DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

7500 SECURITY BOULEVARD
BALTIMORE MD 21244-1850

JUL . 2 1996

Dear State Medicaid Director:

The purpose of this letter is to clarify how States should apply the provisions of § 1924 of the Social Security Act which protect community spouses from impoverishment, when the institutionalized spouse has become Medicaid eligible by virtue of the medically needy spenddown. Generally, under 42 C.F.R. § 435.831(i)(5), the Medicaid program cannot reimburse expenses which an individual incurs to satisfy the medically needy spenddown. However, we believe that the spousal impoverishment protections override this rule when the amount of the institutionalized spouse's income protected in the post-eligibility process exceeds the medically needy eligibility standard.

Under the medically needy program an institutionalized spouse may incur a large spenddown liability which results in the individual becoming Medicaid eligible. If that individual has a "community spouse," Congress provided a mechanism under which a portion of the individual's income would be protected for that spouse in order to avoid spousal impoverishment. Section 1924(a)(1) provides that the "spousal" rules supersede any other provision of the Medicaid statute including § 1902(a)(17) and 1902(f) which is inconsistent with its rules. Section 1924(d) contains rules which protect portions of the institutionalized spouse's income from being used to pay for the cost of institutional care. While these rules could be read to apply only to that portion of income remaining after meeting the spenddown, to do so would undermine the Congressional purpose of protecting spouses from impoverishment.

When an institutionalized spouse spends down income in order to become eligible as medically needy, much of this spouse's income would be used to satisfy the spenddown. If the general rule of 42 C.F.R. § 435.831(i)(5) applies, the institutionalized individual would have virtually no income to make available to the community spouse. Contrary to Congressional intent, spousal impoverishment would follow. This problem only arises in the case of a spenddown, since outside of the spenddown context, the post-eligibility calculation ensures that sufficient funds from the institutionalized spouse will be protected for the community spouse, to the extent that the institutionalized spouse has income.

When this situation came to our attention, we conducted a survey of States with medically needy programs through our regional offices. The survey showed that most, if not all, of the States give the spousal impoverishment protections precedence over the prohibition of reimbursing for spenddown amounts, when determining the amount of income to be protected for the community spouse. States are using some mechanism to ensure that funds are actually available for the community spouse, even if this requires them to subsidize the spenddown amount in determining how much the institutionalized spouse actually pays to the nursing facility or for home and community-based care.

As explained in detail above, the spousal impoverishment provisions relating to the post-eligibility process found at section 1924(d)(1) take precedence over any provisions which are in conflict

with them. Therefore, steps must be taken to protect funds for the community spouse in the medically needy eligibility process, even if the result is that the State must pay for the institutionalized spouse's spenddown liability. To reach that end, we are presenting as an example one reasonable methodology States may use. States may also use other reasonable methods consistent with the law and regulations.

Under this method, the State Medicaid agency would determine eligibility for a medically needy institutionalized individual with a community spouse by ascertaining the individual's gross income, reducing that amount by any eligibility disregards, and comparing the result against the medically needy income standard for a single individual to determine the spenddown liability. The agency would then credit against the spenddown amount any incurred expenses for medical care as specified in 42 C.F.R. § 435.831(d). Once these incurred expenses equal or exceed the spenddown amount the individual will be eligible for Medicaid.

The agency will then determine the individual's contribution towards the cost of his or her institutional care. This calculation will be performed using the steps specified in § 1924(d)(1) of the Social Security Act, 42 U.S.C. § 1396r-5(d)(1). In this calculation the agency will begin by using the individual's gross income, then deduct from gross income the personal needs allowance, then the community spouse monthly income allowance, a family allowance (for each family member residing with the community spouse), and amounts for incurred expenses for medical or remedial care for the institutionalized spouse. Any amounts of income which remain after these deductions will be available to reduce the amount which the agency pays towards the individual's institutional care.

Note: As explained above, the State should pay whatever portion of the institutionalized spouse's cost of care (including spenddown) is necessary to ensure the actual availability of community spouse monthly income and family allowances calculated under this methodology.

In light of the survey results which show that States are, for the most part, complying with the philosophy behind the spousal impoverishment provisions, we do not believe the clarified policy will create a burden on the States. The clarification simply articulates the Federal policy in a manner which we believe is consistent with State practice as well as Congressional intent.

If you should have any questions or wish to discuss this clarification further, please contact Jennifer Ryan of my staff at (410) 786-4459

Sincerely,

Steven C. McAdoo
Acting Director
Medicaid Bureau

cc: Regional Administrator
Regions I - X