

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

September 25, 2019
1:00 p.m. Central Time
Gold's Building – Room 534
1033 O Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to the following regulations:

Title 477 NAC 20 - *Definitions Pertaining To Non-Modified Adjusted Gross Income (Non-Magi) Programs.*

The proposed changes update, clarify, and add definitions. The proposed changes also update formatting.

Title 477 NAC 23 - *Resources For Non-Modified Adjusted Gross Income (Non-Magi) Programs.*

The proposed changes clarify under which circumstances a trust can be counted as an available resource. The regulation change will not impact most beneficiaries, however, the change will impact those eligible for Medicaid in the Aged or Disabled category who are also beneficiaries of a trust. The proposed change will ensure continued compliance with federal law and retain the current policy.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 477	Prepared by: Erin Noble
Chapter: 20 and 23	Date prepared: 6-4-19
Subject: Definitions and Resources	Telephone: 402-471-9371

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 477 MEDICAID ELIGIBILITY

CHAPTER 20 DEFINITIONS PERTAINING TO NON-MODIFIED ADJUSTED GROSS
INCOME (MAGI) PROGRAMS

001. APPLICABILITY. Chapters 477 Nebraska Administrative Code (NAC) 20 through 28 apply to the following: Aged, Blind, and Disabled (ABD); Medically Needy (MN); Medicaid Insurance for Workers with Disabilities (MIWD); Women's Cancer Program; Transitional Medical Assistance (TMA); Former Foster Care; Emergency Medical Services Assistance (EMSA); and Children and Young Adults Eligible for IV-E Assistance

002. SCOPE AND AUTHORITY. The regulations govern the services provided under Nebraska's Medicaid program as defined by the Medical Assistance Act (Nebraska Revised Statute § 68-901 et seq).

003. DEFINITIONS. The following definitions apply to 477 NAC 20 through 28:

003.01 ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT. An Achieving a Better Life Experience (ABLE) Account is a special type of investment account under Section 529A of the Internal Revenue Code. These accounts are for individuals who have a medically determinable physical or mental impairment, which results in marked and severe functional limitation, and which can be expected to result in death or which has lasted, or can be expected to last for a continuous period of not less than 12 months. The accounts must be held at designated institutions and can only be used for qualified disability expenses, as defined by the Internal Revenue Code. All amounts remaining in an Achieving a Better Life Experience (ABLE) account are transferred to the state at the time the account holder dies.

003.02 AGED, BLIND, AND DISABLED (ABD). A category of medical assistance for aged, blind, and disabled (ABD) persons who meet the appropriate criteria for assistance.

003.03 AGED. A client who is 65 years old or older.

003.04 ANNUITY. A prepaid investment which pays periodic, usually monthly, payments for a set period of time. Payments may begin immediately or at a future date.

003.05 ANNUITY TRANSACTION. The purchase of an annuity, changing the annuity beneficiary, or annuitizing, which is authorizing the commencement of the pay-out period.

003.06 ASSETS. Assets are all income and resources of an applicant or client and the spouse of an applicant or client, including income or resources to which the applicant or client or the spouse of the applicant or client is entitled but does not receive because of action or inaction by the applicant or client; the spouse of the applicant or client; a person or entity, including a court or administrative body with legal authority to act in place of, or on behalf of, the applicant or client or the spouse of the applicant or client; or, a person or entity, including a court or administrative body, acting at the direction or upon the request of the applicant or client or the spouse of the applicant or client.

003.07 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 which the client owns and may convert into cash to be used for support and maintenance.

003.08 BLIND. A category of eligibility for clients who are 64 years old and younger and who are blind in accordance with program standards.

003.09 BURIAL INSURANCE. Insurance policies in which the terms specifically provide proceeds can be used only to pay the burial expenses of the insured.

003.10 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.

003.11 CHILD. For aged, blind, and disabled programs, a child is an individual aged 17 years or younger. For medically needy children, a child is an individual aged 18 or younger.

003.12 CLIENT. An applicant or recipient of Medicaid. For the purposes of these regulations, a reference to a client may also refer to the person's guardian, legal representative, or authorized representative.

003.13 CONTRIBUTIONS OR CASH SUPPORT. Verified payments paid to or for a Medicaid unit.

003.14 COUNTABLE INCOME. The amount of income, after all appropriate disregards are applied, used to determine eligibility for medical assistance.

003.15 DISABLED. A category of eligibility for clients who are 64 years old and younger and who are disabled as determined by the Social Security Administration or the State Review Team. An individual is disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. See Titles II and XVI of the federal Social Security Act, as amended, for further disability criteria.

003.16 EQUITY. The fair market value of property minus the total amount owed on it.

003.17 ESSENTIAL PROPERTY. Property or equipment owned solely by the client or the client's spouse in his or her name, or held in a partnership or corporation interest.

003.18 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.

003.19 FAIR MARKET VALUE. The price an item of a particular make, model, size, material, or condition will sell for on the open market in the geographic area involved.

003.20 FORMER FOSTER CARE. A client less than 26 years old who was in foster care under Nebraska or the tribe's responsibility and receiving Medicaid when he or she became eighteen (18) or nineteen (19) years old, or such higher age at which federal foster care assistance ends.

003.21 FORMER WARD. An individual between the ages of 18 and 21 who has been discharged as a ward by the Department and who is in a continuing educational program.

003.22 GRANTOR OF A TRUST. Any individual who creates a trust is the grantor of the trust. A grantor may be:

- (A) An applicant or client;
- (B) The spouse of an applicant or client;
- (C) A person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the applicant or client or the spouse of the applicant or client; or
- (D) A person or entity, including a court or administrative body, acting at the direction or on the request of the applicant or client or the spouse of the applicant or client.

003.23 HOME. Any shelter which the individual owns and uses as his or 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.

003.24 HOUSEHOLD SIZE. The total number of individuals living together on the basis of relative responsibility.

003.25 INCOME. Gain or recurrent benefit received in money or in-kind from employment, business, property, investments, gifts, benefits, annuities, or trusts at regular or irregular intervals of time.

003.26 IN-KIND INCOME. The value of food, clothing, shelter, or other items received in lieu of wages.

003.27 IRREVOCABLE TRUST. A trust which cannot in any way be revoked by the grantor of the trust.

003.28 MEDICAID-QUALIFYING TRUST. An irrevocable trust or similar legal device which was established prior to August 11, 1993, by an applicant or client or the spouse of an applicant or client under which:

- (A) The applicant or client is the beneficiary of all or part of the distributions from the trust; and

(B) The amount of the distribution is determined by a trustee who is 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.

003.29 MEDICALLY NEEDY. A program which extends Medicaid coverage to eligible individuals with high medical expenses whose income exceeds the maximum threshold, but who would otherwise be eligible.

002.30 POOLED TRUST. An irrevocable trust containing the assets of a disabled individual established and managed by a nonprofit association in a separate account solely for the benefit of a disabled individual.

002.31 QUALIFIED LONG-TERM CARE (LTC) PARTNERSHIP POLICY. A qualified long-term care (LTC) partnership policy is a long-term care insurance policy which has been approved by the Nebraska Department of Insurance. The Department of Health and Human Services accepts the Department of Insurance's certification of the policy. If an individual has a long term care insurance policy which does not meet the requirements for a qualified long-term care partnership policy because it was issued before July 1, 2006, the individual may exchange the policy for another.

002.32 REAL PROPERTY. Land, houses, or buildings.

002.33 REVOCABLE TRUST. A trust which can be revoked by the grantor of the trust. A trust which allows a court to modify, terminate, or revoke the trust and allow the grantor to receive the trust's assets is a revocable trust. A trust claiming to be irrevocable and indicates the trust would terminate if certain action is taken by the grantor is a revocable trust.

002.34 SHARE OF COST. A client's monthly financial out-of-pocket obligation for medical services when the client's income exceeds the program limits.

002.35 SPECIAL NEEDS TRUST. An irrevocable trust containing the assets of a disabled individual and established solely for the benefit of the individual by the disabled individual, if established on or after December 12, 2016, the individual'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 on termination of the trust up to the amount of total medical assistance paid on behalf of the disabled individual.

002.36 SUPPLEMENTAL SECURITY INCOME (SSI) FEDERAL BENEFIT RATE. The maximum Supplemental Security Income benefit payable based on an individual's living arrangement.

002.37 TESTAMENTARY TRUST. A trust created and funded by a grantor's will.

002.38 TRUST. A trust is any written legal instrument, arrangement, or device which is otherwise valid under applicable law and by which an individual, the grantor, transfers property to another person, the trustee, with the intention it be held, managed, or administered under a fiduciary duty by the trustee for the benefit of a designated beneficiary. Trusts can include escrow accounts, investment accounts, pension funds, irrevocable burial trusts, and annuities.

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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

477 NAC 20

002.39 TRUST BENEFICIARY. An individual, designated by a trust to receive any distribution from the income or principal for the benefit of the individual is a beneficiary of the trust. A distribution from a trust may include cash, non-cash, or property disbursements, including the right to use or occupy real property.

002.40 WOMEN'S CANCER PROGRAM. Health care coverage for eligible women who need treatment for breast and cervical cancer. This program was established by the Breast and Cervical Cancer Prevention and Treatment Act of 2000.

Chapters 477 NAC 20 through 28 apply to the following: Aged, Blind, and Disabled (ABD); Medically Needy (MN); Medicaid Insurance for Workers with Disabilities (MIWD); Women's Cancer Program; Transitional Medical Assistance (TMA); Former Foster Care; Emergency Medical Services Assistance (EMSA); Children and Young Adults Eligible for IV-E Assistance

CHAPTER 20-000 DEFINITIONS PERTAINING TO NON-MAGI PROGRAMS

ABD: A categorical program consisting of medical assistance only. Two (2) types of cases are included in the medical assistance only category:

1. ABD with No Share of Cost (ABD only): A case in which an individual's income is less than the applicable standard.
2. ABD Share of Cost Case (ABD with Share of Cost): A case in which there is sufficient income to meet daily maintenance needs and a portion, but not all, of the unit's medical needs. The case is opened for medical assistance with no payment for medical services made until the Share of Cost is obligated toward medical services.

Aged: A client who is sixty-five (65) years old or older.

Annuity: A prepaid investment that pays periodic (usually monthly) payments for a set period of time. Payments may begin immediately or at a future date.

Annuity Transaction: The purchase of an annuity, changing the annuity beneficiary, or authorizing the commencement of the pay-out period (annuitizing).

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.

Blind: A category of eligibility for clients who are sixty-four (64) years old and younger and who are blind in accordance with program standards.

Burial Insurance: Insurance policies in which the terms specifically provide that proceeds can be used only to pay the burial expenses of the insured.

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.

Contributions/Cash Support: Verified payments that are paid to or for a Medicaid unit.

Disabled: A category of eligibility for clients who are sixty-four (64) years old and younger and who are disabled as determined by the Social Security Administration (SSA) or the State Review Team (SRT). An individual is disabled if s/he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months. See Titles II and XVI of the federal Social Security Act, as amended, for further disability criteria.

Equity: The fair market value of property minus the total amount owed on it.

Essential Property: Property or equipment owned solely by the client/client's spouse in his/her name, or held in a partnership or corporation interest.

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.

Fair Market Value: The price an item of a particular make, model, size, material, or condition will sell for on the open market in the geographic area involved.

Former Foster Care: A client less than twenty-six (26) years old who was in foster care under Nebraska or the tribe's responsibility and receiving Medicaid when s/he became eighteen (18) or nineteen (19) years old, or such higher age at which federal foster care assistance ends.

Former Ward: An individual between the ages of eighteen (18) and twenty-one (21) who has been discharged as a ward by the Department and who is in a continuing educational program.

Grantor of a Trust: Any individual who creates a trust. This includes:

1. An applicant/client;
2. His/her spouse;
3. A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the applicant/client or his/her spouse (guardian/conservator); or
4. A person, including a court or administrative body, acting at the direction or on the request of the applicant/client or his/her spouse.

Home: 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.

Household Size: The total number of individuals living together on the basis of relative responsibility.

~~Income: Gain or recurrent benefit received in money or in-kind from employment, business, property, investments, gifts, benefits, annuities, or trusts at regular or irregular intervals of time.~~
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~~In-Kind Income: The value of food, clothing, shelter, or other items received in lieu of wages.~~

~~Irrevocable Trust: A trust that cannot in any way be revoked by the grantor of the trust.~~

~~Medicaid-Qualifying Trust: An irrevocable trust or similar legal device that was established before August 11, 1993, by an applicant/client or his/her spouse under which~~

- ~~1. The applicant/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.~~

~~Medically Needy: A program that extends Medicaid coverage to eligible individuals with high medical expenses whose income exceeds the maximum threshold, but who would otherwise be eligible.~~

~~Pooled Trust: An irrevocable trust containing the assets of a disabled individual(s) that is established and managed by a nonprofit association in a separate account solely for the benefit of a disabled individual.~~

~~Qualified Long-Term Care (LTC) 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 of Health and Human Services 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.~~

~~Real Property: Land, houses, or buildings.~~

~~Revocable Trust: A trust that can be revoked by the grantor. Any trust stipulating that it may be modified or terminated only by a court is considered to be a revocable trust, as the grantor (or representative) can petition the court to terminate the trust. A trust designated as irrevocable but that will terminate if certain action is taken by the grantor is considered a revocable trust for purposes of these regulations.~~

~~Share of Cost: A client's financial out-of-pocket obligation for medical services when countable income exceeds the applicable income level. The Share of Cost amount is the difference between the unit's countable income and the appropriate income threshold. This amount must be obligated or paid to medical providers before Medicaid will pay on the remaining medical bills.~~

~~Special Needs Trust: An irrevocable 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 on termination of the trust up to the amount of total Medicaid paid on behalf of the client.~~

~~SSI Federal Benefit Rate: The maximum Supplemental Security Income (SSI) benefit payable based on an individual's living arrangement (e.g., own home, nursing home, living in another's home).~~

~~Standard of Need for Non-MAGI Programs: The consolidation of items necessary for basic subsistence with amounts based on unit size. Included in this standard are shelter and utilities.~~

~~Testamentary Trust: A trust established through a will.~~

~~Trust: For purposes of these regulations, a trust is any arrangement in which an individual (grantor) transfers property to another person(s) (trustee[s]) with the intention that it be held, managed, or administered by the trustee(s) for the benefit of the grantor or certain designated beneficiaries. The trust must be valid under state law and manifested by a valid trust instrument of agreement. A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.~~

~~The term "trust" also includes any legal instrument or device that is similar to a trust for purposes of these regulations. It involves a grantor who transfers property to an individual or entity with the intention that it be held, managed, or administered by the individual or entity for the benefit of the grantor or others. This can include (but is not limited to) escrow accounts, investment accounts, pension funds, irrevocable burial trusts, annuities, and other similar entities managed by an individual or entity with fiduciary obligations.~~

~~Trust Beneficiary: Any individual, or individuals, designated in a trust to receive any disbursement from the corpus of the trust, or from income generated by the trust, which benefits the party receiving it. A payment from a trust may include actual cash, as well as non-cash or property disbursements, such as the right to use and occupy real property.~~

~~Unit: The number of individuals in a household.~~

~~Women's Cancer Program: Health care coverage for eligible woman who need treatment for breast and cervical cancer. This program was established by the Breast and Cervical Cancer Prevention and Treatment Act of 2000.~~

TITLE 477 MEDICAID ELIGIBILITY

CHAPTER 23 RESOURCES FOR NON-MODIFIED ADJUSTED GROSS INCOME
(MAGI) PROGRAMS

001. APPLICABILITY. Chapters 477 Nebraska Administrative Code (NAC) 20 through 28 apply to the following: Aged, Blind, and Disabled (ABD); Medically Needy (MN); Medicaid Insurance for Workers with Disabilities (MIWD); Women's Cancer Program; Transitional Medical Assistance (TMA); Former Foster Care; Emergency Medical Services Assistance (EMSA); and Children and Young Adults Eligible for IV-E Assistance

002. SCOPE AND AUTHORITY. The regulations govern the services provided under Nebraska's Medicaid program as defined by the Medical Assistance Act (Nebraska Revised Statute [Neb. Rev. Stat.] § 68-901 et seq).

003. RESOURCES

003.01 RESOURCES. The total equity value of available non-excluded resources of the client or client and responsible relative is determined and compared with the established maximum for available resources 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.

003.02 VERIFICATION OF RESOURCES. As a condition of both retroactive and prospective eligibility, all countable resources must be verified and documented in the case record. See the Medicaid Resource Verification Plan for verification sources.

003.02(A) EXCEPTIONS.

- (i) For Aged, Blind, and Disabled clients who receive Supplemental Security Income, including individuals in 1619(b) status, verification of resources is not required.
- (ii) If it is unknown whether or not a resource is countable, verification will be required.

003.02(B) RESOURCE REVIEW. If there is reason to believe 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 Supplemental Security Income recipients.

003.03 AVAILABILITY OF RESOURCES. For the determination of Medicaid eligibility, available resources include cash or other liquid assets or any type of real or personal property

or interest in property which the client owns and may convert into cash to be used for support and maintenance.

003.03(A) UNAVAILABILITY OF RESOURCES. Regardless of the terms of ownership, if it can be documented in the case record a resource is unavailable to the client, the value of the 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 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.

003.03(B) BENEFIT FUNDS. If the applicant or recipient has benefit funds, such as funds raised by a benefit dance or auction, the Department must determine whether those funds are available as a resource. If the client or a financially responsible relative can access the benefit funds to pay for shelter costs, maintenance needs, or medical costs otherwise covered by Medicaid, then the funds are considered available.

003.03(C) AUGMENTED ESTATE. An applicant or client must file in county court for the maximum elective share of a deceased spouse's augmented estate as specified in Neb. Rev. Stat. §§ 30-2313 and 30-2314. The status of the resource must be monitored.

003.03(D) 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. 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.

003.03(D)(i) 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 includes 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.

003.03(D)(ii) DETERMINATION OF VALUE. Public tax records or county assessor 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 these records, verification may be obtained from a real estate agent, car dealer, or other appropriate individual.

003.04 DEPRIVATION OF RESOURCES.

003.04(A) DEPRIVATION OF RESOURCES. Any action taken by the applicant or client, or any other person or entity, which reduces or eliminates the applicant's, client's, or spouse's recorded ownership or control of the asset for less than fair market value is a deprivation of resources. The fair market value of a resource at the time the resource was disposed of must be verified and the equity value of the resource must be determined by taking into consideration any encumbrances against the resource. A deprivation of resources includes:

- (i) Recorded transfer of ownership of real property;

- (ii) Not receiving the spousal share of an augmented estate;
- (iii) Purchase of a life estate in another individual's home without meeting the 12-month requirement to reside there;
- (iv) Promissory notes, loans, mortgages, and contract sales for less than fair market value or which are for at least fair market value and are not enforced;
- (v) Purchase of an irrevocable, non-assignable annuity, if Medicaid is not the preferred beneficiary and the annuity is issued on or after February 8, 2006;
- (vi) Any transfer above the protected spousal reserved amount to a community spouse;
- (vii) Purchase of any contract or financial instrument, including an endowment or insurance, where the criteria for fair market value are not met;
- (viii) Resources transferred to a pooled trust established for the benefit of a person 65 years old or greater at the time of transfer; and
- (ix) Transfer or gift of any resource to a third party for less than fair market value.

003.04(B) 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;
- (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;
- (4) The instrument contains exculpatory or cancellation terms of balance due; or
- (5) The purpose of a transaction is solely to become eligible.
- (6) The value received for the transfer of any resource is less than the expected value which would have been received on an open market for a similar resource of the same type.

003.04(B)(i) EXCULPATORY PROVISION. If a client living in a nursing home lends money to an individual with a promissory note stating the obligation to pay any remaining balance ceases upon the client's death, the exculpatory provision forgives or clears the debt and is therefore not a permissible transaction which would avoid a deprivation.

003.04(B)(ii) REPAYMENT AGREEMENT. Any service agreement must be in writing and reasonably describe the services to be rendered prior to the rendering of services.

003.04(C) ASSET PLACED IN ANNUITY. When an asset is placed in an annuity on February 8, 2006 or later, annuity regulations in this chapter apply.

003.04(D) ASSET PLACED IN TRUST. Trust regulations in this chapter take precedence over deprivation when an asset is placed in a trust.

003.04(E) SALE OF REAL PROPERTY IN LIFE ESTATE. When real property in which the individual has a life estate is sold, the individual or spouse must receive as a lump sum his or her life estate interest from the net proceeds, or the entire net proceeds invested and the individual who has the life estate receives all the income.

003.04(F) DEPRIVATION OF RESOURCE REVIEW. 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

- (i) A nursing home;
- (ii) Receiving skilled level of care in a hospital;
- (iii) Receiving Home and Community-Based Services, including an assisted living waiver, Program of All-Inclusive Care for the Elderly, or requesting and meeting the criteria for such services; or
- (iv) An intermediate care facility for persons with a developmental disability.

003.04(G) LOOK-BACK PERIOD FOR DISPOSAL OR TRANSFER OF RESOURCES ON OR AFTER FEBRUARY 8, 2006. To determine if a client or his or her spouse deprived himself or herself of a resource to qualify for Medicaid, the Department must look back 60 months before the month of application. The look-back is triggered when the applicant first applies for Medicaid and is in a specified living arrangement or is on Medicaid and enters a specified living arrangement. When an applicant applies for Medicaid more than once, the look-back period is based on the first date the individual meets both of these requirements. The look-back period may include the three months prior to the month of application if retroactive Medicaid benefits are requested for those months.

003.04(G)(i) COUNTABLE VALUE OF DISPOSED RESOURCES. To determine any countable value disposed of, the Department will:

- (1) Take the equity the client had in the resource at the time of disposition; equity equals fair market value minus encumbrances, and
- (2) Subtract any compensation received by the client.

003.04(H) PERIOD OF INELIGIBILITY. If it is determined an applicant or client disposed of a resource, the applicant or client is ineligible. To determine the length of the period of ineligibility the countable value of the resource will be divided by the actual monthly cost of care in the specified living arrangement at the current private pay rate. If both spouses are applying and eligible for Medicaid, the period of ineligibility is divided equally between the spouses. The period of ineligibility begins:

- (i) If the client is receiving Medicaid, with the month of entry into a specified living arrangement, following notice requirements; or
- (ii) If an applicant, the first month of requested benefits if in a specified living arrangement.

003.04(I) IMPOSING A PERIOD OF INELIGIBILITY. The applicant or client must be Medicaid eligible, except for the deprivation of resources, in the month benefits are requested for a deprivation penalty to be imposed. If the division results in a fraction, the fraction is converted to a dollar amount and this amount is included as unearned income for the applicable month. In determining the period of ineligibility, the fair market value of the transferred resource is used. The value of other resources and income are not included in the calculation. For periodic disposals within the look-back period, each is determined separately; the periods of ineligibility run consecutively. Multiple fractional month transfers are cumulative and treated as a single transfer.

003.04(I)(i) SPOUSE FOR SPOUSE INELIGIBILITY. If a community spouse enters a specified living arrangement and is Medicaid eligible except for the deprivation, divide the full or any remaining period of ineligibility between the spouses.

003.04(J) DEPRIVATION HARDSHIP WAIVER. An exception may be made if it is determined a transfer was made for less than fair market value, but the individual can verify he or she intended to dispose of the resource for fair market value or for other valuable consideration, the transfer was not made to qualify for assistance, or denial of assistance would cause undue hardship.

003.04(J)(i) REQUESTING A HARDSHIP WAIVER. All requests for deprivation hardship waiver must be submitted in writing to the Department. On receipt of the written request, the Department will follow the Deprivation of Resources Hardship Waiver Procedure. 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 or her legal representative. The guardian, conservator, or anyone acting on behalf of the applicant or client must attempt to recover transferred assets. Up to 30 days of nursing home services may be provided if the applicant or client is cooperating to the fullest extent in attempting to recover transferred assets. If cooperation ceases, undue hardship no longer exists and eligibility is terminated. A hardship waiver will be denied if the applicant or client, or his or her spouse participated in the transfer. A denial of hardship waiver request may be appealed.

003.04(K) TRANSFERS NOT CONSIDERED DEPRIVATION. It is not considered a deprivation of a resource if:

- (i) An applicant or client transferred a resource to his or her spouse, to an individual with power of attorney, or to a guardian or conservator for the sole benefit of the applicant's or client's spouse;
- (ii) An applicant's or client's spouse transferred a resource to an individual with power of attorney, or to a guardian or conservator, for the sole benefit of the applicant's or client's spouse;
- (iii) A resource was transferred to a trust established solely for the benefit of the applicant's or client's son or daughter who is blind or disabled;
- (iv) A resource was transferred to the applicant's or client's son or daughter who is blind or disabled; or
- (v) A resource was transferred to a special needs trust established solely for the benefit of an individual 64 years old or younger who is disabled.

003.04(L) TRANSFER OF A HOME. It is not considered a deprivation of a resource if an applicant or client transfers title to his or her home to his or her:

- (i) Spouse;
- (ii) Son or daughter who
 - (1) Is age 20 or younger;
 - (2) Is blind or disabled; or
 - (3) Was residing in the home for at least two years before his or her parent applied for Medicaid or entered long-term care and provided care to his or her parent which permitted the parent to reside at home rather than be institutionalized or receive Home and Community Based Services Waiver; or

(iii) Sibling who has an equity interest in the home and who was residing in the home for at least one year immediately before his or her sibling applied for Medicaid or entered a specified living arrangement as defined in this chapter.

003.05 TYPES OF RESOURCES. Resources are divided into two categories, liquid and non-liquid.

003.05(A) LIQUID RESOURCES. Liquid resources are assets which are in cash or financial instruments which are convertible to cash.

003.05(A)(i) CASH, SAVINGS, INVESTMENTS, AND MONEY DUE. Available resources includes 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, cash in investment accounts, and accessible retirement accounts.

003.05(A)(ii) 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 will be determined. 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, against the property. If it is determined and documented the contract is not salable, the contract is not considered an available resource to the client. A review of the salability will 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.

003.05(A)(iii) FUNDS SET ASIDE FOR BURIAL. A specified maximum may be disregarded if it is set aside for the purpose of paying burial expenses.

003.05(A)(iii)(1) BURIAL FUNDS. The individual may choose to put the money in:

- (a) 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;
- (b) 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
- (c) A maximum of \$1,500 may be designated for burial. These funds may be in an account or in an insurance policy. This provision is applicable to Aged, Blind, and Disabled Medicaid eligible individuals only.

003.05(A)(iii)(2) TRANSFER OF FUNDS TO AN INSURANCE POLICY. 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.

003.05(A)(iii)(3) IRREVOCABLE BURIAL TRUSTS. If money was placed in an irrevocable burial trust on July 16, 1982, or later, it is not considered an available resource. The value of the irrevocable burial trust is limited by the specified

maximum amount identified at Neb. Rev. Stat. Section 68-129. The trust must be created for the purpose of paying prearranged burial expenses. The value up to the specified maximum of an irrevocable burial trust and any accrued interest or dividends on this 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 must be deposited by a mortuary with a financial institution. 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. If a burial trust is drawn up in another state, the contract terms must be verified and determined whether the state allows irrevocable burial funds or whether the value of the trust is available to the client regardless of the contract terms.

003.05(A)(iii)(4) INTEREST AND DIVIDENDS ON BURIAL TRUSTS. For irrevocable burial trusts all accrued interest or dividends are also irrevocable.

003.05(A)(iii)(5) BURIAL INSURANCE. Burial insurance is defined as insurance in which the policy's terms specifically provide the proceeds can be used only to pay the burial expenses of the insured, or a life insurance policy which 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. If the burial insurance has been irrevocably assigned, it is treated according to this rule and the specified maximum applies. If a total of more than the specified maximum in burial insurance is irrevocably assigned for services, the amount above the specified maximum may be considered deprivation of a resource.

003.05(A)(iii)(6) 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. This exclusion is in addition to the burial space exclusion. To qualify for this exclusion, funds must be separated into a designated account. The \$1500 is reduced by:

- (a) The face value of any policy of life or burial insurance, and
- (b) The amount of any irrevocably assigned burial trust, contract, or arrangement

003.05(A)(iii)(7) BURIAL SPACES. The value of burial spaces, held for the purpose of providing a place for the burial of the client, his or her spouse, and members of the client's immediate family, are not counted as an available resource. 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.

003.05(A)(iii)(8) 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 the item is actually purchased, the contract must state 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 a client transfers ownership of a life insurance policy to someone else, 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 because the client does not own it. Additionally, this is not considered deprivation of a resource.

003.05(A)(iv) LIFE INSURANCE.

003.05(A)(iv)(1) INSURED. The person whose life is insured.

003.05(A)(iv)(2) OWNER. The person who has the right to change the policy.

003.05(A)(iv)(3) TERM INSURANCE. A form of life insurance which generally furnishes insurance protection for only a specified or limited period of time.

003.05(A)(iv)(4) FACE VALUE. The basic death benefit of a life insurance 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.

003.05(A)(iv)(5) CASH SURRENDER VALUE. Amount an insurer will pay, usually to the owner, upon cancellation of a life insurance policy before death of the insured or before maturity of the policy.

003.05(A)(iv)(5)(a) AMOUNT COUNTED AS A RESOURCE. Each person in the unit is allowed a \$1,500 exemption for the face value of his or her life insurance policies. If the combined original face value of all the life insurance policies owned by the client exceeds \$1,500, the actual cash surrender value of all the policies is considered a countable resource. If the cash surrender value is to be counted toward the resource total of a client, consideration is given to any outstanding loans against the policy in determining net cash surrender value. The following must be disregarded in determining the combined original face value of all life insurance policies:

- (i) Burial insurance, and
- (ii) Life insurance policies where the proceeds are irrevocably assigned for the purpose of burial.

003.05(A)(v) LONG-TERM CARE 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.

003.05(A)(v)(1) QUALIFIED LONG-TERM CARE PARTNERSHIP POLICY. A long-term care insurance policy which 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 which does not meet the requirements for a Qualified Long-Term Care Partnership policy because it was issued before July 1, 2006, the individual may exchange the policy for another.

003.05(A)(v)(2) EXCHANGE OF A NON-PARTNERSHIP POLICY FOR A QUALIFIED LONG-TERM CARE PARTNERSHIP POLICY. An applicant or client may exchange a policy which does not meet the requirements of a qualified Long-Term Care Partnership Policy for one which does meet the requirements. The date of exchange is considered the issue date for the qualified Long-Term Care Partnership Policy.

003.05(A)(v)(2)(a) RECIPROCITY WITH OTHER STATES. The Department will accept qualified Long-Term Care Partnership Policies issued in other states with Long-Term Care Partnership Programs.

003.05(A)(vi) ANNUITY, TRUST, GUARDIANSHIP AND CONSERVATORSHIP FUNDS. When an annuity, trust, guardianship, or conservatorship has been established on behalf of an applicant or client, it must be verified if the annuity, trust, guardianship, or conservatorship is available to the applicant or client.

003.05(A)(vi)(1) ANNUITIES.

003.05(A)(vi)(1)(a) ANNUITY. A prepaid investment which pays periodic payments for a set period of time. Payments may begin immediately or at a future date.

003.05(A)(vi)(1)(b) ANNUITY TRANSACTION. The purchase of an annuity, changing the annuity beneficiary, or authorizing the commencement of the pay-out period.

003.05(A)(vi)(1)(c) PURCHASED OR ANNUITIZED BEFORE FEBRUARY 8, 2006. When an applicant or client cannot assign or change the ownership or payee of an annuity, 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 applicant or 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 applicant or client

does not coincide with the life of the annuity, a deprivation has occurred. The look-back period is the same as for trusts. See the Life Expectancy Tables available in the appendix to this title.

003.05(A)(vi)(1)(d) ANNUITY TRANSACTION ON OR AFTER FEBRUARY 8, 2006.

003.05(A)(vi)(1)(d)(i) COUNTABLE RESOURCES. Revocable and assignable annuities are countable resources. A saleable annuity which has not been sold is a countable resource for the amount annuitized, less the payment 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 the deprivation of resources regulation.

003.05(A)(vi)(1)(d)(ii) 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 a community spouse 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.

003.05(A)(vi)(1)(e) ANNUITIES EXCLUDED FROM RESOURCES. An annuity which has been annuitized will be excluded from countable resources if it meets the following conditions:

- (i) The annuity is considered either an individual retirement annuity according to the Internal Revenue Code or a deemed Individual Retirement Account under a qualified employer plan by the Internal Revenue Code; or
- (ii) The annuity is purchased with the proceeds from a simplified employee pension; and
- (iii) 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. The applicant or recipient must verify the annuity meets these requirements.

003.05(A)(vi)(2) TRUSTS.

003.05(A)(vi)(2)(a) TRUST. A trust is any written legal instrument, arrangement, or device which is otherwise valid under applicable law and by which an individual, the grantor, transfers property to another person or entity, the trustee, with the intention it be held, managed, or administered under a fiduciary duty by the trustee for the benefit of a designated beneficiary. Trusts can include escrow accounts, investment accounts, pension funds, irrevocable burial trusts, and annuities.

003.05(A)(vi)(2)(b) GRANTOR OF A TRUST. Any individual who creates a trust is the grantor of the trust. A grantor may be:

- (i) An applicant or client;
- (ii) The spouse of an applicant or client;
- (iii) A person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the applicant or client or the spouse of the applicant or client; or
- (iv) A person or entity, including a court or administrative body, acting at the direction or upon the request of the applicant or client or the spouse of the applicant or client.
- (v) Exception: This subsection does not apply to Third-Party Irrevocable Trusts or Testamentary Trusts.

003.05(A)(vi)(2)(c) TRUST BENEFICIARY. An individual designated by a trust to receive any distribution from the income or principal for the benefit of the individual is a beneficiary of the trust. A distribution from a trust may include cash, non-cash, or property disbursements, including the right to use or occupy real property.

003.05(A)(vi)(2)(d) DISCLOSURE OF TRUST INTEREST. An applicant for or client of medical assistance or the spouse of an applicant for or client of medical assistance who is a grantor or a beneficiary of a trust must report the existence of and provide documentation regarding the trust and any distributions made from the trust to the Department at the time of application for medical assistance and within ten days of the creation of or distributions from a trust after applying for medical assistance.

003.05(A)(vi)(2)(e) AVAILABILITY. Consistent with this chapter and Section 1917(d) of the Social Security Act, and supplementing and not impairing the applicability of any additional requirement contained within this subsection, a trust, or any relevant portion, is considered an available resource if:

- (i) The trust was funded with the assets of the applicant or client or the spouse of the applicant or client and there is any circumstance, no matter how remote, in which distribution can be made from the trust to the applicant or client, unless and to the extent an exception contained within this chapter applies;
- (ii) The applicant or client or the spouse of the applicant or client is both a trustee and a beneficiary of the trust;
- (iii) The terms of the trust require a distribution to the applicant or client or the spouse of the applicant or client;

- (iv) The applicant or client or the spouse of the applicant or client, as a matter of general trust administration or interpretation, can compel distribution from the trust;
- (v) The applicant or client or the spouse of the applicant or client has the ability to receive loans or payments from the trust based on a current or future right to trust distributions;
- (vi) The applicant or client or the spouse of the applicant or client can modify, terminate, or revoke the trust and receive trust assets;
- (vii) Regardless of the terms of the trust, the trustee has made trust assets available to the applicant or client or the spouse of the applicant or client; or,
- (viii) The Supplemental Security Income program has determined the trust is an available resource for the applicant or client or the spouse of the applicant or client.

003.05(A)(vi)(2)(f) REVOCABLE TRUST. A trust which can be revoked by the grantor of the trust. A trust which allows a court to modify, terminate, or revoke the trust and allow the grantor to receive the trust's assets is a revocable trust. A trust which claims to be irrevocable and also indicates the trust would terminate if certain action is taken by the grantor is a revocable trust. For a revocable trust:

- (i) A distribution from income or from principal made to or for the benefit of the applicant or client or the spouse of the applicant or client is income to the applicant or client;
- (ii) Income on the principal of the trust which could be distributed to or for the benefit of the applicant or client or the spouse of the applicant or client is an available resource to the applicant or client;
- (iii) The entire principal is an available resource to the applicant or client or the spouse of the applicant or client; and,
- (iv) A distribution from income or principal which is not made to or for the benefit of the applicant or client or the spouse of the applicant or client is subject to the provisions regarding transfers of assets for less than fair market value, except, to the extent a trust also contains the assets of someone other than the applicant or client or the spouse of the applicant or client, this provision only applies to those assets attributable to the applicant or client or the spouse of the applicant or client.

003.05(A)(vi)(2)(g) IRREVOCABLE TRUSTS. A trust which cannot in any way be revoked by the grantor of the trust.

003.05(A)(vi)(2)(g)(i) TRUSTS ESTABLISHED BEFORE AUGUST 11, 1993. A Medicaid-qualifying trust is a trust or similar legal device established prior to August 11, 1993 by or legally on behalf of an applicant or client or the spouse of the applicant or client from the assets of the applicant or client or the spouse of the applicant or client under which the applicant or client or the spouse of the applicant or client is the beneficiary of all or some of the distributions from the trust and the trustee is permitted

to exercise any discretion with respect to the amount to be distributed, with no use limitation, to the applicant or client or the spouse of the applicant or client. For a Medicaid qualifying trust, the maximum amount which could have been distributed from either the income or principal if the trustee had exercised full discretion under the terms of the trust is considered an available resource.

003.05(A)(vi)(2)(g)(ii) TRUSTS ESTABLISHED ON OR AFTER AUGUST 11, 1993. An Omnibus Budget Reconciliation Act of 1993 trust is a trust or similar legal device which was established other than by will on or after August 11, 1993 by or on behalf of an applicant or client or the spouse of the applicant or client from at least in part the assets of the applicant or client or the spouse of the applicant or client, under which the applicant or client or the spouse of the applicant or client, is a beneficiary of all or some of the distributions from the trust and there is any circumstance under which the trustee can make a distribution to or for the benefit of the applicant or client or the spouse of the applicant or client from all or a portion of the trust. For an Omnibus Budget Reconciliation trust:

- (1) A distribution from income or principal made to or for the benefit of the applicant or client or the spouse of the applicant or client is income to the applicant or client;
- (2) Income on the principal of the trust which could be distributed to or for the benefit of the applicant or client or the spouse of the applicant or client is an available resource to the applicant or client;
- (3) The portion of the principal which could be distributed to or for the benefit of the applicant or client or the spouse of the applicant or client is an available resource to the applicant or client;
- (4) A distribution from income or principal which is not made or cannot under any circumstance be made to or for the benefit of the applicant or client or the spouse of the applicant or client is subject to the provisions regarding transfers of assets for less than fair market value, except, to the extent a trust also contains the assets of someone other than the applicant or client or the spouse of the applicant or client, this provision only applies to those assets attributable to the applicant or client or the spouse of the applicant or client; and
- (5) To the extent the trust contains discretionary or support terms, or both, regarding the trustee's authority to distribute trust assets from all or a portion of the trust to or for the benefit of the applicant or client or the spouse of the applicant or client, those assets are an available resource.

003.05(A)(vi)(2)(g)(iv) EXCEPTIONS.

- (1) The assets of an irrevocable trust are not available if the trust is established for a disabled applicant or client 64 years old or younger who is receiving or eligible to receive Supplemental Security

Income, Retirement, Survivors, and Disability Insurance, or Medicaid in the Aged, Blind, or Disabled category and is a:

- (a) Special needs trust: A trust which meets all of the following requirements:
 - (i) Contains the assets of the applicant or client;
 - (ii) Established solely for the benefit of the applicant or client;
 - (iii) Established by the applicant or client (if established on or after December 13, 2016); a parent, grandparent, or legal guardian of the applicant or client; or, a court; and
 - (iv) The state will receive all amounts remaining in the trust upon the death of the applicant or client or on termination of the trust up to the amount of total medical assistance paid on behalf of the applicant or client; or
- (b) Pooled trust: A trust containing the assets of the applicant or client which meets all of the following requirements:
 - (i) Established and managed by a non-profit association;
 - (ii) 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;
 - (iii) Accounts in the trust are established solely for the benefit of individuals who are blind or disabled; and
 - (iv) The trust provides to the extent any amounts remaining in the applicant's or client's account on his or her death are not retained by the trust, the trust will pay to the state the amount remaining up to the amount of total Medicaid paid on behalf of the applicant or client.
- (c) The assets of an irrevocable trust are not available if denial of assistance would cause undue hardship.

003.05(A)(vi)(2)(g)(v) THIRD PARTY IRREVOCABLE TRUSTS. A trust which cannot in any way be revoked by the grantor of the trust and is created and funded during life by a grantor who is neither the applicant or client nor the spouse of the applicant or client. For purposes of eligibility for medical assistance, a distribution from income or principal made to or for the benefit of the applicant or client or the spouse of the applicant or client is income, and income or principal which could be distributed to or for the benefit of the applicant or client or spouse of the applicant or client is an available resource. If the trust contains both discretionary and support terms regarding the trustee's authority to distribute trust assets from all or a portion of the trust to or for the benefit of the applicant or client or the spouse of the applicant or client, those assets are an available resource to the extent the applicant or client or spouse of the applicant or client can compel distribution as a matter of general trust administration or interpretation. To the extent any relevant essential term of the trust is modified or negated by amendment, agreement, or judicial action after becoming irrevocable, any distribution from income or principal which could have been made to or for the benefit of the applicant or client or the spouse of the applicant or client absent such amendment, agreement, or judicial

action is subject to provisions regarding transfers of assets for less than fair market value. A relevant essential term includes but is not limited to terms which delineate the respective interest of beneficiaries or set forth the relative ability to compel distribution.

003.05(A)(vi)(2)(g)(vi) TESTAMENTARY TRUSTS. A testamentary trust is a trust created and funded by a grantor's will. For purposes of eligibility for medical assistance, a distribution from income or principal made to or for the benefit of the applicant or client or the spouse of the applicant or client is income, and income or principal which could be distributed to or for the benefit of the applicant or client or the spouse of the applicant or client is an available resource. If the trust contains both discretionary and support terms regarding the trustee's authority to distribute trust assets from all or a portion of the trust to or for the benefit of the applicant or client or the spouse of the applicant or client, those assets are an available resource to the extent the applicant or client or spouse of the applicant or client can compel distribution as a matter of general trust administration or interpretation. To the extent any relevant essential term of the trust is modified or negated by amendment, agreement, or judicial action after becoming irrevocable, any distribution from income or principal which could have been made to or for the benefit of the applicant or client or the spouse of the applicant or client absent such amendment, agreement, or judicial action is subject to provisions regarding transfers of assets for less than fair market value. A relevant essential term includes but is not limited to terms which delineate the respective interests of beneficiaries or set forth the relative ability to compel distribution.

003.05(A)(vi)(2)(g)(vii) GUARDIANSHIPS AND CONSERVATORSHIPS. Neb. Rev. Stat. 30-2654 and 30-2628 require funds in conservatorships or "blocked" accounts be made available for the care and maintenance of the individual whose funds are in the account.

003.05(A)(vi)(2)(g)(viii) ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNTS. The balance of an Achieving a Better Life Experience Account is disregarded as a countable resource. A contribution to an Achieving a Better Life Experience Account is not counted as income for an applicant or client. A distribution from an Achieving a Better Life Experience Account is not considered income, but conversion of a resource. A distribution from an Achieving a Better Life Experience Account for a non-housing Qualified Disability Expense to an applicant or client or his or her financial account is disregarded. A distribution from an Achieving a Better Life Experience Account for a housing Qualified Disability Expense is not counted in the month of receipt. The distribution is counted only if retained in a later month. A distribution from an Achieving a Better Life Experience Account is counted as a resource if it is not spent on a Qualified Disability Expense.

003.05(B) NON-LIQUID RESOURCES. Non-liquid resources are tangible properties which must be sold if they are to be used for the maintenance of an applicant or client. They include all properties not classified as liquid resources.

003.05(B)(i) REAL PROPERTY OTHER THAN THE PRINCIPAL HOME. In computing the amount of a 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.

003.05(B)(ii) JOINT OWNERSHIP OF REAL PROPERTY. Real property jointly owned is excluded if sale of the property would cause the other owner undue hardship. However, if undue hardship does not apply or ceases to exist, the property is included in countable resources and handled according to the following regulations.

003.05(B)(ii)(1) ALL OWNERS AGREE TO LIQUIDATE. If an applicant or client owns a property with other persons who are not on Medicaid and the real property is not the principal place of residence for the other owner, the other owners must 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.

003.05(B)(ii)(2) ONE OR MORE OWNERS DO NOT AGREE TO LIQUIDATE. If one or more of the parties do not wish to liquidate, the process for unavailability of a resource is applied, which requires the applicant or 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 applicant's or client's interest in the property, appropriate action must be taken.

003.05(B)(iii) EXEMPTION OF THE HOME. The applicant's or client's home is exempt from consideration as an available resource, subject to the limitations below.

003.05(B)(iii)(1) DEFINITION OF HOME. Home is defined as any shelter which an individual owns and uses as his or 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.

003.05(B)(iii)(2) HOME EQUITY VALUE. For applications on or after January 1, 2006, an applicant or client is not eligible for any long-term care services if the equity value interest in the home exceeds the specified amount as listed in the appendix to this title.

003.05(B)(iii)(3) ADJACENT LOTS. A lot adjacent to the home is considered available if it can be sold separately from the home. If it is determined and documented in the case record a lot adjacent to the home cannot be sold or is not salable due to the location or condition of the property, the adjacent lot is also exempt.

003.05(B)(iii)(4) REMOVAL FROM HOME. If an applicant or client moves away from the home and does not plan or is unable to return, 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 applicant's or client's spouse or dependent relative. A dependent relative includes the client's:

- (a) Child, stepchild, or grandchild 17 years old or younger;
- (b) Child, stepchild, or grandchild 18 years old or older if aged, blind, or disabled; or
- (c) 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.

003.05(B)(iii)(5) ABILITY TO RETURN HOME. When it is not possible to determine immediately whether an applicant or client who moves to a nursing home or assisted living facility and is receiving Aged and Disabled Waiver services will be able to return to the home, a maximum of six months must be allowed to make this determination. Unless the applicant, client, or his or her authorized representative signs a statement which the applicant or client will not return to the home, or the home is already listed for sale, it is not possible to determine immediately if he or she will return home.

003.05(B)(iii)(6) CLIENT OUT OF THE HOME FOR SIX MONTHS. After an applicant or client lives out of the home for a maximum of six months, the home is no longer considered the applicant's or client's principal place of residence and must be considered an available resource. However, the applicant or client is allowed a reasonable amount of time commensurate with then existing conditions to liquidate the property before it affects eligibility. The six months begin with the first full month following the month of admission to a nursing home or assisted living facility, if receiving Home and Community Based Services or Programs of All-Inclusive Care for the Elderly services. After the applicant or 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 the home is no longer allowed the exemption for occupation.

003.05(B)(iii)(6)(a) LIQUIDATION OF HOME. As soon as the determination is made the applicant or client will not be able to return home, the applicant or client must be allowed time to liquidate the property. The applicant or client is also allowed time for liquidation if he or she leaves the home for a reason other than entering a medical institution.

003.05(B)(iii)(7) SALE OF HOME. If an applicant or client sells his or 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, an applicant

or client must be residing in the home at the time of the sale and move directly to his or her new home. Net proceeds are the remainder after payment of the mortgage, realtor's fees, legal fees, etc. Any deductions must be verified.

003.05(B)(iv) LIQUIDATION OF REAL PROPERTY. When an applicant or client as excess resources because of real property, he or she may receive Medicaid pending liquidation of the resource, according to the following regulations. An applicant or client is not entitled to a liquidation period if disregarding the value of the property would allow the applicant or client to begin a sanction period for a deprivation of resources. This reference does not apply if the community spouse under spousal impoverishment regulations will retain any of the proceeds of the sale. If an applicant or client has excess resources because of real property other than his or her home during a retroactive period, he or she is ineligible for Medicaid. The applicant or client may be prospectively eligible with excess resources because of real property if an Agreement to Sell Real Property Form is signed.

003.05(B)(iv)(1) TIME LIMIT FOR LIQUIDATION. Real property which an applicant or client is making a good faith effort to sell must be excluded. First, it must be determined if the applicant or client has the legal authority to liquidate the property. The applicant or client is allowed 60 days to initiate legal action to obtain liquidation. If the applicant or client owns the property with other persons. Once the applicant or client has the legal authority to liquidate the property, the client's signature on the Agreement to Sell Real Property Form must be obtained. The applicant or client is allowed six calendar months to liquidate the real property. If the applicant or client refuses to sign the Agreement to Sell Real Property Form, he or she is immediately ineligible due to excess resources. The six-month period begins with the month following the month in which the Agreement to Sell Real Property Form is signed. Once the Agreement to Sell Real Property Form is signed, the six calendar months are counted whether or not the applicant or client is receiving Medicaid. If, after the Agreement to Sell Real Property Form is signed, the applicant or client goes into current pay status for Supplemental Security Income, the Agreement to Sell Real Property Form is void.

003.05(B)(iv)(1)(a) SUPPLEMENTAL SECURITY INCOME NON-PAY STATUS DURING LIQUIDATION PERIOD. If the applicant or client later goes into non-pay status for Supplemental Security Income, a new Agreement to Sell Real Property Form is signed and a new six-month liquidation period is established. If the applicant or client moves back to the home and subsequently moves out again during the six-month period, he or she is only allowed the months remaining in the original six-calendar-month period. One liquidation period is allowed for each piece of real property which is determined to cause excess resources, even if the case is closed and subsequently reopened.

003.05(B)(iv)(2) EXTENSION OF TIME LIMIT. If an applicant or client is unable to liquidate a property in six calendar months, the Department may authorize one additional three-calendar-month extension. The three calendar months are counted whether or not the applicant or client is receiving Medicaid. If the applicant or client moves back to the home during the three-month period and subsequently

moves out again, he or she is allowed the months remaining in the initial three-month extension. In determining whether to allow a three-calendar-month extension, the Department will consider:

- (a) If the property has been placed on the market with a real estate licensee;
- (b) If the applicant or client is asking a fair price for the property;
- (c) If the asking price has been reduced;
- (d) If the applicant or client understands the requirement for liquidation of the property;
- (e) If the applicant or client has refused a reasonable offer to purchase, defined as at least 2/3 of either the estimated current market value or the proven actual value, if there is no better offer; and
- (f) The economic conditions in the area and if real estate is selling.

003.05(B)(v) MOTOR VEHICLES. One motor vehicle regardless of its value, as long as it is necessary for an applicant or client or a member of his or her household for employment or medical treatment, is disregarded. If an applicant or 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 toward the resource limit. An applicant's or client's verbal statement the motor vehicle is used for employment or medical treatment is sufficient for verification purposes.

003.05(B)(v)(1) EXCEPTIONS. Exceptions include:

- (a) The disregard of any motor vehicle is not allowed when it has been determined a client residing in a nursing home or an assisted living facility and receiving services through Home and Community Based Services or Programs or All-Inclusive Care for the Elderly does not intend, or will not be able to return home if medical transportation is included in the payment to the facility; or
- (b) The applicant or client designates the disregarded vehicle for Assessment of Resources.

003.05(B)(v)(2) DETERMINATION OF FAIR MARKET VALUE. For motor vehicles which are counted toward the resource total, fair market value is used. Cars, trucks, SUVs, vans, motorcycles, recreational vehicles, motorboats, watercraft, and planes are included in the category of motor vehicles.

003.05(B)(vi) 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 whether or not it is deprivation of a resource. If the life estate is sold, the proceeds are counted as resources. Examples of treatment of life estate income are available in the appendix to this title. 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. The Life Estate Interest Table is available in the appendix to this chapter.

003.05(B)(vii) ESSENTIAL PROPERTY. Resources which are used in an applicant, client, or responsible relative's trade or business are disregarded, regardless of value. Land which is leased or rented out to another person or entity or land enrolled in an agricultural development program is not disregarded. Disregarded property includes:

- (1) Real property such as land, houses, buildings, business equipment and fixtures, farm machinery, tools, safety equipment, livestock, and crops used for a client's trade or business; and
- (2) Business bank accounts, as long as the funds are separated from other liquid resources.

003.05(B)(viii) HOUSEHOLD GOOD AND PERSONAL EFFECTS. Household goods and personal effects are exempt. Household goods include:

- (1) Household furniture;
- (2) 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;
- (3) Those items which are for comfort and accommodation; and
- (4) Personal effects.

003.05(B)(ix) NON-BUSINESS PROPERTY FOR MEDICAID IN THE AGED, BLIND, AND DISABLED CATEGORY. A maximum of \$6,000 in equity value of nonbusiness property which 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. Examples are available in the appendix to this title.

003.05(C) INHERITANCE. When an applicant or client receives an inheritance, verified payment of debts or obligations of the deceased are subtracted from the settlement, and the remainder is considered unearned income.

003.06 EXCLUDED RESOURCES. The worth of resources, both available and excluded, is determined on the basis of their equity. Disregarded income is also disregarded as a resource, unless there is a specific regulation stating otherwise. In addition, the following resources are excluded in making a determination of eligibility:

- (1) Real property the individual owns and occupies as a home;
- (2) Household goods and personal effects;
- (3) Cash surrender value of life insurance policies with combined face values of \$1,500 or less per individual;
- (4) A specified maximum in proceeds from an insurance policy irrevocably assigned for the purpose of burial of the client;
- (5) Irrevocable burial trusts up to the specified amount per individual and the interest if irrevocable;
- (6) Burial space items or a contract for the purchase of burial space items owned by a client or designated family member;
- (7) Burial spaces;
- (8) Up to \$1,500 set aside for burial arrangements;
- (9) One motor vehicle;
- (10) Certain life estates in real property;

- (11) 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;
- (12) The unspent portion of any RSDI or SSI retroactive payments (excluded for six months following the month of receipt);
- (13) U.S. savings bonds, which are excluded for the initial 12 month mandatory retention period;
- (14) A resource used in the client's trade or business;
- (15) A maximum of \$6,000 equity value of nonbusiness property, real or personal, used to produce goods or services essential to daily activities for the Aged, Blind, and Disabled categories;
- (16) The unspent portion of an Aid to the Aged, Blind, and Disabled (AABD) payment or State Disability Program retroactive payment, which is excluded for six months following the month of receipt;
- (17) Victims compensation payments, which are excluded for nine months beginning with the first month after receipt;
- (18) Payments received from a state or local government to assist in relocation, which are excluded for nine months beginning with the first month after receipt;
- (19) An unavailable job-related retirement account held by the employer;
- (20) An Individual Development Account;
- (21) Medicare set-aside accounts which may be used only for payment of medical bills of Medicare beneficiaries;
- (22) Funds held in an Achieving a Better Life Experience (ABLE) account; and
- (23) An account excluded under the Social Security Program to Achieve Self-Support (PASS).

003.06(A) MONETARY FUNDS TO BE EXCLUDED. For any of these resources in the form of monetary funds to be excluded, they must be segregated in a separate account so they can be identified. If the funds are not in a separate account, an applicant or client is 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 applicant or client fails to segregate the funds. Several excludable resources may be combined in a single account.

003.06(B) EXCLUDED RESOURCES FOR AMERICAN INDIANS AND ALASKA NATIVES.

003.06(B)(i) LEGAL BASIS. As established under the American Recovery and Reinvestment Act of 2009, states are required to exclude certain types of property specific to American Indians and Alaska Natives as resources when determining Medicaid eligibility for an individual who is an American Indian or an Alaska Native.

003.06(B)(i)(1) 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 Medicaid eligibility for an individual who is an American Indian or Alaska Native:

- (a) Property, including real property and improvements, which 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;
- (b) For any federally recognized Tribe not described in paragraph 1, property located within the most recent boundaries of a prior federal reservation; 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;
- (c) Ownership interests in or usage rights to items not covered by paragraphs one through three which have unique religious, spiritual, traditional, or cultural significance, or rights supporting subsistence or a traditional lifestyle according to applicable tribal law or custom; and,
- (d) Historical Accounting Class and Trust Administration Class payments made under the Claims Resolution Act of 2010 are excluded as a resource for one year from the date of receipt.

003.07 DETERMINATION OF OWNERSHIP OF RESOURCES. A resource appearing on record in the name of an applicant or client or responsible relative as defined in Chapter 24 or this title must be considered to belong to the applicant or client. Ownership of real estate must be verified through records in the offices of the register of deeds or county clerk. If it is substantiated the applicant or client is not the true owner of a resource, it is permissible to allow the applicant or client to remove his or her name from the title of ownership in order to reflect true ownership. The applicant or client is allowed 60 days to make this change without affecting eligibility. After the applicant or client removes his or her name from the resource, eligibility may be determined retroactively or prospectively, as applicable. If the applicant or client does not remove his or her name within 60 days, the resource is counted.

003.07(A) REAL ESTATE. Ownership of real estate is verified through records in the offices of the register of deeds or county clerk. The terms on which property is held in cases of joint ownership must be verified. Transfer on Death Deed must be revoked for initial and continued eligibility. This includes real property owned by a community spouse. Procedures are available in the appendix to this title.

003.07(B) JOINTLY OWNED RESOURCES.

003.07(B)(i) RESOURCES OWNED WITH OTHER CLIENTS. If an applicant or client owns a resource with another applicant or client, the value of the resource is 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.

003.07(B)(ii) RESOURCES OWNED WITH NON-CLIENTS. If an applicant or client owns a resource with an individual who is not receiving Medicaid, the following regulations apply:

003.07(B)(ii)(1) MOTOR VEHICLES. Ownership of a motor vehicle is verified by the title. The number of individuals on the title legally determines the percentage of ownership.

003.07(B)(ii)(2) BANK ACCOUNTS. The terms of the account are verified with the bank. If any person on the account is able to withdraw the total amount, the full amount of the account belongs to the applicant or client. If all signatures are required to withdraw funds, the proportionate share must be counted toward the applicant or client. If the applicant or client verifies none of the funds belong to him or her, the applicant or client must be allowed 60 days to remove his or her name from the account. The applicant or client must provide proof of the change. After the applicant or client removes his or her name from the bank account, eligibility may be determined retrospectively or prospectively, as applicable. If the applicant or client does not remove his or her name within 60 days, the funds are counted as a resource. If a portion of the funds belongs to the applicant or client, the applicant or client must be notified of the requirement to place the funds in a separate account. Verified contributions to the account determine ownership if ownership is disputed.

003.08 RESOURCES OF OTHER INDIVIDUALS COUNTABLE IN A CLIENT'S BUDGET.

003.08(A) RESOURCES OF AN INELIGIBLE OR SANCTIONED PARENT FOR MEDICALLY NEEDY. The resources of an ineligible or sanctioned individual or parent are included in the resource total for the eligible unit members. The ineligible or sanctioned individual or parent is allowed Medicaid resource exclusions. After resource exclusions, the remaining resource amount is counted in the resource total of the eligible unit members.

003.08(B) 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.

003.08(C) DEEMING RESOURCES OF A PARENT. Resource exclusions listed in this chapter apply to the parent's resources. The resources of the eligible child's siblings are not counted toward the child's resource total. If income of a parent is not deemed according to chapter 24 of this title, resources are also not deemed. In considering the resources of a parent counted toward the resource total of a child 17 years old or younger who is eligible for Medicaid in the Aged, Blind, or Disabled category or a medically needy child 18 years old or younger who is eligible and living in the parent's household, the following resources are counted for the child whether or not they are actually made available:

- (i) All resources exceeding \$4,000 in the case of one parent; or
- (ii) All resources exceeding \$6,000 in the case of:
 - (1) Two parents;
 - (2) One parent and the spouse of the parent; or

- (3) One parent and one minor sibling; and
(iii) \$25 for each additional minor sibling in the parent's household.

003.09 DETERMINATION OF VALUE OF TOTAL AVAILABLE RESOURCES. The total value of all available resources is the total value of real and personal property determined according to the preceding guidelines.

003.10 MAXIMUM AVAILABLE RESOURCE LEVELS. The established maximums for available resources which an applicant or 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; or
(4) Each additional individual: + \$25.

003.10(A) CLIENTS RESIDING IN THE SAME HOUSEHOLD. If two or more related Aged, Blind, or Disabled clients, other than a married couple, reside in the same household, each client is entitled to a resource maximum of \$4,000. The treatment of resources of a spouse or a parent is the same as for an applicant or client. If the total equity value of available non-excluded resources exceeds the maximums specified in this chapter, the applicant or client is ineligible. Resources must be below the maximum resource level for one day in the month in order for the applicant or client to be eligible for the month.

003.11 REDUCTION OF RESOURCES. The applicant or client may reduce available resources to the allowable limit if the case record contains documentation the resources have been reduced and the unit is within the allowable resource limits. An applicant who has excess resources other than real property may have his or her application held pending until the resources are reduced. An applicant or client may reduce his or her resources by paying any secured or unsecured debts, purchasing personal property, establishing burial funds, or expending the resources in any manner the applicant or client deems appropriate. If the applicant or client is in a medical institution or receiving waiver services, he or she cannot give away resources in order to establish eligibility. If the applicant or 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 applicant or 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 applicant or client's statement of expenditures is acceptable as verification.

003.11(A) REDUCTION OF RESOURCES TO ESTABLISH EARLIER MEDICAID EFFECTIVE DATE. An applicant or client may do a reduction of resources to establish an earlier Medicaid effective date if he or she has outstanding medical bills. However, eligibility may not begin earlier than the third month before the month of application. In order for an applicant or client with excess resources to establish an earlier effective date, he or she must pay all of the excess resources on medical bills incurred no earlier than the third month before the month of application. The medical expense does not have to be a Medicaid-covered service. The applicant or 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. Once it has been determined there are medical

expenses in the retroactive period, the applicant or client is given 90 days to complete the reduction of resources on medical expenses. Medicaid 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 an applicant has excess resources in the month of application, it is not necessary to verify resources in any of the retroactive months. The spend-down of the excess resources from the month of application is all which is necessary. If the applicant does not have excess resources in the month of application, resources must be verified in the oldest retroactive month in which the applicant 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. Procedures related to documenting a resource spend-down are available in the appendix to this title.

003.12 RESOURCE REQUIREMENTS FOR MEDICARE SAVINGS PLAN (MSP) CLIENTS.

003.12(A) WORKING DISABLED PART A MEDICARE BENEFICIARIES. Resources are treated according to the Maximum Available Resource Levels in this chapter.

003.12(B) SPECIFIED LOW-INCOME MEDICARE BENEFICIARIES (SLMB) AND QUALIFIED INDIVIDUALS-1 (QI-1). Resource limits are adjusted annually by the Centers for Medicare and Medicaid Services, and are available in the appendix to this title.

003.12(C) MEDICARE SAVINGS PLAN AND QUALIFIED MEDICARE BENEFICIARIES (QMB). Resource limits are adjusted annually by the Centers for Medicare and Medicaid Services, and are available in the appendix to this title.

Note: Chapters 477 NAC 20 through 28 apply to the following: Aged, Blind, and Disabled (ABD); Medically Needy (MN); Medicaid Insurance for Workers with Disabilities (MIWD); Women's Cancer Program; Transitional Medical Assistance (TMA); Former Foster Care; Emergency Medical Services Assistance (EMSA); Children and Young Adults Eligible for IV-E Assistance

CHAPTER 23-000 RESOURCES FOR NON-MAGI PROGRAMS

23-001 RESOURCES

23-001.01 Resources: The total equity value of available non-excluded resources of the client or client and responsible relative (see 477 NAC 24-001) is determined and compared with the established maximum for available resources that 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. See 477 NAC 23-001.11 for Reduction of Resources.

Note: For ABD, 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. For examples of resources, see Appendix 477-000-036 and 477-000-052.

23-001.02 Verification of Resources: As a condition of both retroactive and prospective eligibility, all countable resources shall be verified and documented in the case record. See Appendix 477-000-052 for the Resource Verification Plan Table.

23-001.02A Exceptions:

1. For ABD clients who receive Supplemental Security Income (SSI), including individuals in 1619(b) status, verification of resources is not required.
2. If it is unknown whether or not a resource is countable, verification shall be required.

23-001.02B Necessary Verification: Verification of resources consists of but is not limited to the following information:

1. A description of the type of resource (e.g., account or policy number(s), legal descriptions for property, etc.);
2. The location of the resource (e.g., name and address of the bank, insurance company);
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 verification is obtained. See Appendix 477-000-052.

If a client or spouse of the client has a guardian, the guardian's annual 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.

23-001.02C Resource Review: If there is reason to believe at any time there has been an increase in resources that may affect eligibility, all resources must be verified immediately. A resource review is not required for SSI recipients.

23-001.03 Availability of Resources: For the determination of Medicaid 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.

23-001.03A Unavailability of Resource: Regardless of the terms of ownership, if it can be documented in the case record that a 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 sixty (60) days to initiate legal action. After sixty (60) days, if the client has not filed legal action, the case is closed for failure to comply.

If the applicant/recipient has benefit funds, such as funds raised by a benefit dance or auction, you must determine whether those funds are available as a resource. If the client or a financially responsible relative can access the benefit funds to pay for shelter costs, maintenance needs, or medical costs otherwise covered by Medicaid, then the funds are considered available.

An applicant/client 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.

23-001.03B 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.

23-001.03B1 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

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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.

23-001.03B2 Determination of Value: Public tax records or county assessor 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 these records, verification may be obtained from a real estate agent, car dealer, or other appropriate individual.

23-001.04 Deprivation of Resources

23-001.04A Deprivation of Resources: Any action taken by the applicant/client, or any other person or entity, that reduces or eliminates the applicant's/client'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 a resource at the time the resource was disposed of must be verified and the equity value of the resource must be determined by taking into consideration any encumbrances against the resource. A deprivation of resources includes

- (x) Recorded transfer of ownership of real property;
- (xi) Not receiving the spousal share of an augmented estate;
- (xii) Purchase of a life estate in another individual's home without meeting the twelve(12)-month requirement to reside there;
- (xiii) Promissory notes, loans, mortgages, and contract sales for less than fair market value or that are for at least fair market value and are not enforced;
- (xiv) Purchase of an irrevocable, non-assignable annuity, if Medicaid is not the preferred beneficiary and the annuity is issued on or after February 8, 2006;
- (xv) Any transfer above the protected spousal reserved amount to a community spouse;
- (xvi) Purchase of any contract or financial instrument, including an endowment or insurance, where the criteria for fair market value are not met; and
- (xvii) Resources transferred to a pooled trust established for the benefit of a person sixty-five (65) years old or greater at the time of transfer.

23-001.04B Fair Market Criteria: The criteria for fair market value are not met when

- (7) The term of the instrument exceeds the life expectancy of the applicable client(s);
- (8) The instrument does not provide for equal monthly or annual payments commencing immediately during the term of the contract;
- (9) The instrument does not provide for the recovery of assets in the event of default;

- ~~(10) The instrument contains exculpatory or cancellation terms of balance due;
or
5. The purpose of a transaction is solely to become eligible.~~

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~~23-001.04B1 Exculpatory Provision: If a client living in a nursing home lends money to an individual with a promissory note stating that the obligation to pay any remaining balance ceases upon the client's death, the exculpatory provision forgives or clears the debt and is therefore not a permissible transaction that would avoid a deprivation.~~

~~23-001.04B2 Repayment Agreement: Any service agreement must be in writing and reasonably describe the services to be rendered prior to the rendering of services. See 477 NAC 23-001.03B1~~

~~23-001.04C Asset Placed in Annuity: When an asset is placed in an annuity on February 8, 2006 or later, see annuity regulations at 477 NAC 23-001.05A6a.~~

~~23-001.04D Asset Placed in Trust: Trust regulations at 477 NAC 23-001.05A6b take precedence over deprivation when an asset is placed in a trust.~~

~~23-001.04E Sale of Real Property in Life Estate: When real property in which the individual has a life estate is sold, the individual or spouse must receive as a lump sum his/her life estate interest from the net proceeds, or the entire net proceeds invested and the individual(s) who has the life estate receives all the income.~~

~~23-001.04F Deprivation of Resources Review: 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~~

- ~~(v) A nursing home;~~
- ~~(vi) Receiving skilled level of care in a hospital, i.e. swing bed services;~~
- ~~(vii) Receiving Home and Community-Based Services (HCBS), including an assisted living waiver, Program of All-Inclusive Care for the Elderly (PACE), or requesting and meeting the criteria for such services; or~~
- ~~(viii) An intermediate care facility for persons with a developmental disability.~~

~~23-001.04G Look-Back Period for Disposal/Transfer of Resources on or after February 8, 2006: To determine if a client or his/her spouse deprived himself/herself of a resource to qualify for Medicaid, the Department must look back sixty (60) months before the month of application. The look-back is triggered when the applicant first applies for Medicaid and is in a specified living arrangement or is on Medicaid and enters a specified living arrangement.~~

~~When an applicant applies for Medicaid more than once, the look-back period is based on the first date the individual meets both of these requirements.~~

~~To determine any countable value disposed of, the Department shall~~

- ~~(3) Take the equity the client had in the resource at the time of disposition (equity equals fair market value minus encumbrances), and~~
- ~~(4) Subtract any compensation received by the client.~~

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~~23-001.04G1 Period of Ineligibility: If it is determined that an applicant/client disposed of a resource, the applicant/client is ineligible.~~

~~To determine the length of the period of ineligibility the countable value of the resource shall be divided by the actual monthly cost of care in the specified living arrangement at the current private pay rate.~~

~~If both spouses are applying and eligible for Medicaid, the period of ineligibility is divided equally between the spouses.~~

~~The period of ineligibility begins~~

- ~~(iii) If the client is receiving Medicaid, with the month of entry into a specified living arrangement, following notice requirements; or~~
- ~~(iv) If an applicant, the month of application if in a specified living arrangement.~~

~~The applicant/client must be Medicaid eligible, except for the deprivation of resources in the month of application, for a deprivation penalty to be imposed.~~

~~If the division results in a fraction, the fraction is converted to a dollar amount and that amount is included as unearned income for the applicable month.~~

~~In determining the period of ineligibility, the fair market value of the transferred resource is used. The value of other resources and income are not included in the calculation.~~

~~For periodic disposals within the look-back period, each is determined separately; the periods of ineligibility run consecutively. Multiple fractional month transfers are cumulative and treated as a single transfer.~~

~~23-001.04G1A: Spouse for Spouse Ineligibility: If a community spouse enters a specified living arrangement and is Medicaid eligible except for the deprivation, divide the full or any remaining period of ineligibility between the spouses.~~

~~23-001.04G2 Deprivation Hardship Waiver: 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.~~

All requests for deprivation hardship waiver must be submitted in writing to the Department. On receipt of the written request, the Department shall follow the process described at Appendix 477-000-033.

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.

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The guardian, conservator, or anyone acting on behalf of the applicant/client must attempt to recover transferred assets. Up to thirty (30) days of nursing home services may be provided if the applicant/client is cooperating to the fullest extent in attempting to recover transferred assets. If cooperation ceases, undue hardship no longer exists and eligibility is terminated.

A hardship waiver will be denied if the applicant/client or his/her spouse participated in the transfer. A denial of hardship waiver request may be appealed.

23-001.04H Transfers Not Considered Deprivation: It is not considered a deprivation of a resource if

- ~~(vi) An applicant/client transferred a resource to his/her spouse, to an individual with power of attorney, or to a guardian or conservator for the sole benefit of the applicant's/client's spouse;~~
- ~~(vii) An applicant's/client's spouse transferred a resource to an individual with power of attorney, or to a guardian or conservator, for the sole benefit of the applicant's/client's spouse;~~
- ~~(viii) A resource was transferred to a trust established solely for the benefit of the applicant's/client's son or daughter who is blind or disabled (receiving or eligible to receive SSI, RSDI, or ABD);~~
- ~~(ix) A resource was transferred to the applicant's/client's son or daughter who is blind or disabled (receiving or eligible to receive SSI, RSDI, or ABD); or~~
- ~~(x) A resource was transferred to a special needs trust established solely for the benefit of an individual sixty-four (64) years old or younger who is disabled (receiving or eligible to receive SSI, RSDI, or ABD).~~

23-001.04H1 Transfer of a Home: It is not considered a deprivation of a resource if an applicant/client transfers title to his/her home to his/her

~~(iv) Spouse;~~

~~(v) Son or daughter who~~

~~(1) Is age 20 or younger;~~

~~(2) Is blind or disabled (receiving or eligible to receive SSI, RSDI, or ABD based on blindness or disability); or~~

~~(3) Was residing in the home for at least two (2) years before his/her parent applied for Medicaid or entered long-term care and provided care to his/her parent that permitted the~~

parent to reside at home rather than be institutionalized or receive HCBS Waiver; or
(vi) Sibling who has an equity interest in the home and who was residing in the home for at least one (1) year immediately before his/her sibling applied for Medicaid or entered a specified living arrangement listed at 477 NAC 23-001.04F.

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23-001.05 Types of Resources: Resources can be divided into two (2) categories: liquid and non-liquid.

23-001.05A Liquid Resources: Liquid resources are assets that are in cash or financial instruments that are convertible to cash. See Appendix 477-000-036 for examples of liquid resources.

23-001.05A1 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.

23-001.05A2 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 23-001.03B). 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 of 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 Appendix 477-000-032. See process at Appendix 477-000-031.

23-001.05A3 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

- ~~(d) 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;~~
- ~~(e) 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~~
- ~~(f) A maximum of \$1,500 may be designated for burial. These funds may be in an account or in an insurance policy. This provision is applicable to ABD individuals only.~~

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~~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.~~

~~23-001.05A3a Irrevocable Burial Trusts: If money was placed in an irrevocable burial trust on July 16, 1982, or later, it is not considered an available resource.~~

~~The value of the irrevocable burial trust is limited by the specified maximum amount identified at Neb. Rev. Stat. Section 68-129. The trust must be created for the purpose of paying prearranged burial expenses. 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 (15%), but this amount must not be included in the burial trust.~~

~~An irrevocable burial trust must be deposited by a mortuary with a financial institution. 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. If a burial trust 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 trust is available to the client regardless of the contract terms.~~

~~23-001.05A3b Interest and Dividends on Burial Trusts: For irrevocable burial trusts all accrued interest or dividends are also irrevocable.~~

~~23-001.05A3c Burial Insurance: Burial insurance is defined as insurance in which the policy's 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.~~

~~If it is burial insurance that has been irrevocably assigned, it is treated according to the rules in the above paragraph and the specified maximum applies. If a total of more than the specified maximum in burial insurance is irrevocably assigned for services, the amount above the specified maximum may be considered deprivation of a resource (see 477 NAC 23-001.04).~~

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~~23-001.05A3d 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. This exclusion is in addition to the burial space exclusion. To qualify for this exclusion, funds must be separated into a designated account. The \$1500 is reduced by~~

- ~~(c) The face value of any policy of life or burial insurance, and~~
- ~~(d) The amount of any irrevocably assigned burial trust, contract, or arrangement~~

~~23-001.05A3e 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. 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.~~

~~23-001.05A3f 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 a 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 that the insurance policy will be used to fund, the cash value of the policy is not considered a resource because the client does not own it. Additionally, this is not considered deprivation of a resource.~~

23-001.05A4 Life Insurance

23-001.05A4a Insured: The person whose life is insured.

23-001.05A4b Insurer: The company that insures others.

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23-001.05A4c Owner: The person who has the right to change the policy.

23-001.05A4d Term Insurance: A form of life insurance that generally furnishes insurance protection for only a specified or limited period of time.

23-001.05A4e Face Value: The basic death benefit of a life insurance 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.

23-001.05A4f Adjustment: When a client adjusts a large insurance policy to a smaller amount providing limited protection and allowing the client to benefit from accumulated savings.

23-001.05A4g Interest and Dividends: Interest and dividends actually paid to a client from all life insurance policies are treated according to the treatment of income chart at 477 NAC 22-005.06.

23-001.05A4h Cash Surrender Value: Amount an insurer will pay (usually to the owner) upon cancellation of a life insurance policy before death of the insured or before maturity of the policy.

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

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

- ~~(v) Burial insurance, and~~
- ~~(vi) Life insurance policies where the proceeds are irrevocably assigned for the purpose of burial.~~

See ~~477 NAC 23-001.05A3c~~ for the treatment of burial insurance.

If the cash surrender value is to be counted toward the resource total of a client, consideration is given to any outstanding loans against the policy in determining net cash surrender value. See ~~477 NAC 23-001.03B~~.

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~~23-001.05A5 Long-Term Care (LTC) Partnership Program: Resources equal to the amount of benefits paid out by a qualified LTC 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.~~

~~23-001.05A5a Qualified LTC Partnership Policy: 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.~~

~~23-001.05A5b Exchange of Non-Partnership Policy for Qualified LTC Partnership Policy: An applicant/client 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.~~

~~23-001.05A5c Reciprocity with Other States: The Department will accept qualified LTC Partnership Policies issued in other states with LTC Partnership Programs.~~

~~23-001.05A6 Annuity, Trust, and Guardianship/Conservatorship Funds: When an annuity, trust, guardianship, or conservatorship has been established on behalf of an applicant/client and the applicant/client who has applied has resources exceeding the total resource limit, it must be verified if the annuity, trust, guardianship, or conservatorship is available to the applicant/client.~~

23-001.05A6a Annuities

~~23-001.05A6a(1) Annuity: A prepaid investment that pays periodic (usually monthly) payments for a set period of time. Payments may begin immediately or at a future date.~~

~~23-001.05A6a(2) Annuity Transaction: The purchase of an annuity, changing the annuity beneficiary, or authorizing the commencement of the pay-out period (annuitizing).~~

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~~23-001.05A6a(3) Purchased or Annuitized before February 8, 2006: When an applicant/client cannot assign or change the ownership or payee of an annuity, 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 applicant/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 applicant/client does not coincide with the life of the annuity (i.e., the applicant/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 as for trusts. See Appendix 477-000-039 for Period Life Tables.~~

23-001.05A6a(4) Annuity Transaction on or after February 8, 2006

~~23-001.05A6a(4)(i) Countable Resources: Revocable and assignable annuities are countable resources. A saleable annuity that has not been sold is a countable resource for the amount annuitized, less the payment amount(s) already received. A saleable annuity that 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 the deprivation of resources regulation.~~

~~23-001.05A6a(4)(ii) 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 a 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.~~

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~~23-001.05A6a(5) Annuities Excluded from Resources: An annuity that 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 the Internal Revenue Code (IRC) or a deemed Individual Retirement Account under a qualified employer plan by the 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. The applicant or recipient must verify that the annuity meets these requirements.~~

23-001.05A6b Trusts

~~23-001.05A6b(1) Trust: For purposes of these regulations, a trust is any arrangement in which an individual (grantor) transfers property to another person(s) (trustee[s]) with the intention that it be held, managed, or administered by the trustee(s) for the benefit of the grantor or certain designated beneficiaries. The trust must be valid under state law and manifested by a valid trust instrument of~~

agreement. A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.

The term trust also includes any legal instrument or device that is similar to a trust for purposes of these regulations. It involves a grantor who transfers property to an individual or entity with the intention that it be held, managed, or administered by the individual or entity for the benefit of the grantor or others. This can include (but is not limited to) escrow accounts, investment accounts, pension funds, irrevocable burial trusts, annuities, and other similar entities managed by an individual or entity with fiduciary obligations.

~~23-001.05A6b(2) Grantor of a Trust: Any individual who creates a trust. This includes~~

~~(vi) An applicant/client;~~

~~(vii) The applicant's/client's spouse;~~

~~(viii) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the applicant/client or the applicant's/client's spouse (guardian/conservator); or~~

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~~(ix) A person, including a court or administrative body, acting at the direction or upon the request of the applicant/client or his/her spouse.~~

~~23-001.05A6b(3) Trust Beneficiary: Any individual, or individuals, designated in a trust to receive any disbursement from the corpus of the trust, or from income generated by the trust, which benefits the party receiving it. A payment from a trust may include actual cash, as well as non-cash or property disbursements, such as the right to use and occupy real property.~~

~~23-001.05A6b(4) Disclosure of Trust Interest: An applicant or client of ABD or Long-Term Care who has been a grantor, or is a beneficiary, of a trust must report the interest granted to, or held by, the trust. Eligibility cannot be determined until the trust interest has been verified.~~

~~23-001.05A6b(5) Revocable Trust: A trust that can be revoked by the grantor. Any trust stipulating that it may be modified or terminated only by a court is considered to be a revocable trust, as the grantor (or representative) can petition the court to terminate the trust. A trust designated as irrevocable but that will terminate if~~

certain action is taken by the grantor is considered a revocable trust for purposes of these regulations.

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 that 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 sixty (60) days from the approval date; and~~
 - ~~b. A client is allowed sixty (60) days from the date of notification of the requirement to file for access.~~~~

~~23-001.05A6b(6) Irrevocable Trusts: Trusts that cannot in any way be revoked by the grantor of the trust.~~

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~~23-001.05A6b(6)(a) 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 applicant/client (or his or her spouse) under which~~

- ~~1. The applicant/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 an applicant's/client's guardian or legal representative, acting on the applicant's/client's behalf, falls under the definition of a Medicaid-qualifying trust. If a trust has been established for an applicant/client who is not legally competent by his/her legal guardian (including a parent) using the~~

~~applicant's/client's assets, the trust can be treated as having been established by the applicant/client, because the applicant/client could not establish the trust for himself/herself.~~

~~23-001.05A6b(6)(b) 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 applicant/client who establishes a trust or who is a beneficiary of a trust. An applicant/client is considered to have established a trust if his/her assets or assets of his/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 applicant/client;~~
- ~~2. His/her spouse;~~
- ~~3. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the applicant/client or his/her spouse; or~~
- ~~4. A person, including any court or administrative body, acting at the direction or upon the request of the applicant/client or his/her spouse.~~

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~~Where a trust includes the assets of another person or persons as well as the assets of the applicant/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 applicant/client and/or his/her spouse.~~

~~23-001.05A6b(6)(b)(i) Payment Can Be Made from Trust: In the case of an irrevocable trust, where there are any circumstances under which payment can be made to or for the benefit of the applicant/client from all or a portion of the trust, the following rules apply to that portion:~~

- ~~1. Payments from income or from the corpus made to or for the benefit of the applicant/client and/or his/her spouse are treated as income to the applicant/client.~~
- ~~2. Income on the corpus of the trust which could be paid to or for the benefit of the applicant/client and/or his/her spouse must be considered a resource available to the applicant/client.~~

- ~~3. The portion of the corpus that could be paid to or for the benefit of the applicant/client and/or his/her 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 applicant/client and/or his/her spouse are treated as a transfer of assets for less than fair market value.~~

~~23-001.05A6b(6)(b)(ii) Exceptions: A trust is not considered available if it is established for a disabled client sixty-four (64) years old or younger (receiving or eligible to receive SSI, RSDI, or ABD) and is a:~~

- ~~1. Special needs trust: A trust containing the assets of the applicant/client and established solely for the benefit of the applicant/client by his/her parent, grandparent, legal guardian, or a court, if the state will receive all amounts remaining in the trust upon the death of the applicant/client or on termination of the trust up to the amount of total Medicaid paid on behalf of the applicant/client; or~~
- ~~2. Pooled trust: A trust containing the assets of the applicant/client and:
 - ~~a. Established and managed by a non-profit association;~~~~

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- ~~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 ABD); and~~
- ~~d. The trust provides that to the extent any amounts remaining in the applicant's/client's account on his/her death are not retained by the trust, the trust shall pay to the state the amount remaining up to the amount of total Medicaid paid on behalf of the applicant/client.~~

~~Note: See Supplemental Security Income (SSI), Program Operations Manual System (POMS), SI 01120.201F.~~

~~23-001.05A6b(6)(b)(iii) Payment Cannot Be Made from Trust: When payments from some portion or all of a trust cannot under any circumstances be made to or for the benefit of an applicant/client, or where there is some portion of the trust from which no payments can be made to or for the benefit of the applicant/client, all of the corpus, or income on the corpus, which cannot be paid to the applicant/client is considered a transfer of assets for less than fair market value. See Deprivation of Resources at 477 NAC 23-001.04.~~

~~23-001.05A6b(6)(b)(iv) Hardship Exception: A trust will not be considered available if denial of assistance would cause undue hardship. See 477 NAC 23-001.04F2.~~

~~23-001.05A6b(7) Testamentary Trusts: Trusts established through a will. Testamentary trusts may be excluded as resources, depending on the availability of the funds to the applicant/client or his/her spouse, as specified in the terms of the trust.~~

~~23-001.05A6c Guardianships/Conservatorships: Nebraska law requires that funds in conservatorships or "blocked" accounts be made available for the care and maintenance of the individual whose funds are in the account (See Neb. Rev. Stat. 30-2654 and 30-2628).~~

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~~23-001.05A6d ABLE Accounts: The balance of an ABLE account is disregarded as a countable resource. A contribution to an ABLE account is not counted as income for an applicant/client. A distribution from an ABLE account is not considered income, but conversion of a resource. A distribution from an ABLE account for a non-housing Qualified Disability Expense to an applicant/client or his/her financial account is disregarded. A distribution from an ABLE account for a housing Qualified Disability Expense is not counted in the month of receipt. The distribution is counted only if retained in a later month. A distribution from an ABLE account is counted as a resource if it is not spent on a Qualified Disability Expense.~~

~~23-001.05B Non-Liquid Resources: Non-liquid resources are tangible properties that must be sold if they are to be used for the maintenance of an applicant/client. They include all properties not classified as liquid resources. See Appendix 477-000-036 for examples of non-liquid resources.~~

~~23-001.05B1 Real Property Other Than the Principal Home: In computing the amount of a 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.~~

~~23-001.05B2 Joint Ownership of Real Property: Real property that is jointly owned is excluded if sale of the property would cause the other owner(s) undue hardship. However, if undue hardship does not apply or ceases to exist, the property is included in countable resources and handled according to the following regulations.~~

~~If an applicant/client owns a property with other persons who are not on Medicaid and the real property is not the principal place of residence for 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. For the time limit for liquidation see 477 NAC 23-001.05B4a.~~

~~If one (1) or more of the parties do not wish to liquidate, the process for unavailability of a resource is applied, which requires the applicant/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 applicant's/client's interest in the property, appropriate action must be taken.~~

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~~23-001.05B3 Exemption of the Home: The applicant's/clients home is exempt from consideration as an available resource, subject to the limitations below.~~

~~23-001.05B3a Definition of Home: Home is defined as any shelter that an 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.~~

~~23-001.05B43b Home Equity Value: For applications on or after January 1, 2006, an applicant/client is not eligible for any long-term care services if the equity value interest in the home exceeds the specified amount. See Appendix 477-000-014.~~

~~23-001.05B3c Trailer Houses and Other Portable Housing Units: If an applicant/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 applicant/client enters a nursing home, s/he is allowed the exemption of a home for up to six (6) months~~

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

~~23-001.05B3d Adjacent Lots: A lot adjacent to the home is considered available if it can be sold separately from the home. If it is determined and documented in the case record that a lot adjacent to the home cannot be sold or is not salable due to the location or condition of the property, the adjacent lot is also exempt. See 477 NAC 23-001.05B10 for maximum equity value.~~

~~23-001.05B3e Removal from Home: If an applicant/client 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 applicant's/client's spouse or dependent relative. A dependent relative includes the client's~~

- ~~(d) Child, stepchild, or grandchild seventeen (17) years old or younger;~~
- ~~(e) Child, stepchild, or grandchild eighteen (18) years old or older if aged, blind, or disabled and receiving or eligible to receive SSI, ABD, and/or other categorical assistance; or~~

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- ~~(f) 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 it is not possible to determine immediately whether an applicant/client who moves to a nursing home or assisted living facility and is receiving AD waiver services will be able to return to the home, a maximum of six (6) months must be allowed to make this determination.~~

~~Unless the applicant, client, or his/her authorized representative signs a statement that the applicant/client 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 an applicant/client lives out of the home for a maximum of six (6) months, the home is no longer considered the applicant's/client's principal place of residence and must be considered an available resource. However, the applicant/client is allowed a reasonable amount of time commensurate with then existing conditions to liquidate the property before it affects eligibility.~~

~~The six (6) months begin with the first full month following the month of admission to a nursing home or assisted living facility, if receiving HCBS or PACE services. After the applicant/client is admitted, if the home is exempt because it is occupied by one (1) or more of the relatives identified previously, the six (6) months begin with the first full month following the month that the home is no longer allowed the exemption for occupation.~~

~~23-001.05B3e(1) Liquidation of Home: As soon as the determination is made that the applicant/client will not be able to return home, the applicant/client must be allowed time to liquidate the property. The applicant/client is also allowed time for liquidation if s/he leaves the home for a reason other than entering a medical institution. For the time limit for liquidation, see 477 NAC 23-001.05B4a.~~

~~23-001.05B3f Sale of Home: If an applicant/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, an applicant/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.~~

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~~23-001.05B4 Liquidation of Real Property: When an applicant/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. For the time limit for liquidation, see 477 NAC 23-001.05B4a.~~

~~Note: If an applicant/client has excess resources because of real property other than his or her home during a retroactive period, s/he is ineligible for Medicaid. The applicant/client may be prospectively eligible with excess resources because of real property if an Agreement to Sell Real Property Form is signed.~~

~~23-001.05B4a Time Limit for Liquidation: Real property that an applicant/client is making a good faith effort to sell must be excluded. First, it must be determined if the applicant/client has the legal authority to liquidate the property. The applicant/client is allowed sixty (60) days to initiate legal action to obtain liquidation. If the applicant/client owns the property with other persons, see 477 NAC 23-001.05B2.~~

~~Once the applicant/client has the legal authority to liquidate the property, the client's signature on the Agreement to Sell Real Property Form must be obtained. The applicant/client is allowed six (6) calendar months to liquidate the real property. If the applicant/client refuses to sign the Agreement to Sell Real Property Form, s/he is immediately ineligible due to excess resources. The six (6)-month period begins with the month following the month in which the Agreement to Sell Real Property Form is signed.~~

~~Once the Agreement to Sell Real Property Form is signed, the six (6) calendar months are counted whether or not the applicant/client is receiving Medicaid. If, after the Agreement to Sell Real Property Form is signed, the applicant/client goes into current pay status for SSI, the Agreement to Sell Real Property Form is void.~~

~~Note: If the applicant/client later goes into non-pay status for SSI, a new Agreement to Sell Real Property Form is signed and a new six (6)-month liquidation period is established. If the applicant/client moves back to the home and subsequently moves out again during the six (6)-month period, s/he is only allowed the months remaining in the original six (6)-calendar-month period. One (1) 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.~~

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~~23-001.05B4a(1) Extension of Time Limit: If an applicant/client is unable to liquidate a property in six (6) calendar months, the Department may authorize one (1) additional three(3)-calendar-month extension. In determining whether to allow a three (3)-calendar-month extension, the Department shall consider:~~

- ~~(g) If the property has been placed on the market with a real estate licensee;~~
- ~~(h) If the applicant/client is asking a fair price for the property;~~
- ~~(i) If the asking price has been reduced;~~

- ~~(j) If the applicant/client understands the requirement for liquidation of the property;~~
- ~~(k) If the applicant/client has refused a reasonable offer to purchase (If there is no better offer, a reasonable offer is defined as at least 2/3 of either the estimated current market value or the proven actual value); and~~
- ~~(l) The economic conditions in the area and if real estate is selling.~~

~~The three (3) calendar months are counted whether or not the applicant/client is receiving Medicaid. If the applicant/client moves back to the home during the three (3)-month period and subsequently moves out again, s/he is allowed the months remaining in the initial three (3)-month extension.~~

~~23-001.05B5 Motor Vehicles: One (1) motor vehicle regardless of its value, as long as it is necessary for an applicant/client or a member of his/her household for employment or medical treatment, shall be disregarded. If an applicant/client has more than one (1) 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 toward the resource limit. An applicant's/client's verbal statement that the motor vehicle is used for employment or medical treatment is sufficient for verification purposes. See Appendix 477-000-052.~~

~~23-001.05B5a Exceptions:~~

- ~~(c) The disregard of any motor vehicle is not allowed when it has been determined that a client residing in a nursing home or an assisted living facility and receiving services through HCBS or PACE does not intend, or will not be able to return home if medical transportation is included in the payment to the facility;~~
~~or~~
- ~~(d) The applicant/client designates the disregarded vehicle for Assessment of Resources.~~

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~~23-001.05B5b Determination of Fair Market Value: For motor vehicles that are counted toward 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. See Appendix 477-000-052.~~

~~23-001.05B6 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 whether or not it is deprivation of a resource. If the life estate is sold, the proceeds are counted as resources. See Appendix 477-000-030 for examples of treatment of life estate income.~~

~~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 twelve (12) months after the date of purchase.~~

~~See Appendix 477-000-038 for the Life Estate Interest Table.~~

~~23-001.05B7 Essential Property: Resources that are used in an applicant's/client's or responsible relative's trade or business as the primary means of earning a livelihood for self-support are disregarded, regardless of value. This includes:~~

- ~~(3) Real property such as land, houses, buildings, business equipment and fixtures, farm machinery, tools, safety equipment, livestock, and crops used for a client's trade or business.~~
- ~~(4) Business bank accounts, as long as the funds are separated from other liquid resources.~~

~~See Appendix 477-000-050 for examples.~~

~~Filing a self-employment tax refund alone is not sufficient to meet the criteria of being engaged in a trade or business as a primary means of earning a livelihood. Land that is leased or rented out to another person or entity or land enrolled in an agricultural development program is not disregarded.~~

~~Resources that are excluded under this provision must be in current use in the type of activity described. If not in current use there must be a reasonable expectation that the required use will resume. Resumption of use must be expected within twelve (12) months of last use.~~

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~~23-001.05B8 Household Goods and Personal Effects: Household goods and personal effects of moderate value used in the home are exempt. Household goods include~~

- ~~1. Household furniture;~~

2. — 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;
3. — Those items that are for comfort and accommodation; and
4. — Personal effects (e.g., clothing, jewelry, items of personal care).

~~23-001.05B9 Non-Business Property for ABD: A maximum of \$6,000 in 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 23-001.05B4 for liquidation of real property. See Appendix 477-000-050 for examples.~~

~~23-001.05C Inheritance: When an applicant/client receives an inheritance, verified payment of debts or obligations of the deceased are subtracted from the settlement, and the remainder is considered unearned income.~~

~~23-001.06 Excluded Resources: Disregarded income is also disregarded as a resource, unless there is a specific regulation stating otherwise (see 477 NAC 22-005.06 for income treatment). In addition, the following resources are excluded in making a determination of eligibility:~~

- ~~(24) — Real property that the individual owns and occupies as a home;~~
- ~~(25) — Household goods and personal effects of a moderate value used in the home;~~
- ~~(26) — Cash surrender value of life insurance policies with combined face values of \$1,500 or less per individual (see 477 NAC 23-001.05A4);~~
- ~~(27) — A specified maximum in proceeds from an insurance policy irrevocably assigned for the purpose of burial of the client (see 477 NAC 23-001.05A3c);~~
- ~~(28) — Irrevocable burial trusts up to the specified amount per individual and the interest if irrevocable (see 477 NAC 23-001.05A3a);~~
- ~~(29) — Burial space items or a contract for the purchase of burial space items owned by a client or designated family member (see 477 NAC 23-001.05A3f);~~
- ~~(30) — Burial spaces (see 477 NAC 23-001.05A3e);~~
- ~~(31) — Up to \$1,500 set aside for burial arrangements (see 477 NAC 23-001.05A3d);~~
- ~~(32) — One motor vehicle if it is used for employment, or medical transportation. If the client has more than one motor vehicle, s/he may designate the vehicle to be excluded (see 477 NAC 23-001.05B5).~~
- ~~(33) — Certain trusts (including guardianships). The person(s) in whose behalf the trust is established may be ineligible but this may not affect Medicaid eligibility of the other person(s) in the unit (see 477 NAC 23-001.05A6).~~
- ~~(34) — Certain life estates in real property (see 477 NAC 23-001.05B6);~~

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- ~~(35) — 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;~~

- ~~(36) — The unspent portion of any RSDI or SSI retroactive payments (excluded for six months following the month of receipt);~~
- ~~(37) — U.S. savings bonds (excluded for the initial 12-month mandatory retention period);~~
- ~~(38) — A resource used in the client's trade or business (see 477 NAC 23-001.05B7 and 23-001.05B7);~~
- ~~(39) — 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 for the Aged, Blind, and Disabled categories;~~
- ~~17. The unspent portion of an AABD payment or State Disability Program retroactive payment (excluded for six months following the month of receipt);~~
- ~~18. 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);~~
- ~~19. Payments received from a state or local government to assist in relocation (excluded for nine months beginning with the first month after receipt);~~
- ~~20. An unavailable job-related retirement account that is held by the employer; and~~
- ~~21. An Individual Development Account (an account set up for postsecondary education or purchase of a client's first home); and~~
- ~~22. Medicare set-aside accounts that may be used only for payment of medical bills of Medicare beneficiaries.~~
- ~~23. Funds held in an Achieving a Better Life Experience (ABLE) account (See 23-001.05A6d).~~

~~The worth of resources, both available and excluded, is determined on the basis of their equity.~~

~~For any of these resources in the form of monetary funds to be excluded, they must be segregated in a separate account so that they can be identified. If the funds are not in a separate account, an applicant/client shall be allowed thirty (30) days from notification of the requirement to set up a new account. After thirty (30) days, the resource is included in the resource limit if the applicant/client fails to segregate the funds. Several excludable resources may be combined in a single account.~~

~~23-001.06A Excluded Resources for American Indians and Alaska Natives:~~

~~23-001.06A1 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 Medicaid eligibility for an individual who is an American Indian or an Alaska Native.~~

~~23-001.06A2 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 Medicaid eligibility for an individual who is an American Indian or Alaska Native:

- ~~(e) 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;~~
- ~~(f) For any federally recognized Tribe not described in paragraph 1, property located within the most recent boundaries of a prior federal reservation; 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~~
- ~~(g) 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; and,~~
- ~~(h) Historical Accounting Class and Trust Administration Class payments made under the Claims Resolution Act of 2010 (*Cobell v. Salazar*) are excluded as a resource for one year from the date of receipt.~~

~~23-001.07 Determination of Ownership of Resources: A resource that appears on record in the name of an applicant/client or responsible relative (see 477 NAC 24-001.01G1 and 477 NAC 24-002.02) must be considered to belong to the applicant/client. Ownership of real estate must be verified through records in the offices of the register of deeds or county clerk.~~

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

~~23-001.07A Real Estate: Ownership of real estate shall be verified through records in the offices of the register of deeds or county clerk. The terms on which property is held in cases of joint ownership shall be verified.~~

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

23-001.07B Jointly Owned Resources

~~23-001.07B1 Resources Owned with Other Clients: If an applicant/client owns a resource with another applicant/client, 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.~~

~~23-001.07B2 Resources Owned with Non-Clients: If an applicant/client owns a resource with an individual who is not receiving Medicaid, the following regulations apply:~~

~~23-001.07B2a 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.~~

~~23-001.07B2b Bank Accounts: The terms of the account shall be verified with the bank. If any person on the account is able to withdraw the total amount, the full amount of the account belongs to the applicant/client. If all signatures are required to withdraw funds, the proportionate share must be counted toward the applicant/client. If the applicant/client verifies that none of the funds belong to him/her, the applicant/client must be allowed sixty (60) days to remove his/her name from the account. The applicant/client must provide proof of the change.~~

~~After the applicant/client removes his/her name from the bank account, eligibility may be determined retrospectively or prospectively, as applicable. If the applicant/client does not remove his/her name within sixty (60) days, the funds are counted as a resource. If a portion of the funds belongs to the applicant/client, the applicant/client must be notified of the requirement to place the funds in a separate account. Verified contributions to the account determine ownership if ownership is disputed.~~

~~23-001.07B2c Other Resources: For all other jointly owned resources other than those specified above and real property, the terms of ownership and forfeiture shall be reviewed by the Department.~~

23-001.08 Resources of Other Individuals Countable in a Client's Budget

~~23-001.08A 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.

~~23-001.08B 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.

~~23-001.08C Deeming Resources of a Parent:~~ In considering the resources of a parent(s) counted toward the resource total of a child seventeen (17) years old or younger who is eligible for ABD or a medically needy child eighteen (18) years old or younger who is eligible and living in the parent's household, the following resources are counted for the child whether or not they are actually made available:

- ~~(ii) All resources exceeding \$4,000 in the case of one parent; or~~
- ~~(iii) All resources exceeding \$6,000 in the case of:~~
 - ~~(1) Two parents;~~
 - ~~(2) One parent and the spouse of the parent; or~~
 - ~~(3) One parent and one minor sibling; and~~
- ~~(iv) \$25 for each additional minor sibling in the parent(s)'s household.~~

Resource exclusions listed at 477 NAC 23-001.06 and/or 477 NAC 23-001.06A apply to the parent(s)'s resources. The resources of the eligible child's siblings are not counted toward the child's resource total.

Note: If income of a parent is not deemed according to 477 NAC 24-001.01G2b, resources are also not deemed.

~~23-001.09 Determination of Value of Total Available Resources:~~ The total value of all available resources is the total value of real and personal property determined according to the preceding guidelines.

~~23-001.10 Maximum Available Resource Levels:~~ The established maximums for available resources that an applicant/client may own and still be eligible are as follows:

- ~~(5) One member unit: \$4,000;~~
- ~~(6) Two member unit or family: \$6,000;~~
- ~~(7) Three member unit or family: \$6,025; or~~
- ~~(8) Each additional individual: + \$25.~~

~~Note: If two or more related ABD clients (other than a married couple), i.e., an eligible ABD parent and his/her eligible ABD minor child or two or more unrelated eligible ABD clients, reside in the same household, each client is entitled to a resource maximum of \$4,000.~~

~~The treatment of resources of a spouse or a parent is the same as for an applicant/client. See 477 NAC 24-001.01G1 and 477 NAC 24-002.02. If the total equity value of available non-excluded resources exceeds the maximums specified at 477 NAC 23-001.10, the applicant(s)/client(s) is/are ineligible. Resources must be below the maximum resource level for one (1) day in the month in order for the applicant/client to be eligible for that month.~~

~~For information regarding SIMP resources, see 477 NAC 26-003.~~

~~23-001.11 Reduction of Resources: The applicant/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 applicant who has excess resources other than real property may have his/her application held pending until the resources are reduced. See 477 NAC 23-001.05B3e(1) and 23-001.05B4 for treatment of real property that causes an applicant to have excess resources.~~

~~An applicant/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 applicant/client deems appropriate. If the applicant/client is in a medical institution or receiving waiver services, s/he cannot give away resources in order to establish eligibility, see 477 NAC 23-001.04.~~

~~If the applicant/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 applicant/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 applicant's/client's statement of expenditures is acceptable as verification.~~

~~23-001.11A Reduction of Resources to Establish Earlier Medicaid Effective Date: An applicant/client may do a reduction of resources to establish an earlier Medicaid effective date if s/he has outstanding medical bills. However, eligibility may not begin earlier than the third month before the month of application (see 477 NAC 4-000). In order for an applicant/client with excess resources to establish an earlier 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 application. The medical expense does not have to be a Medicaid-covered service. The applicant/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. Once it has been determined there are medical expenses in the retroactive period, the applicant/client is given ninety (90) days to complete the reduction of resources on medical expenses.~~

Medicaid 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 an applicant has excess resources in the month of application, it is not necessary to verify resources in any of the retroactive months. The spend-down of the excess resources from the month of application is all that is necessary. If the applicant does not have excess resources in the month of application, resources must be verified in the oldest retroactive month in which the applicant 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 Appendix 477-000-034 for procedures related to documenting a resource spend-down.

23-001.12 Resource Requirements for Medicare Savings Plan (MSP) Clients

23-001.12A Working Disabled Part A Medicare Beneficiaries: Resources are treated according to the Maximum Available Resource Levels at 477 NAC 23-001.10.

23-001.12B Specified Low-Income Medicare Beneficiaries (SLMB) and Qualified Individuals-1 (QI-1): Resource limits are adjusted annually by the Centers for Medicare and Medicaid Services. See Appendix 477-000-012.

23-001.12C MSP/Qualified Medicare Beneficiaries (QMB): Resource limits are adjusted annually by the Centers for Medicare and Medicaid Services. See Appendix 477-000-012.