**STATE OF RHODE ISLAND**
**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVCES**
**PUBLIC NOTICE OF PROPOSED RULE-MAKING**

The Secretary of the Executive Office of Health & Human Services (EOHHS) has under consideration amendments to the Medicaid Code of Administrative Rules ("Regulations") Section 0380, "Resources Generally." In accordance with Rhode Island General Laws (RIGL) Chapter 42-35, notice is hereby given that EOHHS proposes to amend this rule in order to reflect an increase in the Minimum Protected Resource Amount from $23,448 to $23,844 and an increase in the Maximum Protected Resource Amount from $117,240 to $119,220. These rules are being amended in order to prevent wrongful denial or discontinuance of benefits for Medicaid applicants and beneficiaries.

These regulations are being promulgated pursuant to the authority contained in Rhode Island General Laws Chapter 40-8 (Medical Assistance) as amended; Rhode Island General Laws Chapter 40-6 ("Public Assistance"); Title XIX of the Social Security Act; Chapter 42-7.2 of the Rhode Island General Laws, as amended; and Chapter 42-35 of the Rhode Island General Laws, as amended.

In accordance with RIGL 42-35-3, an oral hearing will be granted if requested by twenty-five (25) persons or by an agency or association having at least twenty-five (25) members. A request for an oral hearing must be made within forty-five (45) days of this notice.

In the development of these proposed Regulations, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small businesses in Rhode Island. No alternative approach, duplication or overlap, or impact upon small businesses was identified based upon available information.

These proposed rules are accessible on the R.I. Secretary of State's website: **http://www.sos.ri.gov/ProposedRules/** and the EOHHS website **www.eohhs.ri.gov** or available in hard copy upon request (401 462-1575 or RI Relay, dial 711). Interested persons should submit data, views, written comments, or a request for a hearing **by Monday, April 6, 2015** to: Elizabeth Shelov, Office of Policy and Innovation, RI Executive Office of Health & Human Services, Louis Pasteur Building, 57 Howard Avenue Room #142, Cranston, RI 02920 or Elizabeth.Shelov@ohhs.ri.gov.

The Executive Office of Health and Human Services does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief or handicap in acceptance for or provision of services or employment in its programs or activities.

Original signed by
Elizabeth H. Roberts, Secretary
Signed this 16th day of February 2015

## 0380 Resources Generally

### 0380.05 Resource Limits

REV: 06/1994

For Medicaid Resource eligibility to exist, the institutionalized individual's countable resources cannot exceed the following basic limits:

- For Categorically Needy eligibility - $2000
- For Medically Needy eligibility - $4000

The evaluation of resources of an institutionalized individual with a community spouse first determines:

- The total joint resources of a couple;
- The spousal share of resources; and
- The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources and the spousal share of those resources as of the first moment of the month in which the period of continuous institutionalization begins.

Except for the community spouse resource allowance, the total joint resources of a married couple with an institutionalized spouse are deemed available to the institutionalized spouse for purposes of Medicaid eligibility.

Each determination of eligibility (new, reopening or redetermination) requires a review of resources, which includes sending three bank statements (AP-91). Resources are also reviewed at the time of a reported change, or when information is received which indicates a change has occurred, or that unreported resources may exist (Income Eligibility Verification System match, etc.).

Resources must be verified by a review of documents related to the resource, with copies of the documentation kept for the case file.

### 0380.10 **Resource Definitions**

REV: 07/2006

A RESOURCE is either real or personal property which the applicant/recipient can use (either directly or by sale or conversion) to provide for his/her basic needs for food, clothing, shelter or medical care. Third Party Resources for medical care, such as health insurance, are not countable resources in eligibility determinations.

REAL PROPERTY is land and generally whatever is erected or growing upon or attached to land. Real property also includes any interest in land. Examples of real property and interests in land include a lot with or without a house, a life estate, a remainder estate, mineral rights, easements, and leaseholds.

PERSONAL PROPERTY in a broad sense is everything that is subject to ownership that is not real property. It includes tangible and intangible personal property.

TANGIBLE PERSONAL PROPERTY includes movable and tangible things such as animals, furniture, automobiles, jewelry, boats, and merchandise.

INTANGIBLE PERSONAL PROPERTY includes such rights as stock, bonds, savings accounts, checking accounts, certificates of deposit, cash, and promissory notes.

Resources are further defined based upon whether they are countable or excluded in the process of determining eligibility for Medicaid .

COUNTABLE RESOURCE: A resource, whether real or personal property, that is counted toward a resource limit. Countable resources are available to the recipient, and are not excluded.

EXCLUDED RESOURCE: A resource that is not counted toward the resource limit because of a specific exclusion in policy. Some resources are totally excluded regardless of value (e.g., an automobile used for transportation for medical care); some resources are excluded to the extent they do not exceed a specific threshold amount (e.g., a certain amount of the equity of the home of a recipient, life insurance face value limit). See Section 0382, EVALUATION OF RESOURCES.

Other definitions pertaining to the evaluation of an institutionalized individual's countable resources are set forth below.

TOTAL JOINT RESOURCES is the combined resources of the community spouse and the institutionalized spouse, to the extent that either has an ownership interest in the resources. Total joint resources are normally calculated at two points in the eligibility determination process - 1) advance determination when the institutionalized spouse begins a continuous period of institutionalization, and 2) at the time of application for Medicaid (total joint resources as they exist on the first day of the month for which eligibility is being determined).

SPOUSAL SHARE is one-half (1/2) of the couple's Total Joint Resources computed as of the beginning of a continuous period of institutionalization. The spousal share remains fixed until the institutionalized spouse is determined eligible for Medicaid, regardless of any changes in the resources of the institutionalized spouse or the community spouse. At the time of Medicaid eligibility determination, the spousal share is used as one component in the calculation of the community spouse resource allowance.

COMMUNITY SPOUSE RESOURCE ALLOWANCE is the amount of a couple's total joint resources which is attributed to the community spouse at the time Medicaid eligibility is determined for the institutionalized spouse.

A RESOURCE TRANSFER is the conveyance of right, title, or interest in either real or personal property from one person to another.

The conveyance may be by sale, gift, or other process.

COMPENSATION/CONSIDERATION is all real and/or personal property, or any other right or item of value that is received by an applicant/recipient pursuant to a binding contract in exchange for a resource. The recipient may receive the consideration or compensation prior to, at the time of, or after the transfer.

Items of value that serve as consideration or compensation include money, food, shelter, services, stocks, bonds, etc.

FAIR MARKET VALUE (FMV) of property (real and personal) is the amount for which the property can be expected to sell on the open market in the geographic area involved and under existing economic conditions at the time of the determination.

EQUITY VALUE is the FMV less the amount of any legal encumbrances.

UNCOMPENSATED VALUE (UV) is the equity value of a transferred resource minus the amount of compensation/consideration received by the applicant/recipient in exchange for the resource.

THE HOME is an individual's principle place of residence. An individual may possess many houses but only one home.

0380.15 **Differentiating Resources from Income**
REV: 06/1994

Resources are items such as property, cash, bank accounts, other financial instruments, real estate, buildings, etc. that are owned by or available to individuals. Resources must be distinguished from income. The general rule is: A RESOURCE is that which is owned at the beginning of the month. INCOME is that which is received during the month. Income that is not spent within the month in which it is received becomes a resource at the beginning of the next month.

0380.20 **Conversion/Sale of a Resource**
REV: 06/1994

A resource that is converted from one form to another does not result in income to the individual. A previously excluded resource may become a countable resource if converted into another form (e.g., an excluded auto is sold for $400 in cash. The cash received becomes a countable resource - not income). Conversely, a countable resource may become excluded (e.g., an excludable auto is purchased with $400 in cash), but in no event does income result from the transaction.

**0380.25 Replacement of a Resource**
REV: 06/1994

When an individual sells a home and the proceeds are used to purchase a new home within three months, the money obtained from the sale of the home cannot be considered a resource.

Cash (e.g., an insurance settlement) received for the purpose of repairing or replacing an excluded resource that is lost, damaged, or stolen is excluded as a resource for a period of nine months with an additional nine-month extension for good cause. Similarly, in-kind replacement of a lost, damaged, or stolen excluded resource is also an excluded resource.

0380.30 **Availability of a Resource**
REV: 06/1994

In order to be countable in the determination of Medicaid eligibility, a resource must be available to the individual. The individual must be able to use the resource to provide food, shelter, clothing, or convert it into a form in which it can be used to meet needs:

- A resource is considered to be available both when actually available, and when the applicant has the legal ability to make such sum available for support and maintenance;

- Resources are not available when a legal impediment exists which precludes the applicant from making the resource available for support, maintenance or medical care.

Applicants/Recipients are required, as a condition of eligibility, to cooperate with the Medicaid agency in making resources available. See Section 0308, COOPERATION REQUIREMENTS.

0380.35 **Excluded Resources**
REV: 07/2008

In determining eligibility for both Categorically Needy and Medically Needy Medicaid for an institutionalized individual, the following resources, subject to certain rules discussed in Section 0382, EVALUATION OF RESOURCES, are EXCLUDED:

- THE HOME AND ASSOCIATED LAND up to an equity value as set forth in section 0382.10.05;

- HOUSEHOLD GOODS AND PERSONAL EFFECTS, regardless of value;

- ONE AUTOMOBILE, regardless of value;

- LIFE INSURANCE with a face value less than $1,500 for Categorically Needy; less than $4,000 for Medically Needy;

- BURIAL SPACES;

- IRREVOCABLE BURIAL CONTRACTS OR TRUSTS;

- FUNDS SET ASIDE FOR BURIAL, up to a maximum of $1,500;

- RETROACTIVE RSDI AND SSI BENEFITS, for a limited period;

- RESOURCES NECESSARY FOR SELF EMPLOYMENT;

- RESOURCES DESIGNATED BY SSA FOR A PLAN OF SELF SUPPORT for a blind or disabled individual;

- RESOURCES EXCLUDED BY SPECIFIC STATUTES;

- RESOURCES DISREGARDED DUE TO PAYMENTS TO AN LTSS FACILITY UNDER A QUALIFIED STATE LONG TERM CARE INSURANCE PARTNERSHIP POLICY (see Sec. 0382.80ff).

0380.40 **Countable Resources, Institutional Spouse**
REV: 06/1994

The evaluation of resources of an institutionalized spouse with a community spouse first determines:

- The total joint resources of the couple; then

- The spousal share of the resources; and

- The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources at the beginning of the period of continuous institutionalization.

The total joint resources of the married couple with an institutionalized spouse are deemed available to the institutionalized spouse for the purpose of eligibility determination.

0380.40.05 **Total Joint Resources**
REV: 06/1994

The total joint resources of an institutionalized spouse and community spouse are ALWAYS EVALUATED AS OF THE FIRST OF THE MONTH IN WHICH A CONTINUOUS PERIOD OF INSTITUTIONALIZATION BEGINS, regardless of the actual date on which the evaluation is conducted. The total joint resources are equal to the combined resources of the couple, regardless of whether they are owned partly or wholly by either spouse. The evaluation of specific resources follows the policies set forth in Section 0382.

The procedures for evaluating total joint resources differ depending on whether the initial evaluation is conducted in advance of a Medicaid application at the individual's request (Advance Determination), or is conducted as part of a Medicaid application.

**0380.40.05.05 Advance Determination**
REV: 07/2008

The LTSS/AS unit conducts evaluations of total joint resources when requested by an institutionalized or community spouse in advance of a Medicaid application. When a request for an Advance Determination is received, the LTSS/AS unit forwards a packet containing the MA-2 and

MA-2a to the requesting spouse. The completed forms are returned to the LTSS/AS unit with supporting documentation which includes a copy of the couple's most recent income tax returns.

Upon receipt of the MA-2, a file/case number is assigned.

If all relevant documentation is provided, the LTSS/AS unit determines the total joint resources and spousal share. If the information provided is not sufficient for a determination, the LTSS/AS unit requests that the additional information be provided within a reasonable period of time.

Within 45 days of receipt of a completed MA-2 and all relevant supporting documentation, both spouses are notified of the results of the advance determination of total joint resources and spousal share via an MA-3.

All documents related to the advance determination of the total joint resources are retained in the district office case record until:

- A Medicaid application is filed; or
- The institutionalized spouse ends the continuous period of institutionalization by residing outside the institutional setting for at least thirty consecutive days; or
- The death of one spouse.

At the time of a Medicaid application, the file is used as the Medicaid case record.

No disregard based on a Qualifying LTSS Insurance Partnership policy is made at time of Advance Determination, as the statute states that this disregard is based on the payments made by that policy as of the time of application.

**0380.40.05.10 Determination at Time of Application**

REV: 06/1994

When a Medicaid application is filed by an institutionalized individual with a community spouse, the LTSS unit determines if an advance determination has been completed. If so, the file is requested from the LTSS/AS unit which conducted the initial determination.

If an advance determination has not been completed, the LTSS/AS worker conducts both the evaluation of total joint resources as of the time of institutionalization, and the determination of total joint resources as they exist at the time of application.

The determination of total joint resources at the beginning of the period of institutionalization is needed to calculate the spousal share and the community spouse resource allowance. The determination of total joint resources at the time of the Medicaid application is needed to determine the countable resources of the institutionalized spouse. (The countable resources of the institutionalized spouse, for purposes of Medicaid resource eligibility, is the couple's joint total resources at the time of application LESS the community spouse resource allowance).

**0380.40.10 Spousal Share**

REV: 06/1994

The spousal share is equal to one-half of the value of the couple's total joint resources as of the beginning of a period of continuous institutionalization. The value of the spousal share remains fixed at the value computed as of the beginning of the period of continuous institutionalization, regardless of changes in resources which may occur between the beginning period of institutionalization and the time of the Medicaid eligibility determination.

**0380.40.15 Community Spouse Resource Allowance**

REV: ~~01/2014~~ February 2015

The community spouse resource allowance, to the extent such resources are available, is equal to the greater of:

- $ ~~23,448;~~ 23,844 or
- The spousal share, up to a maximum of $ ~~117,240~~ 119,220.

**0380.40.25 Segregating the Resources**

REV: 01/1996

The total joint resources of the couple should be divided as soon as practicable to segregate in the community spouse's name the funds permitted as a community spouse resource allowance.

Resources transferred to the community spouse in order to segregate the funds permitted as a community spouse resource allowance are exempt from the rules pertaining to transfer of resources set forth in Section 0384.

Any resource acquired by the community spouse after the month in which an institutionalized spouse is determined to be eligible will not be deemed available to the institutionalized individual.

Conversely, any resource acquired by the institutionalized spouse in the month after the determination of eligibility is fully countable, and cannot be transferred to the community spouse as part of the community spouse resource allowance.

Resources transferred by an individual to a community spouse under a court order are also exempt from the rules pertaining to transfer of resources in Section 0384.

**0380.40.30 Assignment of Rights, 3rd Party Resources**

REV: 06/1994

Under Rhode Island law, rights to spousal support are automatically assigned to the EOHHS upon application for and receipt of Medicaid. In the event the community spouse does not make the couple's joint resources (less the community spouse resource allowance) available to the institutionalized spouse, the institutionalized spouse is not determined to be ineligible on the basis of such resources. When a community spouse has refused to make resources available, and eligibility has been established, the Medicaid agency is empowered to take action to obtain said

resources to reimburse the state for the cost of medical care paid for on behalf of the institutionalized spouse.

The institutionalized spouse is required, as a condition of eligibility, to assist the Medicaid agency in the process of obtaining such support from the community spouse.

Resources obtained as a result of action taken against the community spouse that are in excess of the incurred cost of institutional care are distributed to the institutionalized spouse, and are considered to be countable resources of the institutionalized spouse.

**0380.40.35 Fair Hearing**
REV: 06/1994

If either the institutionalized spouse or the community spouse is dissatisfied with the spousal share of the joint resources, the attribution of resources, or the determination of the community spouse resource allowance, and if an application for Medicaid has been made on behalf of the institutionalized spouse, the dissatisfied spouse is entitled to a fair hearing.

Section 1924 (e) (2) (C) of the Social Security Act provides State Hearing Officers authority to raise the community spouse resource allowance (CSRA) under certain circumstances. If either the community spouse or the institutionalized spouse establishes that the community spouse resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, an amount adequate to provide such a minimum monthly maintenance needs allowance (under the post-eligibility formula) shall be substituted for the current community spouse resource allowance. In determining how much more income must be generated by the additional resources in order to raise the community spouse's income to the minimum maintenance allowance, the Hearing Officer considers the community spouse's existing income. Existing income for this purpose includes the monthly income allowance which the institutionalized spouse has made available to the community spouse under the post-eligibility formula. There can be no substitution for the current community spouse resource allowance if the institutionalized spouse does not actually make a monthly income allowance available to the community spouse under the post- eligibility formula.

The additional resource(s) above the CSRA which may be protected under this section of the Social Security Act must be income-producing. To be protected, the income producing resource must be providing a reasonable rate of return.

The hearing must be held within thirty days of receipt by the agency of a written request for a hearing.

**0380.45 Resource Reduction**
REV: 06/1994

If an applicant or recipient is found to be ineligible due to excess countable resources as of the first moment of the month, s/he is notified that eligibility does not exist. Included with the Notice is a description of the possibility of resource reduction (form MA-6).

An applicant whose countable resources exceed the basic resource limitation may establish eligibility on the basis of resources if:

- S/he incurs (or has incurred) outstanding allowable medical bills or other allowable expenses that equal or exceed his/her excess resources; AND

- S/he reduces the excess resources to the appropriate resource limit by actually paying the allowable expenses or fees, and submitting verification thereof within thirty days of the date of the rejection or closing notice. Both the expenditure of the resource and submission of verification of the expenditure and the reduced resource must occur within the thirty day time period.

The bills used to establish eligibility cannot be incurred earlier than the first day of the third month prior to the date of an application that is eventually approved. Allowable bills, which the applicant has paid and used to reduce resources, may not be the same bills that have been used to meet an income spenddown.

The agency representative must see the bills that have been actually paid in order to verify that resources have been properly reduced.

**0380.45.05 Date of Eligibility**
REV: 06/1994

An individual who reduces resources and is otherwise eligible will be eligible as of the date the incurred allowable expenses equaled or exceeded the amount of his or her excess assets, subject to verification that the excess resource was actually expended on the allowable expense. In no event shall the first day of eligibility be earlier than the first day of the month of application.

Although an applicant may reduce excess resources by paying an allowable expense that was incurred up to the first day of the third month prior to the date of an application, an applicant cannot establish eligibility by resource reduction in the retroactive period.

The applicant will be required to verify that:

- S/he incurred the necessary amount of expenses; and

- His or her excess resources were reduced to the allowable resource limit by expenditure of the excess resource on the allowed expense.

**0380.45.10 Allowable Expenses**
REV: 04/2001

Only certain expenses may be used to establish eligibility by reduction of excess resources. These expenses are as follows:

- Medical expenses that would be allowed under the policy on the Flexible Test of Income. See Section 0390, FLEXIBLE TEST OF INCOME.

- Certain fees required for: a) an individual to make income or resources available; or b) an incompetent individual, who needs a court-appointed guardian, to access or consent to necessary medical treatment, including applying for Medicaid. Only the fees indicated in Sections 0380.45.10.05 through 0380.45.10.15 are allowable under this provision.

**0380.45.10.05 Guardian/Conservatorship Costs**
REV: 04/2001

Applicants who have court-appointed guardians or conservators are generally required to pay court-approved guardian/conservator's fees. Such fees include but are not limited to court filing fees, the cost of a Probate Bond, court-approved guardianship/conservatorship fees, and court-approved legal fees.

Allowable court-approved expenses not covered by other sources for items listed in Section 0380.45.10, subject to the Rhode Island Supreme Court approved fee schedule (currently $30 per hour under "Executive Order" Number 95-01), may be considered.

When such guardianship fees have been approved by Probate Courts, related guardian ad litem fees not exceeding $250 may also be recognized. The applicant must submit a copy of the Probate Court Order and any supporting documentation, including an itemized bill for allowable guardianship expenses.

The case is referred to the Office of Legal Services by the Long Term Services and Supports Administrator (or his designee) for a decision on the amount of the allowable deduction. The referral must contain a brief description of the case, a copy of the Probate Court Order, an itemized bill from the guardian, and any other supporting documentation submitted by the applicant. The total amount allowed must be reasonable and shall be based on the hours approved by the particular Probate Court for items listed in 0380.45.10 at the rate of compensation paid for guardians ad litem in Family Court as specified in the then-current Rhode Island Supreme Court Executive Order on fee schedules.

**0380.45.10.10 Legal Fees**
REV: 06/1994

Individuals who incur legal fees resulting from legal action to obtain income or resources for their support may expend excess resources to pay such fees.

**0380.45.10.15 Tax Assessments**
REV: 06/1994

Individuals ordered by the Internal Revenue Service, the Rhode Island Division of Taxation, or other State or municipal taxing authority to pay income taxes may expend excess resources to pay the taxes.