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 | INFORMATIONAL LETTER |
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TRANSMITTAL: 91 INF-24

TO: Commissioners of
 Social Services

DIVISION: Medical
 Assistance

DATE: April 26, 1991

SUBJECT: Reduction of Certain Institutionalized Veterans'
 Pension Benefits

SUGGESTED
 DISTRIBUTION: Medical Assistance staff

CONTACT PERSON: MA Eligibility County Representative at 1-800-342-
 3715, extension 3-7581 or New York City Representative
 at (212) 417-4853.

ATTACHMENTS: List of New York State Division of Veterans' Affairs
 Counselors (not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
88 ADM-10		360-4.9	SSL 366.2	MARG pgs	
87 ADM-36			(a)(10) 38 USC 3203F P.L. 101- 508	83-86, 343	

The purpose of this Informational Letter is to advise social services districts of a Veterans' Administration (VA) pension benefit change which affects the Medical Assistance (MA) Program. Section 8003 of the Omnibus Reconciliation Act of 1990 (OBRA 1990 P.L. 101-508) provides for a reduction in pension for certain unmarried veterans receiving Medicaid-covered nursing home care. The new provision provides, "if a veteran having neither spouse nor child is covered by a Medicaid plan for services furnished such a veteran by a nursing facility, no pension in excess of \$90 per month shall be paid to or for the veteran for any period after the month of admission to such nursing facility." This provision was effective November 5, 1990 and will sunset in September 1992 unless federal legislation extends the provision.

The OBRA 1990 reduction in VA pension benefits will have a fiscal impact on the MA program since MA will assume nursing home costs that were previously paid for by VA pension benefits. The term nursing facility as defined in section 1919 of the Social Security Act includes Article 28 residential health care facilities and intermediate care facilities operated or licensed by the Office of Mental Retardation and Development Disabilities. The New York State Division of Veterans' Affairs estimates there are approximately 2,000 affected veterans in nursing facilities covered by Medicaid in New York State.

OBRA 1990 was enacted November 5, 1990, but implementation of the reduction has been postponed due to the VA's delay in identifying and notifying the affected veterans. In order for a veteran's pension to be reduced, the veteran must first be given 60 days notice by the VA. Therefore, an exact implementation date cannot be given until the notices are sent out. The Veterans' Administration is projecting July 1, 1991 as an implementation date since most notices went out in April. If a hearing is requested regarding the reduction of the pension amount, continuance of the current pension amount, pending the outcome of the appeal, may be realized.

This OBRA 1990 provision affects persons receiving improved pensions. It does not affect veterans receiving service-connected disability benefits. Therefore, local VA counselors will, when applicable, review case records to determine if veterans who are in receipt of reduced pension benefits were at some time receiving service-connected compensation benefits. If so, these veterans may subsequently be awarded compensation benefits, which are not subject to the OBRA 1990 pension reduction. Since only improved pension benefits are affected by the reductions, VA counselors will not automatically convert eligible veterans to the improved pension plan. The pension reduction does not currently apply to institutionalized widowed spouses of deceased veterans who receive veterans' dependents benefits.

The OBRA 1990 provision also provides that the MA Program may not reduce its payment to a nursing facility by the amount of the veteran's reduced pension. Currently, when a veteran in a Medicaid covered nursing home receives a monthly pension, the veteran retains \$50 as the personal needs allowance (PNA). After appropriate deductions, the veteran's Net Available Monthly Income (NAMI) is then applied towards the cost of care while in the facility. The Health Care Financing Administration (HCFA) has advised that this reduced pension amount, not to exceed \$90, will become the veteran's PNA and no portion of it may be used as a contribution towards the cost of care. However, if the veteran has other income other than the VA pension, the veteran will not be entitled to another or additional PNA. Instead, after appropriate deductions, any remaining income will be used towards the cost of care.

The Department's legislative proposals include a provision for the amendment of Social Services Law (SSL) 366 (2)(a)(10) to establish a separate PNA for veterans who have neither spouse nor child and who receive this reduced pension. The PNA would be equal to the reduced monthly pension amount. Until this proposed amendment is enacted, veterans residing in nursing homes will continue to retain \$50 as the PNA. Upon enactment of this proposed amendment, a GIS message to social services district will be issued with further instructions.

Please contact your local New York State Division of Veterans' Affairs if you need additional information on specific case circumstances. A listing of these offices is attached.

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