

DEPARTMENT OF HUMAN SERVICES

EFFECTIVE DATE: July 22, 1991

DATE ISSUED: July 22, 1991

SUBJECT: State-wide Implementation of Essex I and Essex II Litigation

**I. PURPOSE**

The State of New Jersey and its counties share the costs of maintenance and clothing for county indigent patients who reside in State institutions and programs for the developmentally disabled and mentally ill.

The State has historically retained 50% of maintenance payments, such as Social Security benefits, it received as representative payee on behalf of county indigent patients and credited the remaining one-half to the counties' obligations for the patients. As a result of this practice, some counties have conducted a practice of refusing to pay invoices for their share of maintenance costs for county indigent patients in State institutions, which are due to the State.

The County of Essex filed a lawsuit, captioned County of Essex v. William Waldman, etc., et al ("Essex I"), challenging the State's practice of retaining 50% of Social Security maintenance payments, that the New Jersey Supreme Court denied a petition and cross-petition for certification under docket number 32,924 on May 28, 1991. Essex County and the State have exhausted their appeals in Essex I. Other counties have filed similar lawsuits and, in the case of some of those counties, consent orders have been entered in the case staying the action until the appellate process has been exhausted in Essex I.

Essex County has filed a second lawsuit, captioned County of Essex v. Commissioner, New Jersey Department of Human Services, et al ("Essex II"), which raises a challenge to the State's practices concerning payments it receives in the form of federal Medicare and Medicaid benefits on behalf of developmentally disabled residents in State facilities. Other counties have filed similar lawsuits and, in the case of some of those counties, consent orders have been entered staying the action pending exhaustion of the appellate process in Essex II. A decision in Essex II was issued by the Appellate Division of Superior Court on June 14, 1991, and the Commissioner of the Department and Essex County have each filed a notice of petition for certification with the New Jersey Supreme Court.

There are other counties in the State that have not filed lawsuits of their own challenging the State's practices concerning maintenance payments in the form

of either Social Security or Medicare and Medicaid benefits. Therefore, no stays are in effect with respect to those counties and in some instances those counties have refused to pay maintenance costs which are due the State.

The purpose of this order is to implement, on a State-wide basis, the courts' decisions in the Essex I and Essex II lawsuits.

**II. SCOPE**

This order has applicability to all counties within the State of New Jersey, except the county of Essex.

**III. AUTHORITY**

N.J.S.A. 30:1-7, 30:1-11, 30:1-12, 30:1-12.1, 30:1-14, 30:1-15, 30:1-15.1, 30:1-15.2, 30:1-17, 30:1-19 through 30:1-22, 30:1A-1 et seq., 30:4-60, 30:4-68.1, 30:4-69, 30:4-78, 30:4-79, and 30:4-165.3, and all powers expressed or implied there.

**IV. POLICY**

- A. Prudent business and financial practices require that the Commissioner take all reasonable and appropriate measures as expeditiously as possible to collect any and all monies due and owing to the Department of Human Services, and that it is necessary and appropriate to administratively determine the amount due the State from the counties.
- B. The final decision in Essex I requires the State to disburse 100% of the Social Security maintenance payments it receives to the credit of Essex County up to the county's statutory obligation for 50% of the maintenance costs for its indigent patients. The court granted relief to Essex County in Essex I retroactive to the date when the county filed its complaint with the trial court.
- C. Subject to further review pending before the Supreme Court, the Appellate Division's decision in Essex II prohibits the Department from charging Essex County for the maintenance costs of persons residing in State institutions and facilities for the developmentally disabled in those cases where the State had received federal Medicare and Medicaid benefits. The court granted relief to Essex County in Essex II retroactive to the date when the county filed its complaint with the trial court.
- D. It is appropriate and desirable to establish a uniform and Statewide practice wherever practicable with respect to disbursement of Social

Security benefits and other maintenance payments received by the State and to be credited to the counties of the State that were not parties to the Essex I and Essex II cases.

**V. PROCEDURES**

- A. The Department of Human Services shall calculate the amount of the disbursement due each of the 20 counties affected by this order based on Social Security benefits received by the Department as representative payee of county indigent patients since December 6, 1990, the date of the Appellate Division decision in Essex I, and payment shall be made by crediting each county with the full amount of its disbursement.
- B. The Department shall calculate the amount paid, if any, by each of the 20 counties affected by this order, for maintenance costs of persons residing in State institutions and facilities and programs for the developmentally disabled in those cases where the State had received federal Medicare and Medicaid benefits for those persons and for which each county was billed after June 14, 1991, the date of the Appellate Division's decision in Essex II, and the Department shall credit each county with the full amount of any such payment. The credit, if any, due each county affected by this order, shall be adjusted by the Department as appropriate in accordance with any final decision of the New Jersey Supreme Court concerning the pending petitions for certification in Essex II and any such adjustment shall be reflected on the monthly invoice issued to each county in the month next following the Court's final decision.
- C. Each county's outstanding debt to the Department for its share of maintenance costs shall be reduced by the aggregate sum of the Essex I disbursement and the Essex II payment to be credited to the county. For each county that is current with respect to maintenance cost payments due the Department, the credit will be applied against current invoices. In the case of a county with a delinquent outstanding balance due the Department, the credit will be applied against the delinquent balance and the county shall immediately pay to the Department the remaining delinquent balance due, if any. A statement reflecting the amount of any outstanding balance due the Department from a county, the amount of any delinquent balance and the amount of any remaining delinquent balance, after the credit referred to in IV. A and B is applied, will be provided by the Department to the county within 60 days of the date of this order.

D. In the case of counties that have filed lawsuits and a stay of the action pending exhaustion of the appellate process in both Essex I and Essex II is presently in force, the county shall not be obligated under this order to pay the amount of any delinquent balance due the Department unless and until the stay of the litigation is vacated by a court of competent jurisdiction, either by consent of the parties or otherwise. Upon vacation of a stay, the amount of any delinquent balance shall become immediately due and payable to the Department. Nothing in this order shall be construed as prohibiting a county from paying any amount due or to become due to the Department.



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Alan J. Gibbs  
Commissioner