CHAPTER 21-001 – RESOURCES

21-001.01 Resources: The total equity value of available non-excluded resources of the client or client and responsible relative (see 477 NAC 22-001) is determined and compared with the established maximum for available resources which the client may own and still be considered eligible. If the total equity value of available non-excluded resources exceeds the established maximum, the client is ineligible.

Note: For AABD/MA, assets of each spouse are considered available to the other (even if they no longer live together) unless there is a divorce or spousal impoverishment provisions apply. The following are examples of resources:

1. Cash on hand;
2. Cash in savings or checking accounts;
3. Certificates of deposit;
4. Stocks;
5. Bonds;
6. Investments;
7. Collectable unpaid notes or loans;
8. Promissory notes;
9. Mortgages;
10. Land contracts;
11. Land leases;
12. Revocable burial funds;
13. Trust or guardianship funds;
14. Cash value of insurance policies;
15. A home;
16. Additional pieces of property;
17. Trailer houses;
18. Burial spaces;
19. Motor vehicles;
20. Life estates;
21. Farm and business equipment;
22. Livestock;
23. Poultry and crops;
24. Household goods and other personal effects;
25. Contents of a safe deposit box;
26. Tax refunds;
27. Elective share of a spouse's augmented estate; and
28. Revocable, assignable, or saleable annuity.

21-001.02 Verification of Resources: All resources shall be verified and documented in the case record.

21-001.02A Medically Needy: If the total amount of countable resources indicated is $1500 or more it must be verified. Client declaration is accepted when the amount of resources indicated on the application is less than $1500.

21-001.02B AABD/MA:

1. For an AABD/MA client who does not receive SSI all resources must be verified and documented.
2. For an AABD/MA client who does receive SSI, including those in 1619(b) status, verification of resources is not required.
3. For any retroactive or prospective month that an AABD/MA client is not in current pay status for SSI, resources must be verified.

21-001.02C Verification: Verification of resources consists of but is not limited to the following information:

1. A description of the type of resource to include account or policy number(s), legal descriptions (for property), etc.
2. The location of the resource (i.e., name and address of the bank, insurance company, etc.);
3. Current value of the resource, encumbrances against the resource, and the resulting equity value;
4. Description of current ownership; and
5. Source of verification and the date the verification is obtained.

If the client or spouse of the client has a guardian, the guardian's report to the court may be used for verification. The guardian's report applies only to the period covered by the report. Regular verification procedures must be followed if there is no guardian's report or the report does not coincide with the date of renewal.

21-001.03 Available Resources: For the determination of eligibility, available resources include cash or other liquid assets or any type of real or personal property or interest in property that the client owns and may convert into cash to be used for support and maintenance.

21-001.04 Unavailability of Resource: Regardless of the terms of ownership, if it can be documented in the case record that the resource is unavailable to the client, the value of that resource is not used in determining eligibility. The feasibility of the client's taking legal action to make the resource available must be taken into consideration. If it is determined that legal action can be taken, the client is allowed 60 days to initiate legal action. After 60 days, if the client has not filed legal action, the case is closed for failure to comply. The resource is not considered available until the legal action is completed.

In evaluating the availability of benefit funds, such as funds raised by a benefit dance or auction, the purpose of the funds must be determined and if the client has access to them. If the client cannot access the funds to pay normal maintenance needs, the funds are not considered available.

An applicant or recipient must file in county court for the maximum elective share of a deceased spouse's augmented estate as specified in Neb. Rev. Stat. sections 30-2313 and 30-2314. The status of the resource must be monitored.

21-001.05 Excluded Resources: Disregarded income is also disregarded as a resource unless there is regulation stating otherwise (see 477 NAC 20-001.29 for income treatment). In addition, the following resources are excluded in making a determination of eligibility:

1. Real property which the individual owns and occupies as a home;
2. Household goods and personal effects of a moderate value used in the home;
3. Cash surrender value of life insurance policies with combined face values of $1,500 or less per individual (see 477 NAC 21-001.15A4);
4. A specified maximum in proceeds from an insurance policy irrevocably assigned for the purpose of burial of the client (see 477 NAC 21-001.15A3c);
5. Irrevocable burial trusts up to the specified amount per individual and the interest if irrevocable (see 477 NAC 21-001.15A3);
6. Burial space items or a contract for the purchase of burial space items owned by a client or designated family member (see 477 NAC 21-001.15A3f);
7. Burial spaces (see 477 NAC 21-001.15A3e);
8. Up to $1,500 set aside for burial arrangements (see 477 NAC 21-001.15A3d);
9. One motor vehicle if it is used for employment, medical transportation, or as the client's home. If the client has more than one motor vehicle, s/he may designate the vehicle to be excluded (see 477 NAC 21-001.15B12).
10. Certain trusts (including guardianships). The person(s) in whose behalf the trust is established may be ineligible but this may not affect eligibility of the other person(s) in the unit (see 477 NAC 21-001.15A6).
11. Certain life estates in real property (see 477 NAC 21-001.15B13);
12. Income received annually, semi-annually, or quarterly which is prorated on a monthly basis and included in the budget. This income is excluded as a resource over the period of time it is being considered as income;
13. The unspent portion of any RSDI or SSI retroactive payments (excluded for six months following the month of receipt);
14. U.S. savings bonds (excluded for the initial six-month mandatory retention period);
15. A resource used in the client's trade or business (see 477 NAC 21-001.15B19);
16. A maximum of $6,000 equity value of nonbusiness property (real or personal) that is used to produce goods or services essential to daily activities
17. Non-business property (see 477 NAC 21-001.15B20);
18. The unspent portion of an AABD/MA or SDP retroactive payment (excluded for six months following the month of receipt);
19. Victims compensation payments, i.e., payments received from a state or local government to aid victims of crime (excluded for nine months beginning with the first month after receipt);
20. Payments received from a state or local government to assist in relocation (excluded for nine months beginning with the first month after receipt);
21. An unavailable job-related retirement account that is held by the employer; and
22. An Individual Development Account (an account set up for postsecondary education or purchase of a client's first home).

The worth of resources, both available and excluded, is determined on the basis of their equity. For any of these funds to be excluded as a resource, they must be segregated in a separate account so that they can be identified. If the funds are not in a separate account, the client shall be allowed 30 days from notification of the requirement to set up a new account. After 30 days, the resource is included in the resource limit if the client fails to segregate the funds. Several excludable resources may be combined in a single account.

21-001.06 Excluded Resources for American Indians and Alaska Natives:

21-001.06A Legal Basis: As established under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), States are required to exclude certain types

of property specific to American Indians and Alaska Natives as resources when determining eligibility for medical assistance for an individual who is an American Indian or an Alaska Native.

21-001.06B Definition of American Indian or Alaska Native: Anyone who, pursuant to 25 U.S.C. § 1603(c) & (f) and 25 U.S.C §1679(b), or 42 C.F.R. 136.12 or Title V of the Indian Health Care Improvement Act, is eligible to receive health care services from Indian health care providers or through referral under Contract Health Services.

The following resources are excluded in making a determination of eligibility for medical assistance for and individual who is an American Indian or Alaska Native:

1. Property, including real property and improvements, that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior;
2. For any federally recognized Tribe not described in paragraph 1, property located within the most recent boundaries of a prior Federal reservation;
3. Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights; and
4. Ownership interests in or usage rights to items not covered by paragraphs 1 through 3 that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

21-001.07 Resources of an Ineligible or Sanctioned Parent for Medically Needy: The resources of an ineligible or sanctioned individual/parent are included in the resource total for the eligible unit members. The ineligible or sanctioned individual/parent is allowed Medicaid resource exclusions. After resource exclusions, the remaining resource amount is counted in the resource total of the eligible unit members.

21-001.08 Individual Added to an Existing Unit: The resources of the total unit (the previous unit plus the added individual) are compared to the resource maximums based on the total unit size.

21-001.09 Spouse for Spouse Responsibility and Designation of Resources

21-001.09A Resources Reserved for the Community Spouse: Resources may be reserved for the community spouse when the alternate care spouse is residing continuously in a specified living arrangement and applies for Medicaid. The amount of resources that a community spouse may reserve is based on the Consumer Price Index. This figure is adjusted annually. See 477-000-029 for the amount of resources a community spouse may reserve. The reserved amount of resources is calculated from the total resources owned by the couple and verified.

21-001.09B Assessment of Resources: Either spouse may request an assessment of their resources no earlier than the beginning of a period of continuous residence in a

specified living arrangement. An assessment of resources may not be finalized and signed until a client has been in a specified living arrangement for 30 consecutive days or would have been except for death. A couple is allowed only one assessment. An Assessment of Resources must be completed by the agency listing all countable resources owned jointly or individually by the couple the month the spouse entered the specified living arrangement. If a transfer or sale of resources occurred during the month the spouse entered the specified living arrangement, then the assessment of resources must list all countable resources owned jointly or individually by the couple on the day the spouse entered the specified living arrangement. The couple is allowed resource exclusions listed at 477 NAC 21-001.05 and 477 21-001.06.

Ownership of the home, one automobile, and all essential property (business property and $6,000 equity in non-business property used to produce goods for home consumption) may be transferred to the community spouse. Other resources transferred to the community spouse are limited to that spouse's protected resource amount. The alternate care spouse is not eligible for Medicaid if resources in excess of the protected amount have been transferred.

If the community spouse transfers away any resource for less than fair market value, it is a deprivation of resources.

21-001.09C Appeal of Assessment: The Assessment of Resources notifies the couple that they may appeal the assessment of resources. The couple may appeal:

1. The value assigned to the resource(s); and
2. The amount reserved for the community spouse.

If the couple shows that the community spouse requires more than the limit, s/he may be allowed to reserve more. In order to appeal, the alternate care spouse must apply for Medicaid, even if s/he has excess resources.

Note: Income from the institutionalized spouse must first be used before additional reserved resources for the community spouse may be considered.

21-001.09D Jointly Owned Resources: If the resources are held jointly with persons other than the spouse, ownership is determined according to procedures at 477 NAC 21-001.10.

21-001.09E Unavailable Resources: If it is determined that the resource is not available after applying 477 NAC 21-001.04 the value of the resource is excluded from the total.

21-001.09F Treatment of Resources Not Included on Assessment: Since the resource assessment is completed only once, the total value of countable resources which are owned by either or both spouse and which are acquired, discovered, or lose their exclusion after completion of the assessment and before the designation are considered available resources and cannot be used to increase the community spouse's resource allowance calculated at the time of the assessment. Examples of resources which may lose their exclusion are the home when the community spouse no longer resides in it or business property in which the community spouse is no longer actively engaged in operating.

21-001.09G Continued Validity of Assessment: The Assessment of Resources remains valid as long as the alternate care spouse does not return to the home without waiver services (even if s/he moves from one specified living arrangement to another). If the alternate care spouse returns home without waiver services, the Assessment of Resources becomes invalid. If the alternate care spouse returns to a specified living arrangement, the original Assessment of Resources is again valid.

21-001.09H Designation of Resources: When the spouse in the specified living arrangement is eligible for Medicaid, a Designation of Resources must be completed. The Designation of Resources lists the amount of resources retained by each spouse. All resources must be re-verified.

21-001.09I Transfer of Ownership: Once it's been determined that the alternate care spouse is otherwise eligible, the case is approved without waiting for completion of the transfer. The client must be advised of the 90-day period. If the couple fails to complete the transfer within 90 days, the case is closed. Transfers of countable resources from the alternate care spouse to the community spouse are not considered a deprivation of resources as long as the amount transferred to the community spouse, when added to his/her own resources, does not exceed the amount the community spouse is allowed to reserve as calculated at the time of assessment.

The alternate care spouse may be eligible in the retroactive months if the couple's resources did not exceed the allowable limit plus the amount reserved for the community spouse, even if the couple has not completed a Designation of Resources or necessary transfers of ownership. Excluded resources transferred solely to the community spouse are not a deprivation of resources. If the community spouse disposes of a resource for less than fair market value, it is considered deprivation of a resource.

21-001.09J Treatment of Resources Not Included on Designation: Resources that are acquired or which lose their exclusion after a Designation of Resources is signed are counted as follows:

1. A resource in the name of the alternate care spouse is considered his/hers;
2. A resource in the name of the community spouse is considered his/hers; or
3. A resource that is jointly owned is divided between the spouses.

Examples of resources which may lose their exclusion are the home when the community spouse no longer resides in it or business property in which the community spouse is no longer actively engaged in operating.

The alternate care spouse may transfer a resource that is in his/her name or his/her share of a jointly owned resource to the community spouse if the amount of resources combined with the community spouse's other resources does not exceed the spousal allowance calculated at the time of assessment. This may occur if the community spouse has had to use some of the assets reserved at the time of the assessment. It allows the alternate care spouse to transfer resources back to the community

spouse so that the community spouse may maintain the reserved amount on the Assessment of Resources.

The alternate care spouse must provide a written statement of his/her intent to transfer the resource. The alternate care spouse is allowed 90 days from the date of report of the resource to complete the transfer. The couple must be notified in writing of the 90-day limit.

21-001.09K Assigning Support Rights: If the couple have resources that exceed the allowable amount and refuse to spend down which prevents Medicaid eligibility for the alternate care spouse, the Department has the legal right to bring support proceedings against the community spouse.

21-001.09L Continued Validity of the Designation: The designation of resources remains valid even if either spouse enters a different specified living arrangement. If the couple does live together in the home without eligibility for waiver services, the designation becomes invalid. Spouse for spouse responsibility again applies.

If the alternate care spouse later moves out of the home or becomes eligible for waiver services, the original designation again becomes valid and the alternate care spouse is allowed a resource level for one. If the community spouse applies, s/he must reduce his/her designated resources to the maximum allowable for:

1. One if the couple is not in the home together or in the home with eligibility for waiver services; or
2. Two if the couple is in the home and ineligible for waiver services.

21-001.10 Determination of Ownership of Resources: A resource which appears on record in the name of a client or responsible relative (see 477 NAC 22-001.07A and 477 NAC 22-001.08A) must be considered belonging to the client. Ownership of real estate through records in the offices of the register of deeds or county clerk must be verified.

If it is substantiated that the client is not the true owner of a resource, it is permissible to allow the client to remove his/her name from the title of ownership in order to reflect true ownership. The client is allowed 60 days to make this change without affecting eligibility. After the client removes his/her name from the resource, eligibility may be determined retroactively and/or prospectively. If the client does not remove his/her name in 60 days, the resource is counted.

21-001.11 Jointly Owned Resources:

21-001.11A Resources Owned with Other Clients: If a client owns a resource with another client who is on categorical assistance, the value of the resource shall be divided by the number of owners, regardless of the terms of ownership. The appropriate value is counted for each unit. This reference also applies to resources owned with a spouse or child.

21-001.11B Resources Owned with Non-Clients: If a client owns a resource with an individual who is not receiving categorical assistance, see the following regulations:

21-001.11B1 Real Estate: Ownership of real estate through records in the offices of the register of deeds or county clerk shall be verified. The terms on

which property is held in cases of joint ownership shall be verified. Records of the court have information in regard to estates which have not been settled or which are in probate. Consult the records of the court if the property has come to the holder as a part of an estate; if by joint purchase, the facts will appear in the record of the deed.

Transfer on Death Deed(s) must be revoked for initial and continued Medicaid eligibility. This includes real property owned by a community spouse. See 477-000-048 for procedures.

21-001.11B2 Motor Vehicles: Ownership of a motor vehicle shall be verified by the title. The number of individuals on the title legally determines the percentage of ownership.

21-001.11B3 Bank Accounts: The terms of the account with the bank shall be verified. If any person on the account is able to withdraw the total amount, the full amount of the account is considered the client's. If all signatures are required to withdraw the money, the proportionate share must be counted toward the client. If the client verifies that none of the money belongs to him/her, the client must be allowed 60 days to remove his/her name from the account. The client must provide proof of the change.

After the client removes his/her name from the bank account, eligibility may be determined retrospectively and/or prospectively. If the client does not remove his/her name in 60 days, the money is counted as a resource. If a portion is the client's, the client must be notified of the requirement to put the money in a separate account. If ownership is disputed then verified contributions to the account determine the ownership.

21-001.12 Consideration of Relative Responsibility: When the client has relative responsibility for a client in another assistance unit and the responsible relative owns the resource(s), the value must be divided by the number of units to determine the amount to be counted to each. An AABD/MA couple is considered one unit.

Exception: If the responsible relative receives SSI, none of the value of the resource(s) is considered to the other unit.

If it is substantiated that the client is not the true owner of a resource, it is permissible to allow the client to remove his/her name from the title of ownership in order to reflect true ownership. The client is allowed 60 days to make this change without affecting eligibility.

21-001.13 Inheritance: When a client receives an inheritance, verified payment of debts or obligations of the deceased are subtracted from the settlement.

21-001.14 Value and Equity: Equity is the actual value of property (the price at which it could be sold) less the total of encumbrances against it (mortgages, mechanic's liens, other liens and taxes, and estimated selling expenses). If encumbrances against the property equal or exceed the price for which the property could be sold, the client has no equity and the property is not an available resource.

21-001.14A Secured Debts: The total value of unpaid personal taxes and other personal debts secured by mortgages, liens, promissory notes, and judgments (other

than those on which the statute of limitations applies) is subtracted from the gross value of the encumbered property to find the equity. The case record shall include documentation of the type of debt and plan under which payment was made. A service or payment made for free at the time for the benefit of the client, without a written agreement for repayment later, is not a debt.

21-001.14B Determination of Value: The use of public tax records may be used to determine the sale value of a resource. If there is a question as to the accuracy of the sale value determined by tax records, verification may be obtained from a real estate agent, car dealer, or other appropriate individual.

21-001.15 Types of Resources: Resources can be divided into two categories: liquid and non-liquid.

21-001.15A Liquid Resources: Liquid resources are assets that are in cash or financial instruments which are convertible to cash. See 477-000-036 for examples of liquid resources.

21-001.15A1 Cash, Savings, Investments, Money Due: Cash on hand, cash in checking and savings accounts, salable stocks or bonds, certificates of deposit, promissory notes and other collectible unpaid notes or loans and other investments are available resources.

21-001.15A2 Land Contracts: A land contract, or real estate contract of sale, is considered a resource to the seller of the property if the contract can be sold. In determining the value of the contract, the salability of the contract and the resulting value shall be determined (see 477 NAC 21-001.14). The contract is not considered salable unless there is a known buyer.

If the contract is determined to be salable, the net value of the contract becomes the value at which it could be sold - minus encumbrances, etc., against the property.

If it is determined and documented that the contract is not salable, the contract is not considered an available resource to the client. A review the salability shall be completed at all renewals or more often as deemed necessary.

Any income received from a land contract is considered unearned income to the client. The contract may be considered a deprivation of resources, the contract terms which are not a deprivation of resource are at 477-000-032.

21-001.15A3 Funds Set Aside for Burial: A specified maximum may be disregarded if it is set aside for the purpose of paying burial expenses. The individual may choose to put the money in:

1. A pre-need burial trust. If the client has an irrevocable burial trust for more than the specified maximum, the excess is considered an available resource;
2. A policy of burial insurance. If the client has irrevocably assigned more than the specified maximum in burial insurance, the excess is not an available resource but may be a deprivation of resources; or
3. A maximum of $1500 may be designated for burial. These funds may be in an account or in an insurance policy.

If the client has a combination of an irrevocable burial trust, and/or burial insurance that exceed the specified maximum to determine how to treat the excess. An individual may transfer funds from an irrevocable burial trust fund into an insurance policy if there is no lapse of time between the withdrawal and the transfer. See below for the treatment of burial spaces and burial space items.

21-001.15A3a Irrevocable Burial Trusts: If the money was put in an irrevocable burial trust on July 16, 1982, or later, it is not considered an available resource.

According to Nebraska law, an individual is allowed to deposit funds up to the specified maximum in an irrevocable trust fund created for the purpose of a prearranged funeral plan. Therefore, the value up to the specified maximum of an irrevocable burial trust and any accrued interest or dividends on that amount, if irrevocable, are considered unavailable and are disregarded. The mortuary may retain an additional amount not to exceed 15 percent, but this amount must not be included in the burial trust.

An irrevocable burial trust fund must be deposited with a financial institution. For burial trusts contracted on December 31, 1986, or earlier, a written copy of the contract for a prearranged funeral plan must be on file with the financial institution. For burial trusts contracted on January 1, 1987, or later, a written copy of the contract may be retained by the client or the funeral home.

In determining whether the value of a burial fund contracted in Nebraska is considered available, the terms of the contract must be verified with the financial institution. It also must be determined if the contract stipulates that the interest or dividends are irrevocable. If a burial fund is drawn up in another state, the contract terms must be verified and determined whether that state allows irrevocable burial funds or whether the value of the fund is available to the client regardless of the contract terms.

Questions regarding burial funds contracted out of state should be submitted with a copy of the contract to the Central Office.

21-001.15A3b Interest on Burial Funds: For irrevocable burial trusts contracted on December 31, 1986, or earlier, the individual was allowed to stipulate whether the interest or dividends accruing to the trust fund were irrevocable. If the interest or dividends are irrevocable, they are disregarded. It must be determined if the contract stipulates that the interest or dividends are irrevocable. For irrevocable burial trusts contracted on January 1, 1987, or later, all accrued interest or dividends are also irrevocable.

21-001.15A3c Burial Insurance: Burial insurance is defined as insurance whose terms specifically provide that the proceeds can be used only to pay the burial expenses of the insured, or a life insurance policy that is irrevocably assigned for the specific purpose of burial. When the proceeds of a life insurance policy are irrevocably assigned for the

purpose of burial, the cash value is not available and is disregarded as a resource.

21-001.15A3d Money Designated for Burial: Up to $1,500 may be disregarded for each individual if it is set aside, for the purpose of paying burial arrangements for the individual or the individual's spouse.

1. This exclusion is in addition to the burial space exclusion.
2. This exclusion is not in addition to a burial trust or burial insurance that has been irrevocably assigned.

21-001.15A3e Burial Spaces: The value of burial spaces (held for the purpose of providing a place for the burial of the client, his/her spouse, and members of the client's immediate family) is not counted as an available resource. The immediate family includes minor and adult children, including adopted children and stepchildren, brothers, sisters, parents, adoptive parents, and the spouses of these individuals.

A burial space includes a crypt, mausoleum, urn, casket, marker, vault, or other repository for the remains of a deceased person. This exemption also applies to markers, vaults, applicable sales tax, charges for opening and closing the grave, but does not include services, burial fees, etc. These items are exempt only if they are actually purchased. If the client has a life insurance policy for the purchase of burial items, the cash value is included in the specified maximum if the policy is irrevocably assigned.

21-001.15A3f Burial Space Items Held in a Contract: Burial space items may be disregarded when they are held for an individual by way of a contract. To meet the requirement that the item is actually purchased, the contract must state that the individual has purchased a particular item for a specified price. The contract may be revocable or irrevocable as long as the agreement itself represents the individual's ownership. The contract may be funded by money set aside in a bank account or in a burial insurance policy. Any interest accrued and left to accumulate is not counted as income.

If it is burial insurance which has been irrevocably assigned, it is treated according to the "Burial Insurance" rules above (see 477 NAC 21-001.15A3c) and the specified maximum applies. If a total of more than the specified maximum in burial insurance is irrevocably assigned for services and/or burial space items, the amount above the specified maximum may be considered a deprivation of a resource (see 477 NAC 21-001.25A). If the client transfers ownership of a life insurance policy to someone else, e.g., a mortuary or a relative, and there is a contract with a mortuary for purchase of burial space items which the insurance policy will be used to fund, the cash value of the policy is not considered a resource since the client does not own it and this is not considered deprivation of a resource.

21-001.15A4 Life Insurance

21-001.15A4a Cash surrender value: Amount which the insurer will pay (usually to the owner) upon cancellation of the policy before death of the insured or before maturity of the policy.

21-001.15A4b Term Insurance: A form of life insurance that generally furnishes insurance protection for only a specified or limited period of time.

21-001.15A4c Face value: Basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions. (In determining the face value of a policy, the original face value of the policy is used.)

21-001.15A4d Insured: The person whose life is insured.

21-001.15A4e Insurer: The company that insures others.

21-001.15A4f Owner: The person who has the right to change the policy.

21-001.15A4g Cash Surrender Value: Using the following criteria, the cash surrender value of life insurance owned by the client is considered a resource. If the combined original face value of all the life insurance policies owned by the client exceeds $1,500, the cash surrender value of all the policies is considered a countable resource. Each person in the unit is allowed the $1,500 exemption for the face value of his/her life insurance.

The following must be disregarded in determining the combined original face value of all life insurance policies:

1. Burial insurance; and
2. Life insurance policies where the proceeds are irrevocably assigned for the purpose of burial.

See 477 NAC 21-001.15A3c for the treatment of burial insurance.

If the cash surrender value is to be counted towards the total resource of a client, consideration is given to any outstanding loans against the policy in determining net cash surrender value see 477 NAC 21-001.14.

21-001.15A4h Adjustment: The client can usually adjust a large insurance policy to a smaller amount providing limited protection and allowing the client to benefit from accumulated savings.

21-001.15A4i Interest and Dividends: Interest and dividends actually paid to the client from all life insurance policies are treated according to the treatment of income chart at 477 NAC 20-001.29.

21-001.15A5 Long-Term Care (LTC) Partnership Program: Resources equal to the amount of benefits paid out by a qualified Long-Term Care Partnership policy are disregarded for an individual applying for Medicaid if the policy was issued on July 1, 2006, or later, and the individual is otherwise Medicaid-eligible. The benefits may be paid as direct reimbursement of long term care expenses, or paid on a per diem or other

periodic basis, for periods during which the individual received long term care services. The disregard is applied to the amount of benefits paid to or for the individual as of the month of application, even if additional benefits remain available under the terms of the policy. The amount of the resource disregard is also excluded from estate recovery.

21-001.15A51 Definition of a Qualified Long-Term Care Partnership Policy: A Qualified LTC Partnership policy is a long-term care insurance policy that has been approved by the Nebraska Department of Insurance. The Department accepts the Department of Insurance's certification of the policy. If an individual has a long term care insurance policy that does not meet the requirements for a Qualified LTC Partnership policy because it was issued before July 1, 2006, the individual may exchange the policy for another.

21-001.15A52 Exchange of Non-Partnership Policy for Qualified LTC Partnership Policy: An individual may exchange a policy that does not meet the requirements of a qualified LTC Partnership Policy for one that does meet the requirements. The date of exchange is considered the issue date for the qualified LTC Partnership Policy.

21-001.15A53 Reciprocity with Other States: The Department will accept qualified LTC Partnership Policies issued in other states with Long-Term Care Partnership Programs.

21-001.15A6 Trust, Guardianship/Conservatorship and Annuity Funds: When a guardianship, conservatorship, annuity, or trust has been established on behalf of a client and the client(s) who has applied has resources exceeding the total resource limit for a grant or medical, it must be verified if the trust, guardianship/conservatorship, or annuity is available to the client.

21-001.15A7 Annuities

21-001.15A7a Purchased or Annuitized before February 8, 2006: Where the client cannot assign or change the ownership or payee, the annuity is unavailable. A determination must then be made if a deprivation has occurred. If the expected return on the annuity is commensurate with the life expectancy of the client, the annuity can be deemed actuarially sound and no deprivation has occurred. If the average number of years of expected life remaining for the client does not coincide with the life of the annuity (i.e., the client is not reasonably expected to live longer than the guarantee period of the annuity),a deprivation has occurred. The look back period is the same for trusts, i.e., 60 months. See 477-000-039 for Period Life Tables.

21-001.15A7b Annuity Transaction on or after February 8, 2006: Revocable and assignable annuities are a countable resource. A saleable annuity which has not been sold is a countable resource for the amount annuitized, less the payment(s) amount already received. A saleable annuity which has been sold for a value consistent with the secondary market is a countable resource in the amount of the proceeds. If a saleable annuity is sold for less than a value consistent with the secondary market, it will be valued at the current secondary market amount and the difference will be subject to deprivation of resources regulation.

21-001.15A8 Annuities Excluded from Resources: An annuity which has been annuitized will be excluded from countable resources if it meets the following conditions:

1. The annuity is considered either an individual retirement annuity according to Internal Revenue Code (IRC) or a deemed Individual Retirement Account under a qualified employer plan by IRC; or
2. The annuity is purchased with the proceeds from a simplified employee pension; and
3. The annuity is irrevocable and non-assignable, the individual who owned the retirement account or plan is receiving equal monthly payments with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.
4. The applicant or recipient must verify that the annuity meets these requirements.

21-001.15A9 Deprivation of Resources for Annuity Transactions: For long term care services, an annuity transaction after February 8, 2006, is treated as a disposal of an asset for less than fair market value unless the State of Nebraska is named as the remainder beneficiary in the first position for at least the total amount of Medicaid expenditures paid, or is named as the remainder beneficiary in the second position after the community spouse and/or minor or disabled child. An annuity is also treated as a disposal of assets for less than fair market value unless it is irrevocable and non-assignable, actuarially sound, and provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments. This provision also applies to a community spouse.

The issuer of an annuity must notify the Department when there is a change in the amount of income or principal withdrawn from the annuity.

21-001.15A10 Revocable Trusts: In the case of a revocable trust:

1. The entire corpus of the trust is counted as an available resource to the client;
2. Any payments from the trust made to or for the benefit of the client are counted as income;
3. Any payments from the trust which are not made to, or on behalf of, the client are considered assets disposed of for less than fair market value; and
4. If the client must go to court to access the funds, the client or his/her guardian or conservator is allowed 60 days to initiate court action.
   a. An applicant is allowed 60 days from the approval date; and
   b. A recipient is allowed 60 days from the date of notification of the requirement to file for access.

21-001.15A11 Guardianship/Conservatorships: When a fund is established in the process of the appointment of a guardianship or conservatorship, it must be determined if the funds are available without court approval. The client is ineligible for categorical assistance until the guardian gives the local office written notice of refusal to spend guardianship/conservatorship monies for the care and maintenance of the client. In order to be considered current notice, it must be given within one year of its use in determining eligibility for categorical assistance.

After current notice has been given, the client, if otherwise eligible, may receive benefits if all judicial remedies are pursued to determine the availability of the funds. This may include an appeal to the proper district court and, if necessary, to the Court of Appeals and the Nebraska Supreme Court. However, certain guardianships/conservatorships are not reasonably available and judicial review may be waived; these include some guardianships/conservatorships where the guardian or conservator's discretion is limited and certain guardianships/conservatorships established from the proceeds of a personal injury case on behalf of a child. The child or his/her guardian/conservator must file a request for access to the funds in a court of competent jurisdiction within:

1. For an applicant, 60 days from the approval date;
2. For a recipient, 60 days from the date of notification of the requirement to file for access.

If the petition or application has not been filed after 60 days, the client is no longer eligible for Medicaid.

21-001.15A12 Testamentary Trusts: Testamentary trusts may be excluded as resources, depending on the availability of the funds to the individual or his/her spouse as specified in the terms of the trust.

21-001.15A13 Irrevocable Trusts

21-001.15A13a Trusts Established before August 11, 1993: For a Medicaid-qualifying trust, established before August 11, 1993, the maximum amount that could have been distributed from either the income or principal is considered an available resource. A Medicaid-qualifying trust is a trust or similar legal device that was established by a client (or his or her spouse) under which:

1. The client is the beneficiary of all or part of the payments from the trust; and
2. The amount of the distribution is determined by one or more trustees who are permitted to exercise any discretion with respect to the amount to be distributed to the individual and the distributable amount from a Medicaid-qualifying trust has no use limitation.

A trust that was established by a client's guardian or legal representative, acting on the client's behalf, falls under the definition of a Medicaid-qualifying trust. If a client is not legally competent, for example, a trust established by his/her legal guardian (including a parent) using the client's assets can be treated as having been established by the client, since the client could not establish the trust for himself/herself.

21-001.15A13b Trusts Established on or after August 11, 1993: In accordance with Sections 1917 (c) and (d) of the Social Security Act, the following regulations apply to all trusts created on or after August 11, 1993. These regulations apply to any client who establishes a trust, who is a beneficiary of a trust, and who is an applicant or recipient of Medicaid. A client is considered to have established a trust if his or her assets or assets of his or her spouse were used to form a part or the entire corpus of the trust other than by will. These include trusts established by:

1. The individual;
2. The individual's spouse;
3. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
4. Person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

Where a trust includes the assets of another person or persons as well as the assets of the client and/or his/her spouse, the rules in this section apply only to the portion of the trust attributable to the assets of the client and/or the client's spouse.

21-001.15A13c Payment Can Be Made from Trust: The following applies when payment may be made to the individual and/or the individual's spouse under the terms of the trust:

1. Payments from income, or from the corpus, made to or for the benefit of the client and/or the client's spouse are treated as income to the client.
2. If there are any circumstances under which payment from the trust corpus could be made to or for the benefit of the client and/or the client's spouse, the portion of the corpus from which payment to or for the benefit of the client or the client's spouse could be made must be considered a resource available to the client.
3. Any portion of the corpus that could be paid to or for the benefit of the client and/or the client's spouse is treated as an available resource.
4. Payments from income or from the corpus that are not made to or for the benefit of the client and/or the client's spouse are treated as transfers of assets for less than fair market value.

21-001.15A13d Exceptions: A trust is not considered available if it is established for a disabled client age 64 or younger (receiving or eligible to receive SSI, RSDI, or AABD/MA) and is a:

1. Special needs trust: A trust containing the assets of the client and established solely for the benefit of the client by the client's parent, grandparent, legal guardian, or a court if the State will receive all amounts remaining in the trust upon the death of the client or upon
2. termination of the trust up to the amount of total Medicaid paid on behalf of the client; or
3. Pooled trust: A trust containing the assets of the client and:
   a. Established and managed by a non-profit association;
   b. A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of assets, the trust pools these accounts;
   c. Accounts in the trust are established solely for the benefit of individuals who are blind or disabled (receiving or eligible to receive SSI, RSDI, or AABD/MA); and
   d. The trust contains the provision that the State of Nebraska will receive all amounts remaining in the trust for the beneficiary upon the death of the client up to the amount of total Medicaid paid on behalf of the client.

21-001.15A13e Payment Cannot Be Made from Trust: When payments from some portion or all of the trust cannot under any circumstances be made to or for the benefit of the client, or where there is some portion of the trust from which no payments can be made to or for the benefit of the client, all of the corpus, or income on the corpus, which cannot be paid to the client is considered a transfer of assets for less than fair market value.

21-001.15A13f Hardship Procedures: A trust will not be considered available if denial of assistance would cause undue hardship.

21-001.15B Non-Liquid Resources: Non-liquid resources are tangible properties which need to be sold if they are to be used for the maintenance of the client. They include all properties not classified as liquid resources. See 477-000-036 for examples of non-liquid resources.

21-001.15B1 Exemption of Home: The client's home is exempt from consideration as an available resource, with the following limitations.

21-001.15B2 Definition of Home: Home is defined as any shelter which the individual owns and uses as his/her principal place of residence. The home includes any land on which the house is located and any related outbuildings necessary to the operation of the home.

21-001.15B3 Adjacent Lots: Lots adjacent to the home are considered available if they can be sold separately from the home. If it is determined and documented in the case record that the lots adjacent to the home cannot be sold or are not salable due to the location or condition of the property, the adjacent lots are also exempt.

21-001.15B4 Home Equity Value: For applications on or after January 1, 2006, or later, the individual is not eligible for any long term care services if the equity value interest in the home exceeds the specified amount.

21-001.15B5 Removal from Home: If the individual moves away from the home and does not plan or is unable to return to it, it must be determined when the home becomes an available resource in accordance with the following provisions. The home continues to be exempt as a resource while it is actually occupied by the client's spouse or dependent relative. A dependent relative includes the client's:

1. Child, stepchild, or grandchild age 17 or younger;
2. Child, stepchild, or grandchild age 18 or older if aged, blind, or disabled and receiving or eligible to receive SSI; AABD/MA; and other categorical assistance; or
3. Brother, sister, stepbrother, stepsister, half-brother, half-sister, parent, stepparent, grandparent, aunt, uncle, niece, nephew, or the spouse of any persons previously named even after the marriage has been terminated by death or divorce (who is receiving or who would be eligible for categorical assistance except for income and resources and who lived in the home at any time one year before the client moved away from the home).

When the client moves to a nursing home or to an assisted living facility and is receiving AD waiver services, and it is not possible to determine immediately if the client will be able to return home, a maximum of six months may be allowed to make that determination. Unless the client or the client's representative signs a

statement that the individual will not return to the home, or the home is already listed for sale, it is not possible to determine immediately if s/he will return home.

After a maximum of six months, the home may no longer be considered the individual's principal place of residence and must be considered an available resource. However, the client is allowed time to liquidate the property before it affects eligibility.

Note: The six months begin with the first full month following the month of admission. After the client is admitted, if the home is exempt because it is occupied by one or more of the relatives identified previously, the six months begin with the first full month following the month that the home is no longer allowed the exemption for occupation.

21-001.15B5a Liquidation of Property: As soon as the determination is made that the client will not be able to return home, the client must be allowed time to liquidate the property. The client is also allowed time for liquidation if s/he leaves the home for a reason other than entering a medical institution.

21-001.15B6 Sale of Home: If the client sells his/her home, the net proceeds become an available resource unless reinvested immediately in another home. In order to be allowed time to reinvest the proceeds, the client must be residing in the home at the time of the sale and move directly to his/her new home.Net proceeds are the remainder after payment of the mortgage, realtor's fees, legal fees, etc. Any deductions must be verified.

21-001.15B7 Liquidation of Real Property: When a client has excess resources because of real property, s/he may receive Medicaid pending liquidation of the resource, according to the following regulations. This reference does not apply if the community spouse under spousal impoverishment regulations will retain any of the proceeds of the sale.

Note: If the client has excess resources because of real property during a retroactive period, s/he is ineligible for Medicaid. The client may be prospectively eligible with excess resources because of real property if an Agreement to Sell Real Property and Repay Assistance is signed.

21-001.15B8 Time Limits for Liquidation: Real property which the client is making a good faith effort to sell must be excluded. First it must be determined if the individual has the legal authority to liquidate the property. If not, the client is allowed 60 days to initiate legal action to obtain authority to liquidate. If the client owns the property with other persons, see 477 NAC 21-001.15B9.

Once the client has the legal authority to liquidate the property, the client's signature on the Agreement to Sell Real Property and Repay Assistance must be obtained. The client is allowed six calendar months to liquidate the real property. If the client refuses to sign the Agreement to Sell Real Property and Repay Assistance, s/he is immediately ineligible because of excess resources. The six-month period begins with the month following the month in which the Agreement to Sell Real Property and Repay Assistance is signed.

Once the Agreement to Sell Real Property and Repay Assistance is signed, the six calendar months are counted, whether or not the client is receiving assistance. If after the Agreement to Sell Real Property and Repay Assistance is signed the client goes into current pay status for SSI, the Agreement to Sell Real Property and Repay Assistance is void.

Note: If the client later goes into non-pay status for SSI, a new Agreement to Sell Real Property and Repay Assistance is signed and a new six-month liquidation period is established. If the client moves back to the home and subsequently moves out again during the six-month period, s/he is only allowed the months remaining in the original six-calendar month period. One liquidation period is allowed for each piece of real property that is determined to cause excess resources, even if the case is closed and subsequently reopened.

21-001.15B8a Extension of Time Limit: If the client is unable to liquidate the property in six calendar months, the supervisor may authorize an additional three calendar months. In determining whether to allow a three-calendar-month extension, the supervisor shall consider:

1. If the property has been placed on the market;
2. If the client is asking a fair price for the property;
3. If the asking price has been reduced;
4. If the client understands the requirement for liquidation of the property;
5. If the client has not refused a reasonable offer to purchase; and Note: If there is not a better offer, a reasonable offer is defined as at least 2/3 of either the estimated current market value or the proven actual value.
6. The economic conditions in the area and if real estate is selling.

21-001.15B9 Joint Ownership: Real property that is jointly owned is excluded if sale of the property would cause the other owner (whether the other owner is on assistance or not) undue hardship. However, if undue hardship ceases to exist, the property is included in countable resources and handled according to the following:

1. If the client owns the property with other persons who are not on assistance and the real property is not the principal place of residence of the other owner(s), the other owners shall be contacted to determine if they are willing to liquidate their interest in the property. If all parties are willing to liquidate, the liquidation proceeds.

2. If one or more of the parties do not wish to liquidate, the process for unavailability of a resource is applied and requires the client to take legal action to force a sale of the property. A written statement may be obtained from the other parties and filed in the case record. After a legal determination is made regarding the availability of the client's interest in the property, appropriate action must be taken.

21-001.15B10 Additional Pieces of Real Property: In computing the amount of the unit's total available resources the potential sales value of all real property, other than the allowed exemption for the home must be determined and used.

21-001.15B11 Trailer Houses and Other Portable Housing Units: If a client occupies a trailer house or other portable housing unit as his/her home, the property is allowed the resource exemption for a home.

If the client enters a nursing home, s/he is allowed the exemption of a home for up to six months:

1. If the trailer house or other portable housing unit is used for the client's trade or business.
2. If it is used to produce goods for the client's own consumption or use.

21-001.15B12 Motor Vehicles: One motor vehicle regardless of its value as long as it is necessary for the client or a member of his/her household for employment or medical treatment must be disregarded. If the client has more than one motor vehicle, the vehicle with the greatest equity must be excluded. Any other motor vehicles are treated as non-liquid resources and the equity is counted in the resource limit. The client's verbal statement that the motor vehicle is used for employment or medical treatment is sufficient.

21-001.15B12a Exceptions:

1. A client in a nursing home or receiving services through an Assisted Living Waiver is not allowed the disregard of any motor vehicles because medical transportation is included in the payment to the facility; or
2. The client designates the disregarded vehicle for Assessment of Resources.

21-001.15B12b Determination of Fair Market Value: For motor vehicles that are counted in the resource total, fair market value is used. Cars, trucks, SUVs, vans, motorcycles, recreational vehicles, motorboats and watercraft, and planes are included in the category of motor vehicles.

21-001.15B13 Life Estates: The owner of a life estate in real property is generally unable to sell the property. The net income from the life estate must be included in the budget rather than considering the life estate as an available resource. If the owner of a life estate transfers it to another individual, it must be determined if it is deprivation of a resource. If the life estate is sold, the proceeds are counted as resources. See 477-000-038 for the Life Estate Interest Table. It is a disposal of assets to purchase a life estate interest in another individual's home unless the purchaser resides in the home for at least 12 months after the date of purchase.

21-001.15B14 Farm Equipment: Farm equipment used for the client's trade or business or to produce goods for the client's own consumption or use.

21-001.15B15 Business Equipment, Fixtures, Machinery: Business equipment, etc., is used for the client's trade or business or to produce goods for the client's own consumption or use.

21-001.15B16 Livestock, Poultry, Crops (Growing and On-Hand): Livestock, poultry, and crops grown for the client's trade or business or for the client's own consumption.

21-001.15B17 Household Goods and Personal Effects: Household goods and personal effects of moderate value used in the home are exempt.

1. Household goods are defined as including:
    a. Household furniture
    b. Furnishings and equipment used in the operation, maintenance, and occupancy of the home or in the functions and activities of the home and family life
    c. Those items which are for comfort and accommodation.
    d. Personal effects include clothing, jewelry, items of personal care, etc.

21-001.15B18 Loans: A bona fide loan to a client or financially responsible relative is disregarded as a resource. A bona fide loan is defined as one that must be repaid. The agreement for repayment may be verbal or written and the loan may be owed to an individual or to an organization or agency. Using prudent person principle the client's statement is adequate verification that the loan must be repaid.

Note: Real property that is used solely for self-employment is considered a resource.

21-001.15B19 Essential Property: Resources that are used in the client's trade or business are disregarded, regardless of the value.

1. This includes:
    a. Real property such as land, houses, or buildings
    b. Personal property such as farm machinery, business equipment, livestock, poultry, crops, tools, safety equipment
    c. Business bank accounts as long as the funds are separated from other liquid resources.

The client or a responsible relative (spouse or parent) must be actively involved in the day to day operation of the trade or business as a primary means of earning a livelihood. See 477-000-050 for examples. If the client or responsible relative is not actively involved in the trade or business, it must be due to circumstances that are beyond the individual's control, e.g., illness, and there must be a reasonable expectation that the use will resume.

21-001.15B20 Non-Business Property: A maximum of $6,000 equity value of nonbusiness property (real or personal) that is used to produce goods or services essential to daily activities is excluded from resources. Any equity in excess of $6,000 is counted as a resource. If the excess resource is real property, see 477 NAC 21-001.15B5a for liquidation of real property.

21-001.16 Maximum Available Resources: The established maximums for available resources which the client may own and still be eligible are as follows:

1. One member unit $4,000;
2. Two member unit or family $6,000;
3. Three member unit or family $6,025;

4. Each additional individual + $25.

Note: If two or more related AABD/MA clients (other than a married couple), i.e., an eligible AABD/MA parent and his/her eligible AABD/MA minor child or two or more unrelated eligible AABD/MA clients, reside in the same household, each client is entitled to resource maximum of $4000. The treatment of resources of a spouse or a parent is the same as for a client. If the total equity value of available non-excluded resources exceeds the maximums specified above, the client(s) is ineligible. Resources must be below the maximum resource level for one day in the month in order for the client to be eligible for that month.

21-001.17 Maximum Available Resource Levels For AABD/MA: The established maximum for available resources which the client, or the client and responsible relative, may own and still be considered eligible for Medicaid, according to unit size, are as follows:

1. One member unit
   a. Client only $4000
   b. If a couple has a valid designation of resources and –
      i. There is an eligible spouse and an ineligible spouse, the resource level for the eligible spouse is $4,000; or
      ii. The ineligible spouse later becomes eligible; each spouse is allowed $4,000.
2. Two member unit - $6000
   a. Client and eligible spouse;
   b. Client and ineligible spouse; or
   c. Client and ineligible spouse who have designated resources but the client returns home or no longer is eligible for waiver services.

For procedures on designating resources, see 477 NAC 21-001.09.

If two or more related AABD/MA clients (other than a married couple), i.e., an eligible AABD/MA parent and his/her eligible AABD/MA minor child or two or more unrelated eligible AABD/MA clients, reside in the same household, each client is entitled to a resource maximum of $4000.

The treatment of resources of a spouse or a parent is the same as for a client see 477 NAC 22-001.07A and 477 NAC 22-001.08A. If the total equity value of available non-excluded resources exceeds the maximums specified above, the client(s) is ineligible. Resources must be below the maximum resource level for one day in the month in order for the client to be eligible for that month.

21-001.18 AABD/MA Deeming Resources of a Parent: In considering the resources of a parent(s) who is not considered an EP towards an eligible child age 17 or younger and living in the parent's household, the following resources are considered to the child whether or not they are actually made available:

1. All resources exceeding $4,000 in the case of one parent; or
2. All resources exceeding $6,000 in the case of:
   a. Two parents;
   b. One parent and spouse of the parent; or
   c. One parent and one minor sibling.
3. $25 each additional minor sibling in the parent(s)' household.

Resource exclusions listed at 477 NAC 21-001.05 and/or 477 NAC 21-001.06 apply to the parent's resources. The resources of the eligible child's brothers and sisters are not considered towards the child.

Note: If income of a parent is not deemed according to 477 NAC 22-001.08B2 resources are also not deemed.

21-001.19 AABD/MA Resource Review: The amount of total resources determines how often verification is required. See 477-000-0049 for the verification schedule.

If there is reason to believe that at any time there has been an increase in resources which may affect eligibility all resources must be verified immediately.

A resource review is not required for SSI recipients.

21-001.20 Resource Requirements for Medicare Savings Plan (MSP) Clients

21-001.20A Working Disabled Part A Medicare Beneficiaries: Resources are treated according to regulations provided above.

21-001.20B SLMB and QI-1: Resource limits are adjusted annually. See 477-000-012.

21-001.20C MSP/QMB: Resource limits are adjusted annually. See 477-000-012.

21-001.21 Determination of Value of Total Available Resources: The total value of all available resources is the total value of real and personal property figured in according with the preceding instructions.

21-001.22 Resources of a Spouse, Parent or Other Essential Person: All resources of a client and spouse or other EP who is included in the budget and who share the same home are considered available for the support of both unless one spouse is eligible for or receiving waiver services. Relative responsibility includes eligible spouse for spouse (eligible or ineligible) and parents for children who are age 17 or younger and still considered part of their household.
If the client and spouse are legally separated or divorced, consideration must still be given to jointly owned resources and their availability in determining the individual's eligibility. In the case of an eligible client whose payment standard has been increased because of the inclusion of EP's, the resources of the essential person(s) are considered available to the client.

Resources of an essential person are treated the same as the resources of the eligible client. However, if the resources of the essential person make the client ineligible (unless the essential person is the ineligible spouse or parent of a minor child), the essential person may be removed from the budget. Once the EP is removed from the budget, his/her resources are no longer considered.

When the client (i.e., a spouse or parent) has relative responsibility for a client in another assistance unit and both clients own the resource(s), the resource is divided by the number of owners only. This meets the requirement of relative responsibility.

21-001.23 Deeming of Resources of a Parent: In considering the resources of a parent(s) who is not considered an EP towards an eligible child age 17 or younger and living in the

parent's household, the following resources are considered to the child whether or not they are actually made available:

1. All resources exceeding $2,000 in the case of one parent; or
2. All resources exceeding $3,000 in the case of:
   a. Two parents;
   b. One parent and spouse of the parent; or
   c. One parent and one minor sibling.
3. $25 for each additional minor sibling in the parent(s)' household.

Resource exclusions apply to the parent's resources. The resources of the eligible child's brothers and sisters are not considered towards the child.

Note: If income of a parent is not deemed, resources are also not deemed.

21-001.24 Reduction of Resources: The client may reduce available resources to the allowable limit if the case record contains documentation that the resources have been reduced and the unit is within the allowable resource limits. An application for an individual who has excess resources other than real property may be held pending until the resources are reduced. See 477 NAC 21-001.15B5a for treatment of real property which causes the client to have excess resources.

The client may reduce his/her resources by paying any secured or unsecured debts, purchasing personal property, establishing burial funds, or expending the resources in any manner that the client deems appropriate. If the client is in a medical institution or receiving waiver services, s/he cannot give away resources in order to establish Medicaid, see 477 NAC 21-001.25A and 477 NAC 21-001.25C.

If the client is not in a medical institution or receiving waiver services, giving away the excess resources is not considered a deprivation of a resource. If the client reduces resources in any way except paying on outstanding medical bills, eligibility is effective the first day of the month in which the resources are actually expended if all other eligibility factors are met. The client's statement of expenditures is acceptable.

The client may do a resource spend-down to establish an earlier medical effective date if s/he has outstanding medical bills. However, medical eligibility may not begin earlier than the third month before the request for assistance, see 477 NAC 4-001ff. In order for a client with excess resources to establish an earlier medical effective date, s/he must pay all of the excess resources on medical bills incurred no earlier than the third month before the month of request. The medical expense does not have to be a Medicaid covered service. The client should pay on the oldest medical bills incurred within the retroactive period and continue paying bills until the amount of the excess resources has been expended.

Medical eligibility may begin with the first day of the month in which the last medical bill was paid which reduced the resources to the allowable limit. Expenditures for medical bills must be verified.

If the client has excess resources in the month of application it is not necessary to verify resources in any of the retroactive months. The resource spend-down of the excess resources from the month of application is all that is necessary. If the client does not have excess resources in the month of application, resources must be verified in the oldest retroactive month

in which the client has outstanding medical bills. If there are excess resources during this retroactive month, only this amount of excess resources must be used to complete the resource spend-down. See 477-000-034 for procedures related to documenting a resource spend-down.

21-001.25 Other Resource Provisions pertaining to Individuals Requesting Long-Term Care Only

21-001.25A Deprivation of Resources: Any action taken by the individual, or any other person or entity, that reduces or eliminates the individual's or spouse's recorded ownership or control of the asset for less than fair market value (full value) is a deprivation of resources. The fair market value of the resource at the time the resource was disposed of must be verified and determine the equity value of the resource by taking into consideration any encumbrances against the resource. This includes:

1. Recorded transfer of ownership of real property;
2. Not receiving the spousal share of an augmented estate;
3. Purchase of a life estate in another individual's home without meeting the 12-month requirement to reside there;
4. Promissory notes, loans, mortgages, and contract sales for less than fair market value and not enforced;
5. Purchase of an irrevocable, non-assignable annuity if Medicaid is not the preferred beneficiary and the annuity is issued on February 8, 2006, or later;
6. Any transfer above the protected spousal reserved amount to a community spouse; and
7. Purchase of any contract or financial instrument, including an endowment or insurance, where the criteria for fair market value are not met.

21-001.25B Fair Market Criteria: The criteria for fair market value are not met when:

1. The term of the instrument exceeds the life expectancy of the applicable client(s);
2. The instrument does not provide for equal monthly or annual payments commencing immediately during the term of the contract;
3. The instrument does not provide for the recovery of assets in the event of default; or
4. The instrument contains exculpatory or cancellation terms of balance due.
5. A service given for free at the time cannot later be claimed as an amount owed.

When an asset is placed in an annuity on February 8, 2006 or later, see annuity regulations at 477 NAC 21-001.15A7b.

Note: Trust regulations at 477 NAC 21-001.15A take precedence over deprivation when an asset is placed in a trust.

21-001.25C Deprivation of Resources for Medicaid: Deprivation of a resource must be reviewed only if an individual or an individual's spouse resides in a specified living arrangement which is defined as:

1. Residing in a nursing home;
2. Receiving the skilled level of care in a hospital, i.e., swing bed services;

3. Receiving home and community based services including an assisted living waiver, home health care or personal care services; or requesting and meeting the criteria for such services; or
4. Residing in an intermediate care facility for persons with a developmental disability. If a couple chooses to do an assessment, see 477 NAC 21-001.09B.

21-001.25D Disposal/Transfer of Resources on February 8, 2006 or Later

21-001.25D1 Look Back Period: To determine if a client or his/her spouse deprived himself/herself of a resource to qualify for Medicaid, the agency must look back 60 months before the month of application. The look back is triggered when the individual first applies for Medicaid and is in a specified living arrangement or is on Medicaid and enters a specified living arrangement.

When an individual applies for Medicaid more than once, the look back period is based on the first date the individual meets both requirements. To determine the countable value disposed of, the Department:

1. Takes the equity the client has in the resource (equity equals fair market value minus encumbrances);
2. Subtracts any compensation received by the client; and
3. Subtracts the allowable resource level shown above from the result of step 2 if this is the first disposal.

21-001.25D2 Period of Ineligibility: If it is determined that an individual disposed of a resource, the applicant or recipient is ineligible for the number of months determined by dividing the countable value of the resource by the actual monthly cost of care in the specified living arrangement at the current private pay rate.

The period of ineligibility begins:

1. If the individual is on Medicaid, with the month of entry into a specified living arrangement; or
2. If the individual is not on Medicaid, the month of application if in a specified living arrangement.

The individual must be Medicaid eligible except for the deprivation of resources in the month of application. It does not apply to an application month in which the individual is ineligible because of excess resources or other eligibility criteria.
If the division results in a fraction, the fraction is converted to a dollar amount and includes that amount as unearned income for the applicable month. In determining the period of ineligibility, the fair market value of the transferred resource only is used. The value of other resources and income are not included in the calculation.

For periodic disposals within the look back period, each are determined separately; the periods of ineligibility run consecutively. Multiple fractional month transfers are cumulative and treated as one transfer. The remaining time of ineligibility is divided by two and shared by the couple if the community spouse enters one of the specified living arrangements during the period of ineligibility of the institutionalized spouse.

21-001.25D3 Availability of Hardship Waiver Process: The individual may request in writing to the agency a hardship waiver exception when imposing a period of ineligibility

for transfer of assets would deprive the individual of medical care so that his/her health or his/her life would be endangered. A notice of discharge from the facility is not necessary to demonstrate that health or life would be endangered. Undue hardship also exists when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter, or other necessities of life.

The facility in which the institutionalized individual resides may file the undue hardship waiver request on behalf of the individual with the written consent of the individual or his/her legal representative. The request will be submitted to Central Office for determination, along with information including, but not limited to, spouse's resources, any written demand for return of assets, any legal action taken to recover the asset, documentation of the individual that signed for or requested the transfer of assets, and living arrangement of the individual(s) at time of transfer.

Central Office will make a determination within 30 days from receipt of the hardship waiver request by the Central Office. If circumstances beyond the control of the agency prevent action within the required time, the Central Office will send a notice to the individual who filed the hardship waiver request. The guardian, conservator, or anyone acting on behalf of the client must attempt to recover transferred assets.

Up to 30 days of nursing home services may be provided if the individual is cooperating to the fullest extent in attempting to recover transferred assets. If cooperation ceases, undue hardship no longer exists. A hardship waiver will be denied if the individual or his/her spouse participated in the transfer. A denial of hardship waiver request may be appealed.

21-001.25E Transfers Not Considered Deprivation for Medical: It is not considered a deprivation of a resource if:

1. An applicant or recipient transferred a resource to his/her spouse or to an individual with power of attorney or a guardian or conservator for the sole benefit of the applicant or recipient's spouse;
2. An applicant or a recipient's spouse transferred a resource to an individual with power of attorney or a guardian or conservator for the sole benefit of the applicant or recipient's spouse;
3. A resource was transferred to a trust established solely for the benefit of the individual's son or daughter who is blind or disabled (receiving or eligible to receive SSI, RSDI, AABD/MA, or MA);
4. A resource was transferred to the individual's son or daughter who is blind or disabled (receiving or eligible to receive SSI, RSDI, AABD/MA, or MA); or
5. A resource was transferred to a trust established solely for the benefit of an individual age 64 or younger who is disabled (receiving or eligible to receive SSI, RSDI, AABD/MA, or MA). For transfer of a home, see 477 NAC 21-001.25F.

21-001.25F Transfer of a Home: It is not considered a deprivation of a resource if an applicant or recipient transfers title to his/her home to his/her:

1. Spouse;
2. Son or daughter who:
    a. Is age 20 or younger;

b. Is blind or disabled (receiving or eligible to receive SSI, RSDI, AABD/MA or MA based on blindness or disability); or
c. Was residing in the home for at least two years before his/her parent requested assistance or entered the living arrangement listed above and provided care to his/her parent which permitted the parent to reside at home rather than be institutionalized or receive Home and Community Based Waiver Services; or

3. Sibling who has an equity interest in the home and who was residing in the home for at least one year immediately before his/her sibling requested assistance or entered the previously listed living arrangement.

21-001.25G Exceptions to Deprivation Policy: An exception may be made if it is determined that a transfer was made for less than fair market value but the individual can verify that s/he intended to dispose of the resource for fair market value or for other valuable consideration, that the transfer was not made to qualify for assistance, or that denial of assistance would cause undue hardship.