New York State Bar Association
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Memorandum Regarding Clarification of Spousal Impoverishment Budgeting with Post-Eligibility Rules under the Affordable Care Act

To: Daniel Tarantino, Director, Bureau of Health Insurance Programs
Judith A. Arnold, Director, Division of Health Reform and Health Insurance Exchange

From: Elder Law and Special Needs Section

Elder # 6 May 12, 2015

Re: **GIS 14 MA/025**: Affordable Care Act - Requirement to Apply Spousal Impoverishment Budgeting with Post-Eligibility Rules to Couples with a Spouse Receiving Home and Community-Based Services Pursuant to a Waiver or Enrolled in a Managed Long Term Care Plan

In November 2014, pending clarification from the Centers for Medicare and Medicaid Services (CMS) regarding Section 2404 of the Affordable Care Act, the New York State Department of Health (DOH) issued GIS 14 MA/025, which rescinded its prior directive in GIS 14 MA/15.

Pursuant to GIS 14 MA/025, the local districts were directed to apply the policy set forth in GIS 12 MA/013 for married individuals who receive home and community-based waiver services (HCBS) under waiver authorized under Section 1915 (c) of the Social Security Act, and to apply the policy set forth in GIS 13 MA/018 for married individuals enrolled in the Managed Long Term Care program (MLTC) under the 1115 waiver. The effect of applying these two different directives is to require application of the post-eligibility budgeting rules for married individuals receiving services under a Section 1915 (c) waiver but not to individuals receiving services under the MLTC program.

On May 7, 2015, CMS issued State Medicaid Director Letter 15-001 providing guidance to states on implementation of Section 2404 of the Affordable Care Act. In its letter, CMS clarified that post-eligibility budgeting rules are required for married individuals receiving services under the Section 1915 (c) waiver programs but that post-eligibility budgeting rules do not apply to MLTC under the Section 1115 waiver. The local districts should be advised of this clarification.

On a related issue, the CMS letter stated at page 3 “[t]he determination of need for HCBS would be triggered when a married applicant requests HCBS coverage offered under the state plan.” And it states at page 4 “[i]mportantly, for those eligible through use of the spousal eligibility rules based on their need for HCBS, the statute does not require that they actually receive the HCBS for which they are eligible.” Therefore DOH should advise districts that they use spousal rules for any married applicant who is eligible for HCBS services and not wait until they are enrolled in an MLTC plan.

On behalf of the Elder Law and Special Needs Section, thank you for meeting with us in October 2014 on this very important issue, and for your efforts in the issuance of GIS 14 MA/025 which assisted many individuals during the period of time that clarification by CMS was pending.

The person who prepared this memorandum: David Goldfarb, Esq.

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