DSS-4357EL
WGIUPD GENERAL INFORMATION SYSTEM 07/02/01
DIVISION: Office of Medicaid Management
GIS 01 MA/022

TO: Local Commissioners, Medicaid Directors

FROM: Betty Rice, Director
Division of Consumer and Local District Relations

SUBJECT: Clarification of Medicaid Treatment of Resources for NYS Partnership for Long-Term Care Participants

EFFECTIVE DATE: Immediately

CONTACT PERSON: Bureau of Local District Support:
Upstate (518) 474-9130 NYC (212) 268-6855

This message is to clarify the treatment of resources for New York State Partnership for Long-Term Care (NYSPLTC) participants who have received 36 months of nursing home benefits or its equivalent.

97 OMM LCM-3, "Medicaid Eligibility for New York State Partnership Policyholders," advised social services districts of the Medicaid Extended Coverage that is available for qualified NYSPLTC participants. The resources of qualified NYSPLTC policyholders are exempt from consideration in determining Medicaid eligibility. Therefore, it is not necessary to collect or document information on an individual's resources or the resources of his/her spouse, except to the extent that such information documents income derived from such resources.

Administrative directive 96 ADM-8, "OBRA '93 Provisions on Transfers and Trusts," advised that since resources are exempt from consideration in determining a qualified policyholder's Medicaid eligibility, the transfer of resources provision (i.e., look-back period and penalty period) does not apply. This is true even if a resource transfer occurred before the policyholder received 36 months of nursing home benefits or its equivalent and even if the resources were income generating.

Since income rules do apply to the qualified NYSPLTC policyholder, a pure income transfer (that is, the transfer of a stream of income, such as a pension, as opposed to the transfer of an income generating resource), can result in a penalty period. In addition, the qualified NYSPLTC policyholder can be required, as appropriate, to pursue or cooperate in the pursuit of income payments to which he/she is entitled (e.g., as an income beneficiary of a trust when the trustee has failed to make required income distributions).

Medicaid does not, however, require the pursuit of income if the income payment would directly reduce the value of the resource from which the income payment is made. For example, periodic payments from an annuity may reduce the value of the annuity. Qualified NYSPLTC participants cannot be required to take periodic payments or to maximize the income payments that may be available if this would directly reduce the value of the annuity.

If, however, the interest earned, which would have been added to the value of the annuity, can be withdrawn, Medicaid would require the qualified NYSPLTC participant to pursue or cooperate in the pursuit of income payments. This is because receiving the amount of the earned interest would not reduce the value of the annuity principal. Therefore, for example, if a particular annuity had a yearly guaranteed interest rate of 3%, the NYSPLTC policyholder would be asked to pursue this interest income, rather than having it added to the value of his/her annuity.

If a NYSPLTC participant fulfills the requirement of receiving 36 months of nursing home benefits or its equivalent any time after the first day of the month, applies for Medicaid for that month, and is otherwise eligible for Medicaid without regard to his/her resources, the effective date of eligibility will be the first day of that month. However, if the policyholder applies for Medicaid for any month prior to the month in which the 36-month durational requirement is met (e.g., for the three-month period prior to application), Medicaid eligibility would be determined with a resource test.