01/01/05

MA-2231: COMMUNITY SPOUSE RESOURCE PROTECTION

02/01/03

I. SPOUSAL PROTECTION RULES

Spousal resource protection is a reserve procedure with unique rules used only when a legally married individual needs Medicaid help with cost of nursing home care. Part of this procedure, called assessment, is a formal estimation of how much of the couple's savings or other assets can be kept by the spouse at home. This can be done in advance of the Medicaid application, or at the time of application, but never before one spouse has entered long term care. Whenever placement in a nursing home is expected, spousal resource protection should be explained to the representative and the record documented.

A. Definitions of Terms.

1. Institutionalized spouse (or ISP) -- An individual applying for or receiving Medicaid who:

   a. Is in a long term care living arrangement:

      (1) SNF, ICF, ICF-MR; State Mental Hospital; Swing bed or inappropriate level of care bed; or approved for a CAP waiver program; or

      (2) General hospital (acute care) after 30 days.

   AND

   b. Is married to someone who is not in long term care;

   AND

   c. Began his first continuous period of institutionalization (CPI) on or after October 1, 1989.

2. Community spouse (or **CUSP**) -- The non-institutionalized spouse (at-home or in domiciliary care) of an institutionalized spouse. A community spouse who is approved for CAP remains a community spouse.

3. Community Spouse Resource Allowance (**CSRA**) -- A portion of the total of all **countable** assets (on first day of month that a/r began first CPI):

   a. Owned and available to either spouse or both spouses according to the rules in MA-2230, Financial Resources, section I.F.

b. Owned jointly with someone outside of the budget unit, when available (i.e., consent/participation of all owners not required to access, or consent/participation given by other owners).

4. Assessment -- The process of determining:

a. Total countable reserve of the couple on the first day of the month that institutionalized spouse begins first CPI; and

b. Amount of community spouse resource allowance (how much of the total reserve is protected for the community spouse).

5. Protection period -- Period of time assets are protected for the Community Spouse. Approved recipients are allowed a period of time during which assets in the amount of the CSRA are excluded from reserve of a/r regardless of who holds assets in their name.

B. Availability Rules (May differ from MA-2230, Financial Resources)

1. From the point of institutionalization through approval of the institutionalized spouse for Medicaid coverage of cost of care, all assets available to either spouse or jointly owned by the couple are available to the institutionalized spouse regardless of who actually holds the assets and must be considered for the purposes of:

a. Assessment -- determining what portion may be protected for the community spouse;

AND

b. Reserve eligibility for the institutionalized spouse.

2. Assets in which the community spouse has sole ownership interest are available to the institutionalized a/r regardless of:

a. Prenuptial or postnuptial agreements

b. Formal/informal separation agreements

c. Willingness of CUSP to cooperate

3. Assets totaling the amount of the CSRA are:

a. Protected for the community spouse's use

b. Not available to the ISP during the protection period

c. Counted when determining eligibility of the community spouse for Medicaid or MQB.

(I.B.)

4. Exceptions to 1. and 2., above -- Count only those resources owned by the a/r (solely owned, or jointly if normally available according to the availability rules in MA-2230, Financial Resources, I.F.) if one of the following is true:

   a. A valid court order or divorce settlement divides and disperses resources of the couple.

      A legal separation agreement is not a court order signed by a judge, and therefore, does not legally divide property.

   b. The current period of institutionalization began before 10/1/89.

      There is no spousal resource protection for individuals institutionalized prior to 10/1/89. Effective with the month after the month of entry, count only those resources in which the institutionalized spouse has an ownership interest. Contact your MPR with questions.

   c. A/R does not have a legal spouse.

   d. A/R has been continuously separated from the spouse for 12 months or longer as of the date of the current continuous period of institutionalization (CPI):

      (1) Separation of 12 months or longer may be formal or informal.

      (2) Accept written or verbal statements of the client or the representative regarding marital status or separation unless questionable or legal spouse denies separation of that length.

         (a) A copy of legal separation document verifies the date of separation and may be an excellent lead for determining the a/r’s total resources.

         (b) Written statement from a person knowledgeable of couple’s situation can also be used to verify length of separation.

         (c) It is not required that the community spouse have been living with the a/r at the time of institutionalization to receive spousal resource protection.

      (3) A prior period of continuous institutionalization does not count as part of the period of separation.

   e. The couple has been separated for any length of time and the community spouse cannot be located.

      (1) If the a/r or the client's representative states that the community spouse's whereabouts are unknown, attempt to locate the community spouse by all of the following:

(a) Local telephone listings,

(b) Statements, verbal or written, of all of the a/r's children,

(c) Statement, verbal or written, of a person knowledgeable of the a/r's situation.

(2) If any of the above sources provides a possible address and/or telephone number for the community spouse, attempt to contact the community spouse at that address/telephone number.

(3) Pend an application up to the 45th or 90th day for:

(a) Receipt of statements by a child(ren) or knowledgeable person regarding the location of the community spouse;

OR

(b) Awaiting response of community spouse when location is not known and attempts to contact the community spouse are unsuccessful.

(4) If the community spouse has not been located by the 45th or 90th day, process the application using only those assets available to the institutionalized spouse.

(5) If information from or about the community spouse is received after approval of application, proceed to verify assets at the point of first CPI, and treat as a change in situation.

5. Pend the application up to the 45th or 90th day when the spouse's location is known, but the spouse has refused to cooperate and verification sources have not been provided. Follow policy in MA-2304, Processing the Application, for denial for failure to provide needed information by the 45th/90th day.

6. Refusal to cooperate occurs when direct verbal or written contact is made with the community spouse. Some examples are:

   a. Mail sent to the address provided by the a/r, the a/r's children, or the a/r's representative is not returned by the post office (indicating that it was received by the community spouse).

   b. IMC speaks with the community spouse on the phone and the spouse refuses to cooperate.

   c. IMC leaves a message on an answering machine or with someone at the community spouse's residence and the request is ignored.

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(I.)

C. Assessment Rules

1. Assessment for spousal resource protection and the protected amount (CSRA) is based on total reserve at the point in time that the first CPI began. The month that the first CPI begins is always the month that total reserve must be verified for the assessment.

2. Do an assessment for spousal resource protection only when:

   a. One spouse has already begun the first continuous period of institutionalization (CPI);

   AND

   b. The other spouse is a community spouse as defined in I.A.2., above;

   AND

   c. One of the following is true:

      (1) Assessment is requested by the couple prior to application for Medicaid. This must be kept on file by the county dss and used at application.

      OR

      (2) Application is made for help with cost of care and no previous assessment has been done.

      OR

      (3) Application is made for help with cost of care and information obtained later proves the previous assessment was incorrect.

3. When individuals request information, but do not meet the criteria in I.C.2., above, explain only the general policy rules. Do not complete an assessment for spousal resource protection when:

   a. The applicant's first CPI began before 10-01-89.

   b. Neither spouse has begun the first continuous period of institutionalization (CPI).

   c. There is no community spouse as defined in I.A.2., above.

d. An assessment has already been done, unless the IMC learns that it was incorrect. Otherwise, the amount does not change because it is based on assets owned on the first of the month that the first period of continuous institutionalization began -- a fixed point in time.

4. At application, review county records to determine if an assessment has already been completed.

a. Question the a/r whether an assessment has been completed in another county. If so:

(1) Get a copy of that assessment; and

(2) Use the Community Spouse Resource Allowance (CSRA) established by that assessment unless verified information proves the previous assessment was incorrect.

b. If you learn that the original assessment was incorrect:

(1) A new assessment must be completed as part of the eligibility determination.

(2) Do not reverify those assets that were correctly verified at the point of institutionalization.

(3) Recalculate the amount of the Community Spouse Resource Allowance based on the corrected reserve total for the month the CPI began.

II. PROCEDURES FOR SPOUSAL RESOURCE PROTECTION

Steps One and Two, below, are assessment steps. The specific verification tasks are the same for Step One and Step Three. The verification month many or may not be the same:

* Verification month in Step One depends on when the CPI began.

* Verification month in Step Three depends on the date of application.

A. Step One: Determine Total Countable Reserve for Month That First CPI Began

1. Determine date that one spouse became an institutionalized spouse (began CPI) as defined in section I.A.1., above.

2. Verify value of all assets in which either or both spouses have an ownership interest as of the first moment of the first month of the first CPI that began on or after 10-01-89.

(II.A.)

3. List every item of reserve, its value, how verified, and who owns it.

4. Exclude any asset which is listed as non-countable in MA-2230, Financial Resources.

5. Exclude any asset which is not available to either spouse based on the rules in MA-2230, Financial Resources.

B. Step Two: Determine Amount Protected for CUSP

1. The protected share is called the Community Spouse Resource Allowance (CSRA).

2. Compute the protection amount based on the following parameters.

   If the total countable/available reserve for the month that the CPI began is:

   a. $21,912 or less: PROTECT ALL ASSETS.

   b. More than $21,912, but not more than $43,824 PROTECT $21,912

   c. More than $43,824 not more than $219,120: PROTECT ONE HALF.

   d. More than $219,120: PROTECT $109,560.

3. The CSRA does not change unless a different amount is established:

   a. Through the appeals process as the amount necessary to meet the needs of the community spouse; or

   b. By subsequent court order; or

   c. The original assessment is found to be incorrect; or

   d. The minimum/maximum protection amount was used and that amount has been increased in policy since the assessment was done.

4. If there is an assessment completed, but no application is made, provide the couple/representative with a copy of the documentation and file the original in a special file, "Assessments for Spousal Resource Protection."

C. Step Three: Determine Total Countable Reserve at Application

* Steps Three through Five are protection steps.

1. Verify reserve total of the budget unit at application.

2. Repeat tasks 2.-5. in II.A., Step One, above, verifying the total countable assets owned by the couple (and/or either spouse individually) at the first moment of each period (ongoing or retroactive) for which assistance is requested.

(II.C.)

3. From total countable/available reserve of the couple, deduct the CSRA determined in section II.B., Step Two, above.

4. The remainder is the total amount of reserve available to the applicant and used to determine the applicant's eligibility.

5. Specific rules relating to spousal protection and burial exclusion

   a. Do not exclude countable burial assets or liquid assets for the burial of either spouse at assessment.

   b. Irrevocable burial assets are unavailable and are not included in the assessment.

   c. When determining reserve eligibility for the institutionalized applicant, burial exclusion applies to applicant and the spouse.

D. Step Four: Determine Applicant's Reserve Eligibility

1. Remaining assets (from Step Three) are available to the applicant regardless of which spouse actually has ownership interest, or in whose name the asset is held.

2. Compare this amount to the reserve allowance for 1 ($2,000). Reference MA-2260, Financial Eligibility Regulations-PLA.

   a. If it is $2,000 or less:

      The a/r is reserve eligible. Proceed to II.E., Step Five, below.

   b. If it is over $2,000:

      The a/r is not eligible until his reserve is reduced to the $2,000 limit.

      (1) Use the same reduction/rebuttal procedures which apply to all other a/r's, located in MA-2230, Financial Resources.

      (2) If reduction/rebuttal options have been thoroughly reviewed and either pursued or refused by the couple, and the applicant's reserve total still exceeds the limit for one on the 45th or 90th day, deny for excess reserve.

      (3) Some options to reduce reserve:

         (a) Pay cost of care
         (b) Pay burial expenses
         (c) Pay bills
         (d) Purchase items needed by the couple

      (4) Reminder: Transfers to persons other than those specified as allowed in MA-2240, Transfer of Resources, may result in a period of ineligibility for help with nursing home cost of care, CAP, or in-home health services and supplies after being sanctioned for institutional services.

(II.D.)

3. Establish protection period for the CSRA, once reserve has been reduced to the CSRA plus $2,000.

   a. Resources equal to the CSRA are excluded through the end of the protection period regardless of which spouse has the resources in his name.

   b. The protection period ends on the last day of the 6th month of the first or second c.p., whichever is appropriate.

      (1) If application approved by the end of the fourth month of first certification period:

      Protection period ends at the end of the first c.p.

      (2) If application approved in the 5th or 6th month of first certification period or if held and not approved until second certification period:

      Protection period ends at end of second certification period.

   c. If protected resources (in the amount of the CSRA) are not transferred to the community spouse's name/control by the end of the protection period:

      (1) The resources become countable/available to the Medicaid recipient;

      (2) Propose termination if this causes the LTC recipient's reserve to exceed $2,000.

4. Whenever there is an application for Medicaid help with cost of care and a community spouse, notify the a/r, his representative, and the community spouse of the results of the assessment and protection period.

5. At a minimum, notification at disposition of an application must include the following information:

   a. Total value of all countable resources and how the value was established at:

      (1) The point a/r began his first CPI;

      AND

      (2) The point at application.

   b. The amount of resources (CSRA) which are protected for the community spouse and the notice of the right to a fair hearing.

   c. That the a/r may retain countable resources up to $2,000, the resource limit for 1.

(II.D.)

6. If the application was approved, the notification must also include:

   a. The amount of assets that must be transferred to the name of the community spouse.

   b. The date the protection ends.

   c. The following rules about the protection period:

      (1) Verification must be provided on all transfers from the couple (or from the recipient's name only) to the community spouse's name only;

      AND

      (2) All resources remaining in the recipient's name become countable and available again.

   d. The amount of income protected for the community spouse, if applicable.

7. Attach the notification regarding the results of assessment and protection to the appropriate eligibility notice.

8. Examples of Resource Protection

   a. EXAMPLE 1: The total countable resources owned by the couple at the time of institutionalization were $78,000. The CSRA is 1/2 of that amount, or $39,000. At the time of application, the total resources held by the couple have been reduced to $40,000. Therefore, the resource total of the a/r is $1,000 ($40,000 - $39,000 = $1,000), and a/r is reserve eligible.

   b. EXAMPLE 2: The total countable resources owned by the couple at the time of institutionalization were $25,000. The minimum CSRA is $21,912. At the time of application, the total resources held by the couple are $14,870. Therefore, the resource total of the institutionalized spouse is $0.

   c. EXAMPLE 3: The total countable resources owned by the couple at the time of institutionalization were $102,500. The CSRA is 1/2 of that amount, or $51,250. At the time of application, the total resources held by the couple are $58,500. Therefore, the resource total of the institutionalized spouse is $7,250 ($58,500 - $51,250 = $7,250), and the a/r must reduce his resources to the $2,000 limit by allowable means.

   d. EXAMPLE 4: The total countable resources owned by the couple at the time of institutionalization were $220,000. The CSRA amount is $109,560. At the time of application, the couple has a total of $111,400. Therefore, the resources of the a/r are $1,840 ($111,400 - $109,560 = $1,840) and the a/r is resource eligible.

      (1) After approval, the community spouse receives an inheritance of $20,000. The resource is not counted for the Medicaid recipient.

(2) Medicaid recipient receives an inheritance of $20,000. The asset is countable for the recipient. If the recipient transfers the asset to the community spouse, there is no sanction, and it is no longer countable for the recipient.

e. EXAMPLE 5: At the point the first CPI began, total reserve is verified to have been $40,000; therefore, CSRA amount is $21,912. At application, the couple has a reserve total of $60,000. The CSRA does not change, but remains $21,912. The total reserve of the applicant is $38,088 ($60,000 - $21,912 = $38,088).

E. Step Five: Determine Recipient's Total Countable Reserve at End of Protection Period

(Look for definition of protection period in I.A.5., above, and for rules in II.D.3., above.)

1. Before the end of the protection period, the recipient or the recipient's representative must provide verification that ownership of an amount of assets equal to the CSRA were transferred from the a/r's name (or both names) to the name of the community spouse only.

   a. In order to remain eligible, assets in the name of the a/r must be reduced to the reserve limit for one.

   b. Any countable assets remaining in the recipient's name at the end of the protection period are countable to the recipient.

2. Either spouse may transfer any amount of resources at any time to the other spouse without penalty.

3. Propose termination following timely notice requirements if:

   a. Verification has not been provided by the end of the protection period that the protected amount has been transferred;

   AND/OR

   b. Countable assets remaining in the recipient's name exceed the reserve limit for 1.

4. Administratively reopen a terminated case and redetermine ongoing eligibility if the recipient later provides verification that assets were transferred prior to the end of the protection period.

III. CHANGES AFFECTING SPOUSAL RESOURCE PROTECTION

A. Community Spouse Begins Continuous Period of Institutionalization

Starting with the month the CPI of the former community spouse begins:

1. Assets held solely in the name of the newly institutionalized individual are countable in the determination of their reserve eligibility.

(III.A.)

2. Assets still held in the name of the first spouse to be institutionalized are available to that individual regardless of any portion which was part of the original CSRA for the former community spouse.

3. Availability of assets held jointly by the couple must be evaluated as assets held jointly with a non-budget unit member recipient, unless they are in the same LTC room. Look for rules in MA-2230, section I.F.1.b. and 4.c.

B. Community Spouse Dies

Spousal resource protection applies only to a living spouse, and does not rule how the assets of an estate should be dispersed.

1. If the community spouse dies and assets are in the deceased community spouse's name only, the assets may be unavailable during the period of settlement of the estate. See MA-2230, I.F.

2. Any assets remaining in the name of the institutionalized spouse only are available beginning with the month following the death, regardless of community spouse resource protection.

3. Assets held jointly with rights of survivorship are available to the survivor without release by the clerk of court being required.

4. The Medicaid recipient who 'renounces' an inheritance is subject to a sanction period of ineligibility for help with cost of nursing home care.

C. Deinstitutionalization of Medicaid Recipient (LTC goes home)

If the recipient ceases to be institutionalized for more than 30 continuous days, that period of continuous institutionalization ends on the 31st day.

1. Do not complete a new assessment if there is a break in institutionalization of more than 30 days. The assessment is always determined using the total countable assets of the couple at the point of the **FIRST** continuous period of institutionalization which began on or after 10-01-89.

2. If new resources are acquired in the non-institutionalized period of time and person returns to LTC:

   a. Verify total reserve of the couple at the month of application and protect only the original protection amount (CSRA), which was determined based upon the total reserve at the first CPI.

   b. Refer to example of additional assets acquired prior to the effective date of Medicaid eligibility in III.D.1.c., below. This works the same way.

(III.)

D. Additional Resources Acquired by Either Spouse <u>Prior to Approval</u> of Medicaid for Institutionalized Spouse

If additional resources are acquired by either spouse prior to effective date of Medicaid eligibility:

1. Additional resources acquired after the first CPI begins, but before effective date of Medicaid eligibility for institutionalized spouse:

   a. Change the applicant's resource total;

      BUT

   b. Do not change the protected amount for the CUSP (CSRA), unless minimum/maximum was used and that amount has increased in policy since the assessment. Use the minimum/maximum in effect at the point that eligibility is established.

   c. EXAMPLE: Total resources at first CPI was $60,000. CSRA is $30,000. At point of application, couple had $35,000. They state intent to reduce the applicant's resources from $5,000 to the $2000 limit by the 45th day. Prior to reduction of resources (which would establish an effective date of Medicaid eligibility), the CUSP learns she has inherited $10,000. The CSRA remains $30,000 and deducted from $45,000 makes the applicant's resource total $15,000.

2. The additional resources in excess of the original protection amount (CSRA) are countable and available to the applicant, regardless of which spouse holds the asset.

3. If transferred to anyone other than the community spouse, a penalty must be imposed for transfer of assets.

E. Additional Assets Acquired by Either Spouse After Effective Date of Medicaid Eligibility

1. Acquired by Medicaid recipient (institutionalized spouse) and:

   a. Retained by the recipient:

      (1) Are countable beginning the first day of the month after the month acquired.

      (2) If the resources cause the reserve total to exceed $2,000, propose termination.

   b. Transferred to the community spouse:

      (1) There is no sanction for transfers between legal spouses; and

      (2) The transferred resources are no longer countable/available to the recipient (institutionalized spouse).

(III.E.1.)

c. Transferred to a non-allowable person (by the recipient, the spouse, or any other party acting on behalf of the recipient or the couple):

Impose a sanction based on the value of the transfer. Refer to rules/procedures in MA-2240, Transfer of Resources.

2. Acquired by community spouse (during or after the protection period)

Resources acquired after the effective date of Medicaid eligibility for nursing home cost of care or CAP are:

a. Not countable or available to the ISP; and

b. Do not effect the CSRA; and

c. If transferred by the community spouse or representative to a non-allowable person:

(1) Does not result in any penalty to the ISP; but

(2) Results in a potential sanction for the CUSP, if CUSP becomes institutionalized or requests CAP or in-home health services and supplies.

F. Ongoing PLA Recipient Enters Long Term Care

(Single individual, or one or both spouses were Medicaid recipients at the point that one entered LTC)

1. Recipient's resource eligibility was based on a budget unit of 2:

a. Do not verify total resources at the point CPI begins.

b. If resources total of the couple at last review did not exceed $2,000:

Do not reverify resources or complete an assessment for protection of resources. It doesn't matter who keeps the resources.

c. If resources total of the couple at last review was more than $2,000:

(1) Institutionalized spouse must transfer to the community spouse enough resources to reduce his reserve total to $2,000 to remain eligible.

(2) The excess or protected resources must be transferred by the end of the c.p. in which the notice of action is completed, unless completed in the 5th or 6th month of the c.p.

d. If a change in resources has since occurred (either spouse has acquired additional assets since the last review) complete an assessment as outlined in section II., above.

(III.F.)

2. Recipient's resource eligibility was based on budget unit of 1, **BUT** recipient has a legal spouse who is not institutionalized, and from whom recipient has been separated less than 12 months at point the first CPI began, a complete assessment of resources is required.

   a. Treat as a change in situation and request verification of the community spouse's resources.

   b. Complete the assessment as outlined in section II., above.

G. Transfer of Resources (Refer to MA-2240, Transfer of Resources)

1. At application, if resources have been reduced since assessment or institutionalization at a greater than reasonable rate, evaluate for possible transfer of resources following MA-2240, Transfer of Resources.

2. Prior to the effective date of Medicaid eligibility for the ISP, transfers of resources by either spouse to a non-allowable person results in a period of sanction for both spouses.

3. After the effective date of Medicaid eligibility for the ISP, transfers of resources by either spouse to a non-allowable person results in a period of sanction for the person who transferred only.

4. Transfers from legal spouse to legal spouse:

   a. Never result in a sanction period, regardless of when they occur.

   b. Do not change the CSRA.

H. Separate Treatment of the Community Spouse's Resources

1. Once resources have been protected for the community spouse, and the institutionalized/CAP spouse is found and remains eligible for nursing facility/CAP assistance, resources owned by the community spouse no longer affect the eligibility of the institutionalized/CAP spouse. The CUSP’s resources are no longer available to the institutionalized/CAP spouse.

   a. The community spouse may use the resources that have been protected in any manner.

   b. At reviews, do not request verification or documentation of resources held by the community spouse of an authorized recipient in LTC.

2. If the ISP is discharged home as a non-CAP recipient, spousal financial responsibility applies and resources protected for the former CUSP are countable.

COMMUNITY SPOUSE RESOURCE PROTECTION WORKSHEET