

August 12, 2009

Allan Bryan  
CMS Region One  
JFK Federal Building Room 2325  
Boston, MA 02203

Dear Mr. Bryan:

We are contacting you concerning recent actions of the Massachusetts Legislature to reduce the Personal Needs Allowance (PNA) of institutionalized Medicaid recipients. We believe that any action to reduce the PNA amounts to a reduction of Medicaid income standards in violation of the maintenance of effort requirements of the American Recovery and Reinvestment Act of 2009 (ARRA) and may jeopardize the receipt of increased Federal Matching Assistance Payments (FMAP).

The Massachusetts State Plan currently sets the PNA income standard for individuals institutionalized in Title XIX facilities at \$72.80 per month. 130 C.M.R. 520.025. 130 C.M.R. 520.026(A)(2) states "If an individual does not have income totaling the standard, the MassHealth agency will pay the individual an amount up to that standard on a monthly basis." The level of this income standard has varied over the years. In the Fiscal Year 1991 Budget the PNA was reduced from \$72.80 to \$60, where it remained until its restoration in the FY2008 and FY2009 budgets. The budget language increasing the PNA did not amend the underlying statute which reads in pertinent part:

*Any person who is eligible for assistance under the provisions of this chapter who is not maintaining his or her own home and who is receiving care in a licensed nursing home, a licensed chronic hospital, a licensed rest home, an approved public medical institution, or a public psychiatric institution shall retain the first sixty dollars of monthly income for clothing, personal needs allowance and leisure time activities. If there is no such income, or if such income is less than sixty dollars, the recipient shall be paid, in advance, the difference between such income and sixty dollars. M.G.L. c.118E §15.*

The recent actions of the Governor to veto budget language maintaining the PNA at its current level has resulted in the statutory language once again taking effect. This change in income standards for institutionalized recipients appears to violate the conditions under which states are

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"Line item 4000-0600 of Chapter 182 of the Acts of 2008 provides in pertinent part "notwithstanding any general or special law to the contrary, not less than \$5,000,000 shall be expended from this item for the purpose of providing an increase to \$72.80 per month in the personal needs allowance for individuals residing in nursing homes and rest homes who are eligible for MassHealth, Emergency aid to the Elder disabled and Children program or Supplemental Security Income". This provision took effect on July I, 2008.

eligible to receive increased FMAP reimbursement pursuant to the provisions contained in ARRA. Specifically, Section 5001(f) of the legislation states that

*... a State is not eligible for an increase in its FMAP under subsection (a), (b), or (c), or an increase in a cap amount under subsection (d), if eligibility standards, methodologies, or procedures under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008.*

The reduction of the PNA income standard by \$12.80 is a significant loss for institutionalized individuals who depend on this modest payment to meet all of their needs not covered by the MassHealth payment rate. Because the Governor's veto is quite recent the Office of Medicaid has not yet taken steps to implement the reduction. We request that your agency further investigate this matter and determine whether the reduction would violate the increased FMAP requirements of ARRA. If the issue is addressed expeditiously the state will have time to determine how best to avoid any FMAP eligibility problems.

Please feel free to contact Deborah Thomson at (617)227-6985 if you wish to discuss this further. Thank you for your attention to this matter.

Sincerely,

Deborah Thomson Esq.  
The PASS Group

Susan Levin Esq.  
National Academy of Elder Law Attorneys  
Massachusetts Chapter

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