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**GENERAL INFORMATION SYSTEM**  
**DIVISION:** Office of Medicaid Management

08/12/98  
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**GIS** 98 MA/026

**TO:** Local District Commissioners, Medicaid Directors

**FROM:** Ann Clemency Kohler, Deputy Commissioner  
Office of Medicaid Management

**SUBJECT:** Evans v. Wing et al., - Erie County Supreme Court

**EFFECTIVE DATE:** Please Respond to this Message by August 21, 1998

**CONTACT PERSON:** Dennis Boucher, (518) 473-6111 or Wendy Butz,  
(518) 473-5500

This message is to alert you to an adverse decision in the above referenced matter. This case concerns an action brought in Erie County Supreme Court on behalf of a class of institutionalized spouses who received home and community-based waived services (waiver recipients) and whose personal needs allowance (PNA) was reduced to \$50.

Prior to January 1, 1995, it was the Department's policy to budget waiver recipients who have community spouses with a PNA equal to the Medicaid income level for a one person household rather than the usual \$50 PNA provided to institutionalized spouses who reside in medical facilities. However, in 1994, the Department issued a GIS message (94 MA/026) instructing districts to budget all institutionalized spouses with a \$50 PNA effective January 1, 1995. This policy change was based on the Department's understanding that the Health Care Financing Administration (HCFA) mandated the same PNA for all institutionalized spouses. The Department's interpretation of Federal statutes also supported this policy change.

In a decision dated June 30, 1997, the court concluded that HCFA had not "required" the Department to change its policy. As a result, the Department must provide retroactive relief to waiver recipients who received a \$50 PNA during the period from January 1, 1995 to August 21, 1996 (On August 21, 1996, the Department issued a GIS message clarifying that the basis for the policy change was the Department's interpretation of Federal law, and not a mandate from HCFA).

For purposes of providing retroactive relief to class members, a notice will be sent to potential class members. The notice will inform the individual of the Department's obligation to provide reimbursement pursuant to the Order in Evans. The notice will instruct affected individuals to obtain documentation from their provider to verify that the provider has

received payment of the individual's spenddown for the affected period. The individual will be instructed to provide this documentation to his/her social services district for reimbursement.

The Department has identified waiver recipients who received services during the period from January 1, 1995 to August 31, 1996. This report will be made available to districts as an attachment to a forthcoming Local Commissioners Memorandum (LCM).

**RESPONSE NEEDED FROM DISTRICT**

The file identifying waiver recipients cannot be tailored to specifically identify only those waiver recipients who have community spouses. As a result, the Department is providing districts with the option of sending out the notice to class members rather than having the Department perform the mailing. Some districts may opt to send the notice because they may be better able to narrow the list to waiver recipients who have community spouses. If your district wishes to be responsible for the mailing, please call one of contact persons listed for this GIS message by August 21, 1998. If we do not here from you by this date, the Department will send a notice to those waiver recipients who are identified as being your district's responsibility.

Further information concerning the actions that will be required as a result of this litigation will be forthcoming. Please note that the above referenced notice will not be mailed by the State until an LCM is issued to social services districts.