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REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Health Policy

4 (Amendment)

5 907 KAR 20:035. Spousal impoverishment and nursing facility requirements for Medicaid.

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

7 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. Part 435,

8 42 U.S.C. 1396a, 1396d, 1396r-5

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

16 Section 1. Resource Assessment.

17 (1) Pursuant to 42 U.S.C. 1396r-5(c)(1)(B), an assessment of the joint resources of an
18 institutionalized spouse and the community spouse shall be made:

19 (a) Upon request of either spouse at the beginning of a continuous period of institutionalization
20 of the institutionalized spouse; and

21 (b) Upon receipt of relevant documentation of resources.

1 (2) Resources that have been protected from estate recovery due to a long-term care partnership
2 insurance policy shall be excluded from the eligibility determination by the eligibility worker at
3 the time of application.

4 (3) An assessment shall contain the total value of the joint resources and computation of the
5 spousal share.

6 (4) The department shall complete the assessment within forty-five (45) days following
7 submission of complete documentation or verification.

8 (5) Upon completion of a resource assessment, each spouse shall:

9 (a) Receive a copy of the assessment; and

10 (b) Be notified that the right of appeal of the assessment shall exist at the time the
11 institutionalized spouse applies for Medicaid.

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

14 (1) The income provisions established in this subsection shall apply for an individual beginning a
15 continuous period of institutionalization on or after September 30, 1989.

16 (a) Except as provided in paragraph (b) of this subsection, during a month in which an
17 institutionalized spouse is in the institution, income of the community spouse shall not be
18 deemed available to the institutionalized spouse.

19 (b) In determining the income of an institutionalized spouse or community spouse, after the
20 institutionalized spouse has been determined or redetermined to be eligible for Medicaid, the
21 provisions of 42 U.S.C. 1396r-5(b)(2) shall apply.

22 (2) The resource provisions established in this subsection shall apply ~~to~~ to an individual
23 beginning a continuous period of institutionalization on or after September 30, 1989.

1 (a) Except as provided in subsection (4)(b) of this section, in calculating the resources of an
2 institutionalized spouse at the time of an initial eligibility determination for a benefit under
3 Medicaid, the resources held by either the institutionalized spouse, community spouse, or both,
4 shall be considered to be available to the institutionalized spouse.

5 (b) The following protected amounts shall be deducted from a couple's combined countable
6 resources at the time of the determination of initial eligibility of the institutionalized spouse:

7 1. The greater amount of:

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

10 b. The state resource standard; and

11 2.

12 a. If applicable, an additional amount transferred under a court support order; or

13 b. If applicable, an additional amount designated by a hearing officer.

14 (c) The institutionalized spouse shall not be ineligible by reason of resources determined under
15 paragraphs (a) and (b) of this subsection to be available for the cost of care in the following
16 circumstances:

17 1. The institutionalized spouse has assigned to the department his or her right to support from the
18 community spouse;

19 2.

20 a. The institutionalized spouse lacks the ability to execute an assignment due to physical or
21 mental impairment; and

22 b. The state has the right to bring a support proceeding against a community spouse without the
23 assignment; or

1 3. The department determines that denial of eligibility would work an undue hardship.

2 (d) After eligibility for benefits is established for the individual:

3 1. During the continuous period in which an institutionalized spouse is in an institution and after
4 the month in which an institutionalized spouse is determined to be eligible for a Medicaid
5 benefit, the resources of the community spouse shall not be deemed available to the
6 institutionalized spouse; and

7 2. Resources of the institutionalized spouse protected for the needs of the community spouse
8 shall be considered available to the institutionalized spouse if the resources are not transferred to
9 the community spouse within six (6) months of the initial eligibility determination.

10 (e) The equity value of an automobile in excess of the limits established by 907 KAR 20:025
11 shall not be included as a countable resource.

12 (3) The provisions established in this subsection shall apply with regard to protecting income for
13 a community spouse.

14 (a) After an institutionalized spouse is determined or redetermined to be eligible for Medicaid, in
15 determining the amount of the spouse's income that is to be applied monthly to payment for the
16 costs of care in the institution, there shall be deducted from the spouse's monthly income the
17 following amounts in the following order:

18 1. A personal needs allowance of sixty (60)~~forty (40)~~ dollars plus a mandatory withholding
19 from income, including a mandatory payroll deduction that is a condition of employment and
20 federal, state, and local taxes that the government requires the payer to deduct before payment is
21 made to the payee;

22 2. A community spouse monthly income allowance to the extent income of the institutionalized
23 spouse is made available to, or for the benefit of, the community spouse;

1 3. A family allowance determined in accordance with the definition of other family member's
2 maintenance standard; and

3 4. An amount for incurred expenses for medical or remedial care for the institutionalized spouse.

4 (b)

5 1. The community spouse income allowance shall be the sum of the standard maintenance
6 amount and the excess shelter allowance, not to exceed the community spouse maintenance
7 standard.

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

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

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

15 (a)

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

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

1 (b)

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

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

5 b. The state spousal resource standard.

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

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

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

14 (5) Except for a transfer of resources to the community spouse as specified in subsection (4) of
15 this section, the transfer of resource policies established by 907 KAR 20:030 shall apply.

16 (6)

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

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

20 2. Request by:

21 a. The institutionalized spouse;

22 b. The community spouse; or

23 c. A representative acting on behalf of either spouse.

1 (b) The notice shall state the:

- 2 1. Amount of the community spouse monthly income allowance;
- 3 2. Amount of a family allowance, if any;
- 4 3. Method of computing the amount of the community spouse resources allowance; and
- 5 4. Spouse's right to an administrative hearing in accordance with 907 KAR 20:060.

6 (7)

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

- 10 1. The community spouse monthly income allowance;
- 11 2. The amount of monthly income determined to be otherwise available to the community
12 spouse;
- 13 3. The attribution of resources at the time of the initial eligibility determination; or
- 14 4. The determination of the community spouse resource allowance.

15 (b) If either the institutionalized spouse or community spouse establishes during the
16 administrative hearing that the community spouse needs income above the level otherwise
17 provided by the monthly maintenance needs allowance, due to an exceptional circumstance
18 resulting in significant financial duress, an amount adequate to provide the necessary additional
19 income shall be substituted for the monthly maintenance needs allowance.

20 (c) If either spouse established during the hearing process that the community spouse resource
21 allowance, in relation to the amount of income generated by an allowance, is inadequate to raise
22 the community spouse's income to the monthly maintenance needs allowance, there shall be

1 substituted for the community spouse resource allowance an amount adequate to provide the
2 monthly maintenance needs allowance.

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

7 (1)

8 (a) In determining eligibility, the appropriate medically needy standard or special income level,
9 disregards, and exclusions from income shall be used.

10 (b) In determining patient liability for the cost of institutional care, gross income shall be used as
11 provided in subsections (2) and (3) of this section.

12 (2)

13 (a) Income protected for basic maintenance shall be sixty (60)~~forty (40)~~ dollars monthly plus
14 mandatory withholdings.

15 (b) Mandatory withholdings shall:

16 1. Include minimum state and federal taxes; and

17 2. Not include court-ordered child support, alimony, or similar payment resulting from an action
18 by the recipient.

19 (3) An amount excluded under a plan to achieve self-support, as an impairment related work
20 expense, or a blind work expense (BWE) shall be considered an increased personal needs
21 allowance for a Medicaid recipient except a recipient for whom a quarterly spenddown process
22 as established in 907 KAR 20:020 is applicable.

1 (4) Income in excess of the amount protected for basic maintenance shall be applied to the cost
2 of care except as provided in this subsection.

3 (a) Available income in excess of the basic maintenance allowance shall be first conserved as
4 needed to provide for the needs of a minor child up to the appropriate family size amount from
5 the scale as established by 907 KAR 20:020, Section 1(1).

6 (b) Remaining available income shall be applied to the incurred costs of medical and remedial
7 care that are not subject to payment by a third party (except that the incurred costs may be
8 reimbursed under another public program of the state or political subdivision of the state),
9 including Medicare and health insurance premiums or medical care recognized under state law
10 but not covered under the state's Medicaid plan.

11 (5) The basic maintenance standard allowed an individual during the month of entrance into or
12 exit from the nursing facility shall take into account the home maintenance costs.

13 (6) If an individual loses eligibility for a supplementary payment due to entrance into a
14 participating nursing facility and the supplementary payment is not discontinued on a timely
15 basis, the amount of an overpayment shall be considered as available income to offset the cost of
16 care to the Medicaid Program.

17 (7)

18 (a) An SSI benefit payment, mandatory state supplement payment, or optional state supplement
19 payment received by a specified institutionalized Medicaid eligible individual in accordance with
20 42 U.S.C. 1382(e)(1)(G) shall be excluded from consideration as either income or a resource.

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

22 (8)

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

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

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

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

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

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

11 (10) Income placed in a qualifying income trust established in accordance with 42 U.S.C.
12 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall be counted in the posteligibility
13 determination.

14 Section 4. Special Needs Contributions for Institutionalized Individuals.

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

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

20 Section 5. Applicability.

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

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

- 1 (b) Pursuant to 907 KAR 20:075.
- 2 (2) Resources shall not be considered for eligibility purposes for an individual:
- 3 (a) Whose Medicaid eligibility is determined using the modified adjusted gross income standard
- 4 pursuant to 907 KAR 20:100; or
- 5 (b) Between the age of nineteen (19) and twenty-six (26) years:
- 6 1. Who formerly was in foster care;
- 7 2. Who aged out of foster care while receiving Medicaid coverage; and
- 8 3. For whom the Medicaid eligibility standards are established in 907 KAR 20:075.

9

907 KAR 20:035
REVIEWED:

8/5/2024

Date

DocuSigned by:

Lisa Lee

70997392168844E

Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

8/5/2024

Date

DocuSigned by:

Eric Friedlander

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Eric C. Friedlander, Secretary
Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on October 21, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 14, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until October 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

Contact Person: Jonathan Scott

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Email: JonathanT.Scott@ky.gov

Contact Person: Krista Quarles

Phone Number: (502) 564-7476

Email: CHFSregs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the authorizing statutes by establishing spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility purposes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendments to this regulation updates the personal needs allowance to sixty (60) dollars. This is an increase from the original provision of forty (40) dollars.

(b) The necessity of the amendment to this administrative regulation:

The amendments serve to reduce the amount of the community spouse's income that is to be applied monthly to payment for the costs of care of an institutionalized spouse. This change is required by HB 6 of the 2024 regular session (Acts Ch. 175). The 2024 budget established a new base rate for nursing facilities that includes the enhanced personal needs allowance. As a result, it is appropriate to include the noncodified budget direction in a permanent administrative regulation amendment.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the content of the authorizing statutes by implementing the updated personal needs allowance amount as required by HB 6 of the 2024 regular session.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the authorizing statutes by

implementing the updated personal needs allowance amount as required by HB 6 of the 2024 regular session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

There are 291 nursing provider types enrolled in the Medicaid provider type that may be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Facilities will need to facilitate an additional twenty dollars in personal needs allowance for married individuals. The funding is provided by the state budget.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no cost to the entity. The state budget assumes the additional cost to the facilities as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Entities will benefit from having recipients with a higher personal needs budget, which can help enhance the health of existing patients.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The state budget provided \$3,775,000 in each fiscal year to increase the personal needs allowance.

(b) On a continuing basis:

On a continuing basis, the personal needs allowance funding will continue through the 2026 state fiscal year. If the personal needs allowance is not continued to be funded by the legislature, it will cost the Medicaid program \$3.7 million per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

At this time, DMS does not assess that an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL IMPACT STATEMENT

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

Contact Person: Jonathan Scott
Phone: (502) 564-4321
Email: JonathanT.Scott@ky.gov

Contact Person: Krista Quarles
Phone Number: (502) 564-7476
Email: CHFSregs@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:
The Department for Medicaid Services, Division of Health Policy

(a) Estimate the following for the first year:

Expenditures: The department anticipates \$3.7 million in expenditures in each fiscal year, through fiscal year 2026. This was provided by HB 6.

Revenues: This administrative regulation is not expected to generate revenue.

Cost Savings: There are no expected cost savings

(b) How will expenditures, revenues, or cost savings differ in subsequent years?
DMS continues to estimate a \$3.7 million increase that will need to be funded by the legislature following fiscal year 2026.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):
N/A this regulation will not affect local entities.

(a) Estimate the following for the first year:

Expenditures: N/A there is no impact on local entities

Revenues: N/A there is no impact on local entities

Cost Savings: N/A there is no impact on local entities

(b) How will expenditures, revenues, or cost savings differ in subsequent years?
The department does not anticipate that this administrative regulation will have a fiscal impact on local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3):
The department has not identified any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: N/A - the department has not identified any additional regulated entities.

Revenues: N/A - the department has not identified any additional regulated entities.

Cost Savings: N/A - the department has not identified any additional regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?
N/A - the department has not identified any additional regulated entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation is anticipated to have an annual impact of \$3.7 million that will need to be funded going forward.

(b) Methodology and resources used to determine the fiscal impact: The department has completed an actuarial analysis and fiscal impact statement when reviewing the proposed legislation in the 2024 HB 6 which includes the change to this personal needs allowance.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

(b) The methodology and resources used to reach this conclusion: An actuarial analysis of this provision as well as other research into nursing home rate rebasing was conducted as part of the state budget process. This amendment does not establish costs to regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

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

Contact Person: Jonathan Scott

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1. Federal statute or regulation constituting the federal mandate. 42CFR Part 483.

2. State compliance standards. KRS 205.520(3) states:

“Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect.”

3. Minimum or uniform standards contained in the federal mandate. 42CFR Part 483 establishes general requirements for states to follow when regulating nursing homes and long-term care facilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.