

DSS-4357EL

WGIUPD

GENERAL INFORMATION SYSTEM

11/20/01

DIVISION: Office of Medicaid Management

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TO: Local Commissioners, Medicaid Directors

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

SUBJECT: Evans v. Wing and DeBuono et al.

EFFECTIVE DATE: Immediately

CONTACT PERSON: Bureau of Local District Support:
Upstate (518) 474-8216 NYC (212) 268-6855

This message is to clarify the retroactive relief that is required pursuant to the Evans litigation and to ask districts if they want the State to mail the required notices concerning possible reimbursement.

In accordance with the above referenced case, districts were instructed to rebudget waiver recipients with a personal needs allowance (PNA) equal to the difference between the Medicaid income eligibility level for one-person and two-person households. However, retroactive relief is limited to institutionalized spouses who received home and community-based waiver services under the Long Term Home Health Care Program (LTHHCP). The higher PNA for LTHHCP participants is retroactive to September 1, 1996.

As advised on GIS 98 MA/026, the Department previously identified LTHHCP participants who received services during the period from January 1, 1995 through August 31, 1996. The class members were rebudgeted with a PNA equal to the Medicaid income level for a household of one. Effective September 1, 1996, districts are to rebudget class members with a PNA equal to 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).

LTHHCP participants who were budgeted with a \$50 PNA during any part of the period of September 1, 1996 through May 31, 2001 must be notified that they may be eligible for reimbursement/payment of verified paid/unpaid medical bills. Since the Department cannot specifically identify only those LTHHCP participants who were budgeted with a \$50 PNA, the State's mailing list will include all LTHHCP participants who received services during the period of September 1, 1996 through May 31, 2001. Therefore, districts are being

provided with the option of mailing the notices themselves. A district may prefer to mail the notices if they are able to review the list provided by the State and identify class members so that notices can be sent to only affected individuals.

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Any social services district that would prefer to mail the individual Evans notices, instead of having the Department perform the mailing, must notify the following individual within two weeks of the date of this GIS:

Kim Ciraulo
Bureau of Eligibility and Disability
Phone: (518) 473-6206
Fax: (518) 473-0601
E-mail: kmcl5@health.state.ny.us

If we do not hear from you by the specified date, the Department will send a notice to those waiver recipients who are identified as being your district's responsibility. The Department anticipates having a report available sometime in late fall.

As stated in GIS 01 MA/021, districts are instructed to review Medicaid cases of LTHHCP participants at the time of recertification for entitlement to reimbursement during the retroactive period.

Participants in Programs of All-Inclusive Care for the Elderly (PACE) are not LTHHCP recipients and are, therefore, not entitled to retroactive relief under the Evans litigation. However, since spousal impoverishment budgeting rules are applicable to PACE participants, the Department instructed districts that prospectively (effective June 1, 2001, the month GIS 01 MA/021 was issued) non-institutionalized PACE participants are to be budgeted with the higher PNA. Similarly, since participants in the Traumatic Brain Injuries Waiver and OMRDD Home and Community Based Services Waiver programs are subject to spousal impoverishment budgeting, the higher PNA is also to be applied to these populations effective June 1, 2001.