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 | ADMINISTRATIVE DIRECTIVE |  
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TRANSMITTAL: 92 ADM-23

TO: Commissioners of  
 Social Services

DIVISION: Medical  
 Assistance

DATE: June 8, 1992

SUBJECT: Medical Assistance Treatment of Resource Transfers for  
 Recipients of Supplemental Security Income

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 SUGGESTED

DISTRIBUTION: | Medical Assistance Staff  
 | Fair Hearing Staff  
 | Legal Staff  
 | Staff Development Coordinators

CONTACT

PERSON: | MA Eligibility County Representative at  
 | 1-800-342-3715, extension 3-7581  
 | MA New York City Representative at (212) 417-4853  
 | User ID: OME060

ATTACHMENTS: | Notice of Intent to Change Your Medical Assistance  
 | Coverage (SSI Recipient - Transfer of Resources) -  
 | Not Available On-line

FILING REFERENCES

| Previous<br>ADMs/INFs | Releases<br>Cancelled | Dept. Regs. | Soc. Serv.<br>Law & Other<br>Legal Ref. | Manual Ref. | Misc. Ref. |
|-----------------------|-----------------------|-------------|---|-------------|------------|
| 91 ADM-37             |                       | 360-4.4(c)  | 366.5                                   |             |            |
| 91 ADM-31             |                       |             | 369                                     |             |            |
| 90 ADM-35             |                       |             | MCCA of                                 |             |            |
| 90 ADM-29             |                       |             | 1988                                    |             |            |
| 89 ADM-45             |                       |             | FSA of 1988                             |             |            |
| 82 ADM-26             |                       |             |   |             |            |

I. PURPOSE

This Directive notifies social services districts (districts) of action to be taken when they learn that a prohibited transfer of resources has been made by a Supplemental Security Income (SSI) recipient or his or her spouse.

II. BACKGROUND

Section 303(c) of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100-360, eliminated penalties in the SSI Program for transferring countable resources for less than fair market value on or after July 1, 1988. The law requires the Social Security Administration (SSA) to obtain information on transfers for use by state Medicaid agencies, and to inform individuals about the effect of such transfers on Medicaid eligibility.

NOTE: Due to the need for enabling State legislation, New York State obtained a waiver from the Health Care Financing Administration which permitted the State to delay implementation of the MCCA transfer provisions until October 1, 1989. Therefore, transfers which were made by SSI recipients on or after July 1, 1988, but prior to October 1, 1989, are subject to the 24-month transfer rules in effect at that time. (See 82 ADM-26.) The procedures outlined in this Directive must be followed for transfers occurring on or after October 1, 1989.

III. PROGRAM IMPLICATIONS

A. DEFINITION OF TERMS

For purposes of implementing the transfer of resource provisions for SSI recipients, the definitions below apply.

1. Institutionalized person is an in-patient in a nursing facility or an in-patient in a medical facility receiving a level of care provided in a nursing facility, or a person receiving care, services or supplies pursuant to a waiver under Section 1915(c) of the federal Social Security Act.
2. Limited coverage is coverage of all Medical Assistance (MA) covered care and services except nursing facility services.
3. Nursing facility services are nursing care and related services in a nursing facility; a level of care provided in a hospital which is equivalent to the care provided in a nursing facility; or care, services or supplies furnished pursuant to a waiver under Section 1915(c) of the federal Social Security Act.

4. Penalty period is the period of ineligibility for nursing facility services (not to exceed 30 months) under the MA Program because of a prohibited transfer.

B. EFFECT OF TRANSFERS ON MA ELIGIBILITY

As a result of enactment of section 303(c) of the MCCA, a transfer of a countable resource for less than fair market value has no effect on SSI resource eligibility if it occurs on or after July 1, 1988.

However, in the MA Program, a penalty period is required for institutionalized persons who transfer countable resources on or after October 1, 1989 and within 30 months of their application for MA coverage of nursing facility services.

During the penalty period, the institutionalized person, if otherwise eligible, receives all MA covered care and services except nursing facility services.

C. IDENTIFICATION OF TRANSFERS BY SSA

Effective with any transfer occurring July 1, 1988 or later, SSA must obtain information regarding the transfer from the SSI applicant/recipient (A/R) and provide the information obtained to state Medicaid agencies. SSA must also inform SSI A/Rs, both at application and redetermination, that: (1) any transfer which occurs on or after July 1, 1988, including a transfer of a homestead, may result in ineligibility for Medicaid coverage for nursing facility services for up to 30 months from the date of the transfer; and (2) information obtained by SSA will be shared with state agencies for Medicaid eligibility purposes.

SSA inquires about transfers that may have occurred on or after July 1, 1988, but no more than 30 months prior to the SSI A/R's application or redetermination. If the SSI A/R indicates that a transfer has occurred during such period of time, SSA will record the SSI A/R's statement concerning:

- the date of transfer;
- the description of the resource transferred;
- the value of the resource transferred;
- the amount of compensation received or expected;
- the recipient of the transferred resource;
- the relationship of the recipient to the former owner, if any; and
- the co-owners at the time of transfer, if any.

SSA provides the New York State Department of Social Services (Department) with transfer information obtained from SSI A/Rs.

IV. REQUIRED ACTION

A. RECEIPT OF SSA REFERRALS

SSA forwards transfer information to the Department for distribution to the appropriate district. Under separate cover, districts will receive all referrals obtained from the SSA. Future referrals will be sent monthly as they are received from the SSA. At a future date, the State Data Exchange (SDX) may be revised to indicate that a transfer has taken place and the date of the transfer. Further information will be provided to districts as it becomes available from the SSA.

1. Coverage Code Change

Upon receipt of information concerning a transfer of resources which occurred on or after October 1, 1989 and within 30 months of the current month, the social services district must change the SSI recipient's Coverage Code from 01 (Full Coverage) to 10 (All Services Except Long Term Care).

2. Investigation

Districts are not required to investigate the transfer until the SSI recipient becomes in need of nursing facility services.

3. Notice to Non-institutionalized SSI Recipients

The SSI recipient must be provided with timely and adequate notice of the limitation of MA coverage due to a transfer of resources for less than fair market value. The attached notice must be used to inform the individual of the change in coverage. This notice further advises the SSI recipient that if he or she becomes in need of MA coverage for nursing facility services, MA eligibility will be redetermined. This notice must be reproduced locally until it is available through the usual forms ordering process.

Along with this notice, the DSS-4294 "Explanation of the Effect of Transfer of Resources on Medical Assistance Eligibility" must be provided.

B. INVESTIGATION UPON NEED FOR NURSING FACILITY SERVICES

If an SSI recipient becomes in need of nursing facility services within 30 months of a transfer, the district must verify the information provided by the SSA and investigate the circumstances surrounding the transfer to establish whether a prohibited transfer has occurred. The procedures outlined in 89 ADM-45, "Transfer of Resource Provisions Under the Medical Assistance Program," and 91 ADM-37, "Amendments to Transfer of Resource Provisions Under the Medical Assistance Program" must be followed.

1. Determination

Upon a determination that a prohibited transfer has occurred, the district must calculate the penalty period to determine if the SSI recipient is eligible to receive coverage for nursing facility services. If the penalty period elapsed prior to the month the individual became in need of nursing facility services, the recipient is entitled to full MA coverage.

If the penalty period has not elapsed, unless the recipient meets the requirements of 18 NYCRR 360-4.4(c)(ii)(d)(2) regarding undue hardship (see 90 ADM-29), MA coverage must continue to be limited. If denial will result in undue hardship, full coverage must be provided.

Adequate notice of the determination, including the period of time coverage will be limited, must be provided to the recipient. The DSS 4145 (9/91) "Notice of Decision on Your Medical Assistance Application for Nursing Facility Services (Transfer of Resources)" contained in 91 ADM-37 must be provided.

NOTE: There may be instances when the district does not become aware of a transfer by an SSI recipient until after the individual is institutionalized. If full MA coverage has been provided to the SSI recipient during a time when a penalty period should have been applied, the district may pursue recovery under the provisions of SSL 369.

2. District Notification to SSA

When an institutionalized SSI recipient has been determined to be ineligible for MA coverage of nursing facility services due to a prohibited transfer of resources, SSA is required to consider the individual an MA recipient for purposes of determining the amount of the SSI payment. Therefore, districts must notify SSA whenever an institutionalized SSI recipient's MA coverage is limited due to a prohibited transfer of resources. SSA will use this information to decide whether the \$30 SSI payment limit should be applied and to avoid overpayment of SSI and federally administered State supplementary benefits.

Districts must provide SSA with: the name and social security number of the SSI recipient; a statement or other indication that the SSI recipient is ineligible for coverage of nursing facility services under MA because of a transfer; and the month and year the SSI recipient could again be eligible for all MA covered care and services, if all other facts remain unchanged. Districts must report this information to SSA through established procedures for reporting discrepancies between district information and SDX information.

V. SYSTEMS IMPLICATIONS

Until an automated interface is established between the Department and the SSA, information received from SSA concerning transfers of assets will be handled on a manual basis. Districts will be sent a copy of the SSA referral for the cases in question. Upon receipt of this information, districts must change the MA Coverage Code from 01 (Full Coverage) to 10 (All Services Except Long Term Care).

Entering a Coverage Code 10 where there is an existing Coverage Code 01 will be subject to the WMS downgrade edits. Therefore, when Coverage Code 10 is used, the Authorization From Date must be at least ten days in the future and equal to the first day of the month.

NOTE: In a few limited circumstances, the Automated SDX/WMS Interface may overlay a Coverage Code 10 input by the district, with Coverage Code 01. Until Systems modifications are undertaken, districts should be alert to this possibility.

VI. EFFECTIVE DATE

This Directive is effective June 1, 1992, retroactive to October 1, 1989.

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