



April 13, 2020

VIA ELECTRONIC MAIL:

Mark L. Kissinger, Special Advisor for Long-Term Care
Heidi L. Hayes, Acting Director, Division of ACF & Assisted Living Surveillance
Sheila T. McGarvey, Director, Division of Nursing Homes & ICF/IID Surveillance
New York State Department of Health
Empire State Plaza, Corning Tower, 14th Floor
Albany, NY 12237

Re: Economic Impact Payments for Residents of Long-Term Care Facilities

Dear Mr. Kissinger, Ms. Hayes and Ms. McGarvey:

We write to urge the Department of Health to issue Dear Administrator Letters to all nursing homes and adult care facilities in the state about the federal economic impact payments expected to be issued to individuals nationwide, including the approximately 150,000 New Yorkers institutionalized in these facilities. As you know, nursing homes and adult care facilities frequently serve as representative payee for residents, or directly receive residents' income in less formal arrangements. Clear, prompt guidance from the Department of Health is essential to advise facilities that these payments do not count as "income" for Medicaid purposes, and that they may not be retained by the facility. We urge the Department to issue clear guidance that directs both nursing home and ACF/ALP administrators to properly credit the payments to individual residents' funds accounts, to inform residents of the availability of their payments, and to provide residents timely access to their funds.

Residents who receive Social Security retirement, survivors' benefits, or disability insurance payments will receive the economic impact payment automatically. (The IRS is still setting procedures for people who only receive SSI.)¹ In most cases, the payments will be made by direct deposit to accounts held by the facilities. With payments expected to begin before the end of April, time is of the essence for the Department to clarify facilities' responsibilities and residents' rights.

There was substantial confusion among residents and facility operators about the 2008 stimulus payments. Residents did not know how or if they would receive payments and some operators did not assist residents with filing the required paperwork. Some ACF operators tried to collect

¹ <https://www.irs.gov/coronavirus/economic-impact-payment-information-center>

the funds from residents. To combat misinformation, the Department issued Dear Administrator Letter 08-15 (April 11, 2008) to Adult Care Facilities in advance of the payments.

We anticipate more confusion this time, since the payments in most cases will not require filing a tax return—a change from the 2008 stimulus payments. The current economic impact payments will not count as income in the month received or as assets for 12 months for SSI or Medicaid purposes.² That means nursing home residents’ Net Available Monthly Income (NAMI) will not change as a result of these payments, and ACF residents’ facility fee will not change. Medicaid Assisted Living Program rates and the amount of the spend-down for ALP residents would also not be affected. In each case, the economic impact payment is the resident’s money for the resident to spend at her discretion. As long as the resident’s countable resources are spent down to the applicable resource limit within 12 months, the payment would not result in the resident having “excess resources” for purposes of Medicaid or SSI.

Please confirm that you will issue the guidance requested as soon as possible.

Thank you for your prompt action on this matter.

Sincerely,

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² “Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.” 26 U.S.C. § 6409.

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