

+-----+  
| LOCAL COMMISSIONERS MEMORANDUM |  
+-----+

DSS-4037EL (Rev. 9/89)

Transmittal No: 93 LCM-51

Date: May 13, 1993

Division: Division of Health  
and Long Term Care

TO: Local District Commissioners

SUBJECT: Chapter 59 of the Laws of 1993 and Home Care  
Services

ATTACHMENTS: Chapter 59 of the Laws of 1993  
(not available on-line)

This is to inform you of changes related to home care services provided under the Medical Assistance (MA) Program resulting from the recently enacted Article VII (State Constitution) bill accompanying the State budget (Chapter 59 of the Laws of 1993). The following is a brief summary of the provisions in the legislation related to home care services and the effects of these provisions on present home care services.

Definitions: Personal Care Services/Home Health Services

The definition of personal care services has been amended to include the provision of such services by a shared aide or through the provision of personal emergency response services along with the traditional individual aide. The definition of home health services also was amended to incorporate shared aide into the definition as a method of delivering home health aide service. Both definitions were amended by the incorporation of language specifying that services must be cost effective and appropriate, as determined by the home care assessment instrument, in addition to the previously included fiscal assessment.

The changes made in the definitions of personal care services and home health services do not require any immediate action on the part of social services districts. The changes are a reflection that personal emergency response services (PERS) and shared aide services have become an

integral part of providing appropriate and cost effective home care services. The major impact of these changes is the strengthening of the PERS and shared aide services initiatives as fundamental components of home care services. Additionally, the changes reinforce the concept that cost effectiveness and appropriateness of the services to be provided are essential considerations in determining eligibility for home care services and must be considered before authorization of an individual aide.

#### PERS

Statutory authority for the provision of PERS also was included in Chapter 59. The new legislation restates much of what was in the original prior statute (Chapter 438 of the Laws of 1989) with one exception: the stipulation that PERS not be authorized as a part of personal care services prior to the consideration of the appropriateness of the use of Long Term Home Health Care services has been removed.

As in the prior legislation, social services districts are required to submit an approvable plan to this Department. However, districts must contract with a provider and begin implementation of the plan by July 1, 1993. Requirements regarding the contents of PERS plans remain as stated in 91 ADM-42, "Personal Emergency Response Services (PERS) Procedures and Guidelines". If a social services district does not commence implementation of an approved plan by July 1, 1993, the Department is authorized to develop and implement such a plan for a district. Districts which already have plans approved by the Department will not be required to resubmit plans and districts which have plans pending approval by the Department will not be required to submit new ones.

#### PERS/Shared Aide: State Share Cost Savings Targets and Audit Intercepts

Chapter 59 of the Laws of 1993 requires the Department to develop State share cost savings targets for PERS and shared aide services for each social services district for State fiscal year 1993-94. The statewide target is \$27 million State share. In establishing the targets, the Department will consult with commissioners of the social services districts (or their representatives) concerning the methods to be employed in determining the district-specific targets and the factors to be utilized in establishing the targets. These factors will include, but will not be limited to:

- the district's plans, current caseload and caseload profiles;
- proportion of historical expenditures for each district for personal care and home health services; and
- status of current PERS and shared aide program implementation plans.

Districts will be notified in writing, of their respective target amount, by June 1, 1993.

To ensure that districts are not impeded in their efforts to achieve cost savings targets by the lack of a timely approval of PERS or shared aide services plans, the Department is required to act on a plan/exemption request in a timely manner (30 days for original plans, 15 days for revised plans). If the Department does not act in a timely manner, the State share cost savings target amounts for that district will be reduced on a prorated basis in a proportion related to the number of days that the Department approval/disapproval is overdue.

Additionally, Chapter 59 authorizes the Department to intercept the local share of any recoveries of medical assistance monies made by the Department, through audit or other reviews, to reinvest in districts for the development and implementation of PERS/shared aide plans. Funding for the development and implementation of such plans totals \$4.5 million. If the Department determines that additional funds would enable the district to develop and implement PERS/shared aide plans and such funding is requested by a social services district, funds would be credited to the district on the condition that the district apply the funds only to the development and implementation of PERS/shared aide plans. It is important to note that if the Department determines that the provision of additional funds would facilitate the development and implementation of PERS/shared aide plans and the district fails or refuses to request that funds be intercepted, then the Department is authorized to intercept the recoveries and use them to offset the cost to the Department of developing and implementing the required plans in a social services district.

Districts which fail to develop and implement PERS/Shared-Aide plans and do not achieve targeted savings will be subject to the Department's interception of audit recoveries in an amount sufficient to reimburse the State for the difference between the State share of savings actually achieved by the district and 50 percent of the district's State share cost savings target. For example, if a district's share of the \$27 million statewide target was \$500,000 and actual district savings totalled \$200,000, the district would be fiscally liable for the difference between the actual savings and fifty percent of it's share of the statewide target (\$250,000), or \$50,000. If a county's actual savings exceeded the fifty percent level, no financial liability would remain for a district's failure to realize its total savings target.

On or before March 1, 1994, the Department will notify districts of the progress made toward reaching their district-specific targets. The report will include information on the number of new clients being served, the types of services being provided, and the amount of any intercepted funds or payments of recoveries to the state general fund. Any district which believes that the intercept or payment was incorrect may request the commissioner to review the intercept or payment determination by filing a written request for the review with the commissioner within ten days of receipt of the report. If the review indicates that the amount of the intercept or payment was incorrect, repayment will be authorized. Repayment will occur as soon as possible, but in no case later than June 30, 1994.

The Department is currently preparing to implement the necessary procedures required by the legislation. In consultation with districts, the Department will be developing a formula to allocate the \$27 million cost savings target

among the districts as well as the counties' share of the \$4.5 million in reinvestment funds. Technical assistance in developing and implementing PERS/shared aide plans, including on-site assistance, will be made available to districts. More information on these issues will be forthcoming as policies and procedures are developed.

#### Medicare Maximization

Efforts to maximize Medicare and third-party revenues have been extended by amending subdivision 3 of section 367-j of the social services law, as added by chapter 165 of the laws of 1991, to include long term home health care programs. Programs will be subject to the same reporting requirements and auditing procedures as presently apply to CHHAs.

The Department has begun efforts to develop a state-wide Medicare Maximization policy for both long-term residential care and home care services. The Department will be consulting with districts, providers and other State agencies as part of this effort. Information regarding the development of this policy, associated procedures, and training for districts and providers necessary for implementation will be forthcoming.

#### Grant Funding

The 1993-94 budget also continues an appropriation of \$500,000 for grants to social services districts for Innovative Home Care and Medicare Maximization Demonstration projects. A LCM will be distributed in the near future regarding these grant funds.

If you have any questions or concerns regarding any of the issues addressed in this LCM you may direct your questions in the following manner;

- o PERS plans and Innovative Home Care Projects: Don Dwyer at 1-800-342-3715, extension 3-5616, or directly at (518) 473-5616
- o Shared aide plans: Fred Waite at 1-800-342-3715, extension 3-5490, or directly at (518) 473-5490
- o PERS/Shared aide or Cost Savings Targets/Audit Intercepts: Rich Alexander at 1-800-342-3715, extension 3-5506, or directly at (518) 473-5506
- o Medicare Maximization: Al Roberts at 1-800-342-3715, extension 3-5539, or directly at (518) 473-5539.

---

Gregory M. Kaladjian  
Acting Commissioner