



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

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*Commissioner*

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**INFORMATIONAL LETTER**

**TRANSMITTAL:** 07 OHIP/INF-3

**DIVISION:** Office of Health  
Insurance Programs

**TO:** Commissioners of  
Social Services

**DATE:** September 24, 2007

**SUBJECT:** Spousal Impoverishment - Increasing the Community Spouse Resource Allowance

**SUGGESTED**

**DISTRIBUTION:** Medicaid Staff  
Fair Hearing Staff  
Legal Staff  
Audit Staff  
Staff Development Coordinators

**CONTACT PERSON:** Local District Liaison  
Upstate: (518)474-8887  
New York City: (212)417-4500

**ATTACHMENTS:**

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
06 OMM/ADM-3 96 ADM-11 91 ADM-33 89 ADM-47 GIS 07 MA/001 GIS 05 MA/002 GIS 98 MA/015 GIS 95 MA/029		360-4.10	SSA §1924, SSL §366-c	MRG, pp. 226-227, 231-231.1, 334	

**I. PURPOSE**

The purpose of this Informational Letter is to inform social services districts and fair hearing officers of the steps to be taken in determining the additional resource amount needed, over the community spouse resource allowance, when there is a minimum monthly maintenance needs allowance shortfall.

**II. BACKGROUND**

Section 1924 of the Social Security Act requires states to set a minimum monthly maintenance needs allowance (MMMNA) for community spouses of institutionalized individuals. Effective January 1, 2007, the MMMNA in New York State is \$2,541. The State also must protect a certain amount of the couple's resources for the community spouse which is known as the community spouse resource allowance (CSRA). Effective January 1, 2007, the CSRA is an amount equal to one half of the couple's total countable resources as of the first day of the most recent continuous period (e.g., at least 30 consecutive days) of institutionalization of the institutionalized spouse, with the State minimum set at \$74,820 and a federal maximum of \$101,640.

In cases where the community spouse's own income is less than the MMMNA, income of the institutionalized spouse may be transferred to the community spouse to make up the difference or "shortfall." If the institutionalized spouse's income is insufficient to bring the community spouse's income up to the MMMNA, an increased community spouse resource allowance may be established by fair hearing decision or court order to generate income to bring the community spouse's income up to the MMMNA pursuant to a fair hearing or court order. Either the institutionalized or community spouse can request a fair hearing to establish a CSRA that is adequate to raise the community spouse's income up to the MMMNA.

As noted in a July 27, 2006 State Medicaid Director letter issued by the Centers for Medicare & Medicaid Services (CMS), the State may use any reasonable method to determine the amount of increased resources needed to generate adequate income to make up a MMMNA shortfall, including, but not limited to, considering the cost of a single premium annuity to generate the needed income.

**III. DETERMINING A COMMUNITY SPOUSE'S INCOME**

In determining the income of the community spouse, any interest, dividend, or other income generated by resources that are part of the CSRA is included. If a community spouse has resources in excess of the CSRA, the resources that generate income should be applied first toward the CSRA.

Unless the community spouse is refusing to support, resources in excess of the CSRA are considered available to the institutionalized spouse. Any interest, dividend, or other income generated by resources in excess of the CSRA is considered available to the institutionalized spouse and countable for purposes of calculating the institutionalized spouse's income that is available for the community spouse monthly income allowance (CSMIA) and net available monthly income (NAMI).

If the community spouse is refusing to support, resources in excess of the CSRA are NOT considered available to the institutionalized spouse. Any interest, dividend, or other income generated by resources in excess of the CSRA is part of the community spouse's "otherwise available income" for purposes of calculating the CSMIA. In this situation, if a fair hearing is requested seeking additional resources to generate income for the community spouse, any interest, dividend, or other income generated by resources in excess of the CSRA must NOT be included in calculating the amount of the community spouse's income shortfall.

**IV. REVISIONS TO COMMUNITY SPOUSE RESOURCE ALLOWANCE**

**A. Methodologies**

The amount of resources needed to generate sufficient income to raise the community spouse's income up to the MMMNA may be calculated based on the average interest income that a savings account generates. As most bank interest rates currently are relatively low, savings account interest rate computations generally necessitate apportioning a high amount of resources to generate the community spouse's MMMNA shortfall amount. As an alternative, fair hearing officers and local districts may consider the resource amount needed to purchase a single premium immediate life annuity that would generate the income shortfall amount. Social services districts should advocate at the fair hearing for the method that is most cost-effective for the Medicaid program in the particular case.

The following example demonstrates these two methods for determining the amount of increased resources needed to generate an MMMNA shortfall amount. For purposes of the example, the community spouse is a 75 year old female with a MMMNA shortfall of \$325 a month and \$134,000 in excess resources over the CSRA.

**1. Savings Account Interest Rate Calculation** - Most banks list their savings interest rates online. For this example assume the average savings account interest rate of three area banks is 3%. The formula for the interest rate calculation is:

$$(\text{Annual Shortfall Amount} \times 100) \div \text{Interest Rate} = \text{Additional Resources}$$

Using the example -  $(\$3,900 \times 100 = \$390,000) \div 3 = \$130,000$

The community spouse would require \$130,000 over the CSRA in order to make up the MMMNA shortfall.

**2. Annuity Calculation** - The estimated cost of a single premium life annuity that would generate monthly income of \$325 a month is \$39,538 (See Section IV.B. "Obtaining Figures for Annuity Calculation".) The community spouse would require \$39,538 over the CSRA in order to make up the MMMNA shortfall.

Generally, the single premium immediate life annuity calculation will result in a higher rate of return on the investment than the bank interest computation. However, a method other than the annuity method can be used to calculate the MMMNA shortfall if it is more cost effective for the Medicaid program. Also, there may be cases where the community spouse's excess resources are insufficient to purchase an annuity (as the amount is less than the minimum investment requirement). In such cases, the savings account interest rate calculation may be required to be used.

**B. Obtaining Figures for Annuity Calculation**

The cost of a single premium life annuity that would generate the needed MMMNA shortfall amount can be obtained by contacting an entity (e.g., life insurance company, a mutual fund company, bank) that is in the commercial business of selling annuities. The issuer and seller (e.g., licensed insurance agent or broker) must be subject to all applicable New York State insurance laws and regulations (and if applicable, banking laws and regulations as well).

Another option is to obtain the purchase price figure for the cost of the annuity online through an annuity calculator. One website that is helpful and easy to use is <http://www.immediateannuities.com/>. Instructions for using this website follow:

1. On the top row, select New York State, the individual's age, and his/her gender.
2. Under "Or, enter a Dollar Amount you wish to receive MONTHLY," type in the MMMNA shortfall amount, and click on "Click to Calculate." If the MMMNA shortfall amount has cents, the figure should be rounded UP to the next dollar when typing in the monthly amount needed (e.g., \$837.25 should be typed in as \$838).
3. The annuity price for the submitted data is shown under "Chart 1, Estimated Quotes for a Single Life Annuity," under "Estimated Cost," and opposite "Single Lifetime Income with No Payments to Beneficiaries."

**Note:** The Medicaid program does not endorse any particular website.

**C. Providing Information to Fair Hearing Officer**

When a fair hearing is requested to increase the CSRA, districts must present information on the calculation of the MMMNA shortfall and the resource amount needed to generate the needed income. If the district concludes that the purchase price of an annuity is the amount of additional resources that is most cost-effective for the Medicaid program, the district should present evidence at the fair hearing of the amount of resources necessary to purchase an annuity that will generate the shortfall amount and that meets the following criteria:

- ✓ The annuity is purchased with a single one-time premium, not with a series of purchase payments.
- ✓ The annuitized periodic payment amount (the income payout) is computed based on a fixed rate of return and begins immediately, instead of being deferred.
- ✓ Actuarial soundness is based on the community spouse's life expectancy.
- ✓ The annuitized distributions are paid in equal amounts, with no balloon payment, on a monthly basis for the remainder of the community spouse's life, not just for a certain specified period of time.
- ✓ The life annuity does not provide for payments to a beneficiary upon death; periodic payments terminate upon the community spouse's death.

V. TREATMENT IF ANNUITY IS (OR IS NOT) PURCHASED

A. Annuity Is Purchased

In some cases, such as when the MMMNA shortfall is small, the use of the annuity calculation may result in the community spouse receiving an income stream higher than the MMMNA. An annuity issuer (i.e., the insurance company) may have a minimum investment requirement to purchase a single premium immediate annuity, and this annuity would generate more income than needed to make up the MMMNA shortfall. If the required minimum investment amount to purchase a single premium immediate annuity is more cost effective for the Medicaid program than the savings account calculation, the annuity computation is still the preferred method to use.

Example: An 80 year old male has an MMMNA shortfall of \$100 a month and \$30,000 in excess resources. Using the savings account interest rate method to generate the MMMNA shortfall amount, the community spouse would need additional resources of \$24,000 (i.e., 5% of \$24,000 equals \$1,200 a year or \$100 a month). The insurance issuer requires a minimum investment of \$10,000 to purchase a single premium immediate life annuity and this investment provides a monthly income stream of \$111. It is more cost effective for the Medicaid program for the community spouse to be allocated an additional \$10,000 in resources and receive \$11 a month over the MMMNA than to appropriate \$24,000 in resources to generate the exact MMMNA shortfall amount (\$100).

If additional resources are allocated and an annuity is actually purchased which produces an income stream higher than the MMMNA, the community spouse may be requested to contribute 25 percent of his/her income in excess of the MMMNA and any family member allowance toward the cost of care for the institutionalized spouse.

As noted in Section IV.C., the type of annuity used in the MMMNA shortfall computation provides the community spouse with lifetime income, but periodic payments terminate upon the community spouse's death. If, however, an increased CSRA is authorized and the additional resources are actually used to purchase an annuity that has a beneficiary designated to receive payments upon the death of the annuity owner or the annuitant, the community spouse will NOT be required to name the State as the remainder beneficiary of the annuity.

**B. Annuity Is NOT Purchased**

When there is a fair hearing decision or court order authorizing increased resources to generate an MMMNA shortfall and the increased resource amount is based on an annuity calculation, **the community spouse is not required to actually purchase such an annuity.** However, the district must budget the income amount calculated in the MMMNA shortfall determination as being available on a monthly basis, regardless of whether it is actually being received. In order not to show an income shortfall for the community spouse in the budget, the monthly income that could be received from the annuity purchase computation must be included in the budget. The district should use MBL Unearned Income Source Code "99" (Other) and note the source of this income in the case record. In such cases, if the calculated income generated by the annuity is over the MMMNNA shortfall amount, (such as the example provided in Section V.A.), districts must use a Contribution Code of "5" (Refuses to Contribute) so there is no request for 25% of any excess income over the MMMNA on the community spouse's budgeted income.

If the community spouse chooses not to invest in the single premium immediate life annuity and subsequently has less income or chooses to purchase an annuity that produces an income stream lower than the MMMNA shortfall, the monthly income amount, which was calculated using the approved annuity methodology, should continue to be budgeted as the community spouse's income. The community spouse is not entitled to replace the income that was calculated using the annuity method with income that may subsequently become available from the institutionalized spouse since the community spouse already obtained additional resources over the CSRA to make up the income shortfall.

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Deborah Bachrach, Deputy Commissioner  
Office of Health Insurance Programs