

P A T H

Department of Prevention, Assistance, Transition, and Health Access

BULLETIN NO. 02-36F

FROM Eileen I. Elliott, Commissioner
for the Secretary

DATE November 1, 2002

SUBJECTS 2003 Deficit Prevention Plan: COLA offset for
individuals living independently and
receiving Aid to the Aged, Blind, and Disabled (AABD).

CHANGES ADOPTED EFFECTIVE January 1, 2003

INSTRUCTIONS

___ **Maintain Manual - See instructions below.**

X **Proposed Regulation - Retain bulletin
and attachments until you receive
Manual Maintenance Bulletin: 02-36F**

MANUAL REFERENCE(S)

___ **Information or Instructions - Retain until**

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This rule results from the Deficit Prevention Plan, authorized by Act 142, §324 (State Fiscal Year 2003 Appropriations Act) and approved by the Joint Fiscal Committee of the General Assembly on August 23, 2002. It proposes to offset the 1/1/2003 increase in federal payments to individuals living independently and receiving Aid to the Aged, Blind and Disabled (AABD) with an equivalent, simultaneous decrease in the state supplement. The reduction will thus equal the 1.4 percent COLA increase effective January 1, 2003. Since SSI and AABD payments are made in one monthly check, the net result will be that individuals in independent living arrangements will continue to receive the same SSI/AABD payment during the 2003 calendar year as they did throughout 2002. In the spring of 2003, these AABD beneficiaries will receive a one-time payment to mitigate the reduction in AABD benefits for six months. A detailed explanation of the change is set forth below.

Background

The AABD program is an optional program operated by the state to supplement the federal Supplemental Security Income (SSI) program. Both programs, SSI and AABD, provide cash assistance to the aged, blind and disabled and endeavor to provide a reasonable subsistence compatible with decency and health. 33 V.S.A. §1301(4). Reasonable subsistence amounts vary based on living arrangement. AABD program rules are set forth in sections 2700-2756 of the AABD Policy Manual. The payment levels are prescribed in section P-2740 of the AABD Procedures Manual, as specified by rule in section 2732.

The AABD program has seven living arrangements. One of the program’s seven living arrangements is referred to as the independent living arrangement. The proposed reduction only affects individuals in the independent living group. The reduction will not apply to individuals who live in residential care homes, custodial care living arrangements or other people’s homes, but only to those who live independently. This is to avoid destabilizing the already fragile provider system caring for individuals who live in supported living arrangements.

Under federal law, individuals who receive supplemental security income (SSI) and are aged, blind or disabled receive an annual cost-of-living adjustment (COLA) on January 1 in the federal portion of the benefit. States are not required to match or passthrough the federal COLA in their state supplement payments. Eligible individuals receive a monthly check that combines the federal SSI and state AABD payments. The COLA increase in the federal SSI payment will offset the proposed state AABD reduction since it will be in the same amount and occur at the same time as the COLA increase.

Detailed explanation of the proposed reduction

The proposed AABD reduction will not exceed the COLA individuals that live independently receive in the federal SSI portion of their monthly payment. By linking the state reduction to the federal increase, individuals will continue to receive the same overall benefit amount, as shown in the following table.

<i>Payment Levels</i>	<i>SSI Share</i>	<i>AABD Share</i>	<i>Total</i>
<i>Current</i>			
Individuals	\$545.00	\$ 59.04	\$604.04
Couples	\$817.00	\$110.88	\$927.88
<i>Proposed</i>			
Individuals	\$552	\$ 52.04 ($\$545 \times 1.4\% = \7 ; $\$59.04 - \$7 = \$52.04$)	\$604.04
Couples	\$829	\$ 98.88 ($\$817 \times 1.4\% = \12 ; $\$110.88 - \$12 = \$98.88$)	\$927.88

There are presently 10,103 individuals and 1061 couples living in independent living arrangements whose monthly AABD assistance will be reduced by the same amount as the COLA increase on January 1, 2003. The federal COLA for SSI/AABD beneficiaries effective January 1, 2003 is 1.4 percent. This translates into an increase in monthly federal SSI benefits of approximately \$7 per individual ($\$545 \times 1.4\% = \7) and \$12 per couple ($\$817 \times 1.4\% = \12). Effective January 1, 2003, the state will exercise the discretion permitted by state and federal law to not passthrough the federal increase. Instead, the state will neutralize the federal COLA increase by reducing the state supplement by an amount precisely equivalent to the federal raise.

However, the state proposes to soften the impact of the offset by issuing a one-time, lump-sum payment to current beneficiaries in the spring of 2003. This lump-sum payment will be equivalent to the amount they would have received for the period January through June 2003, if not for the 1/1/2003 reduction in the state supplement. As a result of this lump-sum payment, current beneficiaries will not experience the full financial impact of the 1/1/2003 reduction in the state supplement until July 1, 2003.

The 1/1/2003 reduction in the state supplement will reduce the base spending in the program by \$83,453 and ensure that state funds expended do not exceed the funds appropriated. Savings will be achieved in SFY 2003 because an estimated 700 new individuals are anticipated to enroll in the SSI program between the effective date of the reduction in the state supplement on January 1 and the close of the state fiscal year on June 30. The combined SSI/AABD payments these 700 individuals will receive will be less than contemplated by the original appropriation in section 147 of Act 142.

This rule is necessary to reduce program costs and to address the state budget deficit. The maximum aid eligible individuals receive from the state AABD program depends on the funds available. Section 1307 of Title 33 of the Vermont statutes authorizes the commissioner of the Department of Prevention, Assistance, Transition, and Health Access (PATH) to take measures to guarantee that the expenditures for the program shall not exceed the funds provided. The minimum aid eligible individuals receive are set by section 1618 of the Social Security Act. It requires Vermont to maintain its payment levels for all living arrangements at an amount no less than its March 1983 monthly levels of \$36.90 per individual and \$72.10 per couple. Even with the proposed reduction, individuals will continue to receive monthly payments well in excess of these monthly minimums: \$604.04 per individual and \$927.88 per couple.

Public Comments

A public hearing was held on October 21, 2002, at 11:00 a.m., in the AHS Secretary's Conference Room, State Office Complex, Waterbury, Vermont. Written comments were submitted by three organizations: the Council of Vermont Elders (COVE), the Vermont Coalition of Disability Rights (VCDR), and Vermont Legal Aid (VLA).

Response to Public Comments

Comment: Three commenters assert that the proposed rule lacks legislative authority and contravenes the Appropriations Act.

Response: As explained below, the Appropriations Act and Aid to the Aged, Blind & Disabled statutes support this rule.

(a) The Fiscal Year 2003 Appropriations Act (Act)

The proposed rule complies with the Fiscal Year 2003 Appropriations Act, Act 142. Although §147 of the Act included an appropriation for AABD that assumed no reduction in payment levels, the authority of §324 superceded it because it authorized a deficit prevention plan, “notwithstanding any provision of law to the contrary.” §324(a).

The Joint Fiscal Committee’s alternative and final Deficit Prevention Plan (Plan) “achieves savings equivalent to the savings proposed in the secretary’s plan” and fulfills legislative intent to “minimize the negative effects on the delivery of services”. Act 142, §324(b) and (d). The Plan produced a balanced budget. Act 142, §324(a). The Plan reduces the base of the program beginning January 1, 2003 and ensures it does not exceed the funds appropriated. Savings will be achieved in SFY 2003 because an estimated 700 new individuals are anticipated to enroll in the SSI program

between the effective date of the reduction in the state supplement on January 1 and the close of the state fiscal year on June 30. The combined SSI/AABD payments these 700 individuals will receive will be less than contemplated by the original appropriation in section 147 of Act 142. Additional program savings will accrue beginning 7/1/2003, as current beneficiaries experience the impact of the 1/1/2003 reduction in the state supplement.

(b) Aid To The Aged, Blind And Disabled

In addition to the Act, the department has statutory authority for the changes proposed through the department's rulemaking authority in chapter 13 of Title 33. Specifically, the Legislature has authorized the commissioner of prevention, assistance, transition, and health access to issue regulations for this program "guided by the statutory standards set forth in this chapter". 33 V.S.A. §1308. One statutory standard requires administration of AABD benefits "as far as funds are available" and the commissioner must "insure that the expenditures for the programs shall not exceed the funds provided for them." 33 V.S.A. §1307. The proposed changes are well within this statutory authority.

Comment: Two of the commenters state that the AABD program change violates the state and federal constitutions as well as state and federal law.

Response: The Legislature and Administration promulgated these rules based on the aforementioned legal authority and believe they are legally sound. Although the rule treats current recipients living independently slightly differently than either people who will come into the caseload sometime next year or people living in supported settings, the difference is rationally based and nondiscriminatory. Therefore, the rules meet all state and federal constitutional requirements.

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Vertical lines in the left margin indicate significant changes.

7/1/99

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2732

2732 Payment Levels

The maximum SSI/AABD payment an eligible individual or couple with no other income may receive is the sum of the maximum federal SSI payment and the maximum AABD state supplement for the applicable living arrangement.

A table showing the Federal SSI share, the state AABD share, and combined maximum SSI/AABD payment for each individual and couple living arrangement is published in the PATH Procedures Manual (Section P-2740) as soon as possible after final federal SSI maximums are published in the Federal Register and state AABD funding has been authorized by Vermont legislative action, but prior to the effective date of the revised maximums.

1/1/03

Bulletin No. 02-36

P-2740 A

P-2740 Payment Maximums

A. SSI/AABD Payment Maximums (2700)

Living Arrangement		Effective 1/1/03			<u>1/1/02 - 12/31/02</u>		
		<i>SSI Share</i>	<i>AABD Share</i>	<i>Total</i>	<i>SSI Share</i>	<i>AABD Share</i>	<i>Total</i>
Independent Living	Individual	552.00	52.04	604.04	545.00	59.04	604.04
	Couple	829.00	98.88	927.88	817.00	110.88	927.88
Another's Household	Individual	368.00	39.30	407.30	363.34	39.30	402.64
	Couple	552.67	48.31	600.98	544.67	48.31	592.98
Residential Care Home w/ Assistive Community Care Level III	Individual	552.00	48.38	600.38	545.00	48.38	593.38
	Couple	829.00	96.77	925.77	817.00	96.77	913.77
Res. Care Home w/ Limited Nursing Care Level III	Individual	552.00	267.13	819.13	545.00	267.13	812.13
	Couple	829.00	603.69	1432.69	817.00	603.69	1,420.69
Residential Care Home Level IV	Individual	552.00	223.94	775.94	545.00	223.94	768.94
	Couple	829.00	562.06	1391.06	817.00	562.06	1,379.06
Custodial Care Family Home	Individual	552.00	98.69	650.69	545.00	98.69	643.69
	Couple	829.00	332.82	1161.82	817.00	332.82	1,149.82
Long-term Care	Individual	30.00	17.66	47.66	30.00	17.66	47.66
	Couple	60.00	35.33	95.33	60.00	35.33	95.33