

TO: Local District Commissioners, Medicaid Directors

FROM: Betty Rice, Director
Division of Consumer and Local District Relations

SUBJECT: Personal Needs Allowance Change for "Institutionalized Spouses" Who Reside in the Community

EFFECTIVE DATE: Immediately

CONTACT PERSON: Bureau of Local District Support:
Upstate 518-474-9130 NYC 212-268-6855

This message is to advise you of an adverse decision from the Appellate Division, Fourth Department in the Evans v. Wing and DeBuono class action. The Evans litigation involved the amount of the personal needs allowance (PNA) budgeted, under spousal impoverishment budgeting, for persons who receive home and community-based services. These persons, referred to as waiver recipients, meet the definition of "institutionalized spouse" for spousal impoverishment budgeting purposes, but unlike institutionalized spouses who reside in nursing homes or other medical institutions, waiver recipients are able to reside at home by virtue of their receipt of these home and community-based services.

The Appellate Division affirmed an Erie County Supreme Court decision holding that budgeting waiver recipients with the same \$50 PNA that nursing home residents receive is unreasonable and violates the federal Medicaid statute. However, unlike the lower court, which ordered the Department to reinstate a former policy of budgeting waiver recipients with a monthly PNA equal to the Medicaid income level for a household of one, the Appellate Division remanded the matter to the Department for the establishment of a PNA for waiver recipients which is reasonable to meet their maintenance needs in the community.

Effective retroactive to August 1, 1996, the PNA the Department is establishing for waiver recipients is the difference between the Medicaid income level for one-person and two-person households (1996 PNA, \$250; 1997 PNA, \$259; 1998 PNA, \$266; 1999 PNA, \$267; and 2000/2001 PNA, \$275). This is the same amount that is used under the community eligibility rules when a household of one increases to a household of two. If a waiver recipient is living apart from his or her spouse, the waiver recipient has the option to have eligibility determined under the community budgeting rules which provide the waiver recipient with an income standard equal to the Medicaid income level for a household of one.

Since non-institutionalized participants in the Program of All-inclusive Care for the Elderly (PACE) also meet the definition of "institutionalized spouse" and reside at home, their cases also will be budgeted using the higher PNA.

Effective immediately for new applications and recertifications involving a waiver/non-institutionalized PACE participant who is subject to spousal impoverishment budgeting, social services districts must deduct a PNA equal to \$275 in determining the Medicaid eligibility of the waiver/non-institutionalized PACE participant. For MBL budgets with an effective From Date of 1/1/00 or greater, system support will be available effective July 9, 2001. The use of PNA Code 3 (currently defined as MA Level), with Budget Type 08, 09 or 10, will generate the correct PNA amount (\$275 for 2000/2001).

Since a higher PNA amount is effective retroactive to August 1, 1996, retroactive reviews will be required for purposes of providing reimbursement to certain class members. Information concerning the identification of class members will be issued separately. If, however, at recertification, a district becomes aware of a case that had been budgeted with a \$50 PNA during any part of the applicable time period, the district should review the case for possible reimbursement. A waiver/non-institutionalized PACE participant who paid or incurred medical bills, which the Medicaid program would have covered if he/she had been budgeted with a PNA equal to the difference between the Medicaid income level for one-person and two-person households, is entitled to reimbursement/payment for verified paid/unpaid medical bills.

Questions concerning this message should be directed to the Medicaid Bureau of Local District Support.