

EFFECTIVE  
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NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

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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  
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 include 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.

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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 has 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, the applicant or client must obtain the legal authority to liquidate the property. 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 Retirement, Survivors, and Disability Insurance (RSDI) or Supplemental Security Income (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.

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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.