

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 96 ADM-11

TO: Commissioners of
Social Services

DIVISION: Health & Long
Term Care

DATE: May 28, 1996

SUBJECT: Spousal Impoverishment: Community Spouse Resource Amount

**SUGGESTED
DISTRIBUTION:**

Medical Assistance Staff
Fair Hearing Staff
Legal Staff
QA&A Staff
Staff Development Coordinators

**CONTACT
PERSON:**

Upstate: Wendy Butz, Bureau of Eligibility & Third
Party Resources, 1-800-343-8859, extension 4-9141;
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User ID: AW7420

ATTACHMENTS:

Attachment I - Institutionalized Spouse Budget
Worksheet - Insert (available on-line)

Attachment II - Information Notice to Couples with an
Institutionalized Spouse (available
on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
90 ADM-29 89 ADM-47		360-4.10(a) (4), (11)	Ch. 81 of Laws of 1995 SSA Sect. 1924(g) SSL 366-c	<u>MARG</u> pp. 331, 333, 334.1 - 334.4	95 LCM-112 GIS 95MA052 95MA047 95MA029

I. PURPOSE

This Administrative Directive (ADM) advises social services districts of a change in the State's minimum community spouse resource amount. The minimum community spouse resource amount is used in determining the Medical Assistance (MA) eligibility of an institutionalized spouse.

II. BACKGROUND

The Medicare Catastrophic Coverage Act (MCCA) mandated special budgeting rules for institutionalized MA applicants with spouses living in the community. Under these rules, community spouses were allowed to retain resources equal to one-half of the couple's total countable resources (spousal share), but not to exceed a maximum community spouse resource amount of \$60,000. This maximum community spouse resource amount is increased annually to reflect changes in the federal Consumer Price Index (CPI), and in 1995 was \$74,820.

The MCCA also required states to establish a minimum community spouse resource amount of at least \$12,000. Community spouses would be allowed to retain this minimum community spouse resource amount when it exceeded the amount of the spousal share. In New York State, prior to the enactment of Chapter 81 of the Laws of 1995, the minimum and maximum community spouse resource amounts were identical. This meant that community spouses could retain \$74,820 of the couple's resources, even when the spousal share was less than \$74,820.

Chapter 81 of the Laws of 1995 amended Social Services Law Section 366-c to establish a minimum community spouse resource amount of \$74,820 (the 1995 maximum community spouse resource amount). As a result, beginning in 1996, community spouses will be allowed to retain resources in the amount of the spousal share, but not less than \$74,820 nor more than the maximum community spouse resource amount (\$76,740 in 1996).

If a community spouse does not possess resources in his or her name equal to the community spouse resource amount, the institutionalized spouse may transfer sufficient resources to bring the community spouse's otherwise available resources up to the level of the community spouse resource amount. The amount which the institutionalized spouse may transfer to the community spouse is known as the community spouse resource allowance (CSRA).

III. PROGRAM IMPLICATIONS

The amendment to Section 366-c of the SSL requires a revision of the formula used to determine the CSRA in spousal impoverishment cases.

Beginning January 1, 1996, the community spouse is permitted to retain resources in an amount equal to the greatest of the following amounts:

- (1) \$74,820 (the new State minimum community spouse resource amount);

- (2) the amount of the spousal share, but not to exceed the maximum community spouse resource amount (which is \$76,740 in 1996 and which will continue to be adjusted annually to reflect changes in the federal CPI);
- (3) the amount established for support of the community spouse pursuant to a fair hearing; or
- (4) the amount established for the support of the community spouse pursuant to a court order .

For purposes of this formula, "spousal share" is the amount equal to one-half of the total value of the countable resources of the community spouse and the institutionalized spouse as of the date of the first continuous period of institutionalization of the institutionalized spouse on or after September 30, 1989.

When the State minimum community spouse resource amount and the federal maximum community spouse resource amount were identical, it was not necessary to determine a couple's spousal share. Consequently, the countable resources of the couple were determined at the time of the MA application, which might or might not have been the first month of institutionalization. Beginning in 1996, because there will be separate minimum and maximum community spouse resource amounts, there will be cases where social services districts will have to determine the amount of the spousal share in order to calculate the community spouse resource allowance.

The following example illustrates the use of the spousal share calculation in the community spouse resource allowance formula:

An individual is admitted to a nursing home on January 12, 1996 and applies for MA coverage in June of 1996. The couple's total countable resources as of January 1, 1996 are \$150,000. The total countable resources as of June 1, 1996 are \$80,000. Using the community spouse resource allowance formula, the applicable allowance is determined by taking the higher of the following amounts:

1. \$74,820 (State minimum community spouse resource amount); or
2. \$75,000 (spousal share, which does not exceed the maximum community spouse resource amount of \$76,740).

Since the spousal share of \$75,000 is higher than the State minimum community spouse resource amount, and does not exceed the maximum community spouse resource amount, the community spouse is permitted to retain \$75,000 of the couple's total countable resources of \$80,000 (as determined for the month of application).

The change in the State's minimum community spouse resource standard will not impact couples whose total countable resources are at or below the \$74,820 minimum. If the couple's total countable resources are at or below \$74,820, the community spouse retains all of the resources. If the couple's total countable resources are above \$74,820 but no more than \$149,640, the community spouse retains the minimum community spouse resource amount of \$74,820. In cases where the total countable resources of the couple are more than \$149,640, the community spouse retains one-half of the total resources (spousal share) up to the maximum community spouse resource amount (currently \$76,740).

IV. REQUIRED ACTION

A. State Minimum Community Spouse Resource Amount Change

Effective January 1, 1996, social services districts must use the following formula to determine the amount of resources which a community spouse is allowed to retain. A community spouse may retain resources equal to the greatest of:

1. \$74,820 (minimum community spouse resource amount);
2. \$_____ (spousal share up to the maximum community spouse resource amount); or
3. \$_____ (the amount established for the support of the community spouse pursuant to a fair hearing or court order).

The following chart shows the community spouse resource amount that will be applicable based on the total countable resources of the couple.

<u>Countable Resources</u>	<u>Resource Amount</u>
Less than or equal to \$149,640	\$74,820
Greater than \$149,640	Spousal share up to maximum resource amount
Greater than twice the maximum resource amount	Maximum resource amount

1. Countable Resources Less than or Equal to \$149,640

In cases where the total countable resources of the couple are less than or equal to \$149,640, the community spouse can retain up to the State minimum community spouse resource amount of \$74,820.

2. Countable Resources Greater than \$149,640

When the total countable resources of the couple are greater than \$149,640, social services districts will be required to calculate the couple's spousal share in order to determine the maximum amount of resources that can be retained by the community spouse.

Social services districts must determine the spousal share, or one-half of the total countable resources of the couple, as of the date of the first continuous period of institutionalization of the institutionalized spouse on or after September 30, 1989. The date of the first continuous period of institutionalization means the first date that the individual: was in a medical institution and/or nursing facility and expected to remain in such a medical institution or nursing facility for at least 30 consecutive days; or in receipt of home and community-based waived services (as defined in Section IV of 89 ADM-47), and expected to receive such services for at least 30 consecutive days; or expected to receive a combination of institutional services and home and community-based waived services for at least 30 consecutive days.

Social services districts should note that in cases where the date of the first continuous period of institutionalization is prior to the first month for which MA eligibility is sought, an assessment of the couple's resources will be required to be made for both the first month of institutionalization and the initial month for which MA coverage is sought. The determination of the couple's total countable resources at the time of institutionalization will determine the amount of the spousal share for use in the community spouse resource allowance formula. The total countable resources at the beginning of the month for which MA coverage is sought will be the amount from which the community spouse resource allowance is available. Any countable resources in excess of the amount of resources permitted to be retained by the community spouse shall be considered available to the institutionalized spouse.

Social services districts should also note that in cases where there is a break in a period of institutionalization and the individual is later re-institutionalized, the spousal share is determined as of the date of the first continuous period of institutionalization.

Note: If an institutionalized spouse can not provide documentation/verification of resources for the first month of institutionalization, the social services district shall allow the community spouse to retain up to \$74,820 (the minimum community spouse resource amount).

3. Countable Resources Greater than Twice the Maximum Amount

Effective January 1, 1996, for couples who have total countable resources in excess of twice the maximum community spouse resource amount, the community spouse will be permitted to retain the maximum community spouse resource amount. In such cases, although the amount of the spousal share would be greater than the maximum community spouse resource amount, the spousal share is capped at this maximum amount.

B. Other Applicable Policies/Information Regarding Resource Reviews for Spousal Impoverishment Cases

1. The transfer of the CSRA must be made within 90 days of notification of the eligibility determination, barring certain exceptions as specified in Section IV.B.1.e. of 89 ADM-47.
2. After the month in which the institutionalized spouse has been determined eligible for MA, no resources of the community spouse will be considered available to the institutionalized spouse. Similarly, no uncompensated transfer of assets made by the community spouse after the month in which the institutionalized spouse has been determined eligible for MA will affect the MA eligibility of the institutionalized spouse.
3. In accordance with the spousal impoverishment provisions outlined in 89 ADM-47, and the undue hardship provisions contained in 90 ADM-29 "Medical Assistance Eligibility: Determination of Undue Hardship for Spousal Impoverishment and Transfer of Assets", if the community spouse fails or refuses to cooperate in providing necessary information about his/her resources, such refusal shall be reason for denying MA for the institutionalized spouse because eligibility can not be determined. If, however, such a denial would result in undue hardship (as set forth in Section III. A. of 90 ADM-29) and an assignment of support is executed, or the institutionalized spouse is unable to execute such an assignment due to a physical or mental impairment, MA shall be authorized, and the case referred to the social services district legal staff for appropriate action.
4. If the community spouse refuses to make his/her resources in excess of the community spouse resource amount available to the institutionalized spouse, the institutionalized spouse will be determined ineligible for MA (if such resources combined with the available resources of the institutionalized spouse exceed the MA resource level for one), unless the institutionalized spouse executes an assignment of support from the community spouse in favor of the social services district and the Department, or the institutionalized spouse is unable to execute such assignment due to a physical or mental impairment.

5. Pursuant to a recent Court of Appeals decision in the matter of Gomprecht v. Sabol, when a petition for spousal support is made by a community spouse against an institutionalized spouse, the Family Court is to apply the minimum monthly maintenance needs allowance standard (absent a showing of exceptional circumstances) under SSL 366-c rather than the prior standard of living or life-style standard. This decision links the Family Court award to the spousal award available under SSL 366-c.

This decision also implies that in determining the CSRA, the Family Court is to apply the formula set forth in SSL 366-c unless additional resources which generate income are needed to bring the community spouse's income (after first including available income from the institutionalized spouse) up to the minimum monthly maintenance needs allowance.

C. Implementation Date

Effective January 1, 1996, Section 366-c of the SSL: establishes separate minimum and maximum community spouse resource amounts; necessitates the computation of the community spouse's spousal share of the couple's total countable resources; and allows the community spouse to retain resources in an amount equal to the spousal share (but not less than \$74,820 nor more than the maximum community spouse resource amount), for purposes of calculating the CSRA.

Note: Effective immediately, when a request for an assessment is not accompanied by an MA application, social services districts must use the community spouse resource allowance formula to assess and document the total value of the countable resources owned by the couple.

D. Institutionalized Spouse Budget Worksheet - Insert

An insert page (Attachment I) has been developed for use with the "Institutionalized Spouse Budget Worksheet" (DSS-4350). This page must be completed when calculating a couple's spousal share in cases where the total combined countable resources of the couple are greater than \$149,640 as of the date of the first continuous period of institutionalization.

Social services district must use the new insert page to identify and list the countable resources of the couple in cases where the first month of institutionalization is prior to the initial month for which MA coverage is sought. If the month for which coverage is sought is the first month of institutionalization, it is not necessary to list the countable resources of the couple on the insert page. In such cases, the total combined countable resources of the couple as determined in Part I of the spousal budget worksheet, is the figure to be entered on the bottom portion of the insert page next to "Total Combined Countable Resources".

Note: For purposes of determining a couple's spousal share in cases where the first month of institutionalization is prior to the first month for which MA coverage is sought, the burial fund/space exemption only applies to pre-established burial funds or burial space/plot items that have actually been purchased. There is no 10 day time frame within which an A/R can establish a burial fund or purchase burial space/plot items for purposes of a spousal share assessment. This time limit only applies to resource assessments that are made in determining MA eligibility (the month MA coverage is sought).

The "Maximum Community Spouse Resource Allowance", as determined on the insert page, is to be entered in Part I of the spousal budget worksheet, on line 2. A note should be added by the worker on line 2 stating, "See insert page regarding resource allowance". A copy of the insert page must accompany the Institutionalized Spouse Budget Worksheet in cases where the spousal share is used to compute the maximum CSRA.

Social services districts must use the insert page, where applicable, when an assessment is requested or a determination of MA eligibility is made on or after January 1, 1996.

E. Informational Notice to Couples with an Institutionalized Spouse

The "Information Notice to Couples with an Institutionalized Spouse" has been revised to reflect the change in the amount of resources that a community spouse may be permitted to retain in determining the MA eligibility of an institutionalized spouse. Social services districts must make the revised notice (Attachment II) available to all persons requesting such information and are required to include the notice with all MA applications involving an institutionalized spouse.

This notice has also been revised to reflect the Court of Appeals decision in the matter of Gomprecht v. Sabol, as discussed in Section IV.B. of this ADM.

A copy of this notice has been distributed to all medical institutions, nursing facilities and Long Term Home Health Care Program providers.

V. SYSTEM IMPLICATIONS

MBL

The calculation of a couple's countable resources and the CSRA must be done using the "Institutionalized Spouse Budget Worksheet". Any resources attributed to the institutionalized spouse should be entered on MBL using the appropriate Categorical Code (CTG) and Chronic Care Indicator (X).

VI. EFFECTIVE DATE

This ADM is effective May 1, 1996 retroactive to January 1, 1996.

Richard T. Cody
Deputy Commissioner
Division of Health & Long Term Care

INSTITUTIONALIZED SPOUSE BUDGET WORKSHEET

COMMUNITY SPOUSE RESOURCE ALLOWANCE - Spousal Share

<p>If the total combined countable resources of the community spouse and the institutionalized spouse as of the date of the first continuous period of institutionalization of the institutionalized spouse is more than \$149,640 (twice the State spousal resource standard), the maximum community spouse resource allowance is one-half of the total countable resources up to the maximum amount permitted to be retained by the community spouse under federal law.</p>			
<p>ASSESSMENT OF RESOURCES - (Resources as of the date of the first continuous period of institutionalization).</p>			
List Resources	Owner	Value	Verification
Burial Fund (Exempt Amt. _____)			
Total Combined Countable Resources			
Spousal Share (One-half of the resources)			
Maximum Community Spouse Resource Allowance			
<p>Comments: Maximum Community Spouse Resource Allowance entered in Part I, line 2 of this worksheet. Note: If the Total Combined Countable Resources listed on line 1 (Part I) is less than the Maximum Community Spouse Resource Allowance, enter the actual amount of resources available (line 2).</p>			

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 or home and community-based waived services. The institutionalized spouse is considered medically needy if his/her resources are at or below a certain level and the monthly income after 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 expected to remain in such an institution/facility for at least 30 consecutive days; or
- (2) in receipt of home and community-based waived services and expected to receive such services for at least 30 consecutive days; or
- (3) in a medical institution/nursing facility or in receipt of home and community-based waived services, and expected to receive a combination of institutional services and home and community-based waived services for at least 30 consecutive days;

and

- (4) married to a person who is not described in items 1-3, these income and resource eligibility rules for institutionalized spouses 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. You may call your local department of social services or send in the completed section of this notice to request such an assessment. New York City residents should call (718) 291-1900 (HRA Info Line).

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 month of the first continuous period of institutionalization of the institutionalized spouse on or after September 30, 1989. The first continuous period of institutionalization means the first time you or your spouse meet the criteria listed in items 1 through 4 (page one, definition of 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 (see attached Table), 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 in this regard.

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 Medical Assistance application, the local social services department may charge up to \$25.00 for the cost of preparing and copying the assessment and documentation.

Information About Income

You may also request an assessment/determination of:

- (1) the community spouse monthly income allowance* (an amount of up to \$1,871 a month for 1995, 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 \$418 as of July 1, 1995, if the family member has no income of his/her own).

* See the attached Table for the current dollar amounts

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 Medical Assistance 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 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 in this regard.

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 allowance(s) and the method of computing such allowances, contact your local social services department. Residents of New York City should call (718) 291-1900 (HRA Info Line).

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 Medical Assistance for the institutionalized spouse because Medical Assistance eligibility cannot be determined. If denial of Medical Assistance 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, Medical Assistance 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 Medical Assistance;
- (3) the institutionalized spouse is unable to obtain appropriate medical care without the provision of Medical Assistance; 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 has 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 Medical Assistance 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 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 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 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 than the Department may, at its option, 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 you 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 Medical Assistance application, the local department of social services may charge up to \$25 for the cost of preparing and copying the assessment and documentation.

SPOUSAL IMPOVERISHMENT INCOME AND RESOURCE AMOUNTS

Federal Maximum Community Spouse Resource Amount

\$76,740 - January 1, 1996

\$74,820 - January 1, 1995

Note: A higher amount may be established by court order or fair hearing to generate income to raise the community spouse's monthly income up to the maximum allowance.

Note: The State Minimum Spousal Resource Standard is \$74,820

Maximum Community Spouse Monthly Income Allowance is an amount up to:

\$1,919 - January 1, 1996

\$1,871 - January 1, 1995

if the community spouse has no income of his/her own.

Note: A higher amount may be established by court order or fair hearing due to exceptional circumstances which result in significant financial distress.

Family Member Allowance - for each family member is an amount up to:

\$432 - January 1, 1996

\$418 - July 1, 1995

\$420 - January 1, 1995

if the family member has no income of his/her own.

If the institutionalized spouse is receiving Medical Assistance, any change in income of the institutionalized spouse, the community spouse and/or the family member may affect the community spouse income allowance and/or the family member allowance. Therefore, the social services district should promptly be notified of any income changes.