

APA-1

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No: 560 Department or Agency: Alabama Medicaid Agency

Rule No: 560-X-25-.16

Rule Title: Income and Resources of a Married Couple for Institutional Care

_____ New; X Amend; _____ Repeal; _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? _____ no

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? _____ yes

Is there another, less restrictive method of regulation available that could adequately protect the public? _____ no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? _____ no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? _____ no

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? _____ yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? _____ no

Does the proposed rule have an economic impact? _____ no

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer: Stephanie Lindsay

Date: 7-18-2018

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Medicaid Agency

RULE NO. & TITLE: 560-X-25-.16 – Income and Resources of a Married Couple for Institutional Care

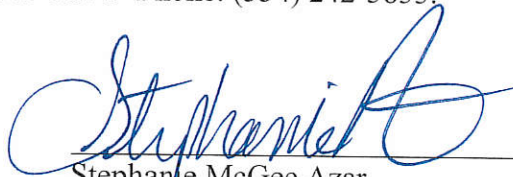
INTENDED ACTION: Amend 560-X-25-.16

SUBSTANCE OF PROPOSED ACTION: The above referenced rule is being amended to include general updates and additions that will clarify the requirements for Income and Resources of a Married Couple for Institutional Care.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written or oral comments may be submitted to the Alabama Medicaid Agency, 501 Dexter Avenue, Post Office Box 5624, Montgomery, Alabama 36103-5624. Agency business hours are 8:00 a.m. to 5:00 p.m. Monday through Friday.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written/Oral comments concerning this change must be received by the Alabama Medicaid Agency no later than September 4, 2018.

CONTACT PERSON AT AGENCY: Stephanie Lindsay, Administrative Secretary, Alabama Medicaid Agency, 501 Dexter Avenue, Post Office Box 5624, Montgomery, Alabama 36103-5624. Phone: (334) 242-5833.


Stephanie McGee Azar
Commissioner

Rule No. 560-X-25-.16 Income and Resources of a Married Couple for Institutional Care

(1) The Medicare Catastrophic Coverage Act (MCCA) of 1988 provides for the special treatment of income and resources of a married couple. The special treatment is to protect the income and resources for the maintenance needs of the community spouse while the spouse is in a medical institution or nursing facility. In determining Medicaid eligibility for an institutionalized spouse, the provisions of this section supersede any other inconsistent provisions of this chapter, including the determination of income and resources. –The MCCA provisions apply to all claimants admitted to the medical institution or nursing facility on or after 9/30/89.

(2) For purposes of this section, the following definitions apply:

(a) SPOUSE - Person legally married to another under State law. The SSI definition as applied to the QMB/SLMB cases is not applicable to spousal cases. Legal marriage is a traditional marriage conducted by legal authority or a common law marriage recognized by a court and entered into prior to January 1, 2017.

(b) INSTITUTIONALIZED SPOUSE (IS) - Legally married person who resides in a medical institution or nursing facility and can reasonably be expected to continue to reside in the medical institution or nursing facility for a continuous period.

(c) COMMUNITY SPOUSE (CS) - Legally married person who is not living in a medical institution or nursing facility, and has a spouse residing in a medical institution or nursing facility for a continuous period.

(d) CONTINUOUS PERIOD OF INSTITUTIONALIZATION - At least 30 consecutive days of institutionalization in qualified medical institutions and/or nursing facilities.

(e) OTHERWISE AVAILABLE INCOME - Income that would be used to determine eligibility without benefit of disregards (including federal, state and local taxes) - gross income as defined by SSI.

(f) MAINTENANCE NEEDS STANDARDS - Income standards against which community spouses' and other family members' incomes are compared for purposes of determining the amount that can be allocated in the post-eligibility calculation.

(g) MONTHLY MAINTENANCE NEEDS ALLOWANCE - The minimum income the community spouse is entitled to have each month. This is an amount deducted in the post-eligibility calculation of income for maintenance needs of An allowance made from the institutionalized spouse to the community spouse (if both spouses agree to the allocation) or other dependent family members to meet his or her their needs in the community.

(h) SPOUSAL SHARE - The set total value amount of resources protected for the community spouse. The Spousal Share is the greater of the Minimum Protected Resource Amount or one-half of the total value of the married couple's combined countable resources, not to exceed the Maximum Protected Resource Amount.

(3) Protecting Income and Resources for the Community Spouse.

(a) A monthly maintenance ~~needs allowance amount (allocation)~~ can be protected for the community spouse and family dependents at home.

(ab) Spousal Impoverishment - To determine eligibility for an institutionalized ~~spouse claimant, who becomes institutionalized on or after September 30, 1989 and~~ who has a community spouse, all resources, ~~{assets}~~ (whether owned jointly or individually by either spouse,) must be ~~combined~~ "pooled" beginning with the point that a spouse was institutionalized

to perform a Spousal Assessment. A Spousal Assessment must be conducted at both the beginning of the first continuous period of institutionalization and at the time of application for Medicaid benefits. A Spousal Assessment will calculate the total value amount of both the resources available to the institutionalized spouse and the protected Spousal Share of the community spouse. A spousal share is the greater of the minimum protected resource amount or 1/2 of the combined countable resources {assets}, not to exceed the maximum federal limit. The determination will be made using the total combined resources {assets} at the point a spouse is institutionalized. The A Spousal Assessment is to be completed at the request of either of the married couple, an authorized representative acting on behalf of either spouse, or at the time of application for Medicaid benefits. The A Spousal Assessment is to be accomplished in a prompt manner.

(cb) When a married couple is both institutionalized and both apply, each is treated as individuals rather than as a couple. Treatment as individuals begins as of the first day of the month following the month both are institutionalized. Spousal impoverishment rules do not apply and an assessment of resources shall not be conducted.

(de) If a married couple is institutionalized and only one applies for Medicaid, they are treated as individuals as of the beginning of the first full month of separation. Income and assets of the ineligible spouse must be deemed during the partial month.

(ed) Spousal impoverishment rules apply to legally married couples when one enters a medical institution or nursing facility while the other remains in the community. The institutionalized spouse must remain in an institution for 30 continuous days or longer.

(fe) Spousal impoverishment does not apply if a claimant is not legally married at the time he/she enters the medical institution or nursing facility, unless he or she subsequently marries.

(gf) If there is a change in circumstances such that there is no community spouse or institutional spouse, spousal impoverishment provisions cease to apply. The effective date of the cessation is the first full month following the change in status, for example, the community spouse enters a medical institution or nursing facility; or if the marriage is ended by death, divorce or annulment.

~~(g) The spousal impoverishment resource {assets} provisions do not apply to a claimant who is in a medical institution or nursing facility before 9/30/89. It would apply after readmission, if the claimant was originally admitted before 9/30/89 but left an institutional facility for 30 consecutive days or longer and then reenters the institution or facility.~~

(h) In order for spousal impoverishment rules to apply there must be a community spouse both at the point of institutionalization and at the point of application.

(i) If the claimant marries after the initial determination of eligibility, spousal rules apply. The resource assessment is computed based on the assets owned by the couple, individually or jointly, at the beginning of the institutionalized spouse's most recent continuous period of institutionalization even though that point precedes the point in time where there is a known community spouse.

(j) If both spouses enter an institution at the same time, but one spouse returns to the community, an assessment must be completed. The assessment is computed based on the resources ~~{assets}~~ owned by the couple (individually or jointly) at the beginning of the institutionalized spouse's most recent continuous period of institutionalization, even though both spouses were institutionalized at that point.

(4) When a claimant for Medicaid was divorced during the look-back period (~~36~~-60 months), the district office should review the divorce settlement. If the claimant did not receive an equal share of the marital estate, it may be considered ~~to be~~ a transfer of resources.

(5) Treatment of Income - The following rules apply in determining ownership of income for eligibility purposes:

(a) Consider available to each spouse one-half of any income paid in the name of both spouses,

(b) Consider any income paid solely to each spouse as income to that spouse,

(c) Consider income paid in the name of another party and both spouses, or one spouse, available to each spouse in proportion to each spouse's interest (or one-half of the total amount to each when payment is made to both spouses),

(d) Consider available to each spouse, one-half of any income that has no instrument establishing ownership. The institutionalized spouse is allowed to submit evidence to Medicaid to rebut the determination of available income (other than trust income). Prenuptial agreements are not binding nor considered for Medicaid eligibility purposes or for spousal impoverishment.

(e) If the institutionalized spouse is the grantor of a trust providing for payment of income to him or her, the maximum amount payable by the terms of the trust will be counted as available. No income paid only to a community spouse shall be counted in determining eligibility or amount of the payment to the nursing home for the institutionalized spouse for any month of institutionalization. The rule on trust income incorporates Section 1902(k) of the Social Security Act, the Medicaid Qualifying Trust provision.

(6) Compare the institutionalized spouse's countable income to the institutional income limit.

(a) After the institutionalized spouse has been determined income and resource eligible, determine the amount of income, if any, to be applied toward the cost of institutional care (i.e., liability amount) by deducting the following from the institutionalized spouse's income in the following order:

1. Personal Needs Allowance,

2. Community Spouse Monthly Maintenance Needs Allowance, if applicable,

3. Family Maintenance Needs Allowance, if applicable,

4. Amount for Health Insurance premiums, if applicable.

(b) The remainder should be the amount the claimant must pay to the nursing facility. In the case of a divorced couple, alimony is not considered to be an income deduction for decreasing the liability amount to be paid to the nursing facility.

(7) The minimum monthly maintenance needs standard for the community spouse is recalculated each year. Changes, if any, in this amount are effective in July. The community spouse monthly maintenance needs allowance is determined as follows: Deduct the community spouse's monthly income from the minimum monthly maintenance needs standard. This amount is published each year by HCFA the U. S. Department of Health & Human Services (HHS) and is 150 percent of the federal poverty level for a couple. Available income of the community spouse includes income that would be used to determine eligibility for the claimant, without

benefit of disregards (including federal, state, and local taxes)(gross income according to SSI standards). Any remaining amount is the monthly maintenance needs allowance (if allocated to the spouse). This amount is used in the post-eligibility calculation for allocation to the community spouse. If in excess, an allowance is not made available. When allowances are not made available to (or for the benefit of) the community spouse, Medicaid will not deduct the allowance. The following are mandated deductions for the institutionalized spouse and may reduce the monthly maintenance needs allowance for the community spouse:

- (a) ~~(1)~~ personal needs allowance,
- (b) ~~(2)~~ Veterans Administration aid and attendance allowance,
- (c) ~~(3)~~ Veterans Administration payments for unusual medical expenses, and
- (d) Veterans Administration continuing medical expenses.

(8) A maintenance needs allowance may be provided from the institutionalized spouse to other dependent family members. The dependent family member is defined as: a minor child, dependent adult child, dependent parent, or dependent sibling of either spouse, who is living with the community spouse and who is listed on the federal tax forms as a dependent (Internal Revenue Service tax dependent) of the community spouse.

(a) Allowances for each family member are determined as follows:

- 1. Step 1. Deduct the gross income of the family member from the community spouse minimum monthly maintenance standard;
- 2. Step 2. Divide the remainder in Step 1 by 3.
- 3. Step 3. The remainder in Step 2, rounded down to the nearest dollar, is the minimum family monthly maintenance needs allowance used in the post-eligibility calculation to be allocated to the family member. If in excess, an allowance is not made available, deduct allowances for other family members, regardless of whether institutionalized spouses make their income available to such persons.

(b) When there is no community spouse and there are other family members, the current ~~MLIF (formerly AFDC)~~ payment standard will be used. The total number of family members at home will be computed against this table. This standard will be used when there are other family members, even though in some instances the needs allowance will be less than that of a spouse only. Any income of the family at home will be deducted from the standard to determine allocation. If the family at home has no income, the standard will be allocated. If the income of the institutionalized spouse is below the standard, the entire income will be allocated except for the protected personal needs allowance and the veterans aid and attendance allowance, veterans reimbursement for continuing unusual medical expenses. The current ~~MLIF (formerly AFDC)~~ definition of family units will be used in determining who is a family member.

(9) Treatment of Resources - Medicaid shall "pool" the resources ~~{assets}~~ of an institutionalized and community spouse when:

(a) Either spouse requests an assessment at the beginning of the institutionalized spouse's first continuous period of institutionalization ~~beginning on or after September 30, 1989; and-~~

(b) Although the married couple may not have requested an Spousal Assessment at the time one of the married couples was institutionalized, the agency Medicaid shall determine the total combined resources ~~{assets}~~ existing at the point of institutionalization when ~~an~~ the initial Medicaid application is filed. At the time of application,

for Medicaid, ~~the Medicaid Agency~~ computes the total combined value of the resources ~~{assets}~~ of the married couple and a Spousal sShare ~~which is equal to 1/2 of the total value, or the minimum protected resource amount, whichever is greater~~. The A Spousal Assessment will be conducted both at the time and date of institutionalization, and at the time of initial eligibility determination (i.e., eligibility or ineligibility). All ~~of the resources {assets}~~ owned by either the institutionalized spouse or the community spouse, or both, shall be considered ~~to be a countable resource~~ available to the institutionalized spouse, except for ~~a specific "protected amount" for the community spouse's~~ ~~(i.e., the sSpousal sShare)~~ ~~not to exceed the maximum federal limit~~.

(c) At the beginning of a continuous period of institutionalization of a spouse, ~~the district office shall use the following criteria Medicaid shall~~ to determine the total value amount of both the Spousal Share of the community spouse and Medicaid eligibility for the institutionalized spouse for the first month of a continuous period of institutionalization as follows:

1. Step 1. List all combined countable resources ~~{assets}~~ owned individually or jointly by the married couple at the date and time of entry to the medical institution or nursing facility. The following types of otherwise excluded resources ~~{assets}~~ shall be included in ~~the a Spousal Assessment~~:

(i) ~~E~~equity value of real property normally excluded from assets due to a bona fide effort to sell;

(ii) equity value of real property normally excluded from assets because it is jointly owned, and the sale of the property would cause the other owner undue hardship because of the loss of housing; ~~and/or~~

(iii) equity value of real property normally excluded because of a legal impediment; ~~and/or~~

(iv) equity value of real property normally excluded because it is income producing.

2. Step 2. Determine the total value of items listed in ~~the Step 1 above procedure~~. If the total in Step 2 is less than the Minimum Protected Resource Amount (published annually by HHS) State Standard, stop here. All resources ~~{assets}~~ may be assessed to and for the use of the community spouse protected as the Spousal Share. If the amount in Step 2 ~~exceeds is greater than~~ the Minimum Protected Resource Amount State Standard, go to Step 3.

3. Step 3. Determine 1/2 of the total ~~value resources {assets}~~ in Step 2.

4. Step 4. Compare the amount in Step 3 with the Maximum Protected Resource Amount (published annually by HHS). If the amount in Step 3 is less than the Maximum Protected Resource Amount, protect ~~that~~ amount in Step 3 as the Spousal Share for the community spouse. If ~~it~~ the amount in Step 3 is ~~more greater~~ than the Maximum Protected Resource Amount, protect the ~~m~~ Maximum Protected Resource Amount as the Spousal Share amount allowed for the community spouse.

5. Step 5. Subtract the amount in Step 4 from the total amount in Step 2 above. The remaining amount is a countable resource ~~{asset}~~ to be used for the institutionalized spouse. If this remaining amount exceeds the current resource ~~{asset}~~ limit for an institutionalized case, the claimant is ineligible until those assets and assets accumulated during the spend-down period are spent down to the appropriate level.

6. During the continuous period of institutionalization, after the month in which an institutionalized spouse is determined to be eligible, no resources ~~{assets}~~ of the community spouse shall be deemed to the institutionalized spouse.

7. Once an assessment has been made, a new assessment can only be made if the claimant is discharged from the nursing facility or medical institution for 30 continuous days and then readmitted for another 30 continuous day period. The assessment can be reevaluated if it is determined that inaccurate information was provided during the original assessment. Only the resources ~~{assets}~~ on hand at the point of continuous institutionalization of the institutionalized spouse, and the value of those resources ~~{assets}~~ can be used in the reevaluation of the assessment. After the assessment is completed, the amount attributed to the institutionalized spouse and any additional money accumulated or acquired by either spouse, must be spent down to \$2,000.00 on the institutionalized spouse in order to be eligible. Gifts and resource exclusions that are otherwise available when determining an individual's eligibility do not qualify as an appropriate spend down. The institutionalized spouse may spend the money on nursing home care, items he or she needs in the nursing home, to pay legitimate debts belonging solely to him or her, maintenance on property in proportion to the ownership interest, or other appropriate expenses. If the community spouse or institutionalized spouse acquires additional resources ~~{assets}~~ during the spend-down period, those additional resources ~~{assets}~~ must be spent down also. The only amount that the community spouse can retain, prior to and at the time of the effective date of eligibility for institutionalized Medicaid benefits, is the protected amount determined in the assessment. After the effective date of eligibility for institutionalized Medicaid benefits, no resources of the community spouse shall be deemed available to the institutionalized spouse.

~~8. For claimants who become institutionalized on or after~~

~~September 30, 1989, under the resource {asset} rules, the community spouse resource {asset} allowance is deducted from the couple's combined countable resources {assets} at the point of continuous institutionalization, and at the point of award in determining the eligibility of the institutionalized spouse.~~

(10) Undue ~~h~~Hardship

(a) If information is available to make a determination that excess resources exist and the institutionalized spouse claimant or sponsor claims an undue hardship exists, the case will be sent to the ~~East Region Beneficiary Services or West Region Beneficiary Services~~ Beneficiary Services East or West Division. ~~The East or West Region Division will forward the case to the Office of General Counsel who will to~~ determine whether an undue hardship exists. If it is determined that an undue hardship exists, the case institutionalized spouse may be awarded eligibility. ~~If there is no undue hardship, the case may be denied.~~

(b) An Undue hardship exists under this Rule-section when the Agency Medicaid determines by clear and convincing evidence that the institutionalized spouse lacks the right, authority, or power to access the excess countable resources attributed to such spouse under 1924 (c)(2) of the Social Security Act, and ineligibility for Medicaid benefits will result in non-receipt of necessary medical services. In determining the existence of "undue hardship," Medicaid will consider all circumstances involving the situation of the individual institutionalized spouse, including but not limited to the following:

1. Whether the institutionalized spouse (or authorized representative) ~~individual or his/her representative~~ has exhausted all reasonable efforts to obtain and utilize the resources in question; or

2. Whether the institutionalized spouse (or authorized representative) ~~individual or his/her representative~~ has exhausted all reasonable efforts to meet his/her needs from all other available sources; or

3. Whether the institutionalized spouse ~~individual~~ has been determined to be a person in need of care and protection pursuant to the Adult Protective Services Act, Alabama Code 1975 §38-9-1, et seq.

(11) ~~The procedure for applying spousal impoverishment is~~ In situations when the community spouse cannot be located, is alleged deceased, or refuses to cooperate with the ~~claimant institutionalized spouses shall be as follows:~~

(a) The record shall contain a sworn statement completed by the institutionalized spouse of the claimant or other person ~~regarding the community spouse. The sworn statement should be completed by the spouse and/or anyone~~ with knowledge of the whereabouts of the community spouse and must show the following:

1. Last known name;
2. last known address;
3. forwarding address at the post office;
4. last known employment;
5. circumstances surrounding disappearance;
6. health of the individual at time of disappearance;
7. state of mind of the individual at time of disappearance;
8. efforts to locate;
9. SSN/VA claim number/other identifying information on the

individual; and

10. if alleged to be deceased, obtain death certificate from the Department of Public Health.

(b) The eligibility specialist must follow up on any leads noted above and must verify the following: financial accounts, property, and employment.

~~When evaluating information on resources, the following applies:~~

~~1. If sufficient information is available to determine that excess resources do not exist, the case may be awarded.~~

~~2. If insufficient information is available to determine if the resources are or are not within the resource limit such as knowledge of resources but the value cannot be verified, the case must be denied.~~

~~3. If information is available to make a determination that excess resources exist and the claimant or sponsor claims an undue hardship exists, the case will be sent to the Elderly/Disabled Certification Beneficiary Services East or West Division so that the Office of General Counsel can determine if an undue hardship exists. If the undue hardship exists, the case may be awarded. If there is no undue hardship, the case must be denied.~~

(12) Transfers by the community spouse to a person or persons other than the institutionalized spouse may result in a periods of ineligibility for nursing home payments for the institutionalized spouse. The institutionalized spouse will need to actually transfer (within 12

months) sufficient resources ~~{assets}~~ to equal the amount protected as the Spousal Share of the allowance to the community spouse so that such resources ~~{assets}~~ do not continue to cause ineligibility.

(13) All countable resources in excess of the amount protected for the ~~community spouse, in the assessment,~~ Spousal Share shall be countable resources to the institutionalized spouse whether they are in the name of the institutionalized spouse or community spouse.

~~———— (14) ——— RULES BEFORE SEPTEMBER 30, 1989 AND BEFORE OCTOBER 1, 1990
RELATED TO COUPLES — TREATMENT OF INCOME AND RESOURCES~~

~~———— (a) ——— Before the Medicare Catastrophic Coverage Act of 1988 (MCCA), treatment of a couple's income and resources depended on the living arrangement as of the first of a month. The rules below apply to persons admitted to the nursing facility before 9/30/89. Income and resources are deemed from spouse to spouse during the partial month (month of separation) when one spouse enters an institution and the other spouse remains at home. The institutionalized spouse is treated as an individual effective the first day of the month he or she fulfills the institutional residency requirement. Deeming of income and resources no longer applies. If eligible, the community spouse and/or family members could receive a designated allocation amount at home. This allocation is deducted from the institutionalized spouse's liability amount.~~

~~———— (b) ——— Before 10-1-90, income and resources of a couple were treated as two individuals after they had been living together (sharing a room) in an institution for six months. Beginning 10-1-90 when both members of a couple are institutionalized and both apply, both members are treated as individuals rather than as a couple from the point both are institutionalized (includes partial months). If only one member of the couple applied for Medicaid, the income and resources of the ineligible spouse was required to be deemed during the partial month.~~

Author: Denise Banks, Associate Director, Policy & Training, Beneficiary Services Division

Statutory Authority: 42 USC 1396r-5. Social Security Act, Section 1924 (a) through (g).

History: Permanent rule effective September 9, 1998. **Amended:** August 22, 2005; effective November 16, 2005. **Amended:** Filed April 11, 2014; effective May 16, 2014. **Amended:** Filed July 18, 2018.