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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 91 LCM-87

Date: May 13, 1991

Division: Medical Assistance

TO: Local District Commissioners

SUBJECT: Section 5103 OBRA '90, Disabled Widows/Widowers Deemed
Eligible for Medicaid

ATTACHMENTS: None

Section 5103 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) has created a new Medicaid eligibility group. A general description of this provision follows so that you can be aware of this new group and the importance of accepting any applications received for eligibility under this group.

Effective January 1, 1991, Section 5103 of OBRA '90 eliminated the special, more restrictive disability test for disabled widows and widowers, and for the disabled surviving divorced spouses. Prior to the enactment of Section 5103, these individuals could not be eligible for Title II benefits unless they were unable to perform any gainful activity. Beginning January 1, 1991 this requirement is changed to conform with the standard definition of disability, which requires that individuals be unable to perform any substantial gainful activity. Substantial gainful activity is work generally performed for remuneration or profit involving the performance of significant physical or mental duties. For additional information, consult Section 360-5.2 of Department Regulations or the Medical Assistance Disability Manual.

This change will result in a number of individuals now eligible for SSI benefits becoming eligible for Title II benefits under the more liberal definition of disability. Many of these individuals, upon becoming eligible for title II, will lose SSI (and categorical Medicaid) because of increased income.

To deal with this problem, Section 5103 created a new deemed SSI group (similar to existing Pickle, Disabled Adult Children, and other widows and widowers groups) for purposes of eligibility for Medicaid. Section 5103 provides that, effective January 1, 1991, individuals who lose SSI or a State Supplementary Payment (SSP) because of receipt of a Title II benefit resulting from the change in the definition of disability will be deemed to be receiving SSI/SSP if:

They were receiving SSI/SSP for the month prior to the month they began receiving the Title II benefit;

They would continue to be eligible for SSI/SSP if the amount of the Title II benefit were not counted as income; and

They are not entitled to Medicare Part A.

Individuals who meet the above requirements are eligible for Medicaid as categorically needy.

In addition, Section 5103 provides that each month of eligibility for SSI/SSP will count toward the individual's five-month disability waiting period and 24-month Medicare waiting period. This means that the normal wait for entitlement to disability benefits and/or Medicare can be greatly reduced or even eliminated, depending on the length of time the individual had been receiving SSI/SSP benefits. Individuals who meet the eligibility criteria described above may or may not actually be eligible for categorical Medicaid, because they may become entitled to Medicare Part A based on a reduced waiting period.

In accordance with the Stenson v. Blum decision (80 ADM-19), when an SSI beneficiary loses eligibility for SSI cash payment, the individual must remain eligible for Medicaid until a separate determination is made. When reviewing such closed SSI cases, eligibility staff should inquire whether the individual lost SSI because they met the new disabled widow/widower criteria and are now eligible for Title II benefits. The Automated SDX/WMS Interface (ASWI) is being modified to receive SSA data identifying these individuals. ASWI will display the code "W" with the literal "Disabled Widow/Widower" in Field 50, Medicaid Eligibility Code. ASWI/SDX coordinators will be notified when this information is received.

Since entitlement to Medicare Part A results in loss of Disabled Widow/Widower status and MA under Section 5103 of OBRA '90, eligibility staff should periodically review these cases to check whether the individual receives Part A Medicare.

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Additional operational instructions concerning this new group will be issued when more information is available from the Social Security Administration (SSA). In the interim, districts should accept applications for Medicaid eligibility for this group. If you need information concerning an applicant's Title II and/or SSI status contact the SSA through your normal channels.

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