

OMM/ADM 97-3

96 ADM-11

91 ADM-33

91 ADM-27

90 ADM-29

89 ADM-47

92 INF-14

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MA/027

MBL

Transmittal

00-3

I. PURPOSE

This Administrative Directive (OMM/ADM) advises social services districts of the January, 2001 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.

This OMM/ADM also advises social services districts of a change to the Department's "income first" policy that is used to determine if a community spouse is entitled to an increase in the community spouse resource allowance.

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 \$84,120 in 2000. Effective January 1, 2001, the maximum community spouse resource allowance is \$87,000.

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 \$2,103 in 2000. Effective January 1, 2001, the MMMNA is \$2,175.

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 must be deducted for each family member living with the community spouse. A family member allowance is established for a minor child, a 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 (poverty line) for a family of two exceeds the otherwise available monthly income of the family member. The maximum family member allowance (that is, where the family member's otherwise available income is zero) was \$469. As a result of a change in the poverty line, effective January 1, 2001, the maximum family member allowance is \$484.

D. Treatment of Institutionalized Spouses' Social Security Benefits and Requests for Additional Resource Allowances

Under the Department's spousal impoverishment rules, if the amount of monthly income otherwise available to a community spouse is less than the MMMNA, \$2,175 effective 1/1/01, the institutionalized spouse may transfer income to the community spouse to bring the community spouse's income up to the MMMNA. If the institutionalized spouse's income is insufficient to bring the community spouse's income up to the MMMNA, an increased community spouse resource allowance may be established to generate income to bring the community spouse's income up to the MMMNA **pursuant to a fair hearing or court order.**

In determining whether a community spouse is entitled to an increased community spouse resource allowance, the income which the nursing home spouse is allowed to transfer to the community spouse is first attributed as available to the community spouse.

Due to an adverse U.S. Court of Appeals decision in Robbins v. DeBuono, an institutionalized spouse's Social Security income can no longer be attributed to the community spouse unless the institutionalized spouse intends to make this income available to the community spouse.

If an institutionalized spouse does not make his or her Social Security income available to the community spouse, an increased

community spouse resource allowance may be established pursuant to a fair hearing or court order to bring the community spouse's income up to the MMMNA. Any of the institutionalized spouse's income that is not being made available to the community spouse is considered to be available for the cost of care.

III. PROGRAM IMPLICATIONS

A. Maximum Community Spouse Resource Allowance

As advised in 96 ADM-11, the spousal share is an amount equal to one-half of the total value of the couple's countable resources as of the date of the first continuous period of institutionalization of the institutionalized spouse on or after September 30, 1989.

Effective January 1, 2001, the minimum community spouse resource allowance is \$74,820 and the maximum community spouse resource allowance is \$87,000. 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 \$87,000. 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.

NOTE: When the first month 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 first month 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.

It is estimated that although the increase in the maximum community spouse resource allowance will result in more spouses becoming eligible for Medicaid coverage for institutional care and services, the required use of the spousal share figure will reduce the number of cases that are entitled to the maximum community spouse resource amount.

B. Minimum Monthly Maintenance Needs Allowance

Effective January 1, 2001, the MMMNA is \$2,175. Institutionalized spouses must be allowed, on a monthly basis, to transfer sufficient income to bring the community spouse's monthly income up to \$2,175. 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). The increase in the MMMNA may result in more institutionalized spouses becoming eligible for Medicaid coverage for institutional care and services.

It should be noted that SSL Section 366-c(8) continues to provide for a higher community spouse income allowance based on exceptional circumstances resulting in significant financial distress. As advised in 89 ADM-47, such expenses may be of a recurring nature or may represent 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. An increase of the community spouse monthly income allowance must be established by a fair hearing or court order.

C. Family Member Allowance

Effective January 1, 2001, the family member allowance will be calculated by subtracting the amount of the family member's otherwise available income from \$1,452, 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:

$$\frac{\$1,452}{3} = \$484$$

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 which may be requested as a contribution from a spouse living apart from an SSI-related A/R.

D. Treatment of Institutionalized Spouses' Social Security Benefits and Requests for Additional Resource Allowances

As advised in General Information System message GIS 00 MA/027, dated November 14, 2000, social services districts can no longer attribute an institutionalized spouse's Social Security income to

the community spouse unless the institutionalized spouse

intends to make this income available to the community spouse. Generally, the reason for not making Social Security income available will be to permit the community spouse to retain additional resources.

In determining whether a community spouse is entitled to an increased community spouse resource allowance, the Social Security income, which the institutionalized spouse is not making available to the community spouse, is not considered available to the community spouse. If the community spouse's income is less than the MMMNA, the community spouse will be entitled to an increased community spouse resource allowance to generate income to bring the community spouse's income up to the MMMNA pursuant to a fair hearing or court order. The amount of the institutionalized spouse's income that is not being made available to the community spouse will be considered available for the cost of care. Fair hearing staff will utilize this new policy when reviewing cases requesting a higher community spouse resource allowance.

IV. REQUIRED ACTION

A. Maximum Community Spouse Resource Allowance

For new cases with budgeting periods beginning January 1, 2001 and after, social services districts must use the minimum community spouse resource allowance of \$74,820 and the maximum community spouse resource allowance of \$87,000 to determine the amount of resources that a community spouse is allowed to retain. In applying these two figures to the community spouse resource allowance formula, the applicable allowance is to be determined by taking the greatest of the following amounts:

1. \$74,820;
2. the amount of the spousal share, but not to exceed \$87,000;
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 month of the first 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. The Medicaid eligibility worker needs to be advised of any previous period of institutionalization and whether the couple had more than \$149,640 in countable resources. This information will determine whether the spousal share figure is to be a factor in determining the maximum community spouse resource allowance.

If an individual claims to have had resources in excess of \$149,640 in the first month of the first continuous period of institutionalization, documentation/verification of the couple's resources for the first month of institutionalization must be obtained. If the first month of institutionalization is within the transfer look-back period, most of the required information will be obtained through the regular resource review process. It is possible, however, that the first month of institutionalization may be outside of the transfer look-back period, in which case, additional resource information must be obtained.

In addition, if the first period of institutionalization is other than the current period of institutionalization and the institutionalized spouse or community spouse claims to have had resources in excess of \$149,640 at the time of the first institutionalization (of the institutionalized spouse), verification must be provided to document the previous institutionalization.

Note: If an institutionalized spouse or community spouse fails to provide documentation/verification of resources for the first month 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 for the first month 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 first month of institutionalization.

Once documentation is received and the spousal share determined, the spousal share is compared to \$87,000. If the spousal share is less than or equal to \$87,000, the maximum community spouse resource allowance is the amount of the spousal share. If the amount of the spousal share exceeds \$87,000, the maximum community spouse resource allowance is capped at \$87,000. As instructed in 96 ADM-11, social services districts must use the new 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 month of the first continuous period of institutionalization, the community spouse

must be permitted to retain up to \$74,820 of the couple's total countable resources.

Note: When determining an institutionalized spouse's eligibility for any month beginning January 1, 2001 or after (even if the individual was institutionalized prior to January 1, 2001), social services districts must use the minimum community spouse resource allowance of \$74,820 and the maximum community spouse resource allowance of \$87,000 to determine the amount of resources that a community spouse is allowed to retain. Eligibility is determined based on the resource allowances in effect for the earliest month coverage is sought. For example, if an applicant had been institutionalized since February, 2000 and requested coverage for Medicaid in March, 2001, the spousal impoverishment rates in effect for March, 2001 would be used to determine Medicaid eligibility. If this applicant requested coverage retroactive to December, 2000, the resource allowances in effect for the year 2000 would be used.

B. Minimum Monthly Maintenance Needs Allowance

Effective January 1, 2001, social services districts must use the increased MMMNA amount of \$2,175 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, 2001 must have eligibility recomputed based on the new figure of \$2,175. 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, 2001.

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, 2001, the family member allowance will be calculated by subtracting the amount of the family member's otherwise available income from \$1,452, dividing the result by three, and rounding up to the nearest dollar. The maximum family member allowance is \$484.

All spousal impoverishment cases involving a family member which are active on or after January 1, 2001, must be recomputed using the appropriate family member allowance formula. Any increase in the family member allowance, or change in the NAMI of the

institutionalized spouse as a result of any increase in the family member allowance, is to be made effective January 1, 2001.

Effective January 1, 2001, the higher family member allowance also 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 be used when completing an assessment of a couple's resources and income.

D. Treatment of Institutionalized Spouses' Social Security Benefits and Requests for Additional Resource Allowances

Effective immediately, unless an institutionalized spouse voluntarily agrees to make his or her Social Security income available to the community spouse, social services districts cannot include the income in computing the amount of the community spouse's monthly income allowance. If an institutionalized spouse voluntarily agrees to make a portion of his or her Social Security income available to the community spouse, the amount that is made available shall be considered in determining the amount of the community spouse's monthly income allowance.

If the institutionalized spouse, or individual applying on behalf of the institutionalized individual, does not agree to make the institutionalized spouse's Social Security income available to the community spouse, either in whole or in part, a note should be entered in the case record indicating the amount that is not being made available. The Social Security income that is not being made available to the community spouse must be budgeted as available for the cost of care.

If the A/R is incapable of stating his or her intent concerning the treatment of his/her Social Security income and no past statement of intent exists, the A/R's authorized representative, power of attorney, or guardian may state the A/R's intent. Authorized representative means the individual the A/R designates to represent him or her in the application process.

Fair hearing staff will utilize only income that is part of the otherwise available income of the community spouse and the community spouse's monthly income allowance when reviewing cases requesting a higher community spouse resource allowance.

Any time after a determination of eligibility, the institutionalized spouse can change his or her intent to make Social Security income available to the community spouse. If the community spouse's otherwise available income and the community spouse income allowance are below the MMMNA, the institutionalized spouse's Social Security income, or a portion thereof, can be added to the community spouse's income allowance to bring the

community spouse's income up to the MMMNA. The month during which such a change of intent is expressed to the social services district is the month in which Social Security income can be considered available for the community spouse income allowance.

Note: If subsequent to receiving an increased community spouse resource allowance, the community spouse takes an action with respect to his or her resources designed to decrease the income received by the community spouse from such resources, the community spouse will not be entitled to an increased portion of the institutionalized spouse's Social Security income. In such cases, the community spouse's otherwise available income will continue to include the income that was generated from the higher community spouse resource allowance.

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"; and
 - d. 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 attachment to the "Information Notice to Couples with an Institutionalized Spouse" has been updated to reflect the year 2001 increases (Attachment I). Social services districts must make available the "Information Notice to Couples with an Institutionalized Spouse," contained in 96 ADM-11, along with the revised attachment, 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 November 27, 2000 upstate and December 11, 2000 in New York City, MBL has supported \$2,175 as the MMMNA when a budget effective From Date of 01/01/01 or later has been entered. The amount of court ordered support in excess of \$2,175 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.

If an institutionalized spouse does not make his or her Social Security income, or portion thereof, available to the community spouse and the community spouse's income is less than the MMMNA, the social services district should not include the amount of Social Security income that is not being made available to the community spouse in the MBL budget (Budget Types 08, 09 and 10). The Social Security income is, however, considered to be available for the cost of care and should be entered with any other NAMI amount on the Principal Provider Subsystem (minus any appropriate disregards, not subtracted from any other income of the institutionalized spouse, i.e., health insurance or personal needs allowance). To ensure that these cases do not get Mass Rebudgeted and an incorrect NAMI updated on the Principal Provider subsystem, districts should use a 12/31 "To Date."

Note: Buy-in eligibility for these cases should be done off line.

VI. **EFFECTIVE DATE**

The spousal impoverishment allowance increases are effective August 1, 2001, retroactive to January 1, 2001. The change in the treatment of an institutionalized spouse's Social Security income is effective August 1, 2001, retroactive to November 1, 2000, which is the first day of the month in which GIS 00 MA/027 was issued.

Kathryn Kuhmerker, Deputy Commissioner
Office of Medicaid Management

SPOUSAL IMPOVERISHMENT INCOME AND RESOURCE AMOUNTS

Federal Maximum Community Spouse Resource Allowance

\$87,000 - January 1, 2001

\$84,120 - January 1, 2000

Note: A higher amount may be established by court order or fair hearing to generate income to raise the community spouse's monthly income up to the maximum allowance.

Note: The State Minimum Community Spouse Resource Allowance is \$74,820

Community Spouse Minimum Monthly Maintenance Needs Allowance is an amount up to:

\$2,175 - January 1, 2001

\$2,103 - January 1, 2000

Note: A higher amount may be established by court order or fair hearing due to exceptional circumstances which result in significant financial distress.

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

484 - January 1, 2001

\$469 - January 1, 2000

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

If the institutionalized spouse is receiving Medicaid, any change in income of the institutionalized spouse, the community spouse and/or the family member may affect the community spouse income allowance and/or the family member allowance. Therefore, the social services district should promptly be notified of any income changes.