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**GENERAL INFORMATION SYSTEM**

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**DIVISION:** Office of Medicaid Management

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**GIS 05 MA/002**

**TO:** Local Commissioners, Medicaid Directors

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

**SUBJECT:** Institutionalized Spouses' Social Security Benefits

**EFFECTIVE DATE:** Immediately

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This is to inform districts that the Department has rescinded GIS 00 MA/027, "Treatment of Institutionalized Spouses' Social Security Benefits and Requests for Additional Resource Allowances," which dealt with the Robbins v. DeBuono court decision, and the provisions in 01 OMM/ADM-4 related to Robbins.

Federal law provides that Social Security benefits cannot be "alienated" (that is, subject to execution, levy, attachment, garnishment, or other legal process). In Robbins, the Second Circuit Court of Appeals held that the mere attribution of Social Security benefits from an institutionalized spouse to a community spouse, for purposes of determining the community spouse's total income, constituted legal process in violation of the federal anti-alienation provision. The Department attempted to have this decision overturned, but the United States Supreme Court declined to accept the case for review.

Although Robbins was not a class action, given the adverse decision from the Second Circuit Court of Appeals and the lack of a definitive interpretation from the Supreme Court, the Medicaid program adopted a policy consistent with the Robbins decision for all institutionalized spouses and community spouses. This policy was set forth in GIS 00 MA/027 and 01 OMM/ADM-4. Under this policy, an institutionalized spouse's Social Security benefits could not be included in determining the community spouse's income unless the institutionalized spouse was willing to make such benefits available. If Social Security benefits were not made available to the community spouse and the community spouse's income was less than the minimum monthly maintenance needs allowance (MMMNA), the community spouse was allowed to retain resources in excess of the maximum community spouse resource allowance in order to generate income.

In 2003, the United States Supreme Court issued a decision addressing the correct interpretation of the term "other legal process" in the statute prohibiting the alienation of Social Security benefits (Washington State Dep't of Social & Health Services v. Guardianship Estate of Keffeler, 537 U.S. 371). The Supreme Court held that the term "other legal process" should be interpreted restrictively, and be understood to refer to a process much like the processes of execution, levy, attachment, and garnishment. On the contrary, in Robbins, the Second Circuit Court of Appeals acknowledged using an expansive definition of "legal process" to arrive at its decision.

Already, one federal district court has noted that the United States Supreme Court decision in Keffeler seriously undermines the rationale for the Robbins decision (Ruck v. Novello, 295 F.Supp.2d 258). The Court in Ruck stated that the mere attribution of income, and a fair hearing process that reviews such an attribution but has no power to direct that control over property be passed from one person to another, does not appear to involve "legal process" as defined by the Supreme Court in Keffeler.

Based on these legal developments, the Department has decided that it will no longer treat institutionalized spouses with Social Security income differently than other institutionalized spouses. Therefore it has rescinded GIS 00 MA/027 and the relevant provisions of 01 OMM/ADM-4.

**Necessary Action:** Effective immediately, a community spouse with income less than the MMMNA will not be allowed to retain resources in excess of the maximum community spouse resource allowance in order to generate income that could be provided by the institutionalized spouse from his/her Social Security benefits. This is true regardless of whether the institutionalized spouse actually makes Social Security benefits available to the community spouse. The decision to give a community spouse a higher community spouse resource allowance continues to be an issue resolved only by fair hearing decision or court order.

Please note that this does NOT mean that the institutionalized spouse is required to transfer Social Security benefits to the community spouse. Under spousal impoverishment budgeting, an institutionalized spouse is allowed, but not required, to make income available to the community spouse as a community spouse monthly income allowance (CSMIA). If an institutionalized spouse chooses not to make available all or part of the income budgeted as a CSMIA, this income will be counted in determining the amount of the institutionalized spouse's income to be applied toward the cost of care.

This change applies to Medicaid eligibility determinations made on or after the date of this GIS. The policy is not retroactive; undercare spousal impoverishment cases determined under the Robbins policy should not be rebudgeted.