



# State of New Mexico Human Services Department Human Services Register



## I. DEPARTMENT NEW MEXICO HUMAN SERVICES DEPARTMENT

## II. SUBJECT INSTITUTIONAL CARE MEDICAID

## III. PROGRAM AFFECTED (TITLE XIX) MEDICAID

## IV. ACTION PROPOSED RULE

## V. BACKGROUND SUMMARY

As authorized in the Deficit Reduction Act of 2005 (DRA 2005) and signed into law February 8, 2006, several changes to Institutional Care Medicaid were mandated. In addition to the changes to Institutional Care Medicaid, proof of citizenship and identity as a factor of eligibility for Medicaid was also mandated. Citizenship has always been an eligibility factor in New Mexico Medicaid rules and therefore no changes to citizenship are being proposed. A synopsis of each of the proposed changes is as follows:

### Transfer of Assets

The HSD is proposing to change the period of examination for transfers of assets after February 8, 2006, by individuals or couples applying for institutional care from 36 months to 60 months.

### Penalty Period – Institutionalized

DRA 2005 mandates that the penalty period for a transfer of assets without fair return be calculated in whole and partial month increments. New Mexico is proposing to calculate the penalty period(s) in whole and partial months (days) to conform to the DRA 2005 provision. Prior to DRA 2005 the calculation of the penalty period was always rounded down to the nearest whole month.

### Equity Value in a homestead

The DRA 2005 mandates that effective 2/08/06, an applicant with equity value in their homestead of \$500,000 or greater is not eligible for Long Term Care Services. The HSD is proposing to add language to that effect.

### Life Estates

The HSD is proposing to count the value of a person's life estate interest in the home of another if residence has not continued for twelve (12) months or more. A person's life estate in their own home may also be a countable resource if they have not resided in their home for twelve (12) or more consecutive months.

### Annuities

The proposed changes will add the State of New Mexico as a beneficiary on annuities issued after February 8, 2006.

***Other***

Infrequent and irregular income changes are being made to comport with SSI Methodology language. Other miscellaneous changes have been made to update terminology and clarify procedures and regulatory language.

**VI. RULES**

These regulations will be contained in sections 8.200.510, 8.215.500, and 8.281.500 NMAC and ICM 600 of the Medical Assistance Eligibility Manual. All manual sections are available on the Medical Assistance Division web site at [www.state.nm.us/hsd/mad.html](http://www.state.nm.us/hsd/mad.html). If you do not have Internet access, a copy of the regulations may be requested by contacting the Medical Assistance Division at 827-3156.

**VII. EFFECTIVE DATE**

The Department proposes to implement these regulations effective August 1, 2008.

**VIII. PUBLIC HEARING**

A public hearing to receive testimony on these proposed regulations will be held at 9:00 a.m., on June 13, 2008, in the Rio Grande Room of the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156, in Santa Fe call 827-3156, or through the Department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

**IX. ADDRESS**

Interested persons may address written or recorded comments to:

Pamela S. Hyde, J.D., Secretary  
Human Services Department  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

These comments must be received no later than 5:00 p.m., on June 13, 2008. Written and recorded comments will be given the same consideration as oral comments made at the public hearing. Interested persons may also address comments via electronic mail to: [Magdalena.Romero@state.nm.us](mailto:Magdalena.Romero@state.nm.us).

**X. PUBLICATIONS**

Publication of these regulations approved by:

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PAMELA S. HYDE, J.D., SECRETARY  
HUMAN SERVICES DEPARTMENT

**600 BENEFIT DESCRIPTION**

An applicant/recipient who is eligible for Institutional Care Medicaid is eligible to receive the full range of Medicaid-covered services, unless coverage is restricted due to transfer of asset penalties. [2-1-95, 7-1-00]

**620 BENEFIT DETERMINATION**

Application for Institutional Care Medicaid is made using the Application/Redetermination of Eligibility for Medical Assistance of Aged, Blind and Disabled Individuals (Form MAD 381).

Completed applications must be acted upon and notice of approval, denial, or delay sent out within [~~thirty (30)~~] 45 days [~~of~~] from the date of registration. The [~~ISS~~] ISD worker explains time limits to the applicant and informs him or her of the date by which the application should be processed.

[2-1-95, 7-1-00]

**620.1 Representatives Applying on Behalf of Individuals**

If a representative makes application on behalf of an institutionalized individual, the representative is relied upon for information. The [~~ISS~~] ISD worker sends all notices to the applicant/recipient in care of the representative.

If the individual who makes an application is an employee of the institution, the [~~ISS~~] ISD worker contacts the applicant's family or other involved individuals. The [~~ISS~~] ISD worker focuses on the applicant/recipient's current circumstances and on past circumstances which may provide clues to existing or potential resources.

[02-01-95]

**623 INITIAL BENEFITS**

For an applicant/recipient who loses SSI eligibility after entering an institution, the Institutional Care Medicaid application date is the first day of the month of SSI termination or the month the application is received by the [~~ISS~~] ISD worker, whichever is earlier. [02-01-95]

**623.1 Notice of Determination**

Applicants eligible for Institutional Care Medicaid are notified of the approval and advised of the amount, if any, of the medical care credit.

Applicants who are ineligible are notified of the denial and provided with an explanation of appeal rights.

[02-01-95]

**624 ONGOING BENEFITS**

A complete redetermination of eligibility must be performed by the [ISS] ISD worker for each open case at least annually. The redetermination includes contact with the recipient, representative or if applicable, the institution's contact person. [02-01-95]

**624.1 Regular Reviews**

For each regular yearly review, the [ISS] ISD worker must determine:

1. Whether medical care credit payments are up to date. An overdue balance may indicate a change in circumstances that is unreported, particularly where rental property is involved; and
2. Whether the deposit to the recipient's personal fund is consistently no more than [~~\$30~~] the applicable personal needs allowance amount per month. A larger deposit may indicate an increase in income that is unreported or a previously unidentified source of income.

[02-01-95]

**624.2 Additional Reviews**

Additional reviews are scheduled by the [ISS] ISD worker depending upon the nature of the recipient's income, resources or medical condition. The following situations may require more frequent review:

1. Social Security cost-of-living increases;
2. VA cost-of-living increases;

3. Rental income which is sporadic and requires review every [~~three (3)~~] three months; or
4. Level of care changes and determinations. The end date on the abstract must be posted for follow-up. The utilization review contractor confirmation form, Notice of Level of Care - Certification Period, is valid for [~~sixty (60) day~~] 60 days for high level nursing facility (NF) or low level NF starting from the date on the form.

[02-01-95]

## 625 RETROACTIVE BENEFIT COVERAGE

Up to [~~three (3)~~] three months of retroactive Medicaid coverage can be furnished to applicants who have received Medicaid-covered services during the retroactive period and would have met applicable eligibility criteria had they applied during the [~~three (3)~~] three months prior to the month of application [42 CFR § 435.914]. [02-01-95]

### 625.1 Application for Retroactive Benefit Coverage

Application for retroactive Medicaid can be made by checking "yes" in the "Application for Retroactive Medical Payments" box on the Application/Redetermination of Eligibility for Medical Assistance of Aged, Blind and Disabled Individuals (Form MAD 381) or by checking "yes" to the question on "Does anyone in your household have unpaid medical expenses in the last [~~three (3)~~] three months?" on the Application for Assistance (Form ISD 100).

Applications for retroactive Medicaid benefits must be made within 180 days from the date of application for assistance. Medicaid-covered services which were furnished more than [~~two (2)~~] two years prior to application are not covered.

[2-1-95, 7-1-00]

### 625.2 Approval Requirements

To establish retroactive eligibility, the [~~ISS~~] ISD worker must verify that all conditions of eligibility were met for each of the [~~three (3)~~] three retroactive months and that the applicant received Medicaid-covered services. Each month must be approved or denied on its own merits. Retroactive eligibility can be approved on either the [~~ISD2~~] eligibility system or on the retroactive Medicaid Eligibility Authorization (Form ISD 333). [2-1-

95, 7-1-00]

### 625.3 Notice

**625.31 Notice to Applicant** The applicant must be informed if any of the retroactive months are denied.

**625.32 Recipient Responsibility to Notify Provider** After the retroactive eligibility has been established, the [ISS] ISD worker must notify the recipient that he/she is responsible for informing all providers with outstanding bills of the retroactive eligibility determination. If the recipient does not inform all providers and furnish verification of eligibility which can be used for billing and the provider consequently does not submit the billing within 120 days from the date of approval of retroactive coverage, the recipient is responsible for payment of the bill.

[02-01-95]

## 630 CHANGES IN ELIGIBILITY

The following procedures apply when an Institutional Care Medicaid recipient leaves an institution:

1. The recipient is notified in writing that his/her eligibility for Institutional Care Medicaid has terminated;
2. The Institutional Care Medicaid case is closed;
3. The recipient is [~~referred to the Children Youth and Families Department, Social Services Division, if other services are indicated and the recipient requests them; and~~] screened for other Medicaid program eligibility; or
4. The recipient is referred to the Social Security Administration for determination of eligibility for SSI benefits, if appropriate.

If a recipient dies in an institution, the case is closed the following month.

[02-01-95]

### 630.1 Discharge Status

Discharge status continues after the UR contractor determines that there is no medical necessity for a high NF or low NF placement. Discharge status does not apply to an acute care placement. After placement in discharge status, the recipient continues to be eligible for Institutional Care Medicaid since he/she still requires institutional care.

**630.11 Abstract Submission** Discharge status requires a new abstract be submitted at regular intervals. The institution must attach verification to the abstract that adequate placement has been and is being sought.

**630.12 Case Closure** The [ISS] ISD worker takes no action to close a case until the recipient is actually discharged from the institution. If the recipient is transferred from high NF to low NF, Medicaid coverage is not interrupted, unless the recipient is ineligible for other reasons.

[02-01-95]

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

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**TITLE 8            SOCIAL SERVICES  
CHAPTER 281    MEDICAID ELIGIBILITY – INSTITUTIONAL CARE (CATEGORIES 081, 083, 084)  
PART 500        INCOME AND RESOURCE STANDARDS**

**8.281.500.5        EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.  
[2-1-95; 8.281.500.5 NMAC - Rn, 8 NMAC 4.ICM.000.5, 3-1-01; A, 8-1-08]

**8.281.500.7        DEFINITIONS [RESERVED]**

- A. **Actuarially sound:** With respect to an annuity or promissory note, the payments made to the beneficiary do not exceed his/her life expectancy and returns to the beneficiary at least equal to the amount used to establish the contract.
- B. **Annuity:** A financial instrument usually sold by a life insurance company, that pays out a regular income at fixed intervals for a certain period of time, often beginning at a certain age and continuing for the life of the owner
- C. **Assets:** All income and resources of an applicant/recipient and their spouse, if applicable.
- D. **Bona fide:** A bona fide agreement is made in good faith and is legally valid.
- E. **Community spouse:** The spouse of an institutionalized spouse who is residing in the community and not in an institution.
- F. **Community spouse resource allowance:** An amount of a couples' resources that is set aside for the community spouse when the other spouse is institutionalized. There is a state minimum and a federal maximum amount of resources that can be set aside for the community spouse.
- G. **Encumbrance:** A general term for any claim or lien on a parcel of real property, including mortgages, deeds of trust and abstracts of judgments.
- H. **Fair Market value:** An estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining Medicaid eligibility.
- I. **Home equity:** (Also known as equity value.) The value of a home minus the total amount owed on it in mortgages, liens and other encumbrances.
- J. **Income:** Anything that an applicant/recipient receives in cash or in kind that he/she can use to meet his/her needs for food and shelter. In-kind income is not cash, but is actual food or shelter, or something that the applicant/recipient can use to get one of these.
- K. **Institutionalized spouse:** An applicant/recipient who is in an acute care hospital, nursing facility, intermediate care facility for the mentally retarded, swingbed or certified in-state inpatient rehabilitation center.
- L. **Life estate:** An interest in property that exists for the life of a person. For example, an individual gives a life estate in a house to person A and the remainder to person B. A has a life estate and B has a remainder interest until person A dies.
- M. **Liquid resource:** Cash or something that can easily be converted to cash within twenty (20) business days.
- N. **Loan:** A transaction in which one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest.
- O. **Lookback period:** A period of time in the past through which the ISS may examine all financial transactions for asset transfers.
- P. **Minimum monthly maintenance needs allowance:** A minimum level of income that the federal government allows to be set aside for the support of the community spouse when the other spouse is in an institution.
- Q. **Negotiable agreement:** An agreement (i.e., a loan) in which the ownership of the agreement and the whole amount of money can be transferred from one person to another.
- R. **Non-liquid resource:** An asset such as real property, which cannot be easily converted to cash within twenty (20) days.
- S. **Promissory note:** A promissory note is a written, unconditional agreement in which one person promises to pay a specified sum of money at a specified time to another person.
- T. **Relative:** Relative is defined as son/daughter; grandson/granddaughter; step-son/step-daughter; in-laws; mother/father; step-mother/step-father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step-brother/step-sister; and niece/nephew.
- U. **Remainder/remainderman:** An interest in property that occurs after a life estate. For example,



**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

an individual gives a life estate in a house to person A and the remainder to person B. A has a life estate and B has a remainder interest. Person B is also called the remainderman.

V. **Resources:** Cash or other liquid assets and any real or personal property that applicant/recipient (or spouse if any) owns and could convert to be used for his/her support and maintenance.

W. **Restricted coverage:** Eligibility for medicaid except for payment for long term care services in a nursing facility.

X. **Reverse mortgage:** A loan against home equity providing cash advances to a borrower and requiring no repayment until a future date.

Y. **Transfer:** To change over the possession, control or ownership of something.  
[8.281.500.7 NMAC; A, 8-1-08]

**8.281.500.9 NEED DETERMINATION:** ~~[Eligibility for the institutional care medicaid programs is always prospective. Applicants/recipients must meet, or expect to meet, all financial eligibility criteria in the month for which a determination of eligibility is made.]~~ Applicants for and recipients of institutional care medicaid must apply for and take all necessary steps to obtain any income or resources to which they may be entitled. Such steps must be taken within thirty (30) days of the date the human services department (HSD) furnishes notice of the potential entitlement.

A. **Failure to apply for and take steps to determine eligibility for other benefits:** Failure or refusal to apply for and take all necessary steps to determine eligibility for other benefits after notice is received results in an applicant/recipient becoming ineligible for institutional care medicaid.

B. **Exceptions to general requirement:** Applicants/recipients who have elected a lower VA payment do not need to reapply for veterans administration improved pension (VAIP) benefits. Crime victims are not required to accept victims compensation payments from a state-administered fund as a condition of medicaid eligibility.

[2-1-95; 7-31-97; 8.281.500.9 NMAC – Rn, 8 NMAC 4.ICM.500, 3-1-01; A, 8-1-08]

**8.281.500.11 APPLICABLE RESOURCE STANDARDS:** The resource criteria and eligibility standards of this section apply to all applicants for and recipients of institutional care medicaid. An applicant/recipient is eligible for institutional care medicaid on the factor of resources if countable resources do not exceed two thousand dollars (\$2,000). Some of an applicant/recipient's resources are counted in the eligibility determination and some resources are excluded. Any resource which is not specifically excluded under 8.281.500.13 NMAC is considered a countable resource for the purpose of determining institutional care medicaid eligibility.

~~[A. **Liquid resources:** The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.~~

~~(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the income support specialist (ISS) sends a bank or postal savings clearance to the appropriate institution(s).~~

~~(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.]~~

A. **Liquid resources:** A liquid resource is cash or something that can easily be converted to cash within twenty (20) business days. The face or surrender value of liquid resources such as cash, savings or checking accounts, and other financial instruments is considered in determining medicaid eligibility. The countable value of liquid resources is based on their current fair market value.

(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the ISD worker provides the applicant/recipient with a detailed request of all documents needed to determine eligibility.

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

resource.

B. **Nonliquid resources:** [The value of nonliquid resources is computed at current fair market value minus encumbrances or financial penalties for early withdrawal. See below for discussion of equity value.] A non-liquid resource is something such as real property that cannot easily be converted to cash within 20 business days. The value of non-liquid resources is computed at current fair market value minus encumbrances or financial penalties for early withdrawal.

**(1) Real property:**

(a) If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource.

(b) If an applicant/recipient owns property with one or more individuals and the applicant/recipient has the right, authority or power to liquidate the property or his/her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property.

(2) **Vehicles:** One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

(3) **Household goods and personal effects:** Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles.

(4) **Annuities:** Annuities belonging to the applicant/recipient or to the spouse of the applicant/recipient must be declared. Annuities must be actuarially sound with no deferral and no balloon payments. Annuities purchased or issued after February 8, 2006 must meet the following additional requirements:

(a) the state is named as the remainder beneficiary in the first position for at least the total amount of medicaid expenditures paid on behalf of the institutionalized individual;

(b) it is non-assignable and irrevocable; and

(c) the issuer agrees to notify the state when there is a change in the amount of income or principal withdrawn for the annuity. The state may be named the remainder beneficiary in the second position if there is a community spouse or a disabled adult child, or a minor child or in the third position if there is a community spouse and a disabled adult child, or a minor child.

(5) **Promissory notes:** A promissory note held by the applicant/recipient must be a bona fide loan. The ISD worker will evaluate the note and determine whether or not it is a bona fide loan. The value of the note, loan, or mortgage is the outstanding balance due as of the date of application for medicaid. The repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it must contain a provision that prohibits cancellation of the balance upon the death of the lender.

(6) **Pension funds:** A pension fund, if accessible to the applicant/recipient, is a countable resource.

(7) **Individual retirement accounts (IRA):** An IRA is a tax deductible savings account that sets aside money for retirement. Funds in an IRA are counted as an asset in their entirety less the amount of penalty for early withdrawal.

(8) **Keogh plan:** A Keogh plan is a retirement plan established by a self-employed individual alone or for the self-employed individual and his or her employees. If the Keogh plan was established for the self-employed individual alone, the funds in the plan are counted as an asset in their entirety less the amount of penalty for early withdrawal. If the Keogh plan was established for employees other than the spouse of the applicant/recipient, the funds do not count as an asset.

(9) **Other financial instruments:** Other financial instruments will be evaluated to determine if they are a countable resource.

(10) **Continuing care retirement community, assisted living, life care community or like living arrangement:** The portion of initial fees paid upon signing a contract for housing and care that has a potential to be refunded to the applicant/recipient are countable.]

[2-1-95, 7-31-97; 8.281.500.11 NMAC – Rn, 8 NMAC 4.ICM.511, 3-1-01; A, 1-1-06; A/E, 2-1-07; A, 8-1-08]

**8.281.500.12 COUNTABLE RESOURCES:** Before a resource can be considered countable, the three (3) criteria listed below must be met.

A. **Ownership interest:** An applicant/recipient must have an ownership interest in a resource for it to

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

be countable. The fact that an applicant/recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant/recipient also has an ownership interest in it.

**B. Legal right to convert resource to cash:** An applicant/recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) **Physical possession of resource:** The fact that an applicant/recipient does not have physical possession of a resource does not mean it is not his/her resource. If he/she has the legal ability to spend the funds or convert the resource to cash, the resource is considered countable. Physical possession of savings bonds is a legal requirement for cashing them.

(2) **Unrestricted use of resource:** An applicant/recipient is considered to have free access to the unrestricted use of a resource even if he/she can take those actions only through an agent, such as a representative payee, ~~or~~ guardian, conservator, trustee, or an individual acting pursuant to a power of attorney. If there is a legal bar to the sale of a resource, the resource is not countable. ~~[If a co-owner of real property can bring an action to partition and sell the property, his/her interest in the property is a countable resource.]~~ However, if a co-owner of real property can bring an action to partition and sell the property, his/her interest in the property is a countable resource.

**C. Legal ability to use a resource:** If a legal restriction exists which prevents the use of a resource for the applicant/recipient's own support and maintenance, the resource is not countable.

**D. Joint ownership of resources:** If an applicant/recipient owns either liquid or non-liquid resources jointly with others, he/she has ~~thirty (30)~~ 30 days from the date requested by the ~~[ISS]~~ ISD worker to submit all documentation required to verify his/her claims regarding ownership of, access to, and legal ability to use the resource for personal support and maintenance. Failure to do so results in the presumption that the resource is countable and belongs to the applicant/recipient.

(1) **Jointly held property:** If jointly held property is identified during review of an active case, the ~~[ISS]~~ ISD worker must:

(a) determine whether the property is a countable resource;

(b) determine whether the value of the jointly held property plus the value of other countable resources exceeds the allowable resource maximum; and

(c) if the value of countable resources exceeds the allowable maximum, advance notice is furnished to the applicant/recipient of the intent to close the case and his/her right to verify claims regarding ownership of, access to and legal ability to use the property for personal support and maintenance.

(i) If the applicant/recipient fails to provide required information or respond within the advance notice period, the case is closed.

(ii) If, after expiration of the advance notice period but prior to the end of the month in which the advance notice expires, the applicant/recipient provides the required evidence to show the property is not a countable resource, or is countable in an amount which, when added to the value of other countable resources, does not exceed the maximum allowable limit, and eligibility continues to exist on all other factors, the case is reinstated for the next month.

(2) **Joint bank accounts:** If liquid resources are in a joint bank account of any type, the applicant/recipient's ownership interest, while the parties to the account are alive, is presumed to be proportionate to the applicant/recipient's contributions to the total resources on deposit.

(a) The applicant/recipient is presumed to own a proportionate share of the funds on deposit unless he/she presents clear and convincing evidence that the parties to the account intended the applicant/recipient to have a different ownership interest.

(b) To establish the applicant/recipient's ownership interest in a joint account, the following are required:

(i) statement by the applicant/recipient regarding contributions to the account; reasons for establishing the account; who owns the funds in the account; and any supporting documentation; plus

(ii) corroborating statements from the other account holder(s);

(iii) if either the applicant/recipient or the other account holder is not capable of making a statement, the applicant/recipient or representative must obtain a statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

(c) Failure to provide required documentation within thirty (30) days of the date requested by the ~~[ISS]~~ ISD worker results in a determination that the entire account amount belongs to the applicant/recipient.

(d) If the existence of a jointly held bank account is identified during the review of an active

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

case, the [ISS] ISD worker requests evidence of ownership and accessibility. If the evidence is not furnished within thirty (30) days of the request, the case is closed.

~~[E. **Other countable resources:** Other liquid or non-liquid resources must be considered in the calculation of total countable resources. Under certain circumstances, the following non-liquid resources may be included in the calculation of countable resources:~~

- ~~\_\_\_\_\_ (1) burial funds;~~
- ~~\_\_\_\_\_ (2) burial spaces;~~
- ~~\_\_\_\_\_ (3) life estates;~~
- ~~\_\_\_\_\_ (4) life insurance; and~~
- ~~\_\_\_\_\_ (5) income producing property.]~~

E. **The home as a countable resource:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home and it is not the residence of the applicant/recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant/recipient or his/her representative puts the home up for sale and it is not the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.

F. **Value of property:** The applicant/recipient must supply the ISD worker with written documentation regarding the fair market value of the property from a real estate agent, title company or mortgage insurance company familiar with the area in which the property is located in addition to any encumbrances against the property. The ISD worker determines the equity value of the property by subtracting the amount of the encumbrances from the fair market value of the property. Definitions: "Relative" is defined as son/daughter; grandson/granddaughter; step-son/step-daughter; in-laws; mother/father; step-mother/step-father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step-brother/step-sister; and niece/nephew.

G. **Hardship:** Applicants/recipients who are on restricted coverage due to excess equity in their homes may request an undue hardship waiver based on the criteria specified at 8.281.500.24 NMAC.

H. **Real property:**

(1) if an applicant/recipient is the sole owner of real property, other than the applicant/recipient's or his/her spouse's primary residence and has the right to dispose of it, the entire equity value is included as a countable resource; and

(2) if an applicant/recipient owns property with one or more individuals and the applicant/recipient has the right, authority or power to liquidate the property or his/her pro-rata share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property.

I. **Vehicles:** One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be non-liquid resources. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

J. **Household goods and personal effects:** Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles.

K. **Promissory notes:** If an applicant/recipient holds or owns a promissory note and the note is negotiable, it is a countable resource. The value is the outstanding principal balance due at the time of the medicaid application, unless the applicant/recipient proves that it has a lower value.

(1) A promissory note held by the applicant/recipient must be a bona fide loan. This means that it must be legally valid and made in good faith. The ISD worker must evaluate the note and determine whether or not it is a bona fide loan. In order to determine if the note is a bona fide loan, the ISD worker should obtain documentation of the applicant/recipient's receipt of payments on the note at the time of application and at re-certification. If the applicant/recipient sells or transfers the promissory note, then he/she may be subject to a penalty for a transfer of assets for less than fair market value.

(2) If the promissory note is non-negotiable, and the applicant/recipient receives payments on the note that could be used for food or shelter, then the amount of the payment retained in the month following receipt is a resource to the applicant/recipient.

(3) If an applicant/recipient purchases a promissory note, loan or mortgage, the repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it must contain a provision that prohibits cancellation of the balance upon the death of the lender. A promissory note not meeting these requirements shall be treated as a transfer of assets for less than fair market value. If a promissory note does

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

not meet the requirements in (3) above, the value of the note, loan or mortgage is the outstanding balance due on the date of the applicant/recipient's application for medicaid.

L. **Pension funds:** A pension fund, if accessible to the applicant/recipient, is a countable resource. Any fees for withdrawal of the funds are subtracted from the balance and the remainder is a countable resource.

M. **Individual retirement accounts (IRA):** An IRA is a tax-deductible savings account that sets aside money for retirement. Funds in an IRA are counted as an asset in their entirety less the amount of penalty for early withdrawal.

N. **Keogh plan:** A Keogh plan is a retirement plan established by a self-employed individual alone or for the self-employed individual and his or her employees. If the Keogh plan was established for the self-employed individual alone, the funds in the plan are counted as an asset in their entirety less the amount of penalty for early withdrawal. If the Keogh plan was established for employees other than the spouse of the applicant/recipient, the funds do not count as an asset.

O. **Loans:** In some circumstances a loan may be a countable resource.

(1) Negotiable loan. If an applicant/recipient owns a loan agreement or is a lender and the agreement is a negotiable, bona fide loan:

- (a) the outstanding principal balance is a resource of the applicant/recipient;
- (b) the cash provided to the borrower is no longer the lender's resource because the lender cannot access it for his or her own use. The loan agreement replaces the cash as the lender's resource;
- ..... (c) payments that the lender receives from the borrower against the loan principal are conversions of a resource, not income. If retained, the payments are counted as the lender's resource starting in the month following the month of receipt; and
- (d) interest income received by the lender is unearned income.

(2) Non-negotiable loan. If the applicant/recipient owns a loan agreement or is a lender and the loan agreement is not a bona fide loan or is not negotiable:

- (a) the agreement is not a resource of the lender;
- (b) payments against the principal are income to the lender, not conversion of a resource;
- (c) the cash specified in the agreement may be a resource if the lender can access it for his or her own use; and
- (d) interest income received by the lender is unearned income.

(3) Bona fide loan. If the applicant/recipient is the borrower and the agreement is a bona fide loan:

- (a) the loan agreement itself is not a resource for the applicant/recipient; and
- (b) the cash provided by the lender is not income, but is the borrower's resource if retained in the month following the month of receipt.

(4) Not a bona fide loan. If the applicant/recipient is the borrower and the agreement is not a bona fide loan:

- (a) the loan agreement itself is not a resource of the applicant/recipient; and
- (b) the cash provided by the lender is income in the month received and is a resource if retained in the month following the month it was received.

(5) Informal loan. If the agreement is an agreement between individuals who are not in the business of lending money or providing credit, it is an informal loan. An informal loan is bona fide if it meets all of the following criteria:

- (a) the agreement is enforceable under state law;
- (b) the agreement is in effect at the time that the cash is provided to the borrower. Money given to an individual with no obligation to repay cannot become a loan at a later date;
- (c) the obligation to repay the loan must be acknowledged by both the lender and the borrower. When money or property is given and accepted based on any understanding other than it is to be repaid by the receiver, there is no loan;
- (d) the agreement must include a plan or schedule for repayment, and the borrower's express intent to repay by pledging real or personal property or anticipated future income (such as SSI benefits);
- (e) the repayment plan or schedule must be feasible. In determining the plan's feasibility, consider the amount of the loan, the individual's resources and income and the individual's living expenses.
- (f) if the applicant/recipient is the borrower, the loan proceeds are a resource if they are retained in the month following the month of receipt. The resource value is the amount of the proceeds that the applicant/recipient still holds in the month following the month of receipt;

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

(g) if the applicant/recipient is the lender, the agreement is a countable resource starting in the month after the month that the lender provides the proceeds to the borrower; and

(h) the agreement's resource value is the outstanding principal balance unless the lender provides evidence that the loan has a lower value.

**P. Other financial instruments:** Other financial instruments will be evaluated to determine if they are a countable resource.

**Q. Continuing care retirement community, assisted living, life care community or like living arrangement:** The portion of initial fees paid upon signing a contract for housing and care that has a potential to be refunded to the applicant/recipient is countable.

**R. Other countable resources:** Other liquid or non-liquid resources must be considered in the calculation of total countable resources. The following non-liquid resources may be included in the calculation of countable resources if they cannot be excluded pursuant to 8.281.500.13 NMAC:

- (1) burial funds;
- (2) burial spaces;
- (4) life insurance and other insurance products; ~~and~~
- (5) income-producing property; and
- (6) other financial investment products.

[2-1-95, 7-31-97; 8.281.500.12 NMAC – Rn, 8 NMAC 4.ICM.512, 3-1-01; A/E, 2-1-07; A, 8-1-08]

**8.281.500.13 RESOURCE EXCLUSIONS:** Some types of resources can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

**A. Burial fund exclusion:** Up to \$1,500 can be excluded from the countable liquid resources of an applicant/recipient if designated as his/her burial fund. An additional amount of up to \$1,500 can be excluded from countable liquid resources if designated as burial funds for the spouse of the applicant/recipient. The burial fund exclusion is separate from the burial space exclusion.

(1) **Retroactive designation of burial funds:** An applicant/recipient can retroactively designate funds for burial back to the first day of the month in which the applicant/recipient intended the funds to be set aside for burial. The applicant/recipient must sign a statement indicating the month the funds were set aside for burial.

(2) **Limit on exclusion:** An applicant/recipient can designate as much of his/her liquid resources as he/she wishes for burial purposes. However, only one burial fund allowance of up to \$1,500 each for the applicant/recipient and his/her spouse can be excluded from countable resources. A burial fund exclusion does not continue from one period of eligibility to another (i.e., across a period of ineligibility). For each new period of eligibility, any exclusion of burial funds must be developed as for an initial application.

(3) **Removal of designation:** An applicant/recipient cannot "un-designate" burial funds, unless one of the following occurs:

(a) eligibility terminates;

(b) part, or all, of the funds can no longer be excluded because the applicant/ recipient purchased excluded life insurance or an irrevocable burial contract which partially or totally offsets the available burial fund exclusion; or

(c) the applicant/recipient uses the funds or any portion of the funds for another purpose. This action makes the funds countable. Any designated burial funds used for another purpose will be counted as income in the month withdrawn and as a resource thereafter.

(4) **Reduction of burial fund exclusion:** The \$1,500 burial fund exclusion is reduced by the following:

(a) the face value of excluded life insurance policies;

(b) assets held in irrevocable burial trusts; irrevocable means the value paid cannot be returned to the applicant/recipient;

(c) assets that are not burial space items held in irrevocable burial contracts;

(d) assets held in other irrevocable burial arrangements~~[-and]~~ ; and

(e) assets held in an irrevocable trust available to meet burial expenses.

(5) **Interest from burial fund:** Interest derived from a burial fund is not considered a countable resource or income if all the following conditions exist:

- (a) the original amount is excluded;
- (b) the excluded burial fund is not commingled with non-excluded burial funds;

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

(c) the interest earned remains with the excluded burial funds.

(6) **Commingling of burial funds:** Burial funds cannot be commingled with non-burial funds. If only part of the funds in an account are designated for burial, the burial fund exclusion cannot be applied until the funds designated for burial expenses are separated from the non-burial funds. Countable and excluded burial funds can be commingled.

(7) **Life insurance policy designated as burial fund:** An applicant/recipient can designate a life insurance policy as a burial fund at the time of application. The [ISS] ISD worker must first analyze the policy according to 8.281.500.13.H NMAC and following subsections.

(8) **Burial contracts:** If an applicant/recipient has a prepaid burial contract, the [ISS] ISD worker determines whether it is revocable or irrevocable and whether it is paid for. Until all payments are made on a burial contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(a) An applicant/recipient may have a burial contract which is funded by a life insurance policy. The life insurance may be either revocably or irrevocably assigned to a funeral director or mortuary.

(b) A revocable contract exists if the value can be returned to the applicant/recipient. An irrevocable contract exists when the value cannot be returned. If the contract or insurance policy assignment is revocable, the following apply.

(i) If the burial contract is funded by a life insurance policy, the policy is the resource which must be evaluated. The burial contract itself has no value. It exists only to explain the applicant/recipient's burial arrangements.

(ii) No exclusions can be made for burial space items because the applicant/recipient does not have a right to them if the contract is not paid for or the policy is not paid up.

(c) If the assignment is irrevocable, the life insurance or burial contract [~~are not countable resources~~] is not a countable resource, because the applicant/recipient does not own ~~them~~ it.

(i) The burial space exclusions can apply if the applicant/recipient has the right to the burial space items.

(ii) The value of the irrevocable burial arrangement is applied against the \$1,500 burial fund exclusion only if the applicant/ recipient has other liquid resources to designate for burial.

**B. Burial space exclusion:** A burial space or an agreement which represents the purchase of a burial space held for the burial of an applicant/recipient, his/her spouse, or any other member of his/her immediate family, is an excluded resource regardless of value. Interest and accruals on the value of a burial space are excluded from consideration as countable income or resources.

(1) When calculating the value of resources to be deemed to an applicant/recipient from his/her parent(s) or spouse, the value of spaces held by the parent(s)/spouse which are to be used for the burial of the applicant/recipient, or any member of the applicant/recipient's immediate family, including the deemer parent/spouse, must be excluded.

(2) The burial space exclusion is separate from, and in addition to, the burial fund exclusion.

(3) **Burial space definitions:** "Burial space" is defined as a(n) burial plot, gravesite, crypt, mausoleum, casket, urn, niche, or other repository customarily used for the deceased's bodily remains.

(a) A burial space also includes necessary and reasonable improvements or additions, such as vaults, headstones, markers, plaques, burial containers (e.g., caskets), arrangements for the opening and closing of a gravesite, and contracts for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care.

(b) Items that serve the same purpose are excluded once per individual, such as excluding a cemetery lot and a casket, but not a casket and an urn.

(4) **Burial space contract:** An agreement which represents the purchase of a burial space is defined as a contract with a burial provider for a burial space held for the eligible applicant/recipient or a member of his/her immediate family.

(a) Until all payments are made on the contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(b) An eligible applicant/recipient's immediate family includes:

(i) spouse;

(ii) natural or adoptive parents;

(iii) minor or adult children, including adoptive and stepchildren;

(iv) siblings, including adoptive and stepsiblings; and

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

(v) spouse of any of the above relatives.

(c) If a relative's relationship to an applicant/recipient is by marriage only, the relationship ceases to exist upon the dissolution of the marriage.

(5) **Burial space "held" for an applicant/recipient:** A burial space is considered held for an applicant/recipient if:

(a) someone has title to and/or possesses a burial space intended for the use of the applicant/recipient or a member of his/her immediate family; or

(b) someone has a contract with a funeral service company for a specified burial space for the applicant/recipient or a member of his/her immediate family, such as an agreement which represents the individual's current right to the use of the items at the amount shown.

(6) Until the purchase price is paid in full, a burial space is not considered "held for" an individual under an installment sales contract or similar device if:

(a) the individual does not currently own the space;

(b) the individual does not currently have the right to use the space; and

(c) the seller is not currently obligated to provide the space.

C. **Life estate exclusion:** ~~[A life estate gives an applicant/recipient certain rights to real property. These rights determine how the resource is treated in determining eligibility for institutional care medicaid.]~~ The value of a life estate interest in the applicant/recipient's own home is excluded if the applicant/recipient has continuously resided in the home for a period of 12 months or more from the date of the life estate purchase. The value of the remainderman's interest is considered a transfer of resources to be evaluated in accordance with 8.281.500.14 NMAC.

~~(1) **Possession:** An applicant/recipient has the right to live on the real property for the rest of his/her life. If it is his/her principal place of residence (home), the life estate is evaluated in accordance with 8.281.500.13.E NMAC and following subsections.~~

~~(2) **Use and profit:** An applicant/recipient has the right to use and obtain profit from the real property. If it is income producing property such as a rental or farm, the life estate is evaluated as income producing property. See 8.281.500.13.F NMAC and following subsections.~~

~~(3) **Sale of the life estate interest:** An applicant/recipient has the right to sell his/her life estate interest. The value of this interest is less than the fair market value of the property and is similar to a lease because of the time frame involved. The value of the life estate is based on the age and life expectancy of the applicant/recipient.~~

~~(4) **Valuation of life estates:** The "unisex life estate and remainder interest tables" are used to determine the value of a life estate. See 8.200.520.14 NMAC. The value is computed by multiplying the current market value by the percentage reduction on the unisex table under the column for the applicant/recipient's age. If an applicant/recipient feels the value calculated based on this method is overstated, he/she can obtain a valuation of the life estate in the area for use as documentation of lesser value.~~

~~(5) **Legal documentation establishing life estate:** The legal document establishing a life estate may affect one or more of the rights discussed above. Joint ownership of a life estate may require the co-owner's approval for sale. See 8.281.500.12 NMAC and following subsections for criteria to use in evaluating the countability of the resource.]~~

D. **Settlement exclusions:** Agent orange settlement payments made to veterans or their survivors are excluded from consideration as resources.

(1) Payments made under the radiation exposure compensation act are excluded from consideration as resources.

(2) Payments received from a state-administered fund established to aid victims of crime are excluded for nine (9) months beginning the month after the month of receipt.

(3) Payments under the foundation called 'remembrance, responsibility and the future', are excluded from consideration as resources.

E. **Exclusions for real property and home:** A home is any shelter used by an applicant/recipient ~~[and/or]~~ or his/her spouse as the principal place of residence. To be excluded, a home must have an equity value of less than \$500,000. An applicant/recipient with home equity of \$500,000 or more shall be placed on restricted coverage for as long as they own the home. The home includes any buildings and contiguous land used in the operation of the home. A home is not considered a countable resource while in use by the applicant/recipient as his/her principal place of residence. The home continues to be excluded during periods when the applicant/recipient



**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

resides in an acute care or long term care medical facility if the applicant/recipient or his/her representative states that the applicant/recipient intends to return to the home.

(1) **Exclusion of home:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home, but the home is the residence of the applicant/recipient's spouse or dependent ~~[relative]~~ minor child or adult disabled child, the home is an excluded resource. ~~[For the home to be excluded as the residence of a dependent relative, the basis and consistent pattern of dependency, such as financial or medical, and the relationship between the individuals must be documented.]~~

~~(2) **The home as a countable resource:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home and it is not the residence of the applicant/recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant/recipient or his/her representative puts the home up for sale and it is not the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.~~

~~(3) **Definitions:** "Relative" is defined as son/daughter; grandson/granddaughter; step son/step daughter; in laws; mother/father; step mother/step father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step brother/step sister; and niece/nephew.~~

~~(4) **Value of property:** The ISS determines the fair market value of the home by obtaining the appraised value from a real estate agent, a title company, or mortgage insurance company. An approximation of the fair market value using a calculation based on the tax assessed value may be appropriate in some areas of the state. The ISS must develop several reliable sources, such as local newspaper ads or "multiple listing" publications in determining the fair market value of the home.]~~

F. **Income-producing property exclusion:** To be excluded from consideration as a countable resource, income-producing property that does not qualify as a bona fide business (e.g., rental property or mineral rights) must have an equity value of no more than \$6,000 and an annual rate of return of at least six percent ~~[(6%)]~~ of the equity value. See 8.281.500.13.F.(1)(b) NMAC below if the equity value exceeds \$6,000 but the rate of return is at least six percent ~~[(6%)]~~ annually. The \$6,000 and six percent ~~[(6%)]~~ limitation does not apply to property used in a trade or bona fide business, or to property used by an applicant/recipient as an employee which is essential to the applicant/recipient's self-support (e.g., tools used in employment as a mechanic, property owned or being purchased in conjunction with operating a business). Existence of a bona fide business can be established by documentation such as business tax returns.

(1) **Determination of rate of return:** To calculate the annual rate of return for income producing property when the \$6,000 and six percent ~~[(6%)]~~ limits apply, the previous year's income tax statement, or at least three ~~[(3)]~~ months earnings is used to project the rate of return for the year.

(a) If the income is sporadic or has decreased from that needed to maintain a six percent ~~[(6%)]~~ rate of return for the coming year, the property is reevaluated at appropriate intervals.

(b) If the annual rate of return is at least six percent ~~[(6%)]~~ of the equity value but the equity value exceeds \$6,000, only the excess equity is a countable resource.

(c) If the annual rate of return is less than six percent ~~[(6%)]~~ but the usual rate of return is more, the property is excluded as a countable resource if all the following conditions are met:

(i) unforeseeable circumstances, such as a fire, cause a temporary reduction in the rate of return;

(ii) the previous year's rate of return, as documented by the income tax statement or several months receipts, is at least six percent ~~[(6%)]~~; and

(iii) the property is expected to produce a rate of return of at least six percent ~~[(6%)]~~ within ~~[eighteen (18)]~~ 18 months of the end of the year in which the adverse circumstances occurred; the ~~[ISS]~~ ISD worker records in the case narrative the plan of action which is expected to increase the rate of return.

(d) The ~~[ISS]~~ ISD worker notifies the applicant/recipient in writing that the property is excluded based on its expected increase in return and that it will be reevaluated at the end of the ~~[eighteen (18)]~~ 18 month grace period. When this period ends, the property must be producing an annual rate of at least six percent ~~[(6%)]~~ to continue to be excluded as a countable resource.

(2) **Types of income-producing property:** Income-producing property includes:

(a) a business, such as a farm or store, including necessary capital and operating assets such as land and buildings, inventory or livestock; the property must be in current use or have been used with a reasonable expectation of resumed use within a year of its most recent use; the ~~[ISS]~~ ISD worker must account for the cash actually required to operate the business; liquid business assets of any amount are excluded;

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

(b) non-business property includes rental property, leased property, land leased for its mineral rights, and property producing items for home consumption; property which produces items solely for home use is assumed to be producing an annual rate of return of at least six percent [~~6%~~];

(c) employment-related property, such as tools or equipment; the applicant/recipient must provide a statement from his/her employer to establish that tools or equipment are required for continued employment when the applicant/recipient leaves the institution; if the applicant/recipient is self-employed, only those tools normally required to perform the job adequately are excluded; the applicant/recipient must obtain a statement from someone in the same line of self-employment to establish what is excludable.

G. **Vehicle exclusion:** The term "vehicle" includes any mode of transportation such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing or as an antique, are not included in this definition. Recreational vehicles and boats are classified as personal effects and are evaluated under the household goods and personal effects exclusion. One vehicle is totally excluded if regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be non-liquid resources. Equity in the other automobiles is counted as a resource.

H. **Life insurance exclusion:** The value of life insurance policies is not considered a countable resource if the total cumulative face value of all policies owned by the applicant/recipient does not exceed \$1,500. A policy is considered to be "owned" by the applicant/recipient if the applicant/recipient is the only one who can surrender the policy for cash.

(1) **Consideration of burial insurance and term insurance:** Burial insurance and term insurance are not considered when computing the cumulative face value because this insurance is redeemable only upon death.

(2) **Calculation when value exceeds limit:** If the total cumulative face value of all countable life insurance policies owned by the applicant/recipient exceeds \$1,500, the ~~[ISS]~~ ISD worker:

(a) verifies the total cash surrender value of all policies and considers the total amount a countable resource;

(b) informs the applicant/recipient that the insurance policies can be converted to term insurance or ordinary life insurance of lower face value at his/her option, if the cash surrender value, alone or in combination with other countable resources, exceeds the resource standard.

I. **Produce for home consumption exclusion:** The value of produce for home consumption is totally excluded.

J. **Exclusion of settlement payments from the department of housing and urban development:** Payments from the department of housing and urban development (HUD) as defined in Underwood v. Harris are excluded as income and resources. These one-time payments were made in the spring of 1980 to certain eligible tenants of subsidized housing [Section 236 of the National Housing Act].

(1) **Segregation of payment:** To be excluded as a resource, payments retained by an applicant/recipient must be kept separate. These payments must not be combined with any other countable resources.

(2) **Income from segregated funds:** Interest or dividend income received from segregated payment funds is not excluded from income, or, if retained, is not an excluded resource. This interest or dividend income must be kept separate from excludable payment funds.

K. **Lump sum payments exclusion:** SSI and social security lump sum payments for retroactive periods are excluded as countable resources for ~~six (6)~~ nine months after the month in which they are received. See 8.281.500.15.B.(4) NMAC for policy regarding SSI and social security lump sums which are placed into the ownership of a medicaid qualifying trust. Social security lump sum payments are considered infrequent income. See ~~[8.281.500.19.C.(1) NMAC]~~ 8.281.500.19. C.(2)(b)(vii) NMAC and following subsections.

L. **Home replacement exclusion:** ~~[The value of a promissory note or similar installment sales contract which constitutes proceeds from the sale of an excluded home is excluded from countable resources if all of the following conditions are met:]~~ The proceeds from a reverse mortgage from the sale of an excluded home is excluded. Additionally, the value of a promissory note or similar installment sales contract which constitutes proceeds from the sale of an excluded home is excluded from countable resources if all of the following conditions are met:

(1) the note results from the sale of the applicant/recipient's home as described in 8.281.500.13.E NMAC and following subsections;

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

(2) within ~~three (3)~~ three months of receipt (execution) of the note, the applicant/recipient purchases a replacement home which meets the definition of a home in 8.281.500.13.E NMAC and following subsections;

(3) all note-generated proceeds are reinvested in the replacement home within ~~three (3)~~ three months of receipt.

(4) **Additional exclusions:** In addition to excluding the value of the note itself, the down payment received from the sale of the former home, as well as that portion of any installment amount constituting payment on the principal are also excluded from countable resources.

(5) **Failure to purchase another excluded home timely:** If the applicant/recipient does not purchase another home which can be excluded under the provisions of 8.281.500.13.E NMAC and following subsections within ~~three (3)~~ three months, the value of the promissory note or similar sales contract received from the sale of an excluded home becomes a countable resource as of the first moment of the first day of the month following the month the note is executed. If the applicant/recipient purchases a replacement home after the expiration of the ~~three (3)~~ three-month period, the value of the promissory note or similar installment sales contract becomes an excluded resource effective the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested.

(6) **Failure to reinvest proceeds timely:** If the proceeds from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully within ~~three (3)~~ three months of receipt in a replacement home, the following resources become countable as of the first moment of the first day of the month following receipt of the payment:

(a) the fair market value of the note; and  
(b) the portion of the proceeds, retained by the individual, which was not timely reinvested;  
(c) the fair market value of the note remains a countable resource until the first moment of the first day of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home; failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract; however, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained.

(7) **Interest payments:** If interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments are considered countable unearned income in accordance with 8.281.500.20.A.(3) NMAC.

(8) **When the home replacement exclusion does not apply:** If the home replacement exclusion does not apply, the market value of a promissory note or sales contract as well as the portion of the payment received on the principal are considered countable resources.

~~**M. — Provisions when one member of a married couple began institutionalization on or after September 30, 1989:** The applicant/recipient must meet all of the following hardship criteria.~~

- ~~(1) The asset must be a non-liquid asset with a fair market value of \$30,000 or less.~~  
~~(2) The applicant/recipient or representative must demonstrate that a bona fide effort to sell or liquidate the asset was unsuccessful. Verification usually involves proof that the property was advertised for a period of at least six (6) months at a price considered reasonable by a source knowledgeable in real estate in that area of the state and that any reasonable offer to purchase the property was not refused.~~  
~~(3) The applicant/recipient or representative must continue to make a bona fide effort to sell the property for as long as eligibility continues.~~  
~~(a) The ISS must verify that the applicant/recipient is unable to obtain admission to a state-run facility.~~  
~~(b) The applicant/recipient or representative has thirty (30) days from the date the ISS requests information to provide verification. Good cause for not reporting in a timely manner may apply. See 8.281.500.14.C.(2)(a) NMAC for the definition of good cause. The ISS has ten (10) days from the date the applicant/recipient's documentation is received to develop a recommendation. The recommendation of the ISS is submitted to the supervisor and the county director for review. The determination as to the application of these provisions is made jointly in writing by the ISS, the ISS supervisor, and the county director and is filed in the case record.~~  
~~(c) If eligibility is approved, the ISS must follow up at least once every six (6) months to verify that a bona fide effort to sell the asset continues.~~

~~**N.]M. Household goods and personal effects exclusion:** Household goods and personal effects are excluded if they meet one of the following four criteria. They are:~~

- ~~(1) items of personal property, found in or near the home, which are used on a regular basis; items~~

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

may include but are not limited to: furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting;

(2) items needed by the householder for maintenance, use and occupancy of the premises as a home; items may include but are not limited to: cooking and eating utensils, dishes, appliances, tools, and furniture;

(3) items of personal property ordinarily worn or carried by the individual; items may include but are not limited to: clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;

(4) items otherwise having an intimate relation to the individual; items may include but are not limited to: prosthetic devices, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual; or items required because of an individual's impairment. [2-1-95; 7-31-97; 8.281.500.13 NMAC – Rn, 8 NMAC 4.ICM.513, 3-1-01; A, 5-1-01; A, 1-1-06; A, 8-1-08]

**8.281.500.14 ASSET TRANSFERS:** The [ISS] ISD worker must determine whether an applicant/recipient or his/her spouse transferred assets within a specified period of time (look back period) before applying for institutional care medicaid or at any time after approval of the application. Then the ISD worker must determine if the applicant/recipient or his/her spouse received fair market value for the asset. If the applicant/recipient or his/her spouse did not receive fair market value for the asset, then the applicant/recipient may be subject to a penalty. In the case of an asset held by the applicant/recipient in common with another individual or individuals in a joint tenancy, tenancy in common, or similar arrangement including life estate/remainderman relation, the asset (or the affected portion of such asset) is considered to be transferred by the applicant/recipient when any action is taken, either by the applicant/recipient or by any other individual, [with the applicant/recipient's consent] acting on behalf of the applicant/recipient (including but not limited to a spouse, representative payee, trustee, guardian, conservator, individuals acting pursuant to a power of attorney), that reduces or eliminates the applicant/recipient's ownership or control of such asset. Any asset transferred to a community spouse in excess of the community spouse resource allowance (CSRA) is considered to be totally available to the institutionalized spouse and must be spent down before eligibility can be established.

~~A. **Definitions:** "Assets" include all income and resources of an applicant/recipient and his/her spouse, including any income or resources which the applicant/recipient or his/her spouse is entitled to receive, but does not receive because of action taken by one of the following:~~

~~\_\_\_\_\_ (1) the applicant/recipient or his/her spouse;~~

~~\_\_\_\_\_ (2) any individual, including a court or administrative body, with legal authority to act in place of or on behalf of the applicant/recipient or his/her spouse; or~~

~~\_\_\_\_\_ (3) any individual, including any court or administrative body, acting at the direction of, or upon the request of, the applicant/recipient or his/her spouse.~~

~~B. **Lookback period:** Effective October 1, 1994, the ISS must determine whether any transfer of assets was made by the applicant/recipient or his/her spouse within thirty six (36) months prior to the application as well as at any time subsequent to the approval of an application for institutional care medicaid.]~~

~~A. **Lookback period:** Any transfer of assets made prior to February 8, 2006 is subject to a 36-month look back period prior to the date of application or at any time subsequent to the approval of an application for institutional care medicaid. Transfers made on or after February 8, 2006 are subject to a 60-month look back period.~~

~~(1) The lookback period is ~~sixty (60)~~ 60 months if the transfer occurred as the result of ~~[the creation of a trust] payments from a trust or portions of a trust that are treated as assets disposed of by the applicant/recipient.~~~~

~~(2) The lookback period starts on the date the applicant ~~[is institutionalized and applies for institutional care medicaid]~~ applies for institutional care medicaid and is in an institution.~~

~~[C.] B. **Transfer of assets ~~[with fair return] for less than fair market value:~~** If a transfer of assets occurred within the applicable lookback period, or at any time after approval of the application, the ISS must determine whether ~~[a fair return was received for the transferred asset(s)] the applicant/recipient or his/her spouse received fair market value for the transferred asset(s).~~~~

(1) **Documentation requirement:** The applicant/recipient or his/her spouse must provide documentation of the transfer, the fair market value of the asset(s) transferred, the circumstances surrounding the transfer and the amount, if any, received as compensation for the transferred asset.

(2) If the applicant/recipient fails to provide this information without good cause within ~~[thirty (30)]~~ 30 days from the date requested by the [ISS] ISD worker, the [ISS] ISD worker denies the application or closes the case, as appropriate.

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

(a) Good cause is considered to exist if the applicant/recipient or representative can show that he/she was effectively precluded from timely reporting because of legal, financial, or other reasons, or because of the existence of a health related problem including death of a family member within the specific degree of relationship (see old AFDC program definition 8.202.400.13 C. NMAC) during the period of time in which the applicant/recipient or representative has to report the required information. The health or other problem must have been of such severity and duration as to have effectively precluded the applicant/recipient or representative from reporting in a timely manner.

(b) To document the good cause claim, the applicant/recipient or representative must provide proof of the existence of the health or other problem and must explain the circumstances which precluded provision of the required information.

(c) The ~~[ISS]~~ ISD worker makes the determination of good cause subject to review and approval by the County Director or designee.

(3) **Restricted coverage:** If a transfer of assets occurred within the applicable lookback period, or at any time subsequent to approval for institutional care medicaid, for which the applicant/recipient or his/her spouse did not receive ~~[a fair return based on the market value of the transferred asset]~~ fair market value, the ~~[ISS]~~ ISD worker determines if a penalty period must be calculated. The penalty for transfers of assets ~~[without fair return]~~ for less than fair market value in the institutional care medicaid categories is restricted coverage. "Restricted coverage" means that the applicant/recipient is eligible for all medicaid-covered services except services furnished in a nursing facility or services considered to be long-term care services.

(4) **Calculating restricted coverage when the transferred asset is income:** If income has been transferred as a lump sum, the period of restricted coverage is calculated based on the lump sum value. For transfers of the right to an income stream, the period of restricted coverage is calculated using the actuarial value of all payments transferred. See 8.200.520.19 NMAC, LIFE EXPECTANCY TABLES.

~~[D] C. Transfer [policies] rules based on date of transfer: [Three (3) sets of policies govern the calculation of penalty periods if a transfer of assets without fair return]~~ Two sets of rules govern the calculation of penalty periods if a transfer of assets for less than fair market value has occurred. The date of transfer and approval date for institutional care medicaid governs which set of ~~[policies]~~ rules is used to calculate the penalty period. ~~[The lookback period for all non trust asset transfers is thirty six (36) months. The lookback period is sixty (60) months in certain situations involving trusts.~~

~~(1) Transfers which occurred from September 1, 1981 through June 30, 1988: If a transfer without fair return was made during this period, the ISS first considers whether the uncompensated value exceeded the resource standard. If so, the ISS evaluates the purpose of the transfer. If the uncompensated value did not exceed the resource standard, there is no need to consider the purpose of the transfer.~~

~~(2) The resources of an applicant/recipient or couple which were transferred (given away, sold, or otherwise converted) within twenty four (24) months preceding the date of application or any time thereafter, are included as countable resources if they meet either of the following standards:~~

~~(a) resources were transferred at less than fair market value and the uncompensated value alone or in combination with other countable resources exceeds the resource standard.~~

~~(i) Uncompensated value is the difference between the amount received by the individual (couple) and the fair market value of the resource, minus a disregard of \$5,000 for an otherwise eligible individual or \$7,500 for an otherwise eligible couple.~~

~~(ii) If the resource was transferred on or after July 1, 1987 from one spouse to another, the disregard is \$30,000.~~

~~(b) resources were transferred for the purpose of establishing medicaid eligibility, which is assumed to be the case unless the applicant/recipient or couple can show clear and convincing evidence of both the following:~~

~~(i) the transfer was exclusively for some other purpose; and~~

~~(ii) at the time of transfer, the applicant/recipient had a reasonable plan for future support and maintenance using other resources of his/her own.~~

~~(c) if the resource could have been excluded at the time of transfer, it is not considered to be a transfer affecting eligibility. For example, if the home is transferred while it is the principal place of residence or while a spouse or dependent relative is living there, it is not a countable resource and therefore is not a transfer affecting eligibility.~~

~~(d) if the transferred resource is included as a countable resource, the applicant/recipient or~~

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

couple is found ineligible for a period of twenty four (24) months from the date of transfer. If the countable value of the transferred resource exceeds \$12,000, the applicant/recipient or couple is ineligible for an additional twelve (12) months for each \$6,000 of countable value. The amount in excess of \$12,000 is prorated at the rate of \$500 per month to determine the period of ineligibility.

~~(e) the effective dates of this provision are outside the thirty six (36) month lookback period for current initial applications. If, however, during this period an applicant/recipient or couple transferred resources without receiving a fair return, applied for institutional care medicaid, and was assessed a penalty of ineligibility which has not yet expired, this section applies and the applicant/recipient or couple is totally ineligible for institutional care medicaid until the penalty period expires.~~

~~(3) **Transfers which occurred between July 1, 1988 and August 10, 1993:** Otherwise eligible institutionalized recipients who transferred assets without fair return during this period were no longer totally ineligible for medicaid, but only ineligible for coverage of nursing facility services, i.e. restricted coverage [Medicare Catastrophic Coverage Act of 1988 (MCCA)]. The MCCA required a lookback period of thirty (30) months before the date of application and removed penalties for the transfer of assets in the supplemental security income (SSI) program effective July 1, 1988. Transfers of assets for less than fair market value by an SSI recipient are considered in determining medicaid eligibility if and when the applicant/recipient is institutionalized. The social security administration (SSA) explains these provisions to all applicants/recipients at each certification and provides transfer information, if any, to the state. The MCCA was subsequently amended to penalize transfers of assets without fair return made by a community spouse to another individual. Prior to the amendment, transfers without fair return by a community spouse to another individual did not affect the eligibility of the institutionalized spouse. Effective October 1, 1990, transfers without fair return made by the community spouse became subject to the same treatment as transfers made by the institutionalized spouse.~~

~~(a) Transfers of assets without fair return made by an institutionalized individual on or after July 1, 1988 and transfers without fair return made by the community spouse of an institutionalized individual on or after October 1, 1990 could result in a period of restricted coverage for the institutionalized individual.~~

~~(b) The period of restricted coverage begins the month the resources were transferred and equals the lesser of the following:~~

~~(i) thirty (30) months; or~~

~~(ii) the total uncompensated value of the transferred assets divided by the average cost to a private patient of nursing facility services in the state at the time of application. Drop any fraction of a month remaining once the calculation is completed.~~

~~(c) If the community spouse subsequently becomes eligible for institutional care medicaid, any remaining months in the restricted coverage period must be divided equally between the spouses.~~

~~(d) Periods of restricted coverage for multiple transfers occurring during this period are concurrent.~~

~~(4) (1) **For transfers made on or after August 11, 1993:** Periods of restricted coverage are calculated as follows [Omnibus Budget Reconciliation Act of 1993]:~~

~~(a) [the length of the period of restricted coverage is no longer limited to a maximum of thirty (30) months. The period of restricted coverage begins the month the resources were transferred.] The period of restricted coverage begins the month the resources were transferred. The total uncompensated value of the transferred assets divided by the average cost to a private patient of nursing facility services in the state at the time of application is [See 8.281.500.14.D.(3)(b)(ii) NMAC for] the methodology used to calculate a period of restricted coverage.~~

~~(b) transfers [without fair return] for less than fair market value made by institutionalized SSI recipients or community spouses of institutionalized individuals may subject the institutionalized individual to a period of restricted coverage.~~

~~(c) sanction periods are now consecutive rather than concurrent. If multiple transfers occur in different months, the periods of restricted coverage begin with the month of the initial transfer and run consecutively:~~

~~(i) If an applicant/recipient transfers an asset without receiving a fair return in February causing four (4) months of restricted coverage (i.e., February through May) and transfers another asset in April causing three (3) months of restricted coverage, the second period of restricted coverage begins in June and lasts through August.]~~

~~(ii) Before OBRA 93, the second sanction period would have begun in April (overlapping the first sanction in April and May) and ended in June.~~

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

~~(d) — interim transfers made between August 11, 1993 and September 30, 1993 are considered to have had the penalty applied for the appropriate month(s), although restricted coverage provisions do not actually begin until October 1, 1993; and~~

~~\_\_\_\_\_ (e)]~~

(c) penalty periods are now consecutive rather than concurrent. If multiple transfers occur in different months, the periods of restricted coverage begin with the month of the initial transfer and run consecutively; for example, if an applicant/recipient transfers an asset for less than fair market value in February causing four months of restricted coverage (i.e., February through May) and transfers another asset in April causing three months of restricted coverage, the second period of restricted coverage begins in June and lasts through August; and.

(d) if an institutionalized individual with a community spouse is placed on restricted coverage as the result of a transfer of assets [without fair return] for less than fair market value and the community spouse subsequently becomes eligible for institutional care medicaid, any remaining months in the restricted coverage period must be divided equally between the spouses.

(2) **For transfers made on or after February 08, 2006:** Pursuant to the Deficit Reduction Act of 2005, otherwise eligible institutionalized recipients who transfer assets for less than fair market value after this date are penalized as follows:

(a) the period of restricted coverage begins the first day of the month in which the resources were transferred, or the date on which the individual becomes eligible for medicaid, and would otherwise be receiving institutional level care but for the application of the penalty period, whichever is later, and does not occur during any other period of ineligibility as a result of an asset transfer. See 8.281.500.14 (B) (3) NMAC for the methodology used to calculate a period of restricted coverage;

(b) once eligibility has been determined and a penalty period has begun to run, it continues until expiration, whether or not there is a break in the institutionalized recipient's eligibility;

(c) the beginning date of restricted coverage is the first day of the month in which the resources were transferred provided the applicant/recipient is institutionalized and eligible for medicaid. For current recipients who fail to report a transfer, the recipients will continue to receive benefits until the adverse action notice date, but the state may seek to recover any medicaid costs paid for long term care services during what should have been a period of restricted coverage. Federal law does not provide a basis to impose a transfer penalty based on date of discovery;

(d) for non-institutionalized individuals, the date restricted coverage begins is the month in which the individual becomes institutionalized;

(e) transfers for less than fair market value made by institutionalized SSI recipients or community spouses of institutionalized individuals may subject the institutionalized individual to a period of restricted coverage; and

(f) multiple transfers occurring in different months are added together and calculated as a single period of ineligibility, that begins on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.

D. **Non-excludable transfers:** Certain financial instruments must be evaluated before they can be considered a transfer of assets.

(1.) **Annuities:** Annuities belonging to the applicant/recipient or to the spouse of the applicant/recipient must be declared. Annuities must be actuarially sound with no deferral and no balloon payments. Annuities purchased or issued after February 8, 2006 must meet the following additional requirements for exclusion as a transfer of assets:

(a) the state is named as the remainder beneficiary in the first position for at least the total amount of medicaid expenditures paid on behalf of the institutionalized individual. The state may be named the remainder beneficiary in the second position if there is a community spouse or a minor or a disabled child and is named in the first position if the community spouse or representative of the child disposes of any such remainder for less than fair market value.

(b) when medicaid is a beneficiary of an annuity, issuers of annuities are required to notify medicaid of any changes in the disbursement of income or principal from the annuity as well as any changes to the state's position as remainder beneficiary; and

(c) it is non-assignable and irrevocable.

(2.) **Life estates:** If an applicant/recipient purchases a life estate in another individual's home, the

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

applicant/recipient must live in that home for a period of at least twelve months after the date of purchase or the transaction will be treated as a transfer of assets for less than fair market value.

(3.) **Promissory notes:** If an applicant/recipient uses funds to purchase a promissory note, the repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it must contain a provision that prohibits cancellation of the balance upon the death of the lender. A promissory note not meeting these requirements shall be treated as a transfer of assets for less than fair market value.

E. **Excludable transfers:** If certain conditions are met, an applicant/recipient is not placed on restricted coverage for transferring assets ~~[without fair return]~~ for less than fair market value.

(1) **Transferred asset was home:** The asset transferred was a home and title to the home was transferred to:

(a) the spouse of the applicant/recipient;  
(b) the son/daughter of the applicant/recipient who is under [twenty one (21)] 21 years of age or who meets the social security administration's definition of disability or blindness. If the child is receiving benefits based on disability or blindness from a program other than social security or SSI, or is not receiving benefits based on disability or blindness from any program, the [ISS] ISD worker must request a determination of disability or blindness from disability determination services;

(c) sibling of the applicant/recipient who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the applicant/recipient was institutionalized; or

(d) son/daughter of the applicant/recipient who was residing in the home for a period of at least [two (2)] two years immediately before the applicant/recipient was institutionalized. For this exclusion to apply, the [ISS] ISD worker must determine that the son/daughter provided care to the applicant/recipient which permitted the applicant/recipient to reside at home rather than in a medical facility or nursing home.

(2) **Other asset transfers:** Sufficient information must be given to the [ISS] ISD worker to establish that either:

(a) the applicant/recipient intended to dispose of the asset at fair market value; or  
(b) at the time of the transfer the applicant/recipient had no expectation of applying for medicaid and the resources were transferred exclusively for a purpose other than to qualify for medicaid as demonstrated [with] by a preponderance of evidence. Unless these conditions are met, the transfer is presumed to have been for the purpose of qualifying for medicaid; or

(c) the state determines that the denial of eligibility would work an undue hardship. [In order for undue hardship to exist, the following criteria must be met:

~~(i) the transfer was made to someone other than a family member. "family member" includes son, daughter, grandson, granddaughter, step-son, step-daughter, in laws, mother, father, step mother, step-father, half brother, half sister, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, step-sister, step-brother.~~

~~(ii) the applicant (or representative including the resident nursing facility) can present convincing evidence that every effort was made to recover the transferred asset and;~~

~~(iii) it is verified that the applicant/recipient is unable to obtain care in any long term care facility in the state without medicaid coverage, including state run facilities (meadows and ponderosa in Las Vegas and Fort Bayard) and, where applicable, the veterans center in Truth or Consequences.~~

~~(d) the applicant is required to verify only that he/she cannot obtain admission to the state run facilities.~~

~~(e) the ISS must submit documentation regarding the circumstances of the transfer to the supervisor and the county director for review. The determination of the excludability of the transfer based on (a), (b) or (c) above is made jointly in writing by the ISS, the ISS supervisor and the county director and is filed in the case record.]~~

(3) **Asset transferred to or for the sole benefit of the community spouse:** No transfer penalty is assessed when assets are transferred from one spouse to another (e.g., assets are transferred from an institutionalized spouse to a community spouse). Any asset transferred to a community spouse or to another individual for the sole benefit of the community spouse in excess of the community spouse resource allowance (CSRA) is considered to be totally available to the institutionalized spouse and must be spent down before eligibility can be established. No transfer penalty is assessed when assets are transferred to another for the sole benefit of the community spouse if all of the conditions listed in (a) through (c) below are met. ~~[No transfer penalty is assessed when assets are transferred~~



**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

from the community spouse to another individual for the sole benefit of the community spouse if all of the conditions listed in (a) through (c) below are met.]

(a) A transfer is considered to be for the sole benefit of the community spouse if it is arranged in such a way that no individual or entity except the community spouse can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, or transfer instrument, that provides for funds or property to pass to a beneficiary who is not the community spouse is not considered to be established for the sole benefit of the community spouse. For a transfer to be considered to be for the sole benefit of the community spouse, the instrument or document must provide for the spending of the funds involved for the benefit of the community spouse on a basis that is actuarially sound based on the life expectancy of the community spouse. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the community spouse, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the community spouse since there is no way to establish, without a document, that only the community spouse will benefit from the transfer.

(4) **Asset transfers to or for the sole benefit of a blind or disabled child of the institutionalized individual:** No transfer penalty is assessed when assets are transferred to a blind or disabled child of the institutionalized individual, or to a trust established solely for the benefit of a blind or disabled child of the institutionalized individual. For this exemption to apply, the child must meet the social security administration's definition of blindness or disability. See 8.281.500.15 NMAC and following subsections for [policy] rules regarding trusts. The transfer must meet all of the conditions listed in (a) through (c) below to be excluded in the eligibility determination process.

(a) A transfer to such a blind or disabled child is considered to be for the sole benefit of that child if the transfer is arranged in such a way that no individual or entity, except the blind or disabled child, can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, or transfer instrument, that provides for funds or property to pass to a beneficiary who is not the blind or disabled child of the institutionalized individual is not considered to be established for the sole benefit of the blind or disabled child. For a transfer or trust to be considered to be for the sole benefit of a blind or disabled child, the instrument or document must provide for the spending of the funds involved for the benefit of the blind or disabled child on a basis that is actuarially sound based on the life expectancy of the child. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the blind or disabled child of the institutionalized individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the blind or disabled child since there is no way to establish, without a document, that only the blind or disabled child will benefit from the transfer. See 8.281.500.15. NMAC and following subsections for policy regarding trusts.

(5) **Asset transfers to a trust for the sole benefit of a disabled individual under age 65:** No transfer penalty is assessed when assets are transferred to a trust established for the sole benefit of an individual under age [sixty five (65)] 65 who meets the social security administration's definition of disability. See 8.281.500.15 NMAC and following subsections for policy regarding trusts. The transfer must meet all of the conditions listed in (a) through (c) below to be excluded in the eligibility determination process.

(a) A transfer is considered to be for the sole benefit of a disabled individual under age 65 as described above if the transfer is arranged in such a way that no individual or entity except the disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not a disabled individual under age 65 as described above, is not considered to be established for the sole benefit of the disabled individual. For a transfer or trust to be considered to be for the sole benefit of the disabled individual, the instrument or document must provide for the spending of the funds involved for the benefit of the disabled individual on a basis that is actuarially sound based on the life expectancy of the disabled individual.

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the disabled individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the disabled individual since there is no way to establish, without a document, that only the disabled individual will benefit from the transfer. See 8.281.500.15 NMAC and following subsections for policy regarding trusts.

F. **Re-establishing eligibility:** If an asset is transferred [~~without fair return~~] for less than fair market value and the applicant/recipient is placed on restricted coverage, he/she has options to re-establish full medicaid coverage.

(1) **Reimbursement by transferee:** The individual to whom the asset was transferred can reimburse the applicant/recipient for the asset at fair market value or liquidate/sell the asset and spend an amount equal to the uncompensated fair market value on the applicant/recipient's care or other exempt assets as listed in 8.281.500.13 NMAC and following subsections.

(2) **Return asset to applicant:** The asset can be transferred back to the applicant/recipient, liquidated, or sold and then spent down to the resource limit on the applicant/recipient's care or other exempt assets as listed in 8.281.500.13 NMAC and following subsections.

(3) If the transferred asset is restored to an applicant/recipient, he/she may become totally ineligible for medicaid due to excess resources. The ~~[ISS]~~ ISD worker must verify that the applicant/recipient's countable assets do not exceed the standard for institutional care medicaid.

[2-1-95, 7-31-97; 8.281.500.14 NMAC – Rn, 8 NMAC 4.ICM.515, 3-1-01; A, 8-1-08]

**8.281.500.15 TRUSTS:** A trust is a legal device in which property or other assets are held by one or more individuals for the benefit of others. The one who holds the assets is called the trustee. The trustee usually has legal title to the assets held in the trust and is considered the owner of the trust assets in most dealings with third parties. The individual for whose benefit the assets are held by the trustee is called the beneficiary. A trust is usually created by a transfer of assets to the trustee from the owner, who is referred to as the settlor, trustor, or grantor. The transfer may be made while the settlor is alive or it may be made by will. The transfer of assets into a trust divests the original owner of legal title or restricts access to those assets.

A. **Definitions applicable to trust provisions:**

(1) "Assets" includes all income and resources of the applicant/recipient and his/her spouse, including any income or resources which the applicant/recipient or his/her spouse is entitled to but does not receive because of action by:

(a) applicant/recipient or his/her spouse;

(b) any individual, including a court or administrative body, with legal authority to act in place of or on behalf of the applicant/recipient or his/her spouse; or

(c) any individual, including any court or administrative body, acting at the direction or upon the request of the applicant/recipient or his/her spouse.

(2) "Institutionalized individual" is an individual who is a resident in a nursing facility or who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility.

(3) "Revocable trust" is created when the grantor reserves the right to cancel any provision of the trust.

(4) "Irrevocable trust" is created when the grantor does not reserve the right to cancel any provision of the trust.

B. **Medicaid qualifying trusts (MQTs):** This policy applies to trusts created prior to August 11, 1993. A "medicaid qualifying trust" (MQT) is a trust or similar legal device established, other than by will, by an applicant/recipient or his/her spouse, under which the applicant/recipient may be the beneficiary of all or part of the payments from the trust. The distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the applicant/recipient. When the use of an attorney is solicited to establish a trust, the beneficiary of that trust is not exempt from the requirements of MQT provisions. Legal instruments such as trusts are almost always drafted by an attorney. It is the grantor him/herself who actually

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

establishes or creates the trust when he/she signs or executes it.

(1) **Amount deemed available from an MQT:** The amount from an MQT that is deemed available to an applicant/recipient of institutional care medicaid is the maximum amount that could be distributed to the applicant/recipient or for the care of the applicant/recipient, regardless of restrictions imposed by the trust on the allowable use of the funds. This provision applies regardless of whether the MQT was set up for the purpose of qualifying for medicaid or whether the trust is irrevocable.

(2) **Revocable trusts:** Revocable trusts that limit access to the assets held in trust must be dissolved and the assets spent down before eligibility can be established. If the [HSS] ISD worker determines that all or part of the assets held in a trust are not accessible or available to the applicant/recipient, or the trustees have limited discretion over distribution of the assets held in trust, transfer provisions must be applied. Under transfer of resource policy, an applicant/recipient who transfers resources without fair return may incur a penalty for a specified period of time. See 8.281.500.14. NMAC and following subsections.

(3) **Beneficiary of trust lives in an ICF-MR:** If the beneficiary of a trust is an applicant/recipient who is mentally retarded and resides in an intermediate care facility for the mentally retarded (ICF-MR), that applicant/recipient's trust is not considered an MQT if the trust or trust decree was established prior to April 7, 1986, and is solely for the benefit of that applicant/recipient.

(4) **Treatment of SSI or social security lump sum payments:** SSI or social security lump sum payments for retroactive periods which are placed in an MQT do not qualify for the ~~six~~ six month exclusion from countable resources. The trust is evaluated as an MQT for purposes of medicaid eligibility.

C. **Trusts established on or after August 11, 1993:** Trusts established on or after August 11, 1993 are evaluated using the provisions of OBRA 93. The term "medicaid qualifying trust" is no longer used after that date. Most trusts are considered when determining eligibility for medicaid. Depending on how the trust is structured, the amounts in the trust may count as resources, income, or transfer of assets.

(1) **Trust establishment:** An applicant/recipient is considered to have established a trust and that trust is considered to belong to that applicant/recipient if his/her assets were used to form all or part of the corpus (body) of the trust. The trust must have been established, other than by will, by any of the following individuals:

- (a) applicant/recipient;
- (b) applicant/recipient's spouse;
- (c) an individual, including a court or administrative body, with legal authority to act in place of, or on behalf of, the applicant/recipient or his/her spouse; or
- (d) an individual, including a court or administrative body, acting at the direction of, or upon the request of, the applicant/recipient or his/her spouse.
- (e) if the corpus of a trust includes assets of an applicant/recipient and assets of any other individual or individuals, the portion of the trust representing the assets of the applicant/recipient is considered in determining his/her eligibility for medicaid.

(f) income and/or resources from the trust must be considered available to the applicant/recipient without regard to any of the following:

- (i) the purposes for which a trust is established;
- (ii) whether the trustees have or exercise any discretion under the trust;
- (iii) any restrictions on when or whether distribution may be made from the trust; or
- (iv) any restrictions on the use of distributions from the trust.

(2) **Revocable trusts:** Assets in a revocable trust may be counted as income, resources, or transfer of assets based on the following rules:

- (a) the corpus of the trust is considered as a resource available to the applicant/recipient;
- (b) payments from the trust to or for the benefit of the applicant/recipient are considered income of the applicant/recipient; and
- (c) any other payments from the trust are considered assets transferred by the applicant/recipient in accordance with the provisions on transfers. See 8.281.500.14 NMAC and following subsections.

(3) **Irrevocable trusts:** Assets in an irrevocable trust may be counted as income, resources, or transfer of assets based on the following rules:

- (a) if payments from the trust could be made to or for the benefit of the applicant/recipient, the portion of the corpus from which the payment is made or the corpus income from which payments to the applicant/recipient could be made, are considered resources available to the applicant/recipient; and

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

(i) payments from that portion of the corpus or income to or for the benefit of the applicant/recipient are considered income of the applicant/recipient.

(ii) payments for any other purpose are considered a transfer of assets by the applicant/recipient which are subject to transfer of asset provisions.

(b) any portion of the trust from which, or any income on the corpus from which, payments could not under any circumstances be made to the applicant/recipient is considered, as of the date of establishment of the trust (or, if later, the date on which payment to the applicant/recipient was foreclosed), to be assets disposed of by the applicant/recipient and the value of the trust is determined by including the amount of any payments made from such portion of the trust after such date.

(4) **Value of the irrevocable trust:** The value of the trust is determined by including the amount of any payments made from portions of the trust after the date of establishment or, if later, the date on which payments to the applicant/recipient were foreclosed.

D. **Other trusts:** The following types of trusts are not subject to the conditions specified under revocable and irrevocable trusts noted above. Only income and resources distributed directly to the applicant/recipient and/or to a third party on the applicant/recipient's behalf by the trustee are considered available to the applicant/recipient in determining medicaid eligibility if the applicant/recipient could use the payment for food, clothing or shelter for him/herself. The trusts described in this section are reversionary trusts meaning the trust must provide that, upon the death of the applicant/recipient, any funds remaining in the trust revert to the state medicaid agency, up to the amount paid in medicaid benefits on the applicant/recipient's behalf. If the applicant/recipient has resided in more than one state, the trust must provide that the funds remaining in the trust are distributed to each state in which the applicant/recipient received medicaid, based on the state's proportionate share of the total amount of medicaid benefits paid by all of the states on the applicant/recipient's behalf. The trustee may, upon the death of the beneficiary, pay the expenses of the beneficiary's burial or cremation up to the amount then authorized for burial expenses under federal and state medicaid law and regulations, to the extent other resources are not so designated.

(1) **Reversionary trust for certain disabled individuals:** This trust contains the assets of an applicant/recipient who is under [~~sixty five (65)~~] 65 years of age at the time the trust is established and who meets the social security administration's definition of disability. A reversionary trust must be established for the sole benefit of the applicant/recipient by a parent, grandparent, legal guardian, or a court. Upon the death of the applicant/recipient, the state receives all amounts remaining in the trust up to the amount of the total medicaid benefits paid on behalf of the applicant/recipient.

(2) **Income diversion trusts:** To be considered an income diversion trust, a trust must meet the following requirements:

(a) the trust is composed only of pension, social security, and other income to the applicant/recipient, including accumulated income in the trust; and

(b) the state receives all amounts remaining in the trust upon the death of the applicant/recipient up to an amount equal to the total medicaid benefits paid on behalf of the applicant/recipient.

(c) the trusts described in this section are also known in New Mexico as Maxwell v. Heim income diversion trusts. Those trusts executed on or after August 11, 1993 no longer have to be court ordered or approved.

(3) **Non-profit trusts for certain disabled individuals:** Trusts containing the assets of applicants/recipients who meet the social security administration's definition of disability and which meet all the following criteria are considered non-profit trusts for certain disabled individuals:

(a) the trust is established and managed by a non-profit association;

(b) a separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools these accounts;

(c) accounts in the trust are established solely for the benefit of applicants/recipients who meet the social security administration's definition of disability and are established by the parent, grandparent, or legal guardian of such applicants/recipients, by such applicants/recipients themselves, or by a court; and

(d) amounts remaining in the applicant/recipient's account upon his/her death will first be used to pay the state an amount equal to the total amount of medicaid benefits paid on behalf of the applicant/recipient.

E. **Undue hardship:** An institutionalized spouse who (or whose spouse) has excess resources and is unable to access resources from an existing trust will not be found ineligible for medicaid under Section 1924(c)(3)(C) of the Social Security Act, where the state determines, on a case by case basis, that denial of eligibility on the basis of excess resources would work an undue hardship. Undue hardship is considered to exist if denial of

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

medicaid would deprive the applicant/recipient of food, shelter, or medical care. Cases of undue hardship will be reviewed every ~~six (6)~~ six months to monitor changes in circumstances.

F. **Documentation of trusts:** Upon learning of the existence of a trust, the ~~[ISS]~~ ISD worker must obtain a copy of the trust document, including all attachments, and forward it to the MAD eligibility unit ~~[so that it may be submitted to the HSD office of general counsel]~~ for review.

[2-1-95, 7-31-97; 8.281.500.15 NMAC – Rn, 8 NMAC 4.ICM.517, 3-1-01; A, 8-1-08]

**8.281.500.16 RESOURCE STANDARDS FOR MARRIED COUPLES**

A. **Community property resource determination methodology:** Community property resource determination methodology is used in the eligibility determination for married applicants/recipients who began institutionalization for a continuous period prior to September 30, 1989.

(1) To determine the countable value of resources, the ~~[ISS]~~ ISD worker must:

- (a) add the total value of all resources owned by both spouses;
- (b) exclude the separate property of the non-applicant/recipient spouse; and
- (c) attribute one-half of the total value of the community property to the applicant/recipient spouse plus the value of his/her separate property.
- (d) the resulting figure must be less than \$2,000.

(2) **Application of community property rules:** Under community property rules, all property held by either spouse is presumed to be community property unless successfully rebutted by the applicant/recipient or representative. To rebut community property status, the applicant/recipient or representative must document that the property was:

- (a) acquired before marriage or after a divorce or legal separation;
- (b) designated as separate property by a judgment or decree of any court;
- (c) acquired by either spouse as a gift or inheritance; or
- (d) designated as separate property by a written agreement between the spouses, including a deed or other written agreement concerning property held by either or both spouses in which the property is designated as separate property.

(i) If one of the parties to this written agreement is incompetent, legal counsel must execute the agreement on behalf of the incompetent spouse.

(ii) Property designated as separate by written agreement is evaluated according to current ~~[policy]~~ rules regarding transfer of resources.

(iii) Income cannot be designated as separate by an agreement between spouses. Income is considered separate only if it is derived from a resource that has been determined separate.

B. **Spousal impoverishment:** Spousal impoverishment provisions apply if one member of a married couple is institutionalized for a continuous period of at least ~~[thirty (30)]~~ 30 consecutive days beginning on or after September 30, 1989. See spousal impoverishment provisions of the Medicare Catastrophic Coverage Act of 1988 (MCCA). No comparable treatment of resources and income is required for non-institutionalized individuals or individuals who do not have a spouse remaining in the community. These provisions cease to apply as of the month following the month an individual is no longer institutionalized or no longer has a community spouse. If a community spouse or other dependents apply for medicaid, they are subject to the rules governing treatment of income and resources for individual applicants/recipients.

(1) **Resource assessment:** A resource assessment must be completed to evaluate a couple's resources as of the first moment of the first day of the month one member of the married couple is institutionalized for a continuous period of at least 30 consecutive days beginning on or after September 30, 1989. This process is used to determine the amount of resources which may be protected for the community spouse. See (f) below for resources which must be included in the resource assessment. The resource assessment and computation of spousal shares occurs only once, at the beginning of the first continuous period of institutionalization beginning on or after September 30, 1989. A new resource assessment may be completed if it is later determined that the original resource assessment was inaccurate. Upon the death of the community spouse, the ISD worker may review the applicant/recipient's resources.

(a) A medicaid application does not need to be submitted at the time the assessment is requested. A reasonable fee may be charged for completing assessments which are not made in conjunction with medicaid applications. Applications for assessments are available at the ISD offices which determine eligibility for institutional care medicaid. Either member of the couple or their representative may request an assessment

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

application.

- (b) The ~~[ISS]~~ ISD worker must complete a resource assessment using the following criteria:
- (i) one member of a married couple became institutionalized on or after September 30, 1989 in an acute care hospital or nursing facility for a continuous period of at least ~~[thirty (30)]~~ 30 consecutive days;
  - (ii) the institutionalized individual has a spouse who remains in the community in a non-institutionalized setting; and
  - (iii) the institutionalized spouse remains, or is likely to remain, institutionalized for a period of at least ~~[thirty (30)]~~ 30 consecutive days based on a written statement from his/her physician and supporting medical documentation. The institutionalized individual is considered "likely to remain" even if he/she does not actually remain in an institution for ~~[thirty (30)]~~ 30 consecutive days if he/she met this condition at the beginning of the period of institutionalization.
- (c) The ~~[ISS]~~ ISD worker explains exactly what verification is required to complete the assessment. If the ~~[ISS]~~ ISD worker requires further information, the individual requesting the assessment is notified in writing and given a reasonable time period of at least ~~[ten (10)]~~ 10 working days to provide the additional information.
- (d) The institutionalized individual ~~[and/or]~~ or his/her spouse/representative is responsible for providing all verification necessary to complete the assessment.
- (e) The ~~[ISS]~~ ISD worker completes the resource assessment within ~~[forty five (45)]~~ 45 days of the date of receipt of the completed and signed assessment application unless verification is still pending by the 45th day. In that case, the assessment is not completed until all necessary information is provided by the institutionalized individual and/or his/her spouse/representative.
- (f) Assessments include the total value of the couple's countable resources held jointly or separately as of the first moment of the first day of the month one spouse became institutionalized for a continuous period of at least ~~[thirty (30)]~~ 30 consecutive days beginning on or after September 30, 1989. The assessment form identifies the spousal shares and the community spouse resource allowance. The couple is entitled to all resource exclusions allowed in 8.281.500.13 NMAC and the following subsections except that value limits for the exempt vehicle and household goods of the community spouse do not apply.
- (g) When the assessment is complete, the ~~[ISS]~~ ISD worker copies all documentation used to make the determination of countable resources and retains the documents in the case record. The ~~[ISS]~~ ISD worker also provides complete copies of the assessment forms to the following parties:
- (i) institutionalized individual;
  - (ii) community spouse; and
  - (iii) representative(s) if any.
- (h) When the amount of the couple's total countable resources has been determined, the resulting amount is divided by ~~[two (2)]~~ two to determine the spousal shares. The community spouse is entitled to his/her spousal share or the state minimum resource allowance, whichever is greater, up to the applicable federal maximum standard or an amount determined at a fair hearing or an amount transferred pursuant to a court order. The community spouse resource allowance (CSRA) is the amount by which the greatest of the spousal shares or state minimum resource allowance exceeds the amount of resources otherwise available to the community spouse without regard to such an allowance. ~~[This protected amount is called the community spouse resource allowance (CSRA)].~~ The CSRA remains in effect until one of the spouses dies. The remainder of the couple's total countable resources in excess of the CSRA is considered available to the institutionalized spouse. If either the institutionalized spouse or the community spouse is dissatisfied with the computation of the spousal share of the resources, the attribution of resources or the determination of the community spouse resource allowance, he/she can request a fair hearing pursuant to 8.352.2 NMAC. A hearing regarding the determination of the community spouse resource allowance shall be held within 30 days of the date of the request for the hearing.
- (2) **CSRA standards:** The ~~[CSRA]~~ state minimum resource allowance and the federal maximum standards vary based on when the applicant/recipient became institutionalized for a continuous period of at least 30 consecutive days. See 8.200.510.10 NMAC, RESOURCE STANDARDS, for [CSRA] the applicable standards.
- (3) **CSRA revision:** The CSRA can be revised if either of the following occurs:
- (a) ~~[the initial determination was erroneous as determined during an administrative hearing]~~ a different amount is determined at an administrative or court hearing; or
  - (b) inaccurate information was provided to the ~~[ISS]~~ ISD worker at the time the spousal share was calculated.

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

(4) **Resource availability after computation of CSRA:** Resources of a couple remaining after the computation of the CSRA are considered available to the institutionalized spouse. These remaining resources are compared to the resource limit.

(a) From the time of the initial determination of eligibility until the first regularly scheduled redetermination, the CSRA is not considered available to the institutionalized spouse.

(b) The CSRA ~~is~~ may be applied retroactively for the ~~three (3)~~ three months prior to the month of application and is not considered available to the institutionalized spouse until the first periodic review following initial approval.

(5) **Resource transfer after computation of the CSRA:** When eligibility has been approved for an institutionalized spouse, resources equal to the amount of the CSRA may be transferred to the community spouse. This transfer is intended to assist the community spouse in meeting his/her needs in the community. Couples should transfer resources in the amount of the CSRA to the community spouse as soon as possible after approval for institutional care medicaid. The institutionalized spouse or representative can complete this transfer at any time between the date of the assessment and the first periodic review ~~twelve (12)~~ 12 months after approval.

(6) **Resource transfers which exceed the CSRA:** Resources transferred to a community spouse at less than fair market value are not subject to transfer penalties. Resources transferred to the community spouse in excess of the computed CSRA are considered available to the institutionalized spouse and must be spent down to below the resource standard before eligibility can be established. Resources transferred to the community spouse may exceed the CSRA if an increased amount is ordered by any court having jurisdiction or by a state administrative hearing officer.

(7) **Transfer deadlines:** If the resource transfer is not completed by the institutionalized spouse by the end of the initial period of eligibility, the resources are considered completely available to the institutionalized spouse beginning with the first periodic review after the initial determination of eligibility.

(8) **Newly acquired assets:** After a continuous period of institutionalization begins, newly acquired resources or increases in the value of resources owned by the institutionalized spouse are countable. Recalculations of eligibility for the institutionalized spouse based on countable resources are effective at the beginning of the month following the month in which new resources were received or an increase occurred in the value of resources already owned.

(a) The institutionalized spouse may transfer newly acquired resources to the community spouse without a penalty up to the difference between the CSRA and the state minimum resource standard in effect as of the date of institutionalization.

(b) After a continuous period begins, new resources acquired by the community spouse or increases in the value of resources which are part of the CSRA are not considered available to the institutionalized spouse.

[2-1-95; 7-31-97; 8.281.500.16 NMAC – Rn, 8 NMAC 4.ICM.518, 3-1-01; A, 8-1-08]

**8.281.500.17 DEEMING RESOURCES:** Deeming of resources applies only during periods when an eligible applicant/recipient under age ~~eighteen (18)~~ 18 years of age lives at home and during the month the eligible applicant/recipient enters an institution. After the initial month of entry into the institution, only those resources directly attributable to or available to the applicant/recipient are counted and compared to the \$2,000 resource limit.

A. **Deeming of resources for children who are blind or have a disability:** If an applicant/recipient under ~~eighteen (18)~~ 18 years of age who is blind or disabled enters an institution, the resources of the parent(s) are deemed to the applicant/recipient if the parent(s) live in the same household. If an ineligible parent receives ~~aid to families to dependent children (AFDC)~~ temporary assistance to needy families (TANF), resources are not deemed to the applicant/recipient.

B. To determine the amount of resources deemed to the applicant/recipient, the following computation is made:

(1) determine parent(s) resources;

(2) allow parent(s) all the resource exclusions that an eligible applicant/recipient would receive;

(3) the remaining resources in excess of \$2,000 for one parent or \$3,000 for two parents are deemed to the applicant/recipient child. If there is more than one applicant child, the deemed resources are divided equally; and

(4) the deemed resources are added to whatever countable resources the applicant/recipient child has in his/her own right. The applicant/recipient child is eligible for institutional care medicaid on the factor of

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

resources if countable resources do not exceed \$2,000.

[2-1-95; 7-31-97; 8.281.500.17 NMAC – Rn, 8 NMAC 4.ICM.519, 3-1-01; A, 8-1-08]

**8.281.500.18 INCOME:** An applicant/recipient's gross countable monthly income must be less than the maximum allowable monthly income standard. If an applicant/recipient's monthly gross countable income is below \$50, the application can still be processed; however, the applicant must be referred to the social security administration to apply for SSI. Income may be in the form of cash, checks, and money orders, or in-kind, including personal property or food. If income is not received in the form of cash, the cash value of the item is determined and counted as income. The [ISS] ISD worker verifies all income and obtains appropriate documentation. Income is counted in the month received. Income is considered available throughout the month regardless of the date received.

A. **Types of income:** Countable income is the sum of unearned income and/or earned income, less disregards and/or exclusions, plus deemed income.

B. **Earned income:** Earned income consists of the total gross income received by an individual for services performed as an employee or as a result of self-employment.

(1) Royalties earned in connection with the publication of an applicant/recipient's work and any honorarium/fee received for services rendered are considered earned income.

(2) The self-employed applicant/recipient must provide an estimate of his/her current income based on the tax return filed for the previous year and/or current records maintained in the regular course of business. The estimate of net earnings for the entire previous taxable year is prorated equally among all months of the current year, even if the business is seasonal.

(a) Consideration is given to the applicant/recipient's explanation as to why he/she believes the estimated net earnings for the current year vary substantially from the information shown on his/her tax return for past years.

(b) A satisfactory explanation is that the business suffered heavy loss or damage from fire, flood, burglary, serious illness or disability of the owner, or other such catastrophic events. Documentation must include copies of newspaper accounts or medical reports and must be filed in the case record to substantiate the need for a reduced estimate of current self-employment income.

C. **Unearned income:** Unearned income consists of all other income (minus exclusions and disregards) that is not earned in the course of employment or self-employment.

D. **Deemed income:** Deemed income is income considered available to a minor applicant/recipient from his/her parents.

E. **Community property income methodology:** If an applicant/recipient is married, community property income methodology ~~may~~ shall be used in the eligibility determination, regardless of the living arrangements, if the one spouse has less income than the other spouse or if using the community property methodology would benefit both spouses. Under this methodology, one-half of the community property income is attributed to each spouse. Income is considered separate if it is earned in and is paid from a non-community property state. Proof of separate income is the burden of the applicant/recipient, spouse, or representative.

[2-1-95, 7-31-97; 8.281.500.18 NMAC – Rn, 8 NMAC 4.ICM.520, 3-1-01; A, 8-1-08].

**8.281.500.19 INCOME STANDARDS:** The applicable income standard used in the determination of institutional care medicaid eligibility for an applicant/recipient who has not been institutionalized for a period of ~~thirty (30)~~ 30 consecutive days is the SSI federal benefit rate (FBR) for a non-institutionalized individual. Participation in the medicaid home and community based waiver program is considered institutionalization and counts toward the calculation of the ~~thirty (30)~~ 30-day period. All income, whether in cash or in-kind, shall be considered in the eligibility determination, unless such income is specifically excluded or disregarded.

A. **Institutionalization period of thirty consecutive days:** After the applicant/recipient has been institutionalized for ~~thirty (30)~~ 30 consecutive days, the application can be approved as of the first day of the ~~thirty (30)~~ 30-day period. Once an applicant/recipient has been institutionalized for ~~thirty (30)~~ 30 consecutive days, the higher income maximum as specified in 8.200.520.16 NMAC, MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID, is used.

B. **Institutionalization period less than thirty consecutive days:** If the applicant/recipient leaves the facility before ~~thirty (30)~~ 30 consecutive days, the lower income standard (SSI FBR) is used to establish eligibility.

C. **Transfer or death:** If an applicant/recipient transfers to another institution or dies prior to



**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

completing [~~thirty (30)~~] 30 consecutive days of institutionalization, the higher income maximum is used. See 8.200.520.16 NMAC.

(1) **Income exclusions:** Income exclusions are applied before income disregards. Exclusions are applied in determining eligibility whether the income belongs to the applicant/recipient or to an individual from whom income is deemed.

(2) **Infrequent or irregular income:** [~~Infrequent or irregular income is excludable in the month received if it amounts to no more than \$10 of earned income and/or \$20 of unearned income.~~] Exclude the first \$30 per calendar quarter of earned income; and the first \$60 per calendar quarter of unearned income. The following definitions apply:

(a) "irregular income" is income received on an unscheduled or unpredictable basis.  
(b) "infrequent income" is income received only once during a calendar quarter from a single source and includes:

- (i) proceeds of life insurance policies;
- (ii) prizes and awards;
- (iii) gifts;
- (iv) support and alimony;
- (v) inheritances;
- (vi) interest and royalties; and
- (vii) one-time lump sum payments, such as social security.

(c) "frequency" is evaluated for the calendar quarter (i.e. January - March, April - June, July - September, October - December) but the dollar amount is considered in the month received.

(3) **Foster care:** Foster care payments are totally excluded if:

- (a) the foster child is not eligible for SSI; and
- (b) the child was placed in the applicant/ recipient's home by a public or private nonprofit child placement or child care agency.

(4) **Domestic volunteer services exclusions:** Payments to volunteers under domestic volunteer services (ACTION) programs are excluded from consideration as income in the eligibility determination process. These programs include the following:

- (a) volunteers in service to america (VISTA);
- (b) University year for action (UYA);
- (c) special demonstration and volunteer programs;
- (d) retired senior volunteer program (RSVP); and
- (e) foster grandparent program; and
- (f) senior companion program.

(5) **Census bureau employment:** Wages paid by the census bureau for temporary employment related to the census bureau are excluded from consideration as income in the eligibility determination process. [2-1-95, 7-31-97; 8.281.500.19 NMAC – Rn, 8 NMAC 4.ICM.521 & A, 3-1-0; A, 8-1-08]

**8.281.500.20 UNEARNED INCOME:** Unearned income includes all income not earned in the course of employment or self-employment. If payment is made in the name of either or both spouses and another party, only the applicant/recipient's proportionate share is considered available to him/her. If income is derived from property for which ownership is not established, such as unprobated property, one-half of the income is considered available to each member of a married couple.

A. **Standards for unearned income:** Unearned income is computed on a monthly basis. If there are no expenses incurred with the receipt of unearned income, such as annuities, pensions, retirement payments or disability benefits, the gross amount is considered countable unearned income.

(1) **Social security overpayments:** If the social security administration withholds an amount because of an overpayment, the gross social security payment amount is used to determine eligibility. See 8.281.500.23.B. NMAC, for instructions regarding calculation of the medical care credit.

(2) **Rental income:** If an applicant/recipient has rental property, the [~~HSS~~] ISD worker allows the cost of real estate taxes, maintenance and repairs, advertising, mortgage insurance and interest payments on the mortgage as deductions from the amount received as rent.

(3) **Interest on promissory note or sales contract:** The portion of the payment representing interest received from a promissory note or sales contract is considered unearned income. The market value of promissory

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

notes or sales contracts and the portion of the payment representing payment of the principal are considered resources. See also 8.281.500.13.L NMAC, *Home Replacement Exclusion*.

**(4) Income from annuities, pensions and other periodic payments:** Payments from annuities, pensions, social security benefits, disability, veterans benefits, worker compensation, railroad retirement annuities and unemployment insurance benefits and other periodic payments are counted as unearned income.

**B. Unearned income exclusions:**

(1) **Interest from an excluded burial fund:** Interest from an excluded burial fund is not considered unearned income if the interest is applied toward the fund balance. If the interest is paid to the applicant/recipient, it is considered unearned income.

(2) **Tax refunds and earned income tax credit:** Tax refunds from any public agency for property taxes or taxes on food purchases are totally excluded. Any portion of a federal income tax return which constitutes an earned income tax credit is excluded.

(3) **Grants, scholarships and fellowships:** All grants, scholarships and fellowships used to pay tuition and fees at an educational institution, including vocational and technical schools, are totally excluded. Any portion of a grant, scholarship or fellowship used to pay any other expenses, such as food, clothing or shelter, is not excluded.

(4) **Veteran's pensions:** Allowances for aid and attendance (A&A) and unusual medical expenses (UME) are excluded from unearned income for determination of eligibility. If an applicant/recipient receives an augmented VA pension as a veteran or veteran's widow or widower, the pension amount may include an increment for a dependent. If so, the VA must be contacted to provide documentation of the portion of the pension which represents the dependent's increment. When verified, this amount of the VA pension is considered the dependent's income.

(5) **Payments by a third party:** Third party payments are excluded as income if made directly to the applicant/recipient's creditor.

(a) Third party payments may include mortgage payments by credit life or credit disability insurance and installment payments by a family member on a burial plot or prepaid burial contract.

(b) Interest from a burial contract that is automatically applied to the outstanding balance is excluded from unearned income. If the payment or interest is sent to the individual, it is counted as unearned income regardless of the sender's (third party's) intentions. This applies even if the sender specifies the purpose of the payment on the check. This provision does not apply if the signature of the creditor and the individual must both be present in order to negotiate the check (two-party check).

(6) **Indian tribe per capita payments:** Funds held in trust by the secretary of the interior for an indian tribe and distributed on a per capita basis and any interest and investment income from these funds, are excluded as income and resources in the eligibility determination process and the computation of the medical care credit.

(7) **Plans for achieving self-support:** Income derived from, or necessary to, an approved plan for achieving self-support for a blind or disabled applicant/recipient under ~~[sixty-five (65)]~~ 65 years of age is excluded.

(a) For an applicant/recipient who is blind or disabled and over ~~[sixty-five (65)]~~ 65 years of age, this exclusion applies only if he/she received medicaid for the month preceding his/her 65th birthday.

(b) The self-support plan must be in writing and contain the following:

(i) designated occupational objective;

(ii) specification of any savings (resource) or earnings needed to complete the plan, such as amounts needed for purchase of equipment or for financial independence;

(iii) identification and segregation of any income saved to meet the occupational goal;

(iv) designation of a time period for completing the plan and achieving the occupational goal.

(c) Plans for achieving self-support are developed by vocational rehabilitation counselors. If a self-support plan is not in place, the ~~[ISS]~~ ISD worker makes a referral to the division of vocational rehabilitation (DVR).

(d) The ~~[ISS]~~ ISD worker forwards the written plan and documentation to the MAD eligibility unit. The plan must be approved by that unit.

(e) An approved plan is valid for the following specified time periods:

(i) initial period of no more than ~~[eighteen (18)]~~ 18 months;

(ii) extension period of no more than ~~[eighteen (18)]~~ 18 months;

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

- (iii) final period of no more than ~~twelve (12)~~ 12 months; and
- (iv) total period of no more than ~~forty eight (48)~~ 48 months.

(8) **Agent orange settlement payments:** Agent orange settlement payments made to veterans or their survivors are excluded from consideration as income in determining eligibility.

(9) **Radiation exposure compensation act payments:** Payments made under the radiation exposure compensation act are excluded from consideration as income in determining eligibility.

(10) **Victims compensation payments:** Payments made by a state-administered fund established to aid victims of crime are excluded from consideration as income in determining eligibility. These payments are included as countable income when calculating the medical care credit.

(11) **Lump sums for retroactive periods:** Supplemental security income (SSI) lump sum payments for retroactive periods are excluded from consideration as countable income in the month received.

(12) **Life insurance and other burial benefits:** Life insurance and other burial benefits are unearned income to the beneficiary (not the owner). The ~~[ISS] ISD worker~~ must subtract the amount spent on the insured individual's last illness and/or burial up to \$1,500. Any excess is counted as unearned income.

(13) **100% state funded assistance payment:** Any 100%-state-funded assistance payment based on need, such as general assistance (GA) is excluded. Any interim payments made by a state or municipality from all state or local funds while an SSI application is pending are excluded.

(14) **National vaccine injury compensation program (NVICP) payment:** The NVICP funds are excluded as income or a resource until they are actually disbursed by the issuing agent. However, they are counted as income in the month in which they are received and counted as a resource in the following months, provided that the funds in question are not specifically earmarked for medical expenses. If the payment is designated for both living expenses and medical care, a determination must be made to identify how much of the payment is for living expenses, and how much is for medical care. The only portion actually counted then is that amount which is for living expenses. Therefore, a determination must be made as to how the payment is apportioned before making an eligibility determination.

(15) **Remembrance, responsibility and the future payments:** Payments by the remembrance, responsibility and the future foundation to individual survivors forced into slave labor by the Nazis are excluded as income in determining eligibility.

[2-1-95; 7-31-97; 7-1-00; 8.281.500.20 NMAC – Rn, 8 NMAC 4.ICM.522, 3-1-01 ; A, 5-1-01; A, 8-1-08]

**8.281.500.21 DEEMED INCOME**

A. **Availability:** Deemed income is income considered available to a minor applicant/recipient from his/her parents. Deeming of resources and income applies only during periods when an applicant/recipient under eighteen (18) years of age is living with his/her parents and during the month of entry into an institution.

B. **Situations in which deeming occurs:** Deeming of income occurs:

- (1) from ineligible parent to eligible child; or
- (2) if there is both a medicaid-eligible parent and a medicaid-eligible child in the home.

C. **Computing deemed income:** The ~~[ISS] ISD worker~~ computes the total monthly amount of parental unearned and earned income and then computes the deemed income available to the applicant/recipient child. If the deemed income plus the child's separate income exceeds the applicable maximum, the child is not eligible for institutional care medicaid for that month.

(1) **Parents and children receiving aid:** If one of the applicant/recipient child's parents is receiving any benefit or assistance paid by a governmental agency on the basis of economic need, that benefit plus all the income of that parent is excluded from the deeming process. This exclusion applies only to the income of the parent who receives the benefit. Even if the income of one parent is excluded, that parent is still considered a member of the household for purposes of determining the parental allocation. Provisions for deeming income do not apply to benefits under ~~[aid to families with dependent children (AFDC)] temporary assistance to needy families (TANF)~~. No income is deemed to a parent or child(ren) if that parent or child(ren) is (are) receiving AFDC assistance.

(2) **Applicant/recipient parent and applicant/recipient child(ren):** If a household is composed of an applicant/recipient parent and an applicant/recipient child(ren), the parent's income is determined according to the methodology appropriate to the category of medicaid which he/she receives.

(a) If there is enough income to make the applicant/recipient parent ineligible, the remainder of the income is carried over to be deemed to the child(ren).

(b) If there is more than one potentially eligible child, the deemed income is divided equally

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

among them. If total countable income is less than the applicable maximum, the applicant/recipient is eligible for institutional care medicaid on the factor of income.

(c) If an applicant/recipient is determined to be eligible for institutional care medicaid for the month of entry based on deemed income, the [HSS] ISD worker must recompute available income for the following month based on separate income to establish the correct medical care credit. See 8.281.500.23 NMAC MEDICAL CARE CREDIT.

[2-1-95; 7-31-97; 8.281.500.21 NMAC – Rn, 8 NMAC 4.ICM.523, 3-1-01; A, 8-1-08]

**8.281.500.22 DISREGARDS:** Income disregards are determined on an individual basis. Disregards may be applied to any appropriate month of assistance, regardless of which income maximum is used.

A. **Twenty dollar disregard:** The first \$20 of unearned or earned income received in a month is disregarded. This disregard is applied first to unearned income and, if any amount remains, to earned income. If there is no unearned income, the entire \$20 disregard is applied to earned income. This disregard is not applied to any payment made to the applicant/recipient through government assistance programs or private charitable organizations, where payments are based on need. These payments include financial assistance, [AFDC] TANE, assistance from catholic charities, salvation army, bureau of indian affairs, and veteran's administration pension (not compensation) payments.

B. **Additional earned income disregard:** After applying the \$20 disregard as specified in 8.281.500.22.A NMAC above, if appropriate, the first \$65 of monthly earned income plus one-half of the remainder is also disregarded.

C. **Work-related expenses of the blind:** Work-related expenses of an employed applicant/recipient or couple who is/are legally blind are disregarded. The dollar amount of expenses which may be disregarded must be reasonable. Expenses are disregarded when paid and must be verified.

(1) This disregard does not apply to an applicant/recipient who is blind and is [~~sixty five (65)~~] 65 years or age or older, unless he/she was receiving SSI payments due to blindness in the month before turning [~~sixty five (65)~~] or received payments under a state aid to the blind program.

(2) Types of work-related expenses which may be disregarded include:

- (a) federal, state, and local income taxes;
- (b) social security contributions;
- (c) union dues;
- (d) transportation costs, including actual cost of bus/taxi cab fare, or [~~fifteen (15)~~] 15 cents per mile for private automobile;
- (e) lunches;
- (f) child care costs, if not otherwise provided;
- (g) uniforms, tools and other necessary equipment; and
- (h) special expenses necessary to enable an applicant/recipient who is blind to engage in employment, such as a seeing-eye dog or Braille instructions.

D. **Student earned income disregard:** Up to \$1,200 per quarter or a maximum of \$1,620 per calendar year of the earned income of certain students may be disregarded. To qualify for this disregard, the applicant/recipient must meet all of the following requirements:

- (1) under [~~twenty two (22)~~] 22 years of age;
- (2) unmarried;
- (3) not head of a household; and
- (4) in regular attendance at a college or university, for at least [~~twelve (12)~~] 12 semester hours or vocational or technical training course for at least [~~twenty (20)~~] 20 hours per week.

(a) This disregard applies only to a student's own earned income and includes all payments made as compensation for services, such as wages from employment or self-employment, or payments from programs such as neighborhood youth corps or work-study.

(b) This disregard is available in addition to any exclusions applied to grants, scholarships or fellowships and in addition to any other allowable disregards.

E. **Child support payments:** One third (1/3) of the amount of child support payments made to a child applying for institutional care medicaid is disregarded. The remainder is considered unearned income, subject to the appropriate disregards outlined below.

[2-1-95; 7-31-97; 7-1-00; 8.281.500.22 NMAC – Rn, 8 NMAC 4.ICM.525, 3-1-01; A, 8-1-08]

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

**8.281.500.23 POST ELIGIBILITY/MEDICAL CARE CREDIT:** ~~[The medical care credit is the amount of the applicant/recipient's income used to reduce the medicaid payment to the institution where he/she resides. An applicant/recipient must make this payment directly to the institution. Applicants/recipients eligible for institutional care medicaid due to institutionalization in an acute care hospital or an in-state in-patient rehabilitation center are not charged a medical care credit.]~~ Once financial eligibility for institutional care medicaid has been established, the ISD worker must determine:

A. **Medical care credit [determination]:** The medical care credit is the amount of the applicant/recipient's income used to reduce the medicaid payment to the institution where they reside. An applicant/recipient must make this payment directly to the institution. Applicants/recipients eligible for institutional care medicaid due to institutionalization in an acute care hospital or an in-state in-patient rehabilitation center are not charged a medical care credit. The amount of the medical care credit is always determined prospectively. The [ISS] ISD worker computes a medical care credit starting with the first full month of institutional care. No medical care credit is required for the month the recipient enters the institution if he/she is admitted after the first moment of the first day of the month.

(1) **No medical care credit for the month of discharge or death:** A recipient is not required to pay a medical care credit for the month of discharge from the institution. The medical care credit must be paid if the applicant/recipient is transferred to another institution or makes a short visit outside the institution. No medical care credit is charged for the month in which a recipient of institutional care medicaid dies. This will prevent a deficit for the institution when a benefit, such as Social Security, must be returned due to the death of a beneficiary.

(2) **Application delay:** If there is a delay between application and approval, an applicant/recipient incurs a liability for a medical care credit. The [ISS] ISD worker notifies the applicant/recipient of this liability during the application process and informs him/her of the amount of the medical care credit he/she should pay. The applicant/ recipient is encouraged to pay the medical care credit to the institution before approval of the application.

(3) **Medical care credit during retroactive months:** No medical care credits are applied for any period of retroactive eligibility under this provision.

B. **Computing the medical care credit:** ~~[Beginning July 1, 2000, the first forty five dollars (\$45)]~~ The current personal needs amount (PNA) of an applicant/recipient's monthly income is protected for his/her personal ~~[needs]~~ use in a nursing facility. Each year thereafter, the amount of an applicant recipient's monthly income shall be adjusted according to the consumer price index and indicated in 8.200.510.12 NMAC. The excess over the amount protected, subject to other deductions, is applied toward payment for care in the nursing facility as a medical care credit.

(1) See 8.281.500.23.B.(6) NMAC for personal needs allowance for veterans or surviving spouses.

(2) An applicant/recipient's total income, including amounts disregarded in determining eligibility, is used to compute the medical care credit with the following exceptions:

- (a) Indian tribe per capita payments (see 8.281.500.20.B.(6) NMAC);
- (b) German reparation payments; and
- (c) social security administration overpayments.

(i) When the social security administration withholds an amount due to an overpayment, the social security gross payment amount is used to determine eligibility per 8.281.500.20.A.(1) NMAC. To determine the amount used in calculating the medical care credit, the [ISS] ISD worker ascertains whether a social security (Title II) overpayment is being recouped or whether an SSI overpayment is being recouped from a social security benefit check (a cross-program recoupment). Cross-program recoupments are at the recipient's option so the gross benefit amount is used to calculate the medical care credit.

(ii) Recoupment of a social security overpayment from a social security benefit check is mandatory. In such cases, the net social security benefit amount is used to calculate the medical care credit.

- (d) Payments from the Radiation Exposure Compensation Act.
- (e) 'remembrance, responsibility and the future' payments.

(3) **Dependent children at home:** If an institutionalized applicant/recipient with no spouse has dependent children at home who are ineligible for [AFDC] TANF or assistance from any other program, or are eligible for an amount less than the [AFDC] TANF need standard, an allowance for each child of up to the current [AFDC] TANF standard of need may be deducted from the institutionalized applicant/recipient's income which is in excess of the applicant/recipient's personal allowance.

(4) **Health insurance premiums and non-covered medical expenses:** An applicant/recipient is

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

allowed a deduction in the medical care credit computation for the full amount of any health insurance premiums paid by the applicant/recipient. A deduction of up to the medicare part B premium amount is allowed for medical expenses currently being paid by an applicant/recipient which are not covered by institutional care medicaid. This includes other medical care recognized under state law but not covered by institutional care medicaid. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero.

(5) **Personal needs allowance for recipients in an ICF-MR:** If an applicant/recipient who is institutionalized in an intermediate care facility for the mentally retarded (ICF-MR) has a monthly income from employment in a sheltered workshop or other work activity program, up to the first \$100 of this earned income is protected for the applicant/ recipient's personal needs. This amount is in addition to the applicant/recipient's personal needs allowance protected from income from any source. If the applicant/recipient's income is from any other source, the personal needs allowance is set at the amount as set forth in 8.200.510.12 NMAC.

(6) **Veterans administration (VA) benefits:** The [ISS] ISD worker must contact the VA on each veterans case to verify how much of the benefit is for pension, aid and attendance (A&A) and/or unusual medical expenses (UME).

(a) For medicaid eligible veterans with no spouse or dependent children, and for surviving spouses of ~~[veteran's]~~ veterans without dependent children who do not reside in a state veteran's home (Fort Bayard or Truth or Consequences):

- (i) exclude the A&A and UME in the medical care credit computation;
- (ii) allow the personal needs allowance as set forth in 8.200.510.12 NMAC;
- (iii) the benefit for these individuals will be reduced to \$90 per month effective the latest

of the following;

- (iv) the last day of the calendar month in which medicaid coverage begins;
- (v) the last date of the month following ~~[sixty (60)]~~ 60 days after issuance of a reduction

notice; or

- (vi) the earliest date on which payment may be reduced without creating an

overpayment.

- (vii) when the benefit is reduced to \$90, recomputed the medical care credit to allow \$90

for personal needs.

(b) For medicaid eligible veterans with no spouse or dependent children, and for surviving spouses of veterans without dependent children who do reside in a state veteran's home (Fort Bayard or Truth or Consequences);

- (i) include the A&A and UME in the medical care credit computation.
- (ii) allow \$90 for his/her personal needs.
- (iii) the benefit for these individuals is not reduced to \$90.

(c) Benefits for the following individuals are not reduced to \$90 a month, regardless of whether or not they reside in a state veteran's home:

- (i) veterans who have a spouse or dependent child(ren).
- (ii) surviving spouses of veterans who have dependent child(ren).

(d) The [ISS] ISD worker allows these individuals the allowance as set forth in 8.200.510.12. NMAC for personal needs.

C. **Computing medical care credits for married institutionalized recipients:** To calculate the medical care credit for a married institutionalized applicant/recipient, the "name-on-the-check" rule applies. The [ISS] ISD worker uses only the income belonging to the institutionalized applicant/recipient to compute his/her medical care credit. Total gross income before any deductions is used in this process.

(1) **Treatment of VA aid and attendance (A&A) and unusual medical expenses (UME):** Allowances for A&A and UME are considered when computing the medical credit in accordance with 8.281.500.23.B.(6).

(2) **Court-ordered support:** An institutionalized applicant/recipient's gross income is not reduced by amounts of court-ordered child or spousal support.

D. **Computing medical care credits for an institutionalized couple:** To compute medical care credits for the members of an eligible institutionalized couple, the [ISS] ISD worker totals the couple's gross income and divides by two. The personal needs allowance as set forth in 8.281.500.23.B NMAC is subtracted from each amount for each member's personal needs and added to any allowable amount(s) paid by that recipient for

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

noncovered medical expenses.

E. **Medical care credit deductions:** ~~[Deductions for maintenance allowances from the income of an institutionalized spouse are permitted only to the extent that the income is available and is actually contributed to and accepted by the community spouse and/or other dependent family member(s).] The [ISS] ISD worker applies the deductions listed below in the following order when determining the medical care credit:~~

- ~~(1) institutionalized spouse's personal needs allowance as set forth in 8.200.510.12 NMAC;~~
- ~~(2) [basic] community spouse monthly income allowance (CSMIA). [standard reduced by the total gross income of the community spouse;] The CSMIA deduction is permitted only to the extent that the income is available and is actually contributed to and accepted by the community spouse or other dependent family members:~~
  - ~~(a) the CSMIA is calculated by starting with the minimum monthly maintenance needs allowance (MMMNA) and subtracting the community spouse's total gross income;~~
  - ~~(b) both spouses shall be given notice of the amount of the CSMIA;~~
  - ~~(c) if either spouse is dissatisfied with the amount of the CSMIA, he/she can request a fair hearing pursuant to 8.352.2 NMAC to establish that the community spouse needs income above the minimum monthly maintenance needs allowance. The spouse must demonstrate that the community spouse needs the additional income above the level otherwise provided by the minimum monthly maintenance needs allowance due to exceptional circumstances resulting in significant financial duress. If the spouse establishes that the community spouse needs additional income due to exceptional circumstances resulting in significant financial duress, there shall be substituted for the CSMIA such amount as is necessary to alleviate the financial duress and for so long as the exceptional circumstances exist. If as a result of a fair hearing or court hearing, additional income is granted to the community spouse for a specified period of time, when that time expires, the original CSMIA, as calculated by the ISD worker is reinstated. The exceptional circumstances can include medical, remedial or other support expenses that jeopardize the ability of the community spouse to remain self-sufficient in the community;~~
  - ~~(d) If as a result of a court hearing or administrative fair hearing, a request for a revision of the CSMIA is granted, the revised amount shall be substituted for the CSMIA calculated by the ISD worker; and~~
  - ~~(e) When the institutionalized applicant/recipient's income is insufficient to provide the minimum authorized deduction for the community spouse, either spouse can request a fair hearing pursuant to 8.352.2.NMAC. If either spouse establishes that the CSRA (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the MMMNA, there shall be substituted, for the CSRA, an amount adequate to provide the MMMNA.~~
- ~~(4) —extra maintenance allowance for the community spouse if ordered by a court of jurisdiction or a state administrative hearings officer. The community spouse must demonstrate, with a preponderance of evidence, that he/she incurred non reimbursable expenses for medical, remedial and other support services and that these expenses jeopardize his/her ability to remain self-sufficient in the community. The community spouse must also successfully demonstrate that these expenses exceed income, including the CSMIA and excess shelter allowance.~~
  - ~~(a) When an extra maintenance allowance is ordered for the community spouse, the ISS monitors the case to ensure that the exceptional circumstances still exist and adjusts the medical care credit when it is verified that the special conditions no longer exist.~~
  - ~~(b) The community spouse must report within ten (10) days when the exceptional circumstances have changed or no longer exist.~~
  - ~~(c) The ISS may request that a hearing officer reopen and review a case if he/she believes that the exceptional circumstances no longer exist, even if the community spouse has not reported the change and/or fails or refuses to provide verification of the suspected change.~~
  - ~~(d) The total CSMIA and excess shelter allowance combined may not exceed the standard amount per month, unless a state administrative hearings officer or a court of jurisdiction orders the institutionalized spouse to pay an increased amount.~~
- ~~(5) —an allowance for each eligible family member equal to one third of the balance obtained after deducting the family member's gross income from the CSMIA standard amount. Family members include the couple's minor child(ren) under the age of eighteen (18), disabled adult child(ren) of the couple who meet the social security administration's definition of disability and dependent sibling(s) or parent(s) of either member of the couple. These family members must reside with the community spouse. The dependency requirements are met if either member of the couple could claim the family member as a dependent for tax purposes.]~~
  - ~~(3) An excess shelter allowance for allowable expenses of the community spouse which exceed [thirty percent (30%)] 30 percent of the CSMIA standard up to a specified maximum. The following expenses are allowed for the primary residence of the community spouse:~~

**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

- (a) rent or mortgage payment, including interest or principal;
- (b) home taxes and insurance;
- (c) maintenance charges for a condominium or cooperative; and
- (d) amount equal to the standard utility allowance used by the food stamp program if the

community spouse incurs a heating or cooling expense. Utility expenses included in the rent or the basic maintenance fee for a condominium or cooperative, are not allowed.

(4) The total CSMIA and excess shelter allowance combined may not exceed the standard amount per month unless a state administrative hearing officer or a court orders the institutionalized spouse to pay an increased amount.

(5) An allowance for each eligible family member equal to one-third of the balance obtained after deducting the family member's gross income from the MMMNA. Family members include the couple's minor child(ren) under the age of 18 years, disabled adult child(ren) of the couple who meet the social security administration's definition of disability and dependent sibling(s) or parent(s) of the couple. These family members must reside with the community spouse. The dependency requirement is met if either member of the couple could claim the family member as a dependent for tax purposes.

(6) The deductions for the community spouse and dependent family members apply only so long as there is a community spouse. Deductions for the community spouse and other family members shall cease in the first full calendar month after the community spouse dies, becomes divorced, or is institutionalized.

(7) Health insurance premiums and non-covered medical expense deduction.

**F. Reporting requirements:** An applicant/recipient, spouse, or representative is required to report to the [ISS] ISD worker any change in circumstances which may affect eligibility or the medical care credit amount within ~~ten (10)~~ 10 days after the date the change occurs. Changes which cause adjustments in an applicant/recipient's medical care credit amount are effective the month after the change occurs. Family members receiving allowances must also report all changes of gross income and residence within ~~ten (10)~~ 10 days after the date the change occurs. Changes must be reported when the institutionalized spouse stops making all or part of a maintenance allowance available to the community spouse or other family member(s), or when the recipient of a maintenance allowance begins to refuse all or part of the income.

**G. Changes in income and recipient medical care credit:** Payments received by a recipient, such as social security, VA, retirement or other benefits, are applied to billing for services for the same month in which the payment is received. If the income increases, the institution must continue to collect the amount indicated on the medical care credit report in the recipient's file and immediately advise the [ISS] ISD worker of the change. The [ISS] ISD worker processes the change, notifies the institution and the recipient of the new medical care credit amount and indicates the month in which the higher amount is to be collected. The difference between the medical care credit amounts is deposited in the recipient's personal fund account until the change is effective. [2-1-95, 7-31-97, 7-1-00; 8.281.500.23 NMAC – Rn, 8 NMAC 4.ICM.530, 3-1-01, A, 5-1-01; A, 8-1-08]

**8.281.500.24 Undue hardship:** An applicant/recipient subject to a penalty for transfer of assets for less than fair market value may apply for a waiver of the regulation regarding transfer of assets as constituting an undue hardship. The facility where an institutionalized applicant/recipient resides may file an application for waiver of the regulation on behalf of the applicant/recipient with the applicant/recipient's or personal representative's consent.

A. The transfer must have been made to someone other than a family member. "Family member" includes son, daughter, grandson, granddaughter, step-son, step-daughter, in-laws, mother, father, step-mother, step-father, half brother, half sister, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, step-sister, step-brother.

B. The applicant/recipient must demonstrate that the application of the transfer of assets regulation would deprive the applicant/recipient of:

- (1) medical care such that the applicant/recipient's health or life would be endangered; or
- (2) food, clothing, shelter or other necessities of life.

C. The applicant/recipient or the facility where the applicant/recipient resides must submit any documentation to support the claim that application of the transfer of assets regulation would constitute an undue hardship within 30 days of the date of the notice regarding the penalty to the ISD county office.

D. Undue hardship does not exist when the application of a transfer penalty causes an applicant/recipient or his/her family members inconvenience or restricts their lifestyle.

E. The county director of the ISD office will make a decision regarding an application for waiver of



**MEDICAID ELIGIBILITY  
INSTITUTIONAL CARE  
CATEGORIES 081, 083 AND 084**

**EFF:proposed**

the transfer of assets regulation within 30 days of receipt of the application.

(1) Notice of the decision shall be mailed to the applicant/recipient or his/her representative.

(2) The department may make payments to the nursing facility for an applicant/recipient who is a resident of the facility while an application for waiver of the regulation is pending to hold the bed for the applicant/recipient. The department may make payments for no more than 30 days.

F. If the applicant/recipient's application for waiver of the transfer of assets regulation is granted, the department shall pay for long term care services prospective from the date of the application. The department shall pay for long term care services as long as the circumstances constituting the basis for waiver of the application of the regulation exist. If the applicant/recipient's application for waiver of the transfer of assets regulation is denied, the applicant/recipient can request a fair hearing pursuant to 8.352.2 NMAC within 90 days of the date of the notice of denial.

G. The applicant/recipient or his/her representative must notify the ISD worker of any change in circumstances which affects the application of the undue hardship waiver exception within 10 days of the change in circumstances. The Department will review the change of circumstances and determine the next appropriate action, which may include withdrawal of the waiver.

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

**TITLE 8            SOCIAL SERVICES  
CHAPTER 215    MEDICAID ELIGIBILITY - SUPPLEMENTAL SECURITY INCOME (SSI)  
                          METHODOLOGY  
PART 500        INCOME AND RESOURCE STANDARDS**

**8.215.500.11    RESOURCE STANDARDS:** A "resource" is defined as cash or liquid assets and real or personal property which is owned and can be used either directly, or by sale or conversion, for the applicant/recipient's support and maintenance. Resources may be liquid or non-liquid and may be excluded from the eligibility determination process under certain conditions. A liquid resource is an asset which can readily be converted to cash. A non-liquid resource is an asset or property which cannot readily be converted to cash.

A.     **Resource determination:** The resource determination is made as of the first moment of the first day of the month of application. An applicant/recipient is ineligible for any month in which his/her countable resources exceed the allowable resource standard as of the first moment of the first day of the month. Changes in the amount of countable resources during a month do not affect eligibility or ineligibility for that month.

B.     **Distinguishing between resources and income:** Resources must be distinguished from income to avoid counting a single asset twice. As a general rule, ownership of a resource precedes the current month while income is received in the current month. Income held by an applicant/recipient until the following month becomes a resource.

[2-1-95, 7-31-97; 8.215.500.11 NMAC - Rn, 8 NMAC 4.SSI.510, 3-1-01; A, 8-1-08]

**8.215.500.12    APPLICABLE RESOURCE STANDARDS:** The resource standard for medicaid extension as well as retroactive SSI medicaid eligibility determinations is \$2,000. See Section QMB-510 for resource standards applicable to QMB. See Section QDS-510 for standards applicable to the qualified disabled working individuals program. See Section SMB-510 for standards applicable to the SLIMB program.

A.     **Liquid resources:** The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.

(1)    An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the [FSS] ISD worker sends a bank or postal savings clearance to the appropriate institution(s).

(2)    If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

B.     **Nonliquid resources:** The value of nonliquid resources is computed at current fair market value. See below for discussion of equity value.

(1)    **Real property:** If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource. If an applicant/recipient owns property with one or more individuals and the applicant/recipient has the right, authority or power to liquidate the property or his/her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property.

(2)    **Vehicles:** One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Equity in the other automobiles is counted as a resource. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

(3)    **Household goods and personal effects:** Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles. [2-1-95, 7-31-97; 8.215.500.12 NMAC - Rn, 8 NMAC 4.SSI.511, 3-1-01; A, 1-1-06; A/E, 2-1-07; A, 8-1-08]

**8.215.500.13    COUNTABLE RESOURCES:** Before a resource can be considered countable, the three (3) criteria listed below must be met.

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

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A. **Ownership interest:** An applicant/recipient must have an ownership interest in a resource for it to be countable. The fact that an applicant/recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant/recipient also has an ownership interest in it.

B. **Legal right to convert resource to cash:** An applicant/recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) **Physical possession of resource:** The fact that an applicant/recipient does not have physical possession of a resource does not mean it is not his/her resource. If he/she has the legal ability to spend the funds or convert the resource to cash, the resource is considered countable. Physical possession of savings bonds is a legal requirement for cashing them.

(2) **Unrestricted use of resource:** An applicant/recipient is considered to have free access to the unrestricted use of a resource even if he/she can take those actions only through an agent, such as a representative payee or guardian.

(3) If there is a legal bar to the sale of a resource, the resource is not countable. If the co-owner of real property can bring an action to partition and sell the property, his/her interest in the property is a countable resource.

C. **Legal ability to use a resource:** If a legal restriction exists which prevents the use of a resource for the applicant/recipient's own support and maintenance, the resource is not countable.

D. **Joint ownership of resources:** If an applicant/recipient owns either liquid or non-liquid resources jointly with others, he/she has ~~thirty (30)~~ 30 days from the date requested by the ~~ISS~~ ISSD worker to submit all documentation required to ~~verify~~ prove his/her claims regarding ownership of, access to, and legal ability to use the resource for personal support and maintenance. Failure to do so results in the presumption that the resource is countable and belongs to the applicant/recipient.

(1) **Jointly held property:** If jointly held property is identified during review of an active case, the ISS must:

- (a) determine whether the property is a countable resource;
- (b) determine whether the value of the jointly held property plus the value of other countable resources exceeds the allowable resource maximum;
- (c) if the value of countable resources exceeds the allowable maximum, advance notice is furnished to the applicant/recipient of the intent to close the case and his/her right to verify claims regarding ownership of, access to and legal ability to use the property for personal support and maintenance;
- (d) if the applicant/recipient fails to provide required information or respond within the advance notice period, the case is closed; and
- (e) if, after expiration of the advance notice period but prior to the end of the month in which the advance notice expires, the applicant/recipient provides the required evidence to show the property is not a countable resource, or is countable in an amount which, when added to the value of other countable resources, does not exceed the maximum allowable limit, and eligibility continues to exist on all other factors, the case is reinstated for the next month.

(2) **Joint bank accounts:** If liquid resources are in a joint bank account of any type, the applicant/recipient's ownership interest, while the parties to the account are alive, is presumed to be proportionate to the applicant/recipient's contributions to the total resources on deposit.

(a) The applicant/recipient is presumed to own a proportionate share of the funds on deposit unless he/she presents clear and convincing evidence that the parties to the account intended the applicant/recipient to have a different ownership interest.

(b) To establish the applicant/recipient's ownership interest in a joint account, the following are required:

- (i) statement by the applicant/recipient regarding contributions to the account; reasons for establishing the account; who owns the funds in the account; and any supporting documentation; plus
- (ii) corroborating statements from the other account holder(s); if either the applicant/recipient or the other account holder is not capable of making a statement, the applicant/recipient or representative must obtain a statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

(c) Failure to provide required documentation within ~~thirty (30)~~ 30 days of the date requested by the ~~ISS~~ ISSD worker results in a determination that the entire account amount belongs to the applicant/recipient.

(d) If the existence of a jointly held bank account is identified during the review of an active case, the ~~ISS~~ ISSD worker requests evidence of ownership and accessibility. If the evidence is not furnished within

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

~~[thirty (30)]~~ 30 days of the request, the case is closed.

E. **Other countable resources:** Other liquid or non-liquid resources must be considered in the calculation of total countable resources. Under certain circumstances, the following non-liquid resources may be included in the calculation of countable resources:

- (1) burial funds;
- (2) burial spaces;
- (3) life estates;
- (4) life insurance~~[-]~~ and other insurance products;
- (5) income-producing property~~[-]~~ and
- (6) other financial investment products.

F **The home as a countable resource:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home and it is not the residence of the applicant/recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant/recipient or his/her representative puts the home up for sale and it is not the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource. Definition: "Relative" is defined as son/daughter; grandson/granddaughter; step-son/step-daughter; in-laws; mother/father; step-mother/step-father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step-brother/step-sister; and niece/nephew.

G. **Value of property:** The applicant/recipient must supply the ISD worker with written documentation regarding the fair market value of the property from a real estate agent, title company or mortgage insurance company in and familiar with the area in which the property is located in addition to any encumbrances against the property. The ISD worker determines the equity value of the property by subtracting the amount of the encumbrances from the fair market value of the property.

[2-1-95, 7-31-97; 8.215.500.13 NMAC - Rn, 8 NMAC 4.SSI.512, 3-1-01; A/E, 2-1-07; A, 8-1-08]

**8.215.500.14 RESOURCE EXCLUSIONS:** Some types of resources can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

A. **Burial fund exclusion:** Up to \$1,500 can be excluded from the countable liquid resources of an applicant/recipient if designated as burial funds. An additional amount of up to \$1,500 can be excluded from countable liquid resources if designated as burial funds for the spouse of the applicant/recipient. The burial fund exclusion is separate from the burial space exclusion.

(1) **Retroactive designation of burial funds:** An applicant/recipient can retroactively designate funds for burial back to the first day of the month in which the applicant/recipient intended the funds to be set aside for burial. The applicant/recipient must sign a statement indicating the month the funds were set aside for burial.

(2) **Limit on exclusion:** An applicant/recipient can designate as much of his/her liquid resources as he/she wishes for burial purposes. However, only one burial fund allowance of up to \$1,500 each for the applicant/recipient and his/her spouse can be excluded from countable resources. A burial fund does not continue from one period of eligibility to another (i.e., across a period of ineligibility). For each new period of eligibility, any exclusion of burial funds must be developed as for an initial application.

(3) **Removal of designation:** An applicant/recipient cannot "undesignate" burial funds unless one of the following occurs:

(a) eligibility terminates;

(b) part, or all, of the funds can no longer be excluded because the applicant/recipient purchased excluded life insurance or an irrevocable burial contract which partially or totally offsets the available burial fund exclusion; or

(c) the applicant/recipient uses the funds for another purpose.

(4) **Reduction of burial fund exclusion:** The \$1,500 burial fund exclusion is reduced by the following:

(a) the face value of excluded life insurance policies;

(b) assets held in irrevocable burial trusts; irrevocable means the value paid cannot be returned to the applicant/recipient;

(c) assets that are not burial space items held in irrevocable burial contracts;

(d) assets held in other irrevocable burial arrangements.

(5) **Interest from burial fund:** Interest derived from a burial fund is not considered a countable resource or income if all of the following conditions exist:

(a) the original amount is excluded.

(b) the excluded burial fund is not commingled with non-excluded burial funds; and

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

(c) the interest earned remains with the excluded burial funds.

(6) **Commingling of burial funds:** Burial funds cannot be commingled with non-burial funds. If only part of the funds in an account is designated for burial, the burial fund exclusion cannot be applied until the funds designated for burial expenses are separated from the non-burial funds. Countable and excluded burial funds can be commingled.

(7) **Life Insurance policy designated as burial fund:** An applicant/recipient can designate a life insurance policy as a burial fund at the time of application. The [ISS] ISD worker must first analyze the [~~policy~~] rule according to 8.215.500.14.H NMAC and following subsections.

(8) **Burial contracts:** If an applicant/recipient has a prepaid burial contract, the [ISS] ISD worker determines whether it is revocable or irrevocable and whether it is paid for. Until all payments are made on a burial contract, the amounts paid are considered burial funds and no burial space exclusions apply. An applicant/recipient may have a burial contract which is funded by a life insurance policy. The life insurance may be either revocably or irrevocably assigned to a funeral director or mortuary. A revocable contract exists if the value can be returned to the applicant/recipient. An irrevocable contract exists when the value cannot be returned.

(a) If the contract or insurance policy assignment is revocable, the following apply.

(i) If the burial contract is funded by a life insurance policy, the policy is the resource which must be evaluated. The burial contract itself has no value. It exists only to explain the applicant/recipient's burial arrangements.

(ii) No exclusions can be made for burial space items because the applicant/recipient does not have a right to them if the contract is not paid for or the policy is not paid up.

(b) If the assignment is irrevocable, the life insurance or burial contract [~~are not countable resources~~] is not a countable resource because the applicant/recipient does not own them.

(i) The burial space exclusions can apply if the applicant/recipient has the right to the burial space items.

(ii) The value of the irrevocable burial arrangement is applied against the \$1,500 burial fund exclusion only if the applicant/recipient has other liquid resources to designate for burial.

**B. Burial space exclusion:** A burial space or an agreement which represents the purchase of a burial space held for the burial of an applicant/recipient, his/her spouse, or any other member of his/her immediate family, is an excluded resource regardless of value. Interest and accruals on the value of a burial space are excluded from consideration as countable income or resources. When calculating the value of resources to be deemed to an applicant/recipient from his/her parent(s) or spouse, the value of spaces held by the parent(s)/spouse which are to be used for the burial of the applicant/recipient or any other member of the applicant/recipient's immediate family, including the deemer parent/spouse, must be excluded. The burial space exclusion is separate from, and in addition to, the burial fund exclusion.

(1) **Burial space definitions:** "Burial space" is defined as a(n) burial plot, gravesite, crypt, mausoleum, casket, urn, niche, or other repository customarily used for the deceased's bodily remains. A burial space also includes necessary and reasonable improvements or additions, such as vaults, headstones, markers, plaques, burial containers (e.g., caskets), arrangements for the opening and closing of a gravesite, and contracts for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care. Items that serve the same purpose are excluded once per individual, such as excluding a cemetery lot and a casket, but not a casket and an urn.

(2) **Burial space contract:** An agreement which represents the purchase of a burial space is defined as a contract with a burial provider for a burial space held for the eligible applicant/recipient or a member of his/her immediate family. Until all payments are made on the contract, the amounts paid are considered burial funds and no burial space exclusions apply. An eligible applicant/recipient's immediate family includes:

(a) the spouse;

(b) natural or adoptive parents;

(c) minor or adult children, including adoptive and stepchildren;

(d) siblings, including adoptive and stepsiblings; and

(e) spouse of any of the above relatives.

(f) if a relative's relationship to an applicant/recipient is by marriage only, the relationship ceases to exist upon the dissolution of the marriage.

(3) **Burial space "held" for an applicant/recipient:** A burial space is considered held for an applicant/recipient if:

(a) someone has title to and/or possesses a burial space intended for the use of the

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

applicant/recipient or a member of his/her immediate family; or

(b) someone has a contract with a funeral service company for a specified burial space for the applicant/recipient or a member of his/her immediate family, such as an agreement which represents the individual's current right to the use of the items at the amount shown.

(c) until the purchase price is paid in full, a burial space is not considered "held for" an individual under an installment sales contract or similar device if:

- (i) the individual does not currently own the space;
- (ii) the individual does not currently have the right to use the space; and
- (iii) the seller is not currently obligated to provide the space.

**C. Life estate exclusion:** A life estate gives an applicant/recipient certain rights to real property. These rights determine how the resource is treated in determining eligibility for medicaid.

[ (1) **Possession:** An applicant/recipient has the right to live on the real property for the rest of his/her life. If it is his/her principal place of residence (home), the life estate is evaluated in accordance with 8.215.500.14.E NMAC and following subsections.

(2) **Use and profit:** An applicant/recipient has the right to use and obtain profit from the real property. If it is income producing property, such as a rental or farm, the life estate is evaluated as income producing property. See 8.215.500.14.F NMAC and following subsections.

(3) **Sale of the life estate interest:** An applicant/recipient has the right to sell his/her life estate interest. The value of this interest is less than the fair market value of the property and is similar to a lease because of the time frame involved. The value of the life estate is based on the age and life-expectancy of the applicant/recipient.

(4) **Valuation of life estates:** The "unisex life estate and remainder interest tables" are used to determine the value of a life estate. See 8.200.520.14 NMAC. The value is computed by multiplying the current market value by the percentage reduction on the unisex table under the column for the applicant/recipient's age. If an applicant/recipient feels the value calculated based on this method is overstated, he/she can obtain a valuation of the life estate in the area for use as documentation of lesser value.

(5) **Legal documentation establishing life estate:** The legal document establishing a life estate may affect one or more of the rights discussed above. Joint ownership of a life estate may require the co-owner's approval for sale. See 8.215.500.13 NMAC and following subsections for criteria to use in evaluating the countability of the resource.

**D. Settlement exclusions:**

(1) Agent orange settlement payments made to veterans or their survivors are excluded from consideration as resources.

(2) Payments made under the Radiation Exposure Compensation Act are excluded from consideration as resources.

(3) Payments by the remembrance, responsibility and the future foundation to individual survivors forced into slave labor by the Nazis are excluded as resources.

(4) Payments received from a state-administered fund established to aid victims of crime are excluded for nine (9) months, beginning the month after the month of receipt.

**E. Exclusions for real property and home:** A home is any shelter used by an applicant/recipient and/or his/her spouse as the principal place of residence. The home includes any buildings and contiguous land used in the operation of the home. A home is not considered a countable resource while in use by the applicant/recipient as his/her principal place of residence. The home continues to be excluded during periods when the applicant/recipient resides in an acute care or long term care medical facility if the applicant/recipient, or his/her representative, states that the applicant/recipient intends to return to the home.

~~[(1) **Exclusion of home:**]~~ If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home but the home is the residence of the applicant/recipient's spouse or dependent relative, the home is an excluded resource. If the applicant/recipient or his/her representative puts the home up for sale and it is *not* the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.

~~[(2) **The home as a countable resource:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home and it is not the residence of the applicant/recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant/recipient or his/her representative puts the home up for sale and it is not the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.~~

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

~~(3) **Definitions:** "Relative" is defined as son/daughter; grandson/granddaughter; step son/step daughter; in laws; mother/father; step mother/step father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step brother/step sister; and niece/nephew.~~

~~(4) **Value of property:** The ISS determines the fair market value of the home by obtaining the appraised value from a real estate agent, a title company or mortgage insurance company. An approximation of the fair market value using a calculation based on the tax assessed value may be appropriate in some areas of the state. The ISS must develop several reliable sources, such as local newspaper aids, or "multiple listing" publications for determining the fair market value of the home.]~~

F. **Income-producing property exclusion:** To be excluded from consideration as a countable resource, income-producing property that does not qualify as a bona fide business (e.g., rental property or mineral rights) must have an equity value of no more than \$6,000 and an annual rate of return of at least ~~six percent (6%)~~ six percent of the equity value. See 8.215.500.14.F.(1)(b) below if the equity value exceeds \$6,000 but the rate of return is at least ~~six percent (6%)~~ six percent annually. The \$6,000 and ~~six percent (6%)~~ six percent limitation does not apply to property used in a trade or bona fide business, or to property used by an applicant/recipient as an employee which is essential to the applicant/recipient's self-support (e.g., tools used in employment as a mechanic, property owned or being purchased in conjunction with operating a business). Existence of a bona fide business can be established by documentation such as business tax returns.

(1) **Determination of rate of return:** To calculate the annual rate of return for income producing property when the \$6,000 and ~~six percent (6%)~~ six percent limits apply, the previous year's income tax statement, or at least ~~three (3)~~ three months earnings is used to project the rate of return for the year.

(a) If the income is sporadic or has decreased from that needed to maintain a ~~six percent (6%)~~ six percent rate of return for the coming year, the property is reevaluated at appropriate intervals.

(b) If the annual rate of return is at least ~~six percent (6%)~~ six percent of the equity value but the equity exceeds \$6,000, only the excess equity is a countable resource.

(c) If the annual rate of return is less than ~~six percent (6%)~~ six percent but the usual rate of return is more, the property is excluded as a countable resource if all of the following conditions are met:

(i) unforeseeable circumstances, such as a fire, cause a temporary reduction in the rate of return;

(ii) the previous year's rate of return, as documented by the income tax statement or several months receipts, is at least ~~six percent (6%)~~ six percent; and

(iii) the property is expected to produce a rate of return of at least ~~six percent (6%)~~ six percent ~~within eighteen (18)~~ within 18 months of the end of the year in which the adverse circumstances occurred; the ~~[ISS]~~ ISD worker records in the case narrative the plan of action which is expected to increase the rate of return.

(d) The ~~[ISS]~~ ISD worker notifies the applicant/recipient in writing that the property is excluded based on its expected increase in return and that it will be reevaluated at the end of the ~~[eighteen (18)]~~ 18-month grace period. When this period ends, the property must be producing an annual rate of at least ~~six percent (6%)~~ six percent to continue to be excluded as a countable resource.

(2) **Types of income-producing property:** Income-producing property includes:

(a) a business, such as a farm or store, including necessary capital and operating assets such as land and buildings, inventory, or livestock. The property must be in current use or have been used with a reasonable expectation of resumed use within a year of its most recent use. The ~~[ISS]~~ ISD worker must account for the cash actually required to operate the business. Liquid business assets of any amount are excluded.

(b) non-business property includes rental property, leased property, land leased for its mineral rights and property producing items for home consumption. Property which produces items solely for home use is assumed to be producing an annual rate of return of at least ~~six percent (6%)~~ six percent.

(c) employment-related property, such as tools or equipment. The applicant/recipient must provide a statement from his/her employer to establish that tools or equipment are required for continued employment. If the applicant/recipient is self-employed, only those tools normally required to perform the job adequately are excluded. The applicant/recipient must obtain a statement from someone in the same line of self-employment to establish what is excludable.

G. **Vehicle exclusion:** The term "vehicle" includes any mode of transportation, such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing, or as an antique are not included in this definition. Recreational vehicles and boats are classified as personal effects and

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

are evaluated under the household goods and personal effects exclusion. One vehicle is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Equity in the other automobiles is counted as a resource.

**H. Life insurance exclusion:** The value of life insurance policies is not considered a countable resource if the total cumulative face value of all policies owned by the applicant/recipient does not exceed \$1,500. A policy is considered to be "owned" by the applicant/recipient if the applicant/recipient is the only one who can surrender the policy for cash.

(1) **Consideration of burial insurance and term insurance:** Burial insurance and term insurance are not considered when computing the cumulative face value because this insurance is redeemable only upon death.

(2) **Calculation when value exceeds limit:** If the total cumulative face value of all countable life insurance policies owned by the applicant/recipient exceeds \$1,500, the ~~[HSS]~~ ISD worker:

(a) verifies the total cash surrender value of all policies and considers the total amount a countable resource; and

(b) informs the applicant/recipient that the insurance policies can be converted to term insurance or ordinary life insurance of lower face value at his/her option, if the cash surrender value, alone or in combination with other countable resources, exceeds the resource standard.

**I. Produce for home consumption exclusion:** The value of produce for home consumption is totally excluded.

**J. Exclusion of settlement payments from the department of housing and urban development:** Payments from the department of housing and urban development (HUD) as defined in Underwood v. Harris are excluded as income and resources. These one-time payments were made in the spring of 1980 to certain eligible tenants of subsidized housing [Section 236 of the National Housing Act].

(1) **Segregation of payment:** To be excluded as a resource, payments retained by an applicant/recipient must be kept separate. These payments must not be combined with any other countable resources.

(2) **Income from segregated funds:** Interest or dividend income received from segregated payment funds is not excluded from income, or, if retained, is not an excluded resource. This interest or dividend income must be kept separate from excludable payment funds.

**K. Lump sum payments exclusion:** SSI and social security lump sum payments for retroactive periods are excluded as countable resources for ~~nine (9)~~ nine months after the month in which they are received. See 8.215.500.16.A.(4) NMAC for policy regarding SSI and social security lump sums which are placed into the ownership of a medicaid qualifying trust. Social security lump sum payments are considered infrequent income.

**L. Home replacement exclusion:** The value of a promissory note or similar installment sales contract which constitutes proceeds from the sale of an excluded home is excluded from countable resources if all of the following conditions are met:

(1) the note results from the sale of the applicant/recipient's home as described in 8.215.500.14.E NMAC and following subsections;

(2) within ~~three (3)~~ three months of receipt (execution) of the note, the applicant/recipient purchases a replacement home which meets the definition of a home in 8.215.500.14.E NMAC and following subsections; and

(3) all note-generated proceeds are reinvested in the replacement home within three (3) months of receipt.

(4) **Additional exclusions:** In addition to excluding the value of the note itself, the down payment received from the sale of the former home, as well as that portion of any installment amount constituting payment on the principal are also excluded from countable resources.

(5) **Failure to purchase another excluded home timely:** If the applicant/recipient does not purchase another home which can be excluded under the provisions of 8.215.500.14.E NMAC and following subsections within ~~three (3)~~ three months, the value of the promissory note or similar installment sales contract received from the sale of an excluded home becomes a countable resource as of the first moment of the first day of the month following the month the note is executed. If the applicant/recipient purchases a replacement home after the expiration of the ~~three (3)~~ three-month period, the value of the promissory note or similar installment sales contract becomes an excluded resource effective the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested.

(6) **Failure to reinvest proceeds timely:** If the proceeds from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully within ~~three (3)~~ three months of receipt in a replacement home, the following resources become countable as of the first moment of the first day of



**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

the month following receipt of the payment:

- (a) the fair market value of the note; ~~and~~
- (b) the portion of the proceeds, retained by the individual, which was not timely reinvested; and
- (c) the fair market value of the note remains a countable resource until the first moment of the

first day of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home; failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract; however, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained.

(7) **Interest payments:** If interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments are considered countable unearned income in accordance with 8.215.500.20.C.(3) NMAC.

(8) **When the home replacement exclusion does not apply:** If the home replacement exclusion does not apply, the market value of a promissory note or sales contract as well as the portion of the payment received on the principal are considered countable resources.

M. **Household goods and personal effects exclusion:** Household goods and personal effects are excluded if they meet one of the following four criteria. They are:

(1) items of personal property, found in or near the home, which are used on a regular basis. Items may include but are not limited to: furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting.

(2) items needed by the householder for maintenance, use and occupancy of the premises as a home. Items may include but are not limited to: cooking and eating utensils, dishes, appliances, tools, and furniture.

(3) items of personal property ordinarily worn or carried by the individual. Items may include but are not limited to: clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items.

(4) items otherwise having an intimate relation to the individual. Items may include but are not limited to: prosthetic devices, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual; or items required because of an individual's impairment.

[2-1-95, 7-31-97; 8.215.500.14 NMAC - Rn, 8 NMAC 4.SSI.513, 3-1-01; A, 5-1-01; A, 7-1-05; A, 1-1-06; A, 8-1-08]

**8.215.500.16 TRUSTS:** In some instances, an applicant/recipient with a trust can be eligible for SSI cash benefits but not be automatically eligible for medicaid. If the social security administration (SSA) determines that an SSI recipient has a trust, SSI notifies the human services department (HSD) of the existence of the trust. The recipient is then notified that the trust document must be submitted to and reviewed by HSD before medicaid eligibility is determined.

A. **Medicaid qualifying trusts:** A "medicaid-qualifying trust" (MQT) is a trust or similar legal device established prior to August 11, 1993, other than by will, by an applicant/recipient or spouse, under which the applicant/recipient may be the beneficiary of all or part of the payments from the trust. The distribution of trust payments is determined by one or more trustees who are permitted to exercise discretion with respect to the distribution of payments to the applicant/recipient. When the use of an attorney is solicited to establish a trust, the beneficiary of that trust is not exempt from the requirements of MQT provisions. Legal instruments such as trusts are almost always drafted by an attorney. It is the grantor him/herself who actually establishes or creates the trust when he/she signs or executes it.

(1) **Amount deemed available from an MQT:** The amount from an MQT that is deemed available to an applicant/recipient is the maximum amount that could be distributed to the applicant/ recipient, or for the care of the applicant/ recipient, regardless of restrictions imposed by the trust on the allowable use of the funds. If, for example, the trustee can make payments to a health care provider for medical services, the applicant/recipient beneficiary is considered to be receiving benefits from the trust even though these benefits are not paid directly to the beneficiary. This provision applies regardless of whether the MQT was set up for the purpose of qualifying for medicaid or whether the trust is irrevocable.

(2) **Revocable trusts:** Revocable trusts that limit access to the assets held in trust must be dissolved and the assets spent down before eligibility can be established.

(3) **Beneficiary of trust lives in an ICF-MR:** If the beneficiary of a trust is an applicant/recipient who is mentally retarded and resides in an intermediate care facility for the mentally retarded (ICF-MR), that applicant/recipient's trust is not considered an MQT if the trust or trust decree was established prior to April 7, 1986,

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

and is solely for the benefit of that applicant/recipient.

(4) **Treatment of SSI or social security lump sum payments:** SSI or social security lump sum payments for retroactive periods which are placed into an MQT do not qualify for the [~~six (6)~~] nine-month exclusion from countable resources.

**B. Trusts creating medicaid eligibility: [Reserved]**

[2-1-95, 7-31-97; 8.215.500.16 NMAC - Rn, 8 NMAC 4.SSI.517, 3-1-01; A, 8-1-08]

**8.215.500.18 INCOME:**

A. An applicant/recipient's gross countable monthly income must be less than the maximum allowable monthly standard for the applicable medicaid category. Income may be in the form of cash, checks, money orders, or in-kind, including personal property or food. If income is not received in the form of cash, the cash value of the item is determined and counted as income. Income is counted in the month received. Income is considered available throughout the month, regardless of when in the month it is received. The [~~ISS~~] ISD worker verifies and documents all income.

B. **Types of income:** Countable income is the sum of unearned income and/or earned income, less disregards and/or exclusions, plus deemed income.

(1) **Earned income:** Earned income consists of the total gross income received by an individual for services performed as an employee or as a result of self-employment.

(a) Royalties earned in connection with the publication of the applicant/recipient's work and any honorarium/fees received for services rendered are considered earned income.

(b) The self-employed applicant/recipient must provide an estimate of his/her current income based on the tax return filed for the previous year and/or current records maintained in the regular course of business. The estimate of net earnings for the entire previous taxable year is prorated equally among all months of the current year, even if the business is seasonal.

(i) Consideration is given to the applicant/recipient's explanation as to why he/she believes the estimated net earnings for the current year vary substantially from the information shown on his/her tax return for past years.

(ii) A satisfactory explanation is that the business suffered heavy loss or damage from fire, flood, burglary, serious illness or disability of the owner, or other such catastrophic events. Documentation must include copies of newspaper accounts or medical reports and must be filed in the case record to substantiate the need for a reduced estimate of current self-employment income.

(2) **Unearned income:** Unearned income consists of all other income (minus exclusions and disregards) that is not earned in the course of employment or self-employment.

(3) **Deemed income:** Deemed income is income which must be considered available to the assistance unit and counted in determining eligibility whether or not the income is actually made available. For household member(s) who are not members of the assistance unit but who have a support obligation to the assistance unit, income can only be deemed from a parent to his/her minor child(ren) who live in the same household and from one spouse to the other when both live in the same household.

[2-1-95, 7-31-97; 8.215.500.18 NMAC - Rn, 8 NMAC 4.SSI.520, 3-1-01; A, 8-1-08]

**8.215.500.20 UNEARNED INCOME:**

A. Unearned income includes all income not earned in the course of employment or self-employment.

B. Income paid to one spouse is considered the income of that spouse. One-half the total income paid to a couple is considered available to each member of the couple.

(1) If payment is made in the name of either or both spouses and another party, only the applicant/recipient's proportionate share is considered available to him/her.

(2) If income is derived from property for which ownership is not established, such as unprobated property, one-half of the income is considered available to each member of a married couple.

C. **Standards for unearned income:** Unearned income is computed on a monthly basis. If there are no expenses incurred with the receipt of unearned income, such as annuities, pensions, retirement payments or disability benefits, the gross amount is considered countable unearned income.

(1) **Social security overpayments:** If the social security administration withholds an amount because of an overpayment, the gross social security payment amount is used to determine eligibility.

(2) **Rental income:** If an applicant/recipient has rental property, the [~~ISS~~] ISD worker allows the cost of real estate taxes, maintenance and repairs, advertising, mortgage insurance and interest payments on the

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

mortgage as deductions from the amount received as rent.

(3) **Interest on promissory note or sales contract:** The portion of the payment representing interest received from a promissory note or sales contract is considered unearned income. The market value of promissory notes or sales contracts and the portion of the payment representing payment of the principal are considered resources. See also 8.215.500.14.L NMAC, *Home Replacement Exclusion*.

**D. Unearned Income Exclusions:**

(1) **Interest from an excluded burial fund:** Interest from an excluded burial fund is not considered unearned income if the interest is applied toward the fund balance. If the interest is paid to the applicant/recipient, it is considered unearned income.

(2) **Tax refunds and earned income tax credit:** Tax refunds from any public agency for property taxes or taxes on food purchases are totally excluded. Any portion of a federal income tax return which constitutes an earned income tax credit is excluded.

(3) **Grants, scholarships and fellowships:** All grants, scholarships and fellowships used to pay tuition and fees at an educational institution, including vocational and technical schools, are totally excluded. Any portion of a grant, scholarship or fellowship used to pay any other expense, such as food, clothing or shelter, is not excluded.

(4) **Veterans payments:** Veterans aid and attendance (A&A) payments are excluded from unearned income for determination of eligibility.

(a) If an applicant/recipient receives an augmented VA payment as a veteran or veteran's widow or widower, the payment amount may include an increment for a dependent. If so, the VA must be contacted to provide documentation of the portion of the payment which represents the dependent's increment. When verified, this amount of the VA payment is considered the dependent's income.

(b) The portion of a veterans administration improved pension (VAIP) benefit intended for unreimbursed medical expenses is excluded for purposes of eligibility determination.

(5) **Payments by a third party:** Third party payments are excluded as income if made directly to the applicant/recipient's creditor.

(a) Third party payments may include mortgage payments by credit life or credit disability insurance and installment payments by a family member on a burial plot or prepaid burial contract.

(b) Interest from a burial contract that is automatically applied to the outstanding balance is excluded from unearned income. If the payment or interest is sent to the individual, it is counted as unearned income regardless of the sender's (third party's) intentions. This applies even if the sender specifies the purpose of the payment on the check.

(c) This provision does not apply if the signature of the creditor and the individual must both be present in order to negotiate the check (two-party check).

(6) **Indian tribe per capita payments:** Funds held in trust by the secretary of the interior for an indian tribe and distributed on a per capita basis and any interest and investment income from these funds are excluded as income and resources in the eligibility determination process.

(7) **Plans for achieving self-support:** Income derived from, or necessary to, an approved plan for achieving self-support for a blind or disabled applicant/recipient under ~~[sixty-five (65)]~~ 65 years of age is excluded.

(a) For an applicant/recipient who is blind or disabled and over ~~[sixty-five (65)]~~ 65 years of age, this exclusion applies only if he/she received medicaid for the month preceding his/her 65th birthday.

(b) The self-support plan must be in writing and contain the following:

(i) designated occupational objective;

(ii) specification of any savings (resource) or earnings needed to complete the plan, such as amounts needed for purchase of equipment or for financial independence;

(iii) identification and segregation of any income saved to meet the occupational goal;

and

(iv) designation of a time period for completing the plan and achieving the occupational goal.

(c) Plans for achieving self-support are developed by vocational rehabilitation counselors. If a self-support plan is not in place, the ~~[ISS]~~ ISD worker makes a referral to the division of vocational rehabilitation (DVR).

(d) The ~~[ISS]~~ ISD worker forwards the written plan and documentation to the MAD eligibility unit. The plan must be approved by that unit.

(e) An approved plan is valid for the following specified time periods:

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

- (i) initial period of no more than [~~eighteen (18)~~] 18 months;
- (ii) extension period of no more than [~~eighteen (18)~~] 18 months;
- (iii) final period of no more than [~~twelve (12)~~] 12 months; and
- (iv) total period of no more than [~~forty-eight (48)~~] 48 months.

(8) **Agent orange settlement payments:** Agent orange settlement payments made to veterans or their survivors are excluded from consideration as income in determining eligibility.

(9) **Radiation exposure compensation act payments:** Payments made under the radiation exposure compensation act are excluded from consideration as income in determining eligibility.

(10) **Remembrance, responsibility and the future foundation:** Payments to individual survivors forced into slave labor by the Nazis are excluded.

~~[(40)]~~(11) **Victims compensation payments:** Payments made by a state-administered fund established to aid victims of crime are excluded from consideration as income in determining eligibility.

~~[(44)]~~(12) **SSI lump sums for retroactive periods:** Supplemental security income (SSI) lump sum payments for retroactive periods are excluded from consideration as countable income in the month received.

~~[(42)]~~(13) **Life insurance and other burial benefits:** Life insurance and other burial benefits are unearned income to the beneficiary (not the owner). The [~~ISS~~] ISD worker must subtract the amount spent on the insured individual's last illness and/or burial up to \$1,500. Any excess is counted as unearned income.

~~[(43)]~~(14) **100% state-funded assistance payment:** Any 100% state-funded assistance payment based on need, such as general assistance (GA), is excluded. Any interim payments made by a state or municipality from all state or local funds while an SSI application is pending are excluded.

[2-1-95, 7-31-97; 8.215.500.20 NMAC - Rn, 8 NMAC 4.SSI.522, 3-1-01; A, 8-1-08]

**8.215.500.21 DEEMED INCOME:**

A. **Availability:** Deemed income is income which must be considered available to members of an assistance unit regardless of whether the income is actually made available.

B. **Situations in which deeming occurs:** For household member(s) who are not members of the assistance unit but who have a support obligation to the assistance unit member(s), income can only be deemed from a parent(s) to his/her minor child(ren) who live in the same household and from one spouse to the other when both live in the same household.

C. **Parent or spouse receiving benefits based on economic need:** In a deeming situation where one parent or the spouse is receiving a needs benefit, the benefit plus all of the income of the spouse/parent who receives the benefit is excluded from the deeming process. This exclusion applies only to the income of the individual who receives the benefit.

(1) **Needs benefit defined:** "Needs benefit" is any benefit or assistance which is paid by a governmental agency on the basis of economic need.

(2) **Consideration of household membership:** Even if the income of one parent is excluded from the deeming process, the parent is considered a member of the household for purposes of determining the parental allocation. This does not apply to benefits received under the [~~aid to families with dependent children (AFDC)] Temporary Assistance to Needy Families (TANF) program. No income is allocated to a parent or child if that parent or child is receiving [~~AFDC]~~ TANF assistance.~~

D. **Applicant living with ineligible spouse:**

(1) If an applicant/recipient is living in the same household with an ineligible spouse, income may be deemed from the ineligible spouse to the applicant/recipient.

(2) The methodology described below does not apply to the qualified medicare beneficiaries (QMB) program. See Sections QMB 523.2 through QMB 523.23 for methodology applicable to the QMB program only.

(a) **Evaluation of applicant's income:** Determine the amount of income available to the applicant using only the applicant's own income and allow the [~~twenty dollar (\$20)] \$20 disregard. If the applicant/recipient has earned income, the first [~~sixty-five dollars (\$65)] \$65 plus one-half of the remainder is also disregarded.~~~~

(i) If an applicant/recipient's own income exceeds the income standard for an individual, the applicant/recipient is ineligible. No further calculation needs to be done.

(ii) If an applicant/recipient's countable income is less than the standard for an individual, determine the ineligible spouse's gross income.

(b) **Evaluation of ineligible spouse's gross income:** Determine the ineligible spouse's gross income (both earned and unearned). Subtract the [~~twenty dollar (\$20)] \$20 general disregard plus the first [~~sixty-five~~~~

**MEDICAID ELIGIBILITY  
SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY**

**EFF:proposed**

dollars (~~\$65~~) \$65 and one-half of the remainder from any earned income. If there are no children in the household, compare the ineligible spouse's countable income to one-half of the SSI federal benefit rate (FBR) for an individual not living in the household of others. If the ineligible spouse's countable income is less than one-half of the SSI FBR, no income is deemed from the ineligible spouse to the applicant/recipient. If the ineligible spouse's countable income equals or exceeds one-half of the SSI FBR, income is deemed from the ineligible spouse to the applicant.

**E. Applicant living with ineligible spouse and children:**

(1) A "child" is under ~~[eighteen (18)]~~ 18 years of age or under ~~[twenty-one (21)]~~ 21 years of age if a full-time student at an accredited institution of learning.

(2) If there are children in the household, subtract a living allowance for each ineligible child from the ineligible spouse's countable income. The living allowance is one-half of the monthly SSI FBR for an individual not living in a household with others less any income attributable to the child. If the remaining amount is less than one-half of the SSI FBR, no income is deemed from the ineligible spouse to the applicant/recipient. If the remaining amount equals or exceeds one-half of the SSI FBR, income is deemed from the ineligible spouse to the applicant/recipient.

(3) **Determination of countable income:** Add the total gross unearned income of the ineligible spouse to the total gross unearned income of the applicant/recipient. The ~~[twenty dollar (\$20)]~~ \$20 disregard is deducted from the combined total of the couple's unearned income. If the total unearned income is less than ~~[twenty dollars (\$20)]~~ \$20, the remainder is deducted from the combined total of the couple's earned income. The first ~~[sixty five dollars (\$65)]~~ \$65 and 1/2 of the remainder is subtracted from the combined total of the couple's earned income. After all applicable disregards have been subtracted, the remaining earned and unearned income amounts are combined to arrive at the total countable income. If the total countable income is less than the income standard for a couple, the applicant/recipient is eligible.

**F. Applicant child living with ineligible parents:** A "child" applicant/recipient is under ~~[eighteen (18)]~~ 18 years of age. The ~~[FAA]~~ ISD worker determines the total gross monthly amount of parental income, both unearned and earned. The ~~[FAA]~~ ISD worker applies appropriate income disregards to calculate the countable deemed income. See 8.200.520.18 NMAC, *Deemed Income Worksheet*. If the deemed income plus the child's separate income exceeds the income standard for an applicant/recipient, the child is not eligible for that month.

**G. Applicant/recipient parent and applicant/recipient child(ren):** If a household is composed of an applicant/recipient parent and an applicant/recipient child(ren), the income is deemed from the ineligible spouse to the applicant/recipient spouse if appropriate. See Subsection B of 8.215.500.21 NMAC.

(1) If there is enough total income to make the applicant/recipient parent ineligible, the remainder of the income is carried over to be deemed to the child(ren). Deemed income is divided equally among the applicant/recipient children.

(2) If the total countable income of the child, including the deemed income, is more than the applicable income standard, the child is ineligible.

[2-1-95, 7-31-97; 8.215.500.21 NMAC - Rn, 8 NMAC 4.SSI.523, 3-1-01; A, 6-1-04; A, 8-1-08]

**MEDICAID ELIGIBILITY  
GENERAL RECIPIENT POLICIES**

**EFF:proposed**

**TITLE 8            SOCIAL SERVICES  
CHAPTER 200    MEDICAID ELIGIBILITY - GENERAL RECIPIENT POLICIES  
PART 510        RESOURCE STANDARDS**

**8.200.510.12    POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):** Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<b>DEDUCTION</b>	<b>AMOUNT</b>
A. <del>Personal needs allowance for institutionalized spouse</del>	<del>\$58</del>
B. <del>Basic community spouse monthly income allowance standard (CSMIA)</del>	<del>\$1,712</del>
<del>(CSMIA standard minus income of community spouse = deduction)</del>	
C. * <del>Excess shelter allowance for allowable expenses for community spouse</del>	<del>\$898</del>
D. ** <del>Extra maintenance allowance</del>	
E. <del>Dependent family member</del>	<del>1/3 X (CSMIA dependent member's income)</del>
F. <del>Non covered medical expenses</del>	
G. * <del>The allowable shelter expenses of the community spouse must exceed \$514 per month for any deduction to apply.</del>	
H. ** <del>To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.</del>	
<del>I. <b>MAXIMUM TOTAL:</b> The maximum total of the community spouse monthly income allowance and excess shelter deduction is \$2,610.]</del>	
A. <u>Personal needs allowance for institutionalized spouse</u>	<u>\$58</u>
B. <u>Minimum monthly maintenance needs allowance (MMMNA)</u>	<u>\$1,712</u>
C. <u>The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:</u>	
(a) <u>if allowable shelter expenses of the community spouse exceed</u>	<u>\$514</u>
<u>deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above). Use the standard utility allowance(SUA) deduction used in the Food Stamp program for the utility allowance.</u>	
(b) <u>excess shelter allowance may not exceed a maximum of</u>	<u>\$829</u>
(2) <u>Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.</u>	
D. <u>Dependent family member income allowance (if applicable) calculated as follows: 1/3 X (MMMNA - dependent member's income)</u>	
E. <u>Non-covered medical expenses</u>	
F. <u>The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed \$2,541.</u>	

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08; A, 8-1-08]