA) or other payroll deductions are not exempt.

Chapter 938 requires that the Department's definition of MA household be consistent with federal Medicaid regulations. This results in a change in the budgeting methodology when determining household size for SSI-related A/Rs. Previously, when determining household size for an SSI-related A/R, SSL Section 366.2(a)(8) and Rickey v. Perales (86 ADM-46) provided that a household was composed of the A/R and all family members in the household for whom the A/R was legally responsible or had assumed responsibility.

In response to the Department's and social services districts' attempts to implement the resource reduction provisions of Chapter 938 in accordance with the effective date of the Chapter as enacted by the Legislature, January 1, 1991, certain recipients of MA brought suit against the Department and two districts challenging both the implementation of the Chapter and the interpretation of the resource reduction provisions (Doe v. Perales, USDC WDNY).

In order to avoid prolonged disruption of the administration of the MA program and uncertainty among recipients as to their eligibility for MA, which would have resulted from litigating the merits of plaintiffs' claims, the parties proposed a stipulation of settlement of the litigation. The terms of the stipulation are reflected in this ADM as it relates to the implementation of the resource reduction provisions of Chapter 938.

Regulations implementing the provisions of Chapter 938 were filed on an emergency basis, consistent with the provisions of that Chapter and the State Administration Procedure Act (SAPA), effective May 1, 1991.

III. PROGRAM IMPLICATIONS

A. Resource Exemption Standards

The removal of the State burial reserve exemption reduces the resource standard by \$500 per person for households with up to four persons. The resource standard for larger households is reduced by \$2000. The new levels, based upon one-half of the appropriate income exemptions allowed under the schedule and provisions of SSL Section 366.2(a)(8) which sets forth the annual net income exemptions based upon household size, are:

<u>One</u>	<u>Two</u>	<u>Three</u>	<u>Four</u>	<u>Five</u>	<u>Six</u>	<u>Seven</u>	<u>Eight</u>
\$3,000	\$4,300	\$4,350	\$5,100	\$5,950	\$6,800	\$7,650	\$8,500

For each additional person in excess of eight in the household, add \$850.

NOTE: Although the \$500 burial reserve was eliminated from the resource exemption standards, A/Rs continue to be eligible for a burial fund and burial space to the extent allowed as an exempt resource under the cash assistance program to which the A/R is most closely related.

As detailed in 90 ADM-9 and 90 ADM-42, there is no resource standard applied when determining expanded MA eligibility for pregnant women, infants, and children under age six.

Social services districts should use these new levels for new applications made on or after May 1, 1991 and for recertifications made on or after August 7, 1991. These levels apply to all FP MA-only cases where resources are considered in determining MA eligibility. This includes federally non-participating (FNP) parents with income above the Public Assistance (PA) standard living with their children.

Resources of Home Relief (HR)-related A/Rs continue to be compared to the Public Assistance (PA) resource standard of \$1000. HR-related A/Rs continue to be allowed a \$1500 prepaid burial arrangement.

B. Elimination of Income Exemptions

Chapter 938 eliminates certain income exemptions for A/Rs whose MA eligibility is being determined or redetermined under ADC-related or SSI-related budgeting (FP A/Rs). The income exemptions of HR-related A/Rs continue to be in accordance with PA requirements. The following income exemptions are no longer allowed for FP A/Rs:

1. Mandatory payroll deductions - These include federal, State and local income taxes, Social Security withholding taxes (FICA) and New York State Disability;
2. Mandatory deductions from unearned income, including income taxes; and
3. Court-ordered child and spousal support payments. (See Section IV.B.3. for exceptions.)

With the exception of the instances specified in Section IV.B.3., the MA worker must no longer allow the above-listed income exemptions when determining the available income of a legally responsible relative (LRR) or the otherwise available income of a community spouse and family member.

C. Household Size For SSI-Related Applicants/Recipients

Chapter 938 requires a change in the methodology used to determine household size. Many SSI-related A/Rs living with a spouse and/or dependent children will have eligibility redetermined by comparing income and resources to a reduced household size of one or two persons. Minors will no longer be counted in the SSI-related parents' household size.

IV. REQUIRED ACTION

A. Reduction of Resource Exemption Standards

1. New Resource Exemption Standards

Social services districts must use the revised resource exemption standards in Section III.A. to determine MA eligibility for new applications made on or after May 1, 1991 and for recertifications on and after August 7, 1991. These new levels must be used for all FP A/Rs who are not resource exempt. When eligibility is being determined using FNP budgeting, social services districts should continue to use the PA resource standard of \$1000.

2. Cases with Excess Resources

Social services districts should treat cases determined to have excess resources as a result of the new resource standards as follows:

a. New Cases - These cases should be denied MA, unless the recipient has incurred medical bills equal to or greater than the amount of the excess resources and is an FP applicant. Districts must explain the burial fund/funeral agreement options to all applicants. Applicants with excess resources must be given ten days to establish a burial fund or funeral agreement.

b. Undercare Cases -

1) CHRONIC CARE CASES - The verified excess resource amount, if any, must be applied toward the cost of care. This will be accomplished by adjusting the recipient's Net Available Monthly Income (NAMI) amount after the recipient is provided timely and adequate notice of the intended action.

2) COMMUNITY CASES WHOSE ELIGIBILITY WAS DETERMINED/REDETERMINED USING FP BUDGETING (OTHER THAN CHRONIC CARE) - These cases must be discontinued after the district has verified

excess resources and after the district has provided the recipient with timely and adequate notice of the intended action, unless the recipient has incurred medical bills equal to or greater than the amount of the excess resources and is an FP applicant.

- 3) PREGNANT WOMEN AND INFANTS UNDER AGE ONE - Cases with pregnant women and infants under age one were mass rebudgeted as ineligible because the household is over the new resource level. However, social services districts are reminded that pregnant women and infants under age one are resource exempt. Therefore, cases should be reviewed to ensure that eligible pregnant women and infants under age one do not have their MA erroneously discontinued.
- 4) CHILDREN AGES ONE THROUGH FIVE - Cases with children who are at least one year of age but younger than six years of age whose family resources exceed the new levels were mass rebudgeted as ineligible. However, social services districts are reminded that these children are resource exempt if their income does not exceed 133 per cent of the federal poverty line. Therefore, these cases should be reviewed to ensure that eligible children do not have their MA erroneously discontinued.

3. Verification of Resources

Social services districts must verify the current resources of all affected undercare recipients prior to making a determination that the recipient's current resources exceed the new resource level. Districts should use the mass rebudgeting and principal provider update lists of recipients and resources sent to them, together with resource information currently available to the district, as a guide to determine who may be ineligible for MA as a result of this change. These lists should not be relied upon as the sole source of information for determining that excess resources exist.

- a. Chronic Care Cases - Districts must send a letter (Attachment B) to all affected chronic care recipients advising them of the implementation date of the new resource levels. This letter must be mailed at least 15 days before the implementation date. This letter contains a questionnaire on verification of resources. The recipient should complete and sign the

questionnaire, attach any necessary documentation, and mail the questionnaire back within 5 days after the implementation date. If the questionnaire is not returned, or if the answers to the questionnaire indicate that the recipient's resources exceed the new resource level on the implementation date, the district should send the recipient timely and adequate notice that the excess resources will be applied to the cost of care or that the case will be terminated. (See 89 ADM-21 and GIS Message 89MA006.)

- b. Community Cases - By December 31, 1991, social services districts must recertify all community cases identified on the mass rebudgeting list sent to districts on January 22, 1991. Districts must enclose a letter (Attachment C) with the recertification package explaining the new resource levels. Documentation of current resources must be requested from and provided by recipients.

After notifying the recipient of the change in the resource levels and verifying the amount of the recipient's current resources, the district must compare the amount of the recipient's available resources to the new resource level. If the amount of the recipient's available resources exceeds the new resource level, the district must follow the notice requirements below and take other necessary action to assure that the recipient is terminated from MA, unless the recipient has medical expenses equal to or greater than the amount of the excess resources and is an FP applicant.

4. Time Frames for Implementation

- a. New Cases - The changes in resource levels affect all MA applicants who apply on or after May 1, 1991 using FP budgeting. The new resource levels must not be applied for months prior to May 1991 in determining eligibility for the retroactive period.

- b. Undercare Cases

- 1) CHRONIC CARE CASES - The new resource level may not be applied before August 7, 1991. In addition, current resources must be verified and timely and adequate notice must be provided by the social services district to all affected recipients before any resources above the new resource level, or any increased NAMI as a result of these changes, is applied toward the cost of care. Districts are encouraged to take all necessary actions to implement the new resource

levels within 90 days of issuance of this Directive; in any event, such actions must be taken no later than December 1, 1991.

NOTE: Prior to commencement of litigation in Doe v Perales, the Department had sent a letter to nursing facilities requesting distribution of a notice to residents whose NAMI may have increased due to application of excess resources (see 91 LCM-40). This notice advised affected recipients that the difference between their reported resources and the \$3,000 resource exemption level would be collected by the nursing facility as part of their monthly contribution. The notice also advised the recipient that in the event that the recipient disagreed with the Department's estimation of the amount of excess resources, the recipient was to advise the nursing facility and the nursing facility would forward a request for a redetermination of resources to the responsible social services district.

The Department has instructed nursing facilities to refund any increased NAMI collected as a result of the new resource levels (see Attachment D). Refunds to affected recipients will be made by May 31, 1991. Social services districts must not consider these restored NAMI amounts as income in the month received or in the following month. As noted above, districts will be required to verify excess resources for these cases and provide timely and adequate notice before reduction or termination of MA as a result of the reduced resource level.

- 2) COMMUNITY CASES WHOSE ELIGIBILITY WAS DETERMINED/REDETERMINED USING FP BUDGETING (OTHER THAN CHRONIC CARE) - All community cases with resources in excess of \$3000 must be recertified by December 31, 1991. As part of the recertification, current resources must be verified and timely and adequate notice must be provided by the social services district to all affected recipients before any action is taken to reduce or discontinue MA. Any cases with verified resources above the new resource level must be closed, unless the recipient has incurred medical bills equal to or greater than the amount of the excess resources and is an FP applicant.

Social services districts must restore benefits to any persons whose MA coverage was terminated or

reduced prior to August 7, 1991, or who, with respect to an application made prior to May 1, 1991, were denied MA or were required to incur higher medical expenses (a higher spenddown) in order to receive MA, as a result of the new resource levels. The Department will provide districts with a district-specific listing of all community cases where MA eligibility was denied, terminated, or reduced due to excess resources during the applicable period. Where there are medical expenses which are incurred but are not yet paid, MA payment must be made to the Medicaid provider directly. Where the person has paid for the medical expenses or has used a provider who does not have an MA provider number the payment must be made to the person for the full cost of any services covered under the MA program without regard to any prior approval requirements. Social services districts have the option of either processing claims and issuing payments to providers and reimbursement to eligible individuals themselves, or having the Department process the claims and issue the required payments and reimbursement, in accordance with the New York State Fiscal Reference Manual for Local Social Services Districts (Volume I, Chapter 7, pages 29-33, and Volume II, Chapter 5, pages 16-21 and 65-66) and 89 ADM-21. These payments may be made by reducing the person's spenddown if it is anticipated that the entire corrective payment can be made through reduced spenddown within three months. As noted above, social services districts will be required to verify excess resources for these cases and provide timely and adequate notice before reduction or termination of MA as a result of the reduced resource level.

- c. Pended cases - The new resource levels must not be applied before May 1, 1991. Districts must use the old (higher) resource standards when determining eligibility during any month prior to May 1991. Districts must explain the burial fund/funeral agreement options to all applicants. Applicants with excess resources must be given 10 days to establish or add to a burial fund or funeral agreement. Applicants with excess resources and insufficient medical bills to offset excess resources must be denied MA.

B. Elimination of Certain Income Exemptions

1. Changes in Income Exemptions and Standards

Social services districts must not exempt federal, State and local income taxes, FICA, New York State Disability and court-ordered child and/or spousal support payments when determining MA income eligibility for FP A/Rs, including persons in chronic care who have earned income. FNP parents whose income is compared to the MA income standard no longer get these exemptions either. All other income exemptions/disregards not specifically addressed in this Directive continue to be allowed. (See Department regulations at 18 NYCRR Section 360-4.6(a) and pages 119-168 of the Medical Assistance Reference Guide (MARG).)

NOTE: SSI-related A/Rs continue to receive the \$65 mandatory earned income deduction, but it is now limited to \$65. SSI-related A/Rs are no longer eligible for actual amount above \$65. One-half of the remaining earned income continues to be deducted. All other disregards used in SSI-related and ADC-related budgeting methodologies not specifically addressed in this Directive continue to be allowed. (See Department regulations at 18 NYCRR Section 360-4.6(a) and pages 119 through 168 of the MARG.)

2. Pregnant Women and Infants

Social services districts must not discontinue the MA eligibility of pregnant women who were determined eligible prior to January 1, 1991 or infants under age one who are eligible as a result of their mother's eligibility. (See 85 ADM-33 on DEFRA.) There may be instances where a pregnant woman's stored budget shows her income to be over 185 per cent of the poverty line. This will result in the case being listed as ineligible when mass rebudgeted. However, continuous eligibility is guaranteed until the end of the month in which the 60th day postpartum occurs.

3. Court-Ordered Support Payments

Social services districts must continue to deduct court-ordered support in the following situations:

- a. when determining the amount of income to be deemed to:
 - 1) an SSI-related A/R from a non-SSI-related spouse living with the A/R; and
 - 2) an SSI-related child from a parent (of any category) living with the child;

NOTE: In the two situations above, deduct the amount of the support payments from the LRR's income before determining the amount of income to be deemed to the SSI-related A/R.

- b. when determining the otherwise available income (OAI) of a non-applying community spouse and family member in accordance with 89 ADM-47;
- c. when determining the OAI of a non-applying spouse living apart from an SSI-related A/R for the purpose of calculating the requested contribution; and
- d. when determining the eligibility of an institutionalized spouse, and the amount of income to be applied to the cost of care, the amount of any court-ordered support for the community spouse is an allowable deduction. The community spouse monthly income allowance must not be less than the amount of the court-ordered support for the community spouse in accordance with 90 ADM-36.

These are the only instances in which court-ordered support payments are allowable income exemptions. With the exception of these specified instances, the MA worker must not allow these eliminated income exemptions in determining the available income of an LRR or the OAI of a community spouse and family member.

NOTE: In chronic care cases involving an institutionalized spouse, continue to enter the amount of the court-ordered support payment from the institutionalized spouse to the community spouse in excess of the calculated community spouse income allowance on MBL as Additional Allowance Code 19.

C. Household Size for SSI-Related Applicants/Recipients

Social services districts must use the following guidelines to determine the household size for SSI-related A/Rs:

1. Resources

- a. Household size for an SSI-related A/R, using SSI-related budgeting methodology, will always be a household of one if the SSI-related A/R is a child, an unmarried adult, or a married adult who does not reside with his/her spouse. (Minor children are not counted in parents' household size.)
- b. Household size for a married SSI-related A/R, who resides with his/her spouse, will be a household of

two. A household of two will be used for resources in all instances, including when the spouse: receives cash assistance; is not applying for MA; or has income too low to be deemed to the SSI-related A/R. (Minor children are not counted in parents' household size.)

2. Income

- a. When a household consists of an SSI-related couple (neither of whom receives a PA grant or SSI cash), with or without children, the household size for the SSI-related couple is two.
- b. When a household (with or without children), consists of an SSI-related spouse and a non-SSI-related spouse whose income is equal to or more than the allocation amount after allocating to any child(ren) under the age of 18 years, income is deemed and the household size is two for the SSI-related spouse. (The allocation amount is the difference between the MA level for two and the MA level for one and is \$217, effective January 1, 1991.)

If a non-SSI-related spouse's income is below the allocation amount after allocation to any child(ren) under the age of 18 years, the non-SSI-related spouse's income is not deemed to the SSI-related spouse, and that spouse is not counted in the MA income household size for the SSI-related spouse. In such instances, the SSI-related applicant's household size is one. However, to determine resource eligibility, a household of two is used. An example of such a case is detailed in Attachments E and F of this Directive.

- c. For all other SSI-related adults or children, the household size is one.

3. Related Issues

- a. If a certified blind/disabled woman is also pregnant, the household size for income and resources is no longer increased by one when determining eligibility under the SSI-related budgeting methodology. Therefore, the ADC budgeting methodology will generally be more beneficial to a pregnant woman.
- b. In accordance with 89 ADM-47, "Treatment of Income and Resources for Institutionalized Spouses/Individuals and Legally Responsible Relatives", when determining the household size and appropriate exemption level for an A/R in cases where an LRR refuses to support or provide necessary information, the non-contributing LRR is not included as a member of the A/R's household.

- c. If an LRR in the household receives cash assistance, the cash grant and any other income of the LRR are not deemed to the SSI-related A/R. However, as of the effective date of this ADM, countable resources of the LRR are considered when determining the amount of resources available to the SSI-related A/R. If the LRR is a spouse, the household size for the SSI-related A/R is one for income and two for resources. If the SSI-related A/R is a child, the household size for the child is one for both income and resources.
- d. SSI-related A/Rs must be offered a choice between the SSI and ADC budgeting methodologies, if the A/Rs meet the categorical requirements for ADC. It may be more advantageous if there are children or a pregnant woman in the household to use the ADC methodology, which allows the income and resources to be compared to a larger household size.
- e. Persons in the community who are institutionalized spouses because they are receiving home and community based waived services will have their income and resource eligibility determined in accordance with 89 ADM-47 and 90 ADM-36. However, the A/R is subject to the reduced resource exemption standard. In addition, the institutionalized spouse, the community spouse and family member are no longer allowed income exemptions for income taxes, FICA, and New York State Disability.

D. Notice Requirements

Clients will have Fair Hearing rights with aid continuing benefits.

1. Chronic Care Cases - Social services districts must provide timely and adequate notice to all chronic care recipients whose liability (NAMI) changes as the result of the new resource level described in Section IV.A., including cases in which the Department arranged for notice to be given prior to the issuance of this Directive. As indicated above, the new resource level may not be applied until timely and adequate notice has been given, and in no event prior to August 7, 1991. When there is a change in liability due to excess resources, the first box of the DSS-4021 (contained in 89 ADM-21) for single individuals and the DSS-4021 (as modified in 90 ADM-35) for institutionalized spouses must be checked. The suggested language for the change is:

The excess resources: Your resources, as reported to us, equal \$_____. As of _____ 1, 1991 (the effective date of the timely and adequate notice for this client) the Medical Assistance resource

exemption is \$3000. Your excess resources equal \$_____. Any excess resources must be contributed to the cost of care during the month, or used to set up or add to an exempt burial fund, subject to allowable limits, or to purchase exempt burial space items.

NOTE: Timely and adequate notice must be given for any NAMI increase due to the elimination of income exemptions. The Department has instructed nursing facilities to refund by May 31, 1991 any February 1991 NAMI increase resulting from the elimination of income exemptions for chronic care cases. If timely and adequate notice was not given to a recipient for the month of March or subsequent months, the district must prospectively adjust the recipient's NAMI until timely and adequate notice is given. The Department will provide districts with a district-specific listing of all active chronic care cases during the period of January 1, 1991 through March 23, 1991 which had earned income. Social services districts must not consider these restored NAMI amounts as income in the month received or in the following month.

In chronic care situations, when it is a single individual and there is a change in MA liability, a copy of the revised MBL budget and the DSS-4021 "Notice of Intent to Change the Contribution Toward Chronic Care Costs" must be provided.

When there is an institutionalized spouse and there is a change in MA liability, an updated "Institutionalized Spouse Budget Worksheet" detailing the current excess income information, and, if appropriate, the "Notice to Spouse (Undercare)" must also be provided. When the change involves an increase or decrease in the community spouse monthly income allowance or family member allowance, the community spouse must be sent a copy of the updated budget worksheet, the modified DSS-4021 and a copy of the revised MBL budget. The modified DSS-4021 and a copy of the revised MBL budget must be provided if there is a change in MA liability for an institutionalized spouse due to excess resources.

2. Community Cases (Other Than Chronic Care) - Social services districts must adhere to the requirements of 89 ADM-21 when notifying A/Rs in the community affected by these changes.

This includes sending timely and adequate notice to A/Rs when rebudgeting under the new income and resource exemption standards results in a change in an MA spenddown liability or ineligibility.

In accordance with GIS Message 89MA006, A/Rs should be notified they will be ineligible for MA until they incur

medical expenses equal to or greater than their excess resources.

E. Reporting Requirements

1. As soon as practicable after receipt of this Directive, each social services district must provide to the Department a list specifying all persons in the community who were denied MA, whose MA coverage was reduced, or whose application was pended as the result of the new resource level described in Section IV.A prior to the district's implementation of the procedures set forth in this Directive.
2. By January 31, 1992 each social services district must submit a report to the Department indicating the number of persons on the list described in Section IV.E.1 of this paragraph who received corrective payments, with the exception of persons for whom the Department processed claims for corrective payments in accordance with the New York State Fiscal Reference Manual for Local Social Services Districts (Volume I, Chapter 7, pages 29-33, and Volume II, Chapter 5, pages 16-21 and 65-66) and 89 ADM-21. If all the persons on the list did not receive corrective payments, the report must show the reasons why no correction was made and the number of persons for each reason.
3. As indicated in Section IV.A.4. of this Directive, the Department has instructed nursing facilities to refund any increased NAMI collected as a result of the new resource levels by May 31, 1991. In addition, the Department has instructed nursing facilities to provide to the appropriate social services district a list of any affected nursing home residents who did not receive such refunds and the reasons why. Social services districts must forward copies of these lists to the Department by January 31, 1992.

The lists/reports described in paragraphs E.1. through E.3. should be sent to:

Ruth A. Bongiovanni
Director, MA Eligibility Policy
New York State Department of
Social Services
40 North Pearl Street
Albany, New York 12243

V. SYSTEMS IMPLICATIONS

MBL (NYC and Upstate)

The income exemption policy changes, as outlined in this Administrative Directive, were supported on MBL on January 22, 1991

for budgets with Effective Dates of 01/01/91 or later. Information pertaining to these changes may be found in MBL Transmittal 91-2.

MBL has been programmed as of June 10, 1991 to support the new MA resource levels for budgets with Effective Dates of either 05/01/91 (new applications) or 07/01/91 (undercare/recertifications). Information pertaining to this change may be found in MBL Transmittal 91-3.

VI. EFFECTIVE DATE

The provisions of this Directive are effective upon receipt, and retroactive to January 1, 1991, the effective date of Chapter 938, except that the provisions relating to the new resource exemption standards are effective August 7, 1991 for all recipients who were receiving MA on or after January 1, 1991, and are effective May 1, 1991 for new applications received on or after that date.

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

Listing of All Attachments

- Attachment A Listing of All Attachments to this Directive (available on-line)
- Attachment B Initial Inquiry Letter - Chronic Care Recipients (available on-line)
- Attachment C Initial Inquiry Letter - Community Cases (available on-line)
- Attachment D April 30, 1991 Letter to Nursing Facilities (available on-line)
- Attachment E Example of Household Size for SSI-Related A/R Living with Non-SSI-Related Spouse and Minor Child (available on-line)
- Attachment F DSS-3457 (Rev. 8/88) Budget Worksheet - Medical Assistance Monthly Deeming Worksheet (Spouse to Spouse) (not available on-line)

LETTER FOR CHRONIC CARE RECIPIENTS

Dear _____:

The resources you are allowed to have and still be eligible for Medical Assistance will change effective August 7, 1991. Until _____ (the effective date of implementation, which shall be at least 15 days after the date of this letter) you are allowed to have \$3350 in resources. The new resource level is \$3000 effective August 7, 1991. The change in the resource level is because of a change in State law.

Our records show that you have \$_____ in resources. If you still have this amount on _____, you will be over the allowable resource level by \$_____.

If you have more than \$3000 in resources on _____, 1991, you will be required to spend the amount of resources that are over this limit in order to remain eligible for Medical Assistance. You may choose to use some or all of this money to add to or establish a burial fund/or purchase exempt burial space items for you and your spouse. There are some restrictions and options available to you in setting up a burial fund. To be sure you do this properly, you may want to discuss this with your worker. Be advised that if you continue to have more than \$3,000 in resources, the amount over the allowable resource level will be applied toward your cost of care.

In order for us to determine if you owe any money toward your cost of medical care, we need to know the amount of resources. Complete the questionnaire section at the end of this letter and return it to us by _____. Also, please send documentation (proof) of the amount of your resources, including any resources set aside separately in a burial fund.

If we do not receive this information by _____, we will assume that our information about the amount of resources you have is correct.

VERIFICATION OF RESOURCES

Re: (Recipient's name)

Department of Social Services' records show that you have \$_____ in resources. Is this the amount of resources you have?

Yes _____ No _____

If not, please list the amount of resources you now have.

Recipient's Signature Date

ATTACH PROOF OF RESOURCES

LETTER FOR COMMUNITY CASES

Dear _____:

The resources you are allowed to have and still be eligible for Medical Assistance changed effective August 7, 1991. Until _____ 1991 (the effective date of your recertification for MA), you are allowed to have \$_____ in resources for your household size. The new resource level for your household size is \$_____. The change in the resource level is because of a change in State law.

Our records show that you have \$_____ in resources. If you still have this amount on _____, you will be over the allowable resource level by \$_____.

You do not have to spend the resources you have which are over the new resource level before _____ on medical bills. One of the things you may choose to use this money for is to add to or establish a burial fund or funeral agreement up to the maximum allowed. The attachment to this letter explains burial funds and funeral agreements. However, since there are some restrictions and options available to you in setting up a burial fund/funeral agreement, to be sure you do this properly, you may wish to discuss this with your worker.

If you do nothing with your excess resources, you may obtain MA eligibility when your medical expenses are equal to or greater than your excess resources.

BURIAL FUNDS/FUNERAL AGREEMENTS

The Medical Assistance (MA) eligibility resource exemption standards were reduced effective August 7, 1991. If your resources are now greater than the allowable resource standard as the result of the resource standards being reduced, you may still be fully eligible for MA under the following circumstances:

- [] (Names of Individuals) is/are in the Aid to Dependent Children (ADC)-related category for the purposes of determining MA eligibility. ADC-related applicants/recipients are allowed to have a funeral agreement with a maximum initial value of \$1500 per person. If you do not already have a funeral arrangement up to the maximum value you may obtain one for each of the above-listed individuals to reduce the excess resource amount. You may also purchase burial space items.

Your MA coverage will be discontinued at the end of this 10 day notice period if you have remaining excess resources.

- [] (Names of Individuals) is/are in the Supplemental Security Income (SSI)-related category for the purposes of determining MA eligibility. SSI-related applicants/recipients are allowed to have a \$1500 burial fund for themselves and also a \$1500 burial fund for their spouse (regardless of the spouse's category). The burial fund must have a maximum initial value of \$1500 per person. If you do not already have a burial fund up to the maximum value, you may add to or set aside separate burial funds for yourself and your spouse to reduce the excess resource amount. You may also purchase burial space items.

Your MA Coverage will be discontinued at the end of this 10 day notice period if you have remaining excess resources.

If you also have life insurance that has a cash value, call your worker before setting up a burial fund to discuss how much can be set aside from your excess resources toward the burial fund.

April 30, 1991

Re: Medical Assistance (Medicaid) Change in the Resource Levels Court Order

Dear Nursing Home Administrator:

By letter dated March 5, 1991 you were advised, in accordance with the March 1, 1991 court order in the case of Doe v. Perales, to "cease immediately any and all actions to bill for or collect monetary contributions" from nursing home residents whose Net Available Monthly Income (NAMI) increased for the month of February 1991 due to the reduction of the Medicaid resource level to \$3,000. In response to queries regarding reimbursement to nursing homes for such uncollected NAMI increases, further information and instructions are provided below.

As part of the ongoing efforts to negotiate a settlement in the case of Doe v. Perales, the Department has agreed to instruct nursing home providers to refund to nursing home residents the increased NAMI paid for the month of February because their resources were over the \$3,000 limit and/or their available income increased due to the elimination of certain income disregards. In order to identify the affected population, you must compare your facility's roster for the month of February 1991 to the January 1991 roster. For any resident whose NAMI for February was greater than the NAMI for January, you must make a refund equal to the difference between the respective NAMIs if the February increased NAMI amount was paid.

In order to receive Medicaid reimbursement for these refunds and for any uncollected February NAMI increases, your facility must submit one bill in letter format individually listing:

- o each affected Medicaid resident;
- o the amount of the refunded payment or the uncollected NAMI increase;
- o the date any such refund was made; and
- o the corresponding reimbursement amount claimed.

The total reimbursement amount claimed must also be included. The letter must be signed by the administrator or authorized representative of the nursing home, and the corresponding MMIS remittance statement(s) for the month of February must be enclosed with the letter and sent to:

Thomas Grestini
New York State Department
of Social Services
13th Floor, Section D
40 North Pearl Street
Albany, NY 12243

Only one submission for reimbursement of the refunded payment amounts or any uncollected NAMI increases will be processed for each nursing home. Any questions regarding the submission of this claim for reimbursement should be directed to Thomas Grestini at (800) 342-3715, extension 3-5892 or (518) 473-5892.

In order to ensure prompt reimbursement you should make the required refunds to the affected Medicaid nursing home residents and submit the remittance information as soon as possible. In any event, refunds to affected residents must be made by May 31, 1991.

Finally, you must provide a list to the appropriate social services district of any affected Medicaid nursing home resident who did not receive such corrective payment. This list must also specify for each individual the reason why a refund was not made. The list of any affected New York City Medicaid recipients should be sent to:

Mary Harper, Acting Director
Division of Institutional Services
Medical Assistance Program
330 West 34 Street, 6th floor
New York, NY 10001

Thank you for your continued assistance and cooperation.

Sincerely,

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