



STATE OF NEW YORK DEPARTMENT OF HEALTH

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Commissioner

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LOCAL COMMISSIONERS MEMORANDUM

Transmittal No: 02 OMM LCM-02

Date: March 28, 2002

Division: Office of Medicaid
Management

TO: Local District Commissioners

SUBJECT: Evans v. Wing and DeBuono - Medicaid Reimbursement

ATTACHMENTS: Evans Notice (Department mailing/available on-line)

Evans Notice (District mailing/available on-line)

District-specific report of potential Evans class members
(not available on-line)

This Local Commissioners Memorandum (LCM) provides information concerning the Medicaid reimbursement that is required to be provided to certain Evans v. Wing and DeBuono class members.

Background

The Evans litigation involved the amount of the personal needs allowance (PNA) budgeted for institutionalized spouses who received home and community-based waiver services through the Long Term Home Health Care Program (waiver recipients). As a result of the Evans court decision, the Medicaid program cannot budget waiver recipients with the same \$50 PNA that nursing home residents receive. Instead, the Department was required to establish a PNA for waiver recipients which takes into account their maintenance needs in the community.

As advised in General Information Systems (GIS) messages 01 MA/021, dated June 28, 2001, and 01 MA/037, dated November 20, 2001, effective retroactive to September 1, 1996, the PNA the Department established for waiver recipients is equal to the difference between the Medicaid income level for one-person and two-person households.

Individuals Who Are Entitled To Reimbursement

Under the terms of the Order in Evans, the Department must re-determine Medicaid eligibility for waiver recipients who were budgeted with a \$50 PNA during any part of the period from September 1, 1996 through May 31, 2001. Waiver recipients who paid medical bills which the Medicaid program would have covered if the waiver recipient had been budgeted with a PNA equal to the difference between the Medicaid income level for one-person and two-person households are entitled to reimbursement.

Effective retroactive to September 1, 1996, the applicable PNAs are as follows:

<u>From</u>	<u>Through</u>	<u>Old PNA</u>	<u>New PNA</u>	<u>Monthly Difference</u>
September 1, 1996	December 31, 1996	\$50	\$250	\$200
January 1, 1997	December 31, 1997	\$50	\$259	\$209
January 1, 1998	December 31, 1998	\$50	\$266	\$216
January 1, 1999	December 31, 1999	\$50	\$267	\$217
January 1, 2000	December 31, 2000	\$50	\$275	\$225
January 1, 2001	May 31, 2001	\$50	\$275	\$225

Generally, the use of the new PNA will result in a decrease in the amount of income that is considered to be available to the community spouse as part of the community spouse monthly income allowance. However, in cases where a community spouse was at the maximum community spouse monthly income allowance amount and the waiver recipient had income remaining that was applied towards the cost of care, the waiver recipient may be entitled to reimbursement.

In re-determining a waiver recipient's Medicaid eligibility for purposes of determining whether reimbursement should be provided, it is not necessary to actually do a new budget. A comparison of the waiver recipient's previous monthly income contribution amount(s) (as found in the individual's case record) to the "monthly difference" figure provided in this LCM, will determine the amount of reimbursement the waiver recipient may be entitled to. The maximum amount of reimbursement that a waiver recipient may be entitled to each month is the "monthly difference." Since individuals may only receive reimbursement for money that they actually paid towards their medical bills, reimbursement is limited to the amount of income the waiver recipient actually contributed towards the cost of care during the applicable reimbursement period. If a waiver recipient had a monthly income contribution in excess of the "monthly difference," reimbursement would be limited to the monthly difference. The following two examples illustrate possible reimbursement scenarios.

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Example 1. A monthly income contribution of \$100 for January 1, 1997 through December 31, 1997 and \$150 for January 1, 1998 through April 30, 1998, would mean that the individual would be entitled to reimbursement of \$1,800 (\$100 x 12 months plus \$150 x 4 months).

Example 2. A monthly income contribution of \$400 for January 1, 1999 through December 31, 1999, would mean that the individual would be entitled to reimbursement of \$2,604 (\$217 x 12 months).

Notification to Potential Class Members

To assist in identifying individuals who may be entitled to reimbursement, the Department has identified recipients who received a waiver service through the Long Term Home Health Care Program during the applicable time period. Enclosed is a copy of this district specific report. It should be noted that the report could not be tailored to specifically identify only those waiver recipients who were budgeted with a \$50 PNA (spousal impoverishment cases).

Based on the report, the Department will send a notice to potential class members advising them of the Department's obligation to provide reimbursement in accordance with the Order in Evans. The notice will instruct affected individuals to obtain documentation from their provider(s) verifying the amount the individual paid to the provider(s) for the specified period. The individual is instructed to provide this documentation to his/her social services district for reimbursement.

Individuals who still owe money to their Long Term Home Health Care provider or other medical provider, are instructed to submit a copy of the outstanding bill(s) to their local social services district for possible payment or adjustment to the amount owed. The Department will be mailing the notice to potential class members in upstate districts within three weeks of the release of this LCM. Enclosed for your reference is a copy of the notice (Attachment A).

As offered in GIS message 01 MA/037, some districts have elected to send the notices directly rather than have the Department do the mailing. If a district has chosen to be responsible for the mailing, enclosed as Attachment B is a copy of the notice that must be sent. This notice is to be reproduced on agency letterhead and should not be modified except to include information concerning a contact person and/or telephone number. The notices should be sent within 30 days of the receipt of this LCM. This time period should allow districts to accurately identify waiver recipients who were budgeted with a \$50 PNA. If a district wishes to further tailor their mailing, they may review past MBL budgets or notices and only notify those cases where the waiver recipient had a contribution towards the cost of care.

Medicaid Payments or Reimbursement as a Result of the Evans Order

Individuals who request Medicaid reimbursement of paid bills must provide proof of payment from their Long Term Home Health Care provider or other medical provider. Request for reimbursement shall be handled in accordance with the procedures set forth in the New York State Fiscal Reference Manual for Local Departments of Social Services in Volume I, Chapter 7, pages 20-22 and Volume II, Chapter 5, pages 10-15, both dated May 10, 1999. Social

services districts are reminded that if they elect to reimburse class members directly, each class member requesting reimbursement must be sent the DSS-3869, "Notice of Decision on Reimbursement of Medical Bills by the Medical Assistance Program." In addition, individuals must be sent the DSS-3868, "Notice of Medical Assistance Review," indicating that Medicaid eligibility has been reevaluated as a result of the Evans v. Wing and DeBuono court case. The Medicaid notice of decision to be used with the DSS-3868 in the Evans case is the LDSS-4021 "Notice of Intent to Change the Contribution Toward Chronic Care Costs." A copy of this notice is not required to be sent to the individual's Long Term Home Health Care provider or other medical provider.

Reimbursement to an individual is to be considered exempt as income in the month received and exempt as a resource in the following month. Thereafter, any funds remaining are counted as a resource.

Individuals who still owe money to their Long Term Home Health Care provider, or other medical provider, for any time during the period from September 1, 1996 to May 31, 2001, must submit a copy of the unpaid bill(s) for possible payment. If the recomputation of an individual's eligibility results in a reduced monthly income contribution, both the individual and provider must be notified of the change in liability (DSS-3868 and DSS-4021). Although medical bills are generally processed by MMIS, bills relating to this court case that are more than two years old cannot be processed by MMIS. Similar to the handling of Medicaid reimbursements to individuals, social service districts have the option of either processing the claims and issuing payment to providers directly, or having the New York State Department of Health process the claims and issue the required payments. Requests for reimbursement by the Department are to be mailed to Tom Grestini at the New York State Department of Health, GNARESP-Corning Tower, Room 1245, Albany, NY 12237. If a district elects to provide payments to providers directly, the DSS-3869 must be used to inform the provider of the decision to make payment.

Required Information

Similar to the information that was requested for Evans class members who were entitled to reimbursement for the period from January 1, 1995 to August 31, 1996, the Department is requesting the following information for class members for the period from September 1, 1996 to May 31, 2001. Districts that had the Department do their mailings to potential class members should base their answers to the following questions on the responses they received as a result of the mailings. If a district reviewed their report for class members, the responses should be based upon the review. If a district performed their own mailing, but did not review their list for potential class members, the answers should be based on the responses received. The Department is requesting the following information:

1. The total number of class members identified from the State's report. A class member is a LTHHCP participant who was budgeted with a \$50 PNA during any part of the period from September 1, 1996 to May 31, 2001;
2. The name and address of each class member;

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3. The number of class members with a monthly income contribution towards the cost of care for any part of the affected time period; and
4. For each class member with a monthly income contribution, please indicate whether verification of paid/unpaid bills has been submitted and the status of any reimbursement/payment (e.g., documentation submitted and referral made to the State for payment/reimbursement).

When completed, the above information should be mailed (or faxed) to:

Ms. Kim Ciraulo
New York State Department of Health
Office of Medicaid Management
Division of Consumer and Local District Relations
One Commerce Plaza 7th Floor Room 727
Albany, NY 12260
Fax: (518) 473-0601

Recertification

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

Questions

Questions regarding the Evans litigation or the actions that are required as a result of this court case should be directed to the Bureau of Local District Support Upstate at (518) 474-8216 or New York City at (212) 268-6855.

Questions regarding reimbursement should be directed to the Bureau of Finance, upstate to Roland Levie at (518) 474-7549 or 1-800-343-8859, Extension 47549 and in New York City to Marvin Gold at (212) 383-1733.

Sincerely,

Kathryn Kuhmerker
Deputy Commissioner
Office of Medicaid Management

Attachments