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 | ADMINISTRATIVE DIRECTIVE |  
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TRANSMITTAL: 93 ADM-27

TO: Commissioners of  
 Social Services

DIVISION: Health and  
 Long Term Care

DATE: September 7, 1993

SUBJECT: Transfer of Resources: Changes in the Medical Assistance  
 Regional Rates

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SUGGESTED DISTRIBUTION:	Medical Assistance Staff Adult Services Staff Fair Hearing Staff Legal Staff Staff Development Coordinators
CONTACT PERSON:	Ann Hughes at 1-800-342-3715, extension 4-9130  MA New York City Representative at (212) 417-4853 User ID AV0400
ATTACHMENTS:	Attachment I - County Listing by Region (available on-line)  Attachment II - Notice of Change in Limited Coverage Period For Institutionalized Person (not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
92 ADM-44		360-4.4(c)	Ch. 558 of		GIS
92 ADM-38			Laws of 1989		93MA009
91 ADM-37			Section 303		
91 ADM-31			(b) of MCCA		
91 ADM-17			of 1988		
89 ADM-45			FSA of 1988		
			SSL 366(5)		

I. PURPOSE

This Administrative Directive (ADM) notifies social services districts of the January 1, 1993 revisions to the Medical Assistance (MA) regional rates used to determine the period of limited coverage (penalty period) for persons determined to have made prohibited transfers of resources.

II. BACKGROUND

Chapter 558 of the Laws of 1989 amended Section 366.5 of the Social Services Law to establish new transfer of resources provisions required by the Medicare Catastrophic Coverage Act of 1988. These provisions apply to transfers for less than fair market value made on or after October 1, 1989, 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 1st.

III. PROGRAM IMPLICATIONS

A. DEFINITIONS

For purposes of this ADM, the definitions below apply.

1. Limited coverage is coverage of all MA covered care and services except nursing facility services.
2. 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 level of care provided in a nursing facility; or care, services or supplies furnished pursuant to a waiver under Section 1915(c) of the Social Security Act.
3. 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(s).

4. Prohibited transfer is the voluntary giving or sale of property or assets to another person without receiving something of equal value in return, within or after 30 months of applying for MA coverage for nursing facility services.
5. Uncompensated value is the difference between the fair market value of the resource at the time of the transfer (less any outstanding loans, mortgages or other encumbrances on the resource) and the amount received for the resource.

B. MA REGIONAL RATES

The revised MA regional rates are used to calculate a penalty period for persons who have made prohibited transfers of resources and who first apply for MA on or after January 1, 1993.

The MA regional rates effective January 1, 1993 are:

<u>Region*</u>	<u>Monthly Rate</u>
Northeastern	\$ 3,793
Northern Metropolitan	\$ 4,622
Western	\$ 3,512
Rochester	\$ 3,935
Central	\$ 3,667
Long Island	\$ 5,047
New York City	\$ 5,584

\*See Attachment I for county listing by region.

C. 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. 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.

NOTE: See 92 ADM-44 for procedures for calculating the penalty period when multiple prohibited transfers of resources have occurred.

IV. REQUIRED ACTION

As specified in 89 ADM-45 and 91 ADM-37, a penalty period must be established when a federally participating MA-Only applicant/recipient (A/R), or the spouse of the A/R, has made a prohibited transfer of resources. 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.

Social services districts must use the January 1, 1993 MA regional rates to establish the penalty period for any institutionalized person determined to have made a prohibited transfer of resources who has MA eligibility first determined for the month of January, 1993 or later.

A. RECALCULATING THE PENALTY PERIOD

Districts must recalculate the penalty period for an institutionalized A/R who became MA eligible on or after January 1, 1993, if the January 1, 1992 regional rates were used to estimate the penalty period.

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 nursing facility services.

B. NOTICE REQUIREMENTS

As specified in 89 ADM-45 and 91 ADM-37, social services districts must provide timely and adequate notice to A/Rs whose MA coverage is being limited due to a prohibited transfer of resources. The notices contained in these ADMs must be used to meet this requirement.

When a social services district recalculates a penalty period for a person in receipt of nursing facility services, who first applied for MA as an institutionalized person on or after January 1, 1993, the district must advise the client of any change in the period. Attachment II, "Notice of Change in Limited Coverage Period For Institutionalized Person" must be used to notify the client of any revised calculations or expired penalty periods.

V. SYSTEMS IMPLICATIONS

None.

VI. EFFECTIVE DATE

The changes in the regional penalty rates are effective September 1, 1993, retroactive to January 1, 1993.

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Sue Kelly  
Deputy Commissioner  
Division of Health & Long Term Care

## 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

ROCHESTER

Chemung  
 Livingston  
 Monroe  
 Ontario  
 Schuyler  
 Seneca  
 Steuben  
 Yates  
 Wayne

LONG ISLAND

Nassau  
 Suffolk

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.