

COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare

OPERATIONS MEMORANDUM #
Medicaid

SUBJECT: Changes to Spousal Impoverishment Policy and
Procedures Related to Medicaid/Long Term Care

TO: Executive Directors

FROM: Joanne Glover
Director
Bureau of Operations

PURPOSE

To provide policy and procedure changes for individuals with a spouse in the community applying for Long Term Care (LTC) services in an institutional setting or under one of the Home and Community-Based Services (HCBS) Programs. These changes take effect March 5, 2007.

The information provided in this Operations Memorandum takes precedence over any previous policy clarifications that have been issued or the policies and procedures that may be currently listed in the LTC Handbook. To ensure all CAOs receive and apply the same policy and procedures on these topics, this information is issued by an Operations Memorandum versus a Policy Clarification.

BACKGROUND

Section 6013 of the Deficit Reduction Act of 2005 (DRA) P.L. 105-171 amends section 1924 of the Social Security Act and changes the way that states are required to fund the Community Spouse Monthly Maintenance Needs Allowance (CSMMNA). States are required to follow the Income-First method, which is described below.

DISCUSSION

Prior to the enactment of the DRA, states had options on how income and resources of a couple could be treated when a married individual needed LTC services and had a spouse in the community (referred to as Community Spouse or CS) who needed additional income and/or resources to prevent spousal impoverishment. The provisions of the DRA now require that if the CS needs additional income to prevent impoverishment, the income of the Institutionalized Spouse (IS) must be made available

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to provide the needed income. Only when the income of the IS is insufficient to fully fund the CSMMNA can additional resources be allocated to the CS.

Old Policy:

If	Then
The gross monthly income of the CS, including income from the Community Spouse Resource Allowance (CSRA) and the income projected to be available to the CS if the IS predeceases the CS, is less than the CSMMNA;	The CS can request additional income from the IS or the couple can protect additional resources from the couple's non-protected share by purchasing an annuity to generate the additional income needed by the CS.

New Policy:

If	Then
The gross monthly income of the CS, including the income generated by the CSRA, is less than the CSMMNA;	The IS's available income must be used to make up the difference between the CSMMNA and the gross monthly income of the CS.

If	Then
The gross monthly income of the CS, including income from the CSRA and the income that is available from the IS, is less than the CSMMNA;	The couple can protect additional resources from the couple's non-protected share in order to generate the income necessary to fully fund the CSMMNA.

New Policy Guidelines

- This policy applies to couples when one spouse is applying for or receiving LTC services in an institution or under one of the HCBS Programs.

Note: Even though the County Assistance Office (CAO) does not calculate a spousal allowance to be used as a deduction from the cost of care to support the CS (the spouse not receiving HCBS), this policy applies if there is a request to protect additional resources to generate income for the CS.

- The definition of CS includes the spouse of the individual who is institutionalized, and the spouse of the individual applying for or receiving HCBS.

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- The determination of the CSMMNA is based on the Minimum Monthly Maintenance Needs Allowance plus excess shelter expenses up to the Maximum Monthly Maintenance Needs Allowance (\$2,541 effective January 1, 2007).
- The determination of the CS's total gross monthly income includes the CS's own income and the interest generated by the CS's protected share of the resources (also known as the CSRA).

Note: The income projected to be available to the CS if the IS predeceases the CS is no longer considered in the determination of the CS's total gross monthly income.

- The CS's total gross monthly income is compared to the CSMMNA to determine whether the CS needs additional income to prevent impoverishment.
- If the CS needs additional income to meet the CSMMNA, the CS must first use the IS's available income to fund the amount that is needed.
- The income of the IS that is considered available to the CS is the gross monthly income of the IS minus the personal needs allowance (currently \$40 per month) and any income needed to pay medical expenses (Medicare premiums or private insurance premiums).
- If the CS still needs additional income to meet his/her CSMMNA, the CS can request resources from the non-protected share of the couple's resources in order to generate the additional needed income.
- The CAO will notify the applicant that three annuity quotes are needed. This step will be eliminated once an annuity calculator is available.
- The CAO will use the annuity quote that reflects the least amount of non-protected resources needed to generate the required amount of income.

Note: The CS is no longer required to purchase an annuity with the additional resources awarded from the non-protected share of the couple's resources.

- The Department of Public Welfare and the appellant will enter into a Stipulated Agreement in order for the CS to protect additional resources.

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SPECIFIC STEPS:

1. Complete a Resource Assessment to determine the CSRA and the non-protected share of the resources.
2. Notify the couple of the results of the Resource Assessment.
3. Determine eligibility for Medicaid/LTC if an application for Medicaid/LTC is submitted.
4. Calculate the CSMMNA.
5. Verify the total gross monthly income of the CS.
6. Calculate the monthly interest income (currently an annual rate of 1.5% of the protected share of the CS's resources) generated by the CSRA.
7. Calculate the total gross monthly income available to the CS by adding the following sources of income:
 - A. The gross monthly income of the CS (Step 5).
 - B. The monthly income generated from the CSRA (Step 6).
8. Determine whether the total gross monthly income of the CS (as computed in Step 7) is less than the CSMMNA (as computed in Step 4).
9. If the total gross monthly income of the CS is equal to or greater than the CSMMNA, the CS is not entitled to additional resources or income.
10. If the CS needs additional income to fully fund the CSMMNA, the IS's available income must be used to fund the amount that is needed.
11. Determine the IS's total gross monthly income. Deduct the Personal Needs Allowance (currently \$40) and any medical expenses (i.e., Medicare Premiums or private insurance premiums) to determine the IS's available income.
12. Allocate sufficient income from the IS's available income to meet the CS's income shortfall.

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13. If, after allocating all of the IS's available income to the CS, the CS's total gross income is still less than the CSMMNA, advise the couple that the CS can request an additional amount of resources from the non-protected share in order to generate the additional needed income.
14. Advise the couple that they must provide the CAO with three annuity quotes for a single premium, non-guaranteed annuity that is gender specific. The CAO will use the annuity quote that reflects the least amount of non-protected resources needed to generate the required amount of income needed to fully fund the CSMMNA.
15. If requested, the CAO can assist those couples who do not understand how to obtain the three annuity quotes. The CAO can contact the Bureau of Policy, Division of Health Services, at (717) 772-7809 for additional guidance on individual situations where help is needed in order, to get the annuity quotes.
16. Complete the Stipulated Agreement (Attachment A) when all resources have been allocated to the CS and have it signed by all parties.

Complete the Stipulated Agreement (Attachment B) when there are excess resources that must be spent down prior to the determination of eligibility and have it signed by all parties.

17. Forward the appropriate Stipulated Agreement to the Bureau of Hearings and Appeals.
18. Upon receipt of the Order from the Bureau of Hearings and Appeals, the CAO will carry out the terms of the Stipulated Agreement.

Example 1: Income of CS Meets CSMMNA

- Mrs. White has been admitted to Broad Street Nursing Facility. The total countable resources owned by Mr. and Mrs. White on the date of admission were \$150,000. Mrs. White's only source of income is her gross monthly Social Security benefit of \$1,000. Mr. White, the CS, receives total gross monthly retirement benefits of \$4,000 per month.
- The CAO has determined that Mr. White's protected CSRA is \$75,000.
- The CAO receives an application for Medicaid/LTC services on behalf of Mrs. White.

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- Mr. White's gross monthly income of \$4,000 exceeds the Maximum Monthly Maintenance Needs Allowance (\$2,541 effective January 1, 2007).
- Since Mr. White's income exceeds his CSMMNA, Mr. White is not entitled to additional income or resources. The CAO would reject the application for Medicaid/LTC and provide the appropriate PA 162 Notice because Mrs. White has \$67,000 in excess resources (\$75,000 non-protected - \$8,000 (\$2,000 resource limit + \$6,000 resource disregard) = \$67,000).

Example 2: Income of CS Plus Spousal Allowance Meets CSMMNA

- Mr. Brown has been admitted to Main Street Nursing Facility. Total countable resources owned by Mr. and Mrs. Brown on the date of admission were \$60,000. Mr. Brown's total gross monthly income is \$1,593.50 (Department of Defense pension of \$1,000 and a Social Security benefit of \$593.50). Mrs. Brown receives a Social Security gross benefit of \$500 per month.
- The CAO has determined that Mrs. Brown's protected CSRA is \$30,000.
- The CAO has rejected the application due to excess resources and Mr. Brown has appealed, requesting additional income and resources to prevent Mrs. Brown from becoming impoverished.
- The CAO determined that Mrs. Brown is entitled to a CSMMNA of \$1,650 (which is the Minimum Monthly Maintenance Needs Allowance). The couple owns their home and they have no excess shelter costs.
- Interest income from the CSRA will be \$37.50 per month ($\$30,000 \times 1.5\% = \$450 \div 12 \text{ months} = \37.50).
- Mrs. Brown's total gross monthly income is \$537.50 (\$500 Social Security + \$37.50 interest from CSRA).
- Since her total monthly income (\$537.50) is below her CSMMNA of \$1,650, Mrs. Brown has an income shortfall of \$1,112.50 ($\$1,650 - \$537.50 = \$1,112.50$).
- The CAO determined that Mr. Brown has available income in the amount of \$1,460 (\$1,593.50 less \$40 (PNA) and \$93.50 (Medicare B premium) = \$1,460).

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- Since Mr. Brown has enough available income, Mr. Brown must transfer \$1,112.50 to Mrs. Brown to make up her income shortfall.
- Since Mrs. Brown's CSMMNA is met by the transfer of income from Mr. Brown, no additional resources can be protected.

Example 3: Increase in CSRA-IS Eligible

- Mrs. Redd has been admitted to LTC Nursing Home. Total countable resources owned by Mr. and Mrs. Redd on the date of admission were \$60,000. Mrs. Redd's only source of income is her gross monthly Social Security benefit of \$693.50. Mr. Redd receives total gross monthly income of \$1,200 per month.
- The CAO has determined that Mr. Redd's protected CSRA is \$30,000.
- The CAO has rejected the application due to excess resources and Mrs. Redd has appealed, requesting additional income and resources to prevent Mr. Redd from becoming impoverished.
- The CAO determined that Mr. Redd is entitled to a CSMMNA of \$2,000. The couple owns their home and has excess shelter costs.
- Interest income from the CSRA will be \$37.50 per month ($\$30,000 \times 1.5\% = \$450 \div 12 \text{ months} = \37.50).
- Mr. Redd's total gross monthly income is \$1,237.50 ($\$1,200 + \$37.50 \text{ interest from CSRA}$).
- Since his total monthly income (\$1,237.50) is below his CSMMNA of \$2,000, Mr. Redd has an income shortfall of \$762.50 ($\$2,000 - \$1,237.50 = \762.50).
- The CAO determined that Mrs. Redd has available income in the amount of \$560 ($\$693.50 \text{ less } \$40 \text{ (PNA) and } \$93.50 \text{ (Medicare B premium)} = \560).
- Since Mrs. Redd has available income, she must transfer \$560 to Mr. Redd to make up his income shortfall.

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- Mr. Redd's total gross income from all sources is \$1,797.50 ($\$1,200 + \$37.50 + \$560 = \$1,797.50$). Mr. Redd still has an income shortfall of \$202.50 ($\$2,000 - \$1,797.50 = \202.50).
- Since Mr. Redd does not have sufficient income to equal his CSMMNA of \$2,000, the CAO instructed Mr. Redd to obtain three quotes for a single premium non-guaranteed annuity.
- Mrs. Redd may keep \$8,000 in resources (\$2,000 resource limit + \$6,000 resource disregard) and qualify for Medicaid/LTC. \$22,000 in non-protected resources remains to provide Mr. Redd with additional income to reach his CSMMNA.
- The CAO instructs Mr. Redd to get three annuity quotes for a single premium, non-guaranteed annuity to produce the \$202.50 shortfall of income.
- Mr. Redd provides the CAO with three annuity quotes of \$28,000, \$29,000 and \$30,000.
- Since the couples' non-protected resources are less than the lowest annuity quote, Mr. Redd is entitled to keep all of the \$22,000 non-protected resources.
- Mr. Redd is entitled to a CSRA of \$52,000 ($\$30,000 + \$22,000 = \$52,000$).
- The CAO completes the Stipulated Agreement (Attachment A) providing this information and forwards it to the Bureau of Hearings and Appeals (BHA).
- Upon receipt of an Order from BHA, the CAO will implement the terms of the Stipulated Agreement.

Example 4: Increase in CSRA-IS Ineligible

- Mrs. Green has been admitted to ABC Nursing Facility. Total countable resources owned by Mr. and Mrs. Green on the date of admission were \$180,000. Mrs. Green's only source of income is her gross monthly Social Security benefit of \$493.50 per month. Mr. Green receives a gross monthly Social Security benefit of \$793.50 per month.
- The CAO has determined that Mr. Green's protected CSRA is \$90,000.

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- The CAO has rejected the application due to excess resources and Mrs. Green has appealed, requesting additional income and resources to prevent Mr. Green from becoming impoverished.
- The CAO determined that Mr. Green is entitled to a CSMMNA of \$1,650 (which is the Minimum Monthly Maintenance Needs Allowance). The couple has no excess shelter costs.
- Interest income from the CSRA will be \$112.50 per month ($\$90,000 \times 1.5\% = \$1,350 \div 12 \text{ months} = \112.50).
- Mr. Green's total gross monthly income is \$906 (\$793.50 Social Security + \$112.50 interest from CSRA).
- Since his total monthly income (\$906) is below his CSMMNA of \$1,650, Mr. Green has an income shortfall of \$744 ($\$1,650 - \$906 = \744).
- The CAO determined that Mrs. Green has available income in the amount of \$360 (\$493.50 less \$40 (PNA) and \$93.50 (Medicare B premium) = \$360).
- Since Mrs. Green has available income, she must transfer \$360 to Mr. Green to make up his income shortfall.
- Mr. Green's total gross income from all sources is \$1,266 ($\$793.50 + \$112.50 + \$360 = \$1,266$). Mr. Green still has an income shortfall of \$384 ($\$1,650 - \$1,266 = \384).
- Mrs. Green may keep \$8,000 in resources (\$2,000 resource limit + \$6,000 resource disregard) and qualify for Medicaid/LTC. \$82,000 in non-protected resources remains to provide Mr. Green with additional income to reach his CSMMNA.
- The CAO instructs Mr. Green to get three annuity quotes for a single premium, non-guaranteed annuity to produce the \$384 shortfall of income.
- The three annuity quotes provided by Mr. Green were \$50,000, \$51,000 and \$51,500. The CAO informed Mr. Green that he could protect an additional \$50,000 from the non-protected share of resources, which was the amount of the lowest quoted single premium non-guaranteed annuity.

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- Mrs. Green's total available income is now equal to his CSMMNA of \$1,650 ($\$793.50 + \$112.50 + \$360 + \$384 = \$1,650$).
- Mr. Green is entitled to a CSRA of \$140,000 ($\$90,000 + \$50,000 = \$140,000$).
- However, Mrs. Green is still resource ineligible, since there are still excess resources in the amount of \$32,000 in the non-protected share ($\$90,000 - \$8,000 - \$50,000 = \$32,000$). The CAO completes the Stipulated Agreement (Attachment B) providing this information and forwards it to the Bureau of Hearings and Appeals.
- After receiving the Order from the Bureau of Hearings and Appeals and upon receipt of a subsequent application indicating that Mrs. Green is now resource eligible, the CAO will implement the terms of the Stipulated Agreement.

NEXT STEPS

1. Review this Operations Memorandum with appropriate staff.
2. Contact your Area Manager if you have questions.
3. This Operations Memorandum will become obsolete upon release of the revised Handbook pages.

Attachments

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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE**

Appeal of:

Case No.

PARTIES' FINDINGS OF FACT AND STIPULATED AGREEMENT

BACKGROUND

This matter is an appeal of the denial of Medicaid/LTC eligibility for . The appellant and the County Assistance Office (CAO), through their respective representatives, have agreed to a stipulated finding of fact and agreement in this matter.

ISSUE

What amount of additional resources is the community spouse permitted to protect in excess of her/his standard one-half share for the purpose of generating income to bring her/his income up to the Community Spouse Monthly Maintenance Needs Allowance (CSMMNA).

FINDINGS OF FACT

1. is the Appellant. is the community spouse.
2. The Appellant entered an LTC facility or was assessed medically eligible for Home and Community-Based Services (HCBS) on . The total countable resources of the Appellant and the community spouse on were \$.
3. An application for Medicaid/LTC was filed on .
4. The community spouse's protected share, known as the Community Spouse Resource Allowance (CSRA) (subject to the minimum and maximum amounts), is \$.
5. At the time of the application, the Appellant's total gross monthly income minus deductions for medical insurance premiums and the Personal Needs Allowance was \$. The community spouse's total gross monthly income was \$.

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6. The CSMMNA is . In addition to her/his income listed in paragraph 5, the community spouse is deemed to receive \$ monthly income from her/his CSRA.
7. The community spouse is entitled to \$ of additional income from the Appellant. The Appellant may transfer \$ per month to the community spouse.
8. The community spouse still needs additional income in order to increase her/his income to the CSMMNA. In order to generate the additional monthly income of \$, the community spouse could purchase an annuity at the cost of \$, provided that amount of resources are available to purchase an annuity.
9. The couple's total countable resources at admission/medical assessment were \$. The CSRA is \$. Considering the protected share of resources for the community spouse at the time of application, in the amount of \$, and the resource allowance of \$ for the Appellant, an amount of \$ remains for the community spouse to purchase an annuity. The monthly income to the community spouse from an annuity purchased at the cost of \$ would be \$.
10. The Department will count as income to the community spouse the amount of income that would be generated by the annuity she/he can purchase with the amount of resources protected for that purpose in accordance with the agreed-to calculations. Income will be counted even if the community spouse chooses not to purchase the annuity. This agreement regarding the attribution of annuity income is binding in the future.

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STIPULATED AGREEMENT

In accordance with 55 Pa. Code § 178.124(b) (2), the Department and the Appellant have agreed that the community spouse is permitted a CSRA of \$ _____ in order to generate income sufficient to meet her/his CSMMNA of \$ _____. Medicaid/LTC benefits may be authorized for the Appellant effective _____.

Representative of Appellant

Date

Relationship to Appellant

CAO Representative

Date

Title

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ISSUE

What amount of additional resources is the community spouse permitted to protect in excess of her/his standard one-half share for the purpose of generating income to bring her/his income up to the Community Spouse Monthly Maintenance Needs Allowance (CSMMNA).

FINDINGS OF FACT

1. is the Appellant. is the community spouse.
2. The Appellant entered an LTC facility or was assessed medically eligible for Home and Community-Based Services (HCBS) on . The total countable resources of the Appellant and the community spouse on were \$.
3. An application for Medicaid/LTC was filed on .
4. The community spouse's protected share, known as the Community Spouse Resource Allowance (CSRA) (subject to the minimum and maximum amounts), is \$.

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5. At the time of the application, the Appellant's total gross monthly income minus deductions for medical insurance premiums and the Personal Needs Allowance was \$. The community spouse's total gross monthly income was \$.
6. The CSMMNA is . In addition to her/his income listed in paragraph 5, the community spouse is deemed to receive \$ monthly income from her/his CSRA.
7. The community spouse is entitled to \$ of additional income from the Appellant. The Appellant may transfer \$ per month to the community spouse.
8. The community spouse still needs additional income in order to increase her/his income to the CSMMNA. In order to generate the additional monthly income of \$, the community spouse could purchase an annuity at the cost of \$.
9. The couple's total countable resources at admission/medical assessment were \$. The CSRA is \$. Considering the protected share of resources for the community spouse at the time of application, in the amount of \$, and the resource allowance of \$ for the Appellant, an amount of \$ remains for the community spouse to purchase an annuity. The monthly income to the community spouse from an annuity purchased at the cost of \$ would be \$. After the purchase of the annuity, or after it is deemed that an annuity is purchased, excess resources in the amount of \$ still exist.
10. The Department will count as income to the community spouse the amount of income that would be generated by the annuity she/he can purchase with the amount of resources protected for that purpose in accordance with the agreed-to calculations. Income will be counted even if the community spouse chooses not to purchase the annuity. This agreement regarding the attribution of annuity income is binding in the future.

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STIPULATED AGREEMENT

In accordance with 55 Pa. Code § 178.124(b) (2), the Department and the Appellant have agreed that the community spouse is permitted a CSRA of \$ _____ in order to generate income sufficient to meet her/his CSMMNA of \$ _____. Medicaid/LTC may be authorized for the Appellant when her/his resources are below the appropriate limit. The authorization of Medicaid/LTC may require a new application.

Representative of Appellant

Date

Relationship to Appellant

CAO Representative

Date

Title

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