

907 KAR 20:035. Spousal impoverishment and nursing facility requirements for Medicaid.

RELATES TO: KRS 194A.505, 205.520, 205.619, 304.14-640, 304.14-642, 38 U.S.C. 5503

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. Part 435, 42 U.S.C. 1396a, 1396d, 1396r-5

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

Section 1. Resource Assessment.

- (1) Pursuant to 42 U.S.C. 1396r-5(c)(1)(B), an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made:
 - (a) Upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse; and
 - (b) Upon receipt of relevant documentation of resources.
- (2) Resources that have been protected from estate recovery due to a long-term care partnership insurance policy shall be excluded from the eligibility determination by the eligibility worker at the time of application.
- (3) An assessment shall contain the total value of the joint resources and computation of the spousal share.
- (4) The department shall complete the assessment within forty-five (45) days following submission of complete documentation or verification.
- (5) Upon completion of a resource assessment, each spouse shall:
 - (a) Receive a copy of the assessment; and
 - (b) Be notified that the right of appeal of the assessment shall exist at the time the institutionalized spouse applies for Medicaid.

Section 2. Protection of Income and Resources of the Couple for Maintenance of the Community Spouse.

- (1) The income provisions established in this subsection shall apply for an individual beginning a continuous period of institutionalization on or after September 30, 1989.
 - (a) Except as provided in paragraph (b) of this subsection, during a month in which an institutionalized spouse is in the institution, income of the community spouse shall not be deemed available to the institutionalized spouse.
 - (b) In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for Medicaid, the provisions of 42 U.S.C. 1396r-5(b)(2) shall apply.
- (2) The resource provisions established in this subsection shall apply for an individual beginning a continuous period of institutionalization on or after September 30, 1989.
 - (a) Except as provided in subsection (4)(b) of this section, in calculating the resources of an institutionalized spouse at the time of an initial eligibility determination for a benefit under Medicaid, the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.
 - (b) The following protected amounts shall be deducted from a couple's combined countable resources at the time of the determination of initial eligibility of the institutionalized spouse:

1. The greater amount of:
 - a. The spousal share which shall not exceed a maximum of \$60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g); or
 - b. The state resource standard; and
2.
 - a. If applicable, an additional amount transferred under a court support order; or
 - b. If applicable, an additional amount designated by a hearing officer.
- (c) The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:
 1. The institutionalized spouse has assigned to the department his or her right to support from the community spouse;
 2.
 - a. The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment; and
 - b. The state has the right to bring a support proceeding against a community spouse without the assignment; or
 3. The department determines that denial of eligibility would work an undue hardship.
- (d) After eligibility for benefits is established for the individual:
 1. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for a Medicaid benefit, the resources of the community spouse shall not be deemed available to the institutionalized spouse; and
 2. Resources of the institutionalized spouse protected for the needs of the community spouse shall be considered available to the institutionalized spouse if the resources are not transferred to the community spouse within six (6) months of the initial eligibility determination.
- (e) The equity value of an automobile in excess of the limits established by 907 KAR 20:025 shall not be included as a countable resource.
- (3) The provisions established in this subsection shall apply with regard to protecting income for a community spouse.
 - (a) After an institutionalized spouse is determined or redetermined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:
 1. A personal needs allowance of forty (40) dollars plus a mandatory withholding from income, including a mandatory payroll deduction that is a condition of employment and federal, state, and local taxes that the government requires the payer to deduct before payment is made to the payee;
 2. A community spouse monthly income allowance to the extent income of the institutionalized spouse is made available to, or for the benefit of, the community spouse;
 3. A family allowance determined in accordance with the definition of other family member's maintenance standard; and
 4. An amount for incurred expenses for medical or remedial care for the institutionalized spouse.
 - (b)
 1. The community spouse income allowance shall be the sum of the standard maintenance amount and the excess shelter allowance, not to exceed the community spouse maintenance standard.

2. The community spouse maintenance standard shall be set at \$1,500 per month, to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).

(c) If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse income allowance for the spouse shall not be less than the amount ordered.

(4) The provisions established in this subsection shall apply regarding a transfer of resources from an institutionalized spouse.

(a)

1. An institutionalized spouse may, without regard to the prohibition against disposal of assets for less than fair market value, transfer to the community spouse, or to another for the sole benefit of the community spouse, an amount equal to the spousal protected resource amount to the extent the resources of the institutionalized spouse are transferred to, or for the sole benefit of, the community spouse.

2. The transfer shall be made as soon as practicable after the initial determination of eligibility, taking into account the time necessary to obtain a court order under paragraph (c) of this subsection.

(b)

1. The spousal protected resource amount shall be the greater of:

a. The spousal share which shall not exceed a maximum of \$60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g); or

b. The state spousal resource standard.

2. The state spousal resource standard shall be set at \$20,000.

3. For an individual, the spousal protected resource amount may be a higher amount established by a hearing officer or a higher amount transferred under a court order as specified in paragraph (c) of this subsection.

(c) If a court has entered an order against an institutionalized spouse for the support of a community spouse, the prohibition against disposal of assets for less than fair market value shall not apply to the amount of resources transferred pursuant to the order for the support of the spouse.

(5) Except for a transfer of resources to the community spouse as specified in subsection

(4) of this section, the transfer of resource policies established by 907 KAR 20:030 shall apply.

(6)

(a) The department shall send the notice specified in paragraph (b) of this subsection to both spouses upon a:

1. Determination of eligibility for Medicaid of an institutionalized spouse; or

2. Request by:

a. The institutionalized spouse;

b. The community spouse; or

c. A representative acting on behalf of either spouse.

(b) The notice shall state the:

1. Amount of the community spouse monthly income allowance;

2. Amount of a family allowance, if any;

3. Method of computing the amount of the community spouse resources allowance; and

4. Spouse's right to an administrative hearing in accordance with 907 KAR20:060.

(7)

(a) Both the institutionalized spouse and community spouse shall be entitled to an administrative hearing in accordance with 907 KAR 20:060 if the spouse is dissatisfied with the action of the agency including determination of the following:

1. The community spouse monthly income allowance;

2. The amount of monthly income determined to be otherwise available to the community spouse;
 3. The attribution of resources at the time of the initial eligibility determination; or
 4. The determination of the community spouse resource allowance.
- (b) If either the institutionalized spouse or community spouse establishes during the administrative hearing that the community spouse needs income above the level otherwise provided by the monthly maintenance needs allowance, due to an exceptional circumstance resulting in significant financial duress, an amount adequate to provide the necessary additional income shall be substituted for the monthly maintenance needs allowance.
- (c) If either spouse established during the hearing process that the community spouse resource allowance, in relation to the amount of income generated by an allowance, is inadequate to raise the community spouse's income to the monthly maintenance needs allowance, there shall be substituted for the community spouse resource allowance an amount adequate to provide the monthly maintenance needs allowance.

Section 3. Specified Individuals in Nursing Facilities. For an individual who is aged, blind, or has a disability and who is in a medical institution or nursing facility but does not have a community spouse, the requirements established in this section with respect to income limitations and treatment of income shall apply.

- (1)
 - (a) In determining eligibility, the appropriate medically needy standard or special income level, disregards, and exclusions from income shall be used.
 - (b) In determining patient liability for the cost of institutional care, gross income shall be used as provided in subsections (2) and (3) of this section.
- (2)
 - (a) Income protected for basic maintenance shall be forty (40) dollars monthly plus mandatory withholdings.
 - (b) Mandatory withholdings shall:
 1. Include minimum state and federal taxes; and
 2. Not include court-ordered child support, alimony, or similar payment resulting from an action by the recipient.
- (3) An amount excluded under a plan to achieve self-support, as an impairment related work expense, or a blind work expense (BWE) shall be considered an increased personal needs allowance for a Medicaid recipient except a recipient for whom a quarterly spenddown process as established in 907 KAR 20:020 is applicable.
- (4) Income in excess of the amount protected for basic maintenance shall be applied to the cost of care except as provided in this subsection.
 - (a) Available income in excess of the basic maintenance allowance shall be first conserved as needed to provide for the needs of a minor child up to the appropriate family size amount from the scale as established by 907 KAR 20:020, Section 1(1).
 - (b) Remaining available income shall be applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums or medical care recognized under state law but not covered under the state's Medicaid plan.
- (5) The basic maintenance standard allowed an individual during the month of entrance into or exit from the nursing facility shall take into account the home maintenance costs.
- (6) If an individual loses eligibility for a supplementary payment due to entrance into a participating nursing facility and the supplementary payment is not discontinued on a

timely basis, the amount of an overpayment shall be considered as available income to offset the cost of care to the Medicaid Program.

(7)

(a) An SSI benefit payment, mandatory state supplement payment, or optional state supplement payment received by a specified institutionalized Medicaid eligible individual in accordance with 42 U.S.C. 1382(e)(1)(G) shall be excluded from consideration as either income or a resource.

(b) The payment shall not be used in the posteligibility process to increase the patient liability.

(8)

(a) Ninety (90) dollars of Veterans Affairs benefits received by a veteran or the spouse of a veteran shall be excluded from consideration as income.

(b) The ninety (90) dollars shall not be counted in the eligibility or the posteligibility calculation.

(9) Veterans Affairs payments for unmet medical expenses and aid and attendance shall:

(a) Be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility;

(b) Be excluded in the posteligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility; and

(c) Not be excluded in the posteligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(10) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall be counted in the posteligibility determination.

Section 4. Special Needs Contributions for Institutionalized Individuals.

(1) A voluntary payment made by a relative or other party on behalf of a nursing facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medicaid Program.

(2) A special service or item shall include television or telephone service, private room or bath, or a private duty nursing service.

Section 5. Applicability.

(1) The provisions and requirements established in this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined:

(a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(b) Pursuant to 907 KAR 20:075.

(2) Resources shall not be considered for eligibility purposes for an individual:

(a) Whose Medicaid eligibility is determined using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(b) Between the age of nineteen (19) and twenty-six (26) years:

1. Who formerly was in foster care;

2. Who aged out of foster care while receiving Medicaid coverage; and

3. For whom the Medicaid eligibility standards are established in 907 KAR 20:075.

(23 Ky.R. 4035; 24 Ky.R. 607; eff. 8-20-1997; 28 Ky.R. 970; 1417; eff. 12-19-2001; 30 Ky.R. 743; 1270; eff. 11-25-2003; 35 Ky.R. 1649; 2754; eff. 7-6-2009; TAm 7-16-2013; Recodified from 907 KAR 1:655, 9-30-2013; 40 Ky.R. 1178; 1782; 2166; eff. 4-4-2014; Crt eff. 12-6-2019.)