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ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 91 ADM-31

TO: Commissioners of  
 Social Services

DIVISION: Medical  
 Assistance

DATE: August 20, 1991

SUBJECT: Transfer of Resources: Changes in the Medical Assistance  
 Regional Rates and in the Method of Calculating Transfer  
 Penalty Periods

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 SUGGESTED

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

CONTACT

PERSON: | Questions concerning this Administrative Directive  
 | should be directed to your MA Eligibility County  
 | Representative by calling 1-800-342-3715, extension  
 | 3-7581 or your New York City Representative at  
 | (212) 417-4853.

ATTACHMENTS: | Attachment - County Listing by Region (available on-  
 | line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
89 ADM-45		360-4.4(c)	Ch. 558 of		GIS
90 ADM-35			Laws of 1989		91MA013
91 ADM-17			Section 303 (b) of MCCA of 1988 FSA of 1988 SSL 366(5)		

I. PURPOSE

This Administrative Directive (ADM) notifies social services districts of:

- a) the January 1, 1991 revisions to the Medical Assistance (MA) regional rates used to determine the period of restricted coverage (penalty period) for persons determined to have made a prohibited transfer of resources on or after October 1, 1989; and
- b) changes in the method of calculating the penalty period for an MA applicant/recipient (A/R) who has made a prohibited transfer of resources.

II. BACKGROUND

Chapter 558 of the Laws of 1989 amended Section 366.5 of the Social Services Law (SSL) to establish new transfer of resources provisions required by the Medicare Catastrophic Coverage Act (MCCA) of 1988. These provisions apply to transfers for less than fair market value made on or after October 1, 1989. Under these provisions, as outlined in 89 ADM-45, persons who make prohibited transfers within or after the 30-month period prior to the date of institutionalization, or the date of application for MA while institutionalized, whichever is later, are ineligible for certain MA covered services for a period of time. The period of ineligibility is either (i) 30 months, or (ii) a number of months equal to the uncompensated value of the transferred resource divided by the MA regional rate established for the region in which the person is institutionalized, whichever is less. The period is intended to approximate the length of stay in an institution which the transferred resources would have purchased. The MA regional rates are updated annually, effective January 1.

In addition, the Health Care Financing Administration (HCFA) has recently clarified the procedures for computing the penalty period, to determine if the period is equal to 30 months, or less.

III. PROGRAM IMPLICATIONS

A. MA Regional Rates

The revised MA regional rates are used to calculate a penalty period for persons who have transferred resources on or after October 1, 1989 and who first apply for MA as an institutionalized person on or after January 1, 1991.

The MA regional rates effective January 1, 1991 are:

MA REGIONAL RATES

<u>Region*</u>	<u>Monthly Rate</u>
Northeastern	\$3,470
Northern Metropolitan	\$4,180
Western	\$3,167
Rochester	\$3,468
Central	\$3,310
Long Island	\$4,563
New York City	\$5,116

\*See Attachment I for county listing by region.

B. Transfer Penalty Period

When calculating the duration of a penalty period, the period begins with the month in which the resources were transferred. The number of months in the penalty period is equal to 30 months, or less if a lesser period results when the total uncompensated value of the transferred resource is divided by the regional rate.

NOTE: In accordance with 91 ADM-17, "Treatment of Medical Assistance Applications When There Are Excess Resources and Outstanding Medical Bills", with the exception of transfers of the community spouse resource allowance, resources transferred in a month for which MA coverage is sought are considered available in that month.

In calculating the duration of a penalty period, social services districts must use full months only. The penalty period begins with the first day of the month in which a transfer was made. If a calculation of the penalty period results in a partial month, the days must be rounded down to the end of the preceding month.

IV. REQUIRED ACTION

A. MA Regional Rate Adjustments

As specified in 89 ADM-45, a penalty period or period of ineligibility for nursing home level of care or home and community-based waived services must be established when an MA-Only A/R who is subject to federally participating (FP) treatment of resources has made a prohibited transfer of resources on or after October 1, 1989, and within or after the 30-month period prior to the date of institutionalization, or the date of application for MA while institutionalized,

whichever is later. The MA regional rate used to determine the penalty period is the rate for the region in which the individual is institutionalized. Districts must use the rate in effect for the year in which the individual first applies as an institutionalized person.

For persons determined to have made a transfer of resources on or after October 1, 1989, who have eligibility first determined as an institutionalized person for the month of January, 1991 or after, the January 1, 1991 MA regional rates must be used to establish the penalty period. Social services districts must recalculate the penalty period for an A/R who required nursing facility level of care or home and community-based waived services on or after January 1, 1991, if the January 1990 regional rates were used to estimate the penalty period. Social services districts must review these cases as soon as possible, since a recipient's penalty period may change based on the new rates. When a penalty period has previously been calculated for an A/R who continues to reside in the community and who is not in receipt of home and community-based waived services, no recalculation of the penalty period is required until the individual becomes in need of prohibited services.

As specified in 89 ADM-45, social services districts must provide timely and adequate notice to A/Rs whose MA coverage is being restricted due to a prohibited transfer of resources. The notices contained in 89 ADM-45 must be used to meet this requirement.

When a social services district recalculates a penalty period for a person in receipt of nursing facility level of care or home and community-based waived services, who first applied for MA as an institutionalized person on or after January 1, 1991, the district must advise the client of any change in the period. The DSS-4147 "Notice of Intent to Discontinue/Change Medical Assistance Coverage" must be used to notify the client of any revised calculations or expired penalty periods.

B. Determination of Transfer Penalty Period

As indicated in Section III.B. of this Directive, when calculating the duration of a penalty period, full months only must be used. A full month is counted at the beginning of a penalty period, regardless of the date in a month a transfer actually occurs. If a calculation of a penalty period results in a partial month, the penalty period must end with the preceding month.

For example, a prohibited transfer of \$40,000 is made in January by an individual institutionalized in the Rochester region. Using the regional rate for Rochester of \$3,468, the penalty period is equal to 11.5 months. Under previous guidelines, the excess uncompensated value remaining for the month of December

was considered available toward the institutionalized individual's cost of care for December. Applying the revised "full months only" policy, the penalty period will end with the last day of November, with no impact on the individual's eligibility for December.

This provision is effective September 1, 1991. However, when districts are completing the recalculations required by Section IV.A. of this ADM, the penalty period must be rounded down to end with the last full month. In addition, any institutionalized individual brought to the attention of the district who is still within a penalty period must have the period adjusted, and appropriate notice sent to the individual regarding the change in the penalty period.

V. SYSTEMS IMPLICATIONS

None.

VI. EFFECTIVE DATE

The changes in the regional penalty rates are effective retroactive to January 1, 1991.

The changes regarding calculation of the penalty period are effective September 1, 1991.

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

ATTACHMENT

COUNTY LISTING BY REGION

NORTHEASTERN

Albany  
Clinton  
Columbia  
Delaware  
Essex  
Franklin  
Fulton  
Greene  
Hamilton  
Montgomery  
Otsego  
Rensselaer  
Saratoga  
Schenectady  
Schoharie  
Warren  
Washington

WESTERN (Buffalo)

Allegany  
Cattaraugus  
Chautauqua  
Erie  
Genesee  
Niagara  
Orleans  
Wyoming

LONG ISLAND

Nassau  
Suffolk

ROCHESTER

Chemung  
Livingston  
Monroe  
Ontario  
Schuyler  
Seneca  
Steuben  
Yates  
Wayne

NORTHERN METROPOLITAN  
(New Rochelle)

Dutchess  
Orange  
Putnam  
Rockland  
Sullivan  
Ulster  
Westchester

NEW YORK CTTY

Bronx  
Kings (Brooklyn)  
NY (Manhattan)  
Queens  
Richmond (Staten Island)

CENTRAL(Syracuse)

Broome  
Cayuga  
Chenango  
Cortland  
Herkimer  
Jefferson  
Lewis  
Madison  
Oneida  
Onondaga  
Oswego  
St.Lawrence  
Tioga  
Tompkins

1. Use the region in which the facility is located, or if the A/R is not institutionalized, use the region in which the individual resides.
2. For out of state facilities, use the region closest to the location of the facility.