

Information Notice to Couples with an Institutionalized Spouse

Medicaid is an assistance program that may help pay for the costs of your or your spouse's institutional care, home and community based waiver services, or Program of All-inclusive Care for the Elderly (PACE) program. The institutionalized spouse is considered medically needy if his/her resources are at or below a certain level and the monthly income after certain deductions is less than the cost of care in the facility.

Federal and State laws require that spousal impoverishment rules be used to determine an institutionalized spouse's eligibility for Medicaid. These rules protect some of the income and resources of the couple for the community spouse.

Who is an institutionalized spouse?

If you or your spouse is:

- (1) In a medical institution or nursing facility and is likely to remain there for at least 30 consecutive days; or
- (2) Receiving home and community based services provided pursuant to a waiver under section 1915(c) of the federal Social Security Act and is likely to receive such services for at least 30 consecutive days; or
- (3) Receiving institutional or noninstitutional services under a PACE program as defined in sections 1934 and 1894 of the federal Social Security Act;

AND

- (4) Married to a spouse who does not meet any of the criteria set forth under (1) through (3), these income and resource eligibility rules for an institutionalized spouse may apply to you or your spouse.

If you wish to discuss these eligibility provisions, please contact your local department of social services.

Even if you have no intention of pursuing a Medicaid application at this time, you are urged to contact your local department of social services to request an assessment of the total value of your and your spouse's combined countable resources. It is to the advantage of a community spouse to request such an assessment to make sure that allowable resources are not depleted by your or your spouse's cost of care. To request such an assessment, you may call your local department of social services or send in the completed "Request for Assessment" section of this notice. New York City residents, calling from within New York City, should call the Human Resources Administration (HRA) Infoline toll-free at 1-877-472-8411. If calling from outside the five boroughs, the HRA Infoline number is (718) 557-1399.

Information About Resources

Effective January 1, 1996, the community spouse is allowed to keep resources in an amount equal to the greater of the following amounts:

- (1) \$74,820 (the State minimum spousal resource standard); or
- (2) The amount of the spousal share up to the maximum amount permitted under federal law.*

For purposes of this calculation, "spousal share" is the amount equal to one-half of the total value of the countable resources of you and your spouse as of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse on or after September 30, 1989. The most recent continuous period of institutionalization means the most recent time you or your spouse meets the criteria listed in items 1 through 4 (page one, definition of an institutionalized spouse) on or after September 30, 1989. In determining the total value of the countable resources, we will not count the value of your home, household goods, personal property, the car, and certain funds established for burial expenses.

The community spouse may be able to obtain additional amounts of resources to generate income when the otherwise available income of the community spouse, together with the income allowance from the institutionalized spouse, is less than the maximum community spouse monthly income allowance,* by requesting a fair hearing or commencing a family court proceeding against the institutionalized spouse. Your own attorney or local Office for the Aging can give you more information regarding this.

Either spouse or a representative acting on their behalf may request, at the beginning or any time after the beginning of a continuous period of institutionalization, an assessment of the couple's countable resources. Upon receipt of such request and all relevant documentation, the local district will assess and document the total value of the couple's countable resources and provide each spouse with a copy of the assessment and the documentation upon which it is based. If the request is not filed with a Medicaid application, the local department of social services may charge up to \$25.00 for the cost of preparing and copying the assessment and documentation.

Information About Income

You also may request an assessment/determination of:

- (1) The community spouse monthly income allowance* (an amount of up to \$2,319 a month for 2004, if the community spouse has no income of his/her own); and
- (2) A family allowance for each minor child, dependent child, dependent parent or dependent sibling of either spouse living with the community spouse* (an amount of up to \$521 as of January 1, 2004, if the family member has no income of his/her own).

The community spouse may be able to obtain additional amounts of the institutionalized spouse's income, due to exceptional circumstances resulting in significant financial distress, than would otherwise be allowed under the Medicaid program, by requesting a fair hearing or commencing a family court proceeding against the institutionalized spouse. Significant financial distress means exceptional expenses which the community spouse cannot be expected to meet from the monthly maintenance needs allowance or from amounts held in resources. These expenses may include, but are not limited to: recurring or extraordinary non-covered medical expenses (of the community spouse or dependent family members who live with the community spouse); amounts to preserve, maintain, or make major repairs on the homestead; and amounts necessary to preserve an income-producing asset. Social Services Law 366-c.2(g) and 366-c.4(b) require that

*See the "Spousal Impoverishment Income and Resource Amounts" attachment for the current dollar amounts.

the amount of such support orders be deducted from the institutionalized spouse's income for eligibility purposes. Such court orders are only effective back to the filing date of the petition.

Your own attorney or local Office for the Aging can give you more information regarding this.

If you wish to request an assessment of the total value of your and your spouse's countable resources, a determination of the community spouse resource allowance, community spouse monthly income allowance, or family member allowance(s) and the method of computing such allowances, contact your local department of social services. New York City residents, calling from within New York City, should call the Human Resources Administration (HRA) Infoline toll-free at 1-877-472-8411. If calling from outside the five boroughs, the HRA Infoline number is (718) 557-1399.

Additional Information

For purposes of determining the Medicaid eligibility of the institutionalized spouse, a community spouse must cooperate in providing necessary information about his/her resources. Refusal to provide the necessary information shall be reason for denying Medicaid for the institutionalized spouse because Medicaid eligibility cannot be determined. If denial of Medicaid would result in undue hardship for the institutionalized spouse and an assignment of support is executed or the institutionalized spouse is unable to execute such assignment due to physical or mental impairment, Medicaid shall be authorized. However, if the community spouse refuses to make such resource information available, then the Department, at its option, may refer the matter to court.

Undue hardship is a situation where:

- (1) A community spouse fails or refuses to cooperate in providing necessary information about his/her resources;
- (2) The institutionalized spouse is otherwise eligible for Medicaid;
- (3) The institutionalized spouse is unable to obtain appropriate medical care without the provision of Medicaid; and
 - (a) The community spouse's whereabouts are unknown; or
 - (b) The community spouse is incapable of providing the required information due to illness or mental incapacity; or
 - (c) The community spouse lived apart from the institutionalized spouse immediately prior to institutionalization; or
 - (d) Due to the action or inaction of the community spouse, other than the failure or refusal to cooperate in providing necessary information about his/her resources, the institutionalized spouse will be in need of protection from actual or threatened harm, neglect, or hazardous conditions if discharged from an appropriate medical setting.

An institutionalized spouse will not be determined ineligible for Medicaid because the community spouse refuses to make his or her resources in excess of the community spouse resource allowance available to the institutionalized spouse if:

- (1) The institutionalized spouse executes an assignment of support from the community spouse in favor of the social services district; or
- (2) The institutionalized spouse is unable to execute such assignment due to physical or mental impairment.

Contribution from Community Spouse

The amount of money that we will request as a contribution from the community spouse will be based on his/her income and the number of certain persons in the community depending on that income. We will request a contribution from a community spouse of 25% of the amount his/her otherwise available income exceeds the minimum monthly maintenance needs allowance plus any family member allowance(s). If the community spouse feels that he/she cannot contribute the amount requested, he/she has the right to schedule a conference with the local department of social services to try to reach an agreement about the amount he/she is able to pay.

Pursuant to Section 366(3)(a) of the Social Services Law, Medicaid MUST be provided to the institutionalized spouse, if the community spouse fails or refuses to contribute his/her income towards the institutionalized spouse's cost of care. However, if the community spouse fails or refuses to make his/her income available as requested, then the Department, at its option, may refer the matter to court for a review of the spouse's actual ability to pay.

Request For Assessment

Date _____

Institutionalized Spouse's Name _____

Current Address _____

Telephone Number _____

Community Spouse's Name _____

Current Address _____

Telephone Number _____

I/we request an assessment of the items checked below:

- Couple's countable resources and the community spouse resource allowance
- Community spouse monthly income allowance
- Family member allowance(s)

Signature of Requesting Individual

Address and telephone # if different from above

Check if you are a representative acting on behalf of either spouse. Please call your local department of social services if we do not contact you within 10 days of this request.

Note: If an assessment is requested without a Medicaid application, the local department of social services may charge up to \$25 for the cost of preparing and copying the assessment and documentation.