

EFFECTIVE
07/29/2020

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

477 NAC 26

TITLE 477 MEDICAID ELIGIBILITY

CHAPTER 26 SPOUSAL IMPOVERISHMENT MEDICAID PROGRAM (SIMP)

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); Children and Young Adults Eligible for IV-E Assistance.

001. SCOPE AND AUTHORITY. These regulations establish the conditions for eligibility for the spousal impoverishment Medicaid program. These regulations are promulgated under the authority of the Medical Assistance Act, Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 68-901 et seq. and §1924 of the Social Security Act 42 United States Code (U.S.C.) § 1396r-5.

002. DEFINITIONS. For the purposes of these rules and regulations, the following definitions apply.

002.01 COMMUNITY SPOUSE. The spouse of an institutionalized spouse, as defined below. A community spouse may not reside in a medical institution, nursing facility, receive Home and Community-Based Services (HCBS), or participate in Program for All-inclusive Care for the Elderly (PACE).

002.02 DEPENDENT FAMILY MEMBERS. Minor children residing with a community spouse, dependent parents, or siblings of the community spouse or institutionalized spouse who reside with the community spouse and could be claimed as dependents for tax purposes.

002.03 EXCESS SHELTER COSTS. The amount by which the combined rent or mortgage; property taxes; homeowner's insurance; and condominium or cooperative fees, if applicable, exceed 30% of the minimum maintenance needs amount.

002.04 FAMILY MAINTENANCE ALLOWANCE. The amount deducted from an institutionalized spouse's income to meet the maintenance needs of the community spouse and family members.

002.05 INSTITUTIONAL LEVEL OF CARE. The level of care, based on medical and functional criteria, which is normally required by the Department to reside in a nursing facility, intermediate care facility for the developmentally disabled, or to receive Home and Community-Based Services (HCBS).

002.06 INSTITUTIONALIZED SPOUSE. An individual who is in a medical institution, nursing facility, intermediate care facility for the developmentally disabled, or meets the requirements to receive Home and Community-Based Services (HCBS) for at least 30 consecutive days and who is married to a spouse who does not reside in a medical institution, nursing facility, intermediate care facility for the developmentally disabled, or meet the requirements to receive Home and Community-Based Services.

002.07 MAINTENANCE NEED STANDARD. The income standard to which the community spouse's and other dependent family members' income is compared for the purpose of determining the amount of allowance that may be made from the institutionalized spouse's income. The maintenance need standard is determined by need and is subject to a minimum and maximum amount.

003. RESOURCES. The following provisions apply to resource determinations made for the spousal impoverishment Medicaid program. Unless otherwise stated, these provisions do not alter the methodology for determining and evaluating resources as found elsewhere in this title.

003.01 ASSESSMENT OF RESOURCES. An assessment of resources for the couple is completed in accordance with the regulations below.

003.01(A) FORM USED. The IM-73 form is used to catalog all resources owned and available to the couple for the spousal impoverishment Medicaid program.

003.01(B) TIMELINE FOR COMPLETION. A married couple is allowed one assessment. Either spouse may request the assessment of resources when one spouse has already received institutional level of care for at least 30 days, is likely to need an institutional level of care for more than 30 continuous days, or would have received such care except for death. The month that the institutional spouse was first able to request an assessment is the month used to complete the IM-73, regardless of when the form is completed. The couple does not need to apply for Medicaid in order to complete an assessment of resources.

003.01(C) RESOURCES INCLUDED ON THE ASSESSMENT. All countable resources owned or available to the couple must be verified and accounted for on the assessment of resources. This includes any resource owned individually, jointly, or owned with other parties. For the purposes of the spousal impoverishment Medicaid program (SIMP), prenuptial agreements or laws or principles of marital property do not apply.

003.01(D) RESOURCES NOT INCLUDED ON THE ASSESSMENT. Resources which are excluded in determining Medicaid eligibility are also excluded for the assessment of resources. An excluded resource owned by the couple at the time of the assessment which later loses its exclusion cannot be added to the assessment of resources when the exclusion is lost. Resources acquired after the assessment is completed, resources which were not disclosed, and resources which were discovered after completion of the IM-73 cannot be later added in order to increase the amount reserved for the community spouse.

003.01(E) RESOURCES RESERVED FOR THE COMMUNITY SPOUSE. After all resources have been accounted for on the assessment of resources form, the amount of resources to be reserved for the community spouse is calculated. The community spouse

may reserve up to half of the couple's combined resources, subject to a minimum and maximum reserved amount. The minimum and maximum amounts used on an assessment of resources are the minimum and maximum amounts in effect for the date used to assess the resources. The minimum amount may always be reserved, even if the combined resources are below the minimum. A community spouse may not reserve more than the maximum amount. The minimum and maximum amounts are adjusted annually according to the consumer price index. See 477-000-029.

003.01(F) APPLICABILITY OF THE ASSESSMENT. The amount of resources reserved for the community spouse that is calculated on the assessment of resources is used when Medicaid eligibility is determined for the institutionalized spouse. If the institutionalized spouse stops receiving services which require an institutional level of care, then eligibility for the spousal impoverishment program (SIMP) ends. If one spouse later needs an institutional level of care, then the original assessment of resources and reserved amount is used in determining Medicaid eligibility.

003.01(G) APPEAL OF THE ASSESSMENT. The assessment of resources notifies the couple that they may appeal the assessment. The couple may appeal the value assigned to the resources, the amount reserved for the community spouse, or both. In order to appeal, the institutionalized spouse must apply for Medicaid. If the community spouse alleges that it is necessary to reserve additional resources, the community spouse must first show that the need cannot be met by allocating additional income from the institutionalized spouse. If the community spouse prevails on appeal, then additional resources may be reserved.

003.02 DESIGNATION OF RESOURCES. The designation of resources is completed in accordance with the rules below.

003.02(A) FORM USED. The IM-74 form is used to account for all resources owned by the institutionalized and community spouses. The form is used to designate which resource will be considered available to each spouse.

003.02(B) TIMELINE FOR COMPLETION. A designation of resources must be completed when Medicaid eligibility for the spousal impoverishment Medicaid program (SIMP) is determined. The institutionalized spouse must have submitted a Medicaid application before the designation is completed and eligibility is determined.

003.02(C) RESOURCES INCLUDED ON THE DESIGNATION. All resources owned and available to the couple at the time that Medicaid eligibility is being requested are included on the designation of resources. The value of all resources on the designation must be verified before being included on the form. The institutionalized spouse must have countable resources below four thousand (\$4,000) to be eligible. The community spouse cannot have countable resources above the amount reserved on the assessment of resources for the institutionalized spouse to be eligible.

003.02(C)(i) TRUST EXCEPTION. No resource owned by a trust is allowed on the IM-74. If either spouse is the beneficiary of a trust, and the trust is a countable

resource, then the trust assets available must be distributed to the beneficiary before such assets can be included on the designation of resources.

003.02(D) INTERSPOUSAL TRANSFERS. The IM-74 may be completed, and Medicaid eligibility determined before all resources have changed title to reflect the arrangement on the form. The ownership of all resources is verified again at the time of the institutionalized spouse's first Medicaid renewal. If any necessary transfers have not been completed at that time, and the institutionalized spouse retains ownership in more than four thousand (\$4,000) in resources, Medicaid must be closed due to excess resources. Transfer of resources between spouses is an exception to the deprivation of resource provisions unless the resources transferred from the institutionalized spouse would result in the community spouse having countable resources above the reserved amount. The amount transferred in excess of the community spouse's reserved amount is counted as a deprivation of resources.

003.02(E) RESOURCES NOT INCLUDED ON THE DESIGNATION. A resource which is acquired, omitted, or that loses its exclusion after the designation of resources has been completed is treated as follows:

- (i) The value of a resource titled in the name of the institutionalized spouse is attributable to the institutionalized spouse;
- (ii) The value of a resource titled in the name of the community spouse is attributable to the community spouse; and
- (iii) The value of a resource titled jointly in the name of both spouses is divided in equal shares to each spouse.

003.02(F) APPLICABILITY OF THE DESIGNATION. The IM-74 is in effect while the institutionalized spouse remains eligible for the spousal impoverishment Medicaid program (SIMP). This is true even when the institutionalized spouse moves from one institutional living arrangement to another. If the institutionalized spouse resides in the home with the community spouse without receiving institutional services, then eligibility for spousal impoverishment ends and the designation of resources no longer applies. If the community spouse begins to receive institutional services, then eligibility for spousal impoverishment ends and the designation of resources does not apply.

003.03 MAXIMUM AVAILABLE RESOURCE LIMITS. The established maximum for available resources that a couple may own and still be considered eligible for Medicaid in the following circumstances are as follows:

003.03(A) INSTITUTIONALIZED SPOUSE. The institutionalized spouse in the spousal impoverishment Medicaid program must have four thousand (\$4,000) or less in countable resources to be eligible. The institutionalized spouse may transfer resource to the community spouse without penalty up to the amount reserved for the community spouse on the IM-73.

003.03(B) COMMUNITY SPOUSE. The community spouse must reduce countable resources to the amount calculated on the IM-73 before the institutionalized spouse may become eligible.

003.03(C) RESIDING WITH COMMUNITY SPOUSE. If the institutionalized spouse resides with the community spouse without being eligible to receive Home and Community-Based Services (HCBS) or Program for All-inclusive Care for the Elderly (PACE), then eligibility for the spousal impoverishment Medicaid program ends. The couple would have a resource limit of six thousand (\$6,000) in order to be eligible under other Medicaid programs for the aged, blind, or disabled.

003.03(D) COMMUNITY SPOUSE RECEIVES INSTITUTIONAL CARE. If the community spouse begins to receive institutional care, then eligibility for the spousal impoverishment Medicaid program ends. The couple would need to reduce resources such that each spouse had four thousand (\$4,000) or less in countable resources before either would be eligible for other aged, blind, or disabled (ABD) Medicaid programs.

003.04. ASSIGNING SUPPORT RIGHTS. If the couple has resources that exceed the allowable amount and refuse to spend down, which prevents Medicaid eligibility for the institutionalized spouse, the Department has the legal right to bring support proceedings against the community spouse.

004. INCOME.

004.01 EFFECTIVE DATES. Spousal impoverishment Medicaid program (SIMP) budgeting procedures begin the first month, including a partial month, in which an eligible spouse enters an institutional living arrangement. The budgeting procedures end the first full month that an institutionalized spouse ceases to receive an institutional level of care or when the community spouse no longer meets the definition of a community spouse, whichever occurs first.

004.02 ALLOCATION OF INCOME. Only the income of the institutionalized spouse is used to determine whether any cost sharing amount is due to the provider. The income of a community spouse is not considered available to the institutionalized spouse. Some of the income of the institutionalized spouse may be allocated to the community spouse and dependent family members. The amount that may be allocated is determined in accordance with the procedures in this chapter.

004.03 DETERMINING OWNERSHIP OF INCOME. All income must be verified to determine the amount of the income and the individual to whom the income is due. Income is considered to be owned by the person legally entitled to receive it. Ownership of income may be appealed.

004.03(A) MULTIPLE OWNERS. When a source of income is payable to more than one party, the following rules apply:

- (i) If payment is made payable to both spouses, one-half is considered available to each spouse;
- (ii) Income must be divided by the number of payees if payment is made payable to one or both spouses and a third party;
- (iii) Only the spouse's proportionate share is considered available to that spouse;

- (iv) If income is paid to one spouse and a third party but the verification reveals that the income is intended for both spouses, both spouses must be included in the division to determine the proportionate share; and
- (v) If income does not specify either spouse, one-half of the amount is considered available to each spouse.

004.04 BUDGETING THE INSTITUTIONALIZED SPOUSE. The budget of the institutionalized spouse is calculated using the procedure below. Only the income of the institutionalized spouse is used to determine whether any cost sharing applies. The institutionalized spouse must be allowed sufficient income to meet their personal needs before determining whether any income is allocated to the community spouse. If the income of the community spouse is not provided or verified then no allocation is allowed. If an allocation for the maintenance needs of the community spouse is calculated, but is not made available to the community spouse, then no deduction is allowed. A deduction for the maintenance of dependent family members is always allowed, even if the income is not made available to those family members. Any amount remaining after deductions are paid to the provider.

004.04(A) BUDGET CALCULATION. The following amounts are deducted from the gross, verified income of the institutionalized spouse in the following order:

- (i) The income standard for the appropriate living arrangement. See 477-000-012;
- (ii) A fee for a guardian or conservator;
- (iii) The amount calculated for the maintenance needs of the community spouse;
- (iv) The amount calculated for the maintenance needs of dependent family members; and
- (v) Incurred medical expenses allowed under this title.

004.05 DETERMINING THE MAINTENANCE ALLOWANCE. The maintenance needs of a spouse or dependent family member are calculated. The calculation is subject to a minimum and maximum amount. See 477-000-012. In comparing income of a spouse or family member, all income is used, even if such income would normally be subject to a deduction or exclusion for Medicaid eligibility. The gross amount of income is used except for self-employment. Adjusted gross income is used for self-employment. The amount calculated for the maintenance needs of a spouse or dependent family member may be appealed.

004.05(A) DETERMINING THE COMMUNITY SPOUSE MAINTENANCE ALLOCATION.

A portion of the income of the institutionalized spouse can be allocated to the community spouse when necessary to maintain the living standard of the community spouse. The allocation is subject to a minimum and maximum amount which is adjusted annually. If the community spouse has income in excess of the maximum amount, then no allocation is allowed. If the community spouse has income less than the maximum, then the calculation below is used. If the income of the community spouse is less than the calculated amount, then the institutionalized spouse may allocate income up to the calculated amount. The income of the community spouse is compared to a sum of the following factors:

- (i) The minimum maintenance allowance;
- (ii) Excess shelter costs, as defined; and
- (iii) A standard utility amount.

004.05(B) DETERMINING A DEPENDENT FAMILY MEMBER'S MAINTENANCE ALLOCATION. A portion of the income of the institutionalized spouse will be allocated to assist in the maintenance of dependent family members. The maintenance amount is a sum of the needs of each dependent family member. For each dependent family member, the remaining income of the institutionalized spouse is compared to an amount calculated below. The sum of the needs of each dependent family member is used as the allocated amount. For each dependent family member, calculate the maintenance need amount as follows:

- (i) The minimum spousal maintenance amount minus
- (ii) The gross amount of income for the dependent family member, and then
- (iii) Divide the result by three.

004.05(C) EXCEPTIONS. An allocation above the maximum amount is only allowed under the following circumstances:

- (i) A court has ordered the institutionalized spouse to provide more financial support than the calculated maintenance amount. A court order takes precedence over the calculated amount; or
- (ii) The family alleges that a need in excess of the calculated amount is needed due to exceptional circumstances resulting in significant financial duress and appeals the calculated amount. The family must show that there are insufficient resources reserved for the community spouse to meet the financial need. If the family prevails on appeal, then an additional amount may be allowed.