**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 0382, "Evaluation of Resources." 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 the following: the amount of allowable home equity interest has been increased for individuals seeking eligibility for Medicaid nursing facility services or other long-term care services from $543,000 to $552,000. In addition, the amount of the equity value of the life estate of an institutionalized individual that can be considered an excluded resource has increased from $543,000 to $552,000.

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

## 0382 Evaluation of Resources

### 0382.05 First Moment of the Month Rule
REV: 06/1994

Countable resources are determined as of the FIRST MOMENT OF THE MONTH (FOM). The determination is based on the resources the individuals own, their value, and whether or not they are excluded as of the first moment of the month. The FOM rule establishes a point in time at which to value resources; what a person owns in countable resources can change during a month but the change is always effective with the following month's resource determination.

The kinds of changes that can occur are:

- CHANGES IN VALUE OF EXISTING RESOURCES

The value of an existing resource may increase or decrease. For example, the value of a share of stock may decrease by $30 or increase by $20.

- DISPOSITION OR ACQUISITION OF RESOURCES

An individual may dispose of an existing resource (e.g., close a savings account and purchase an item) or may acquire a new resource (e.g., an inheritance which is subject to the income-counting rules in the month of receipt).

- CHANGE IN EXCLUSION STATUS OF EXISTING RESOURCES

An individual may replace an excluded resource with one that is not excluded (e.g., sell an excluded automobile for non-excluded cash) or vice versa (use non-excluded cash to purchase an excluded automobile). Similarly, a time-limited exclusion (such as the period for exclusion of retroactive Title II benefits) may expire.

Changes such as SSI, SSA, and Lump Sums do not affect the countable value of resources in the month in which they occur. Any change does not affect countable resources until the first moment of the following month.

If countable resources exceed the limit as of the first moment of a month, the recipient is not eligible for that month, unless the resources are reduced by expenditure on certain allowable expenses, see Section 0380.45, RESOURCE REDUCTION.

Resources are evaluated using the methodologies set forth in the remainder of Section 0382 for the various types of resources. Each type of resource has its own unique deductions, exclusions, and methods for evaluation to determine its countable value. If not otherwise indicated, the countable value of a resource is the equity value (fair market value less legal encumbrances).

Once the countable value of each resource (after the appropriate exclusions/deductions) is determined, the countable values of all resources (including deemed resources) are added together to determine the total countable resources for the institutionalized individual.

**0382.10 Real Estate**
REV: July 2014

The policies and procedures set forth in the following sections will be used to determine Medicaid eligibility and Medicaid payments for services to institutionalized individuals.

The equity value of real property owned by an individual that is neither excluded (up to a certain amount) as the home nor determined unavailable is a countable resource.

Real property may consist of land, buildings, and objects permanently attached to the land, (including "mobile" homes permanently sited).

Real property includes the value of certain interests in real estate such as life estates, mineral rights, easements, and life leaseholds. Life estates with enhanced powers shall be evaluated for Medicaid eligibility in accordance with section 0382.56 herein.

**0382.10.05 Home and Associated Land Exclusions**
REV: ~~01/2014~~ February 2015

Definitions
For the purposes of this section, the following definitions apply:

**APPLICANT:** New applicants for Medicaid as well as current recipients at any point in which eligibility is redetermined.

**DEPENDENT CHILD:** An unmarried child of the applicant and/or the applicant's spouse who is dependent upon the applicant and/or the spouse for financial support, and is either under eighteen (18) years of age; or over eighteen (18) years of age and living with a disability which began before age twenty-two (22).

**HOME**: Any residential property in which the applicant and/or applicant's spouse possess an ownership interest that also serves as the principal place of residence of the applicant and/or, in the instances specified in this section, the applicant's spouse or dependent child. A home may be a fixed or mobile residential property. A cooperative or condominium apartment, townhouse, mobile house, and houseboat are all examples of residential properties that may serve as home. An applicant and spouse may have an ownership interest in several residential properties, but only one (1) shall be considered a home for the purposes of this section.

**HOME EXCLUSION:** The treatment of a residential property as a non-countable resource when the property serves as the home of an applicant/spouse as specified in this section. Regardless of whether one or both spouses in the household are applicants, only one residential property is considered to be a home, and as such, is treated as an excluded resource for the purposes of determining Medicaid eligibility.

**INTENT TO RETURN:** An expression indicating that it is the applicant's plan to live in the home used as the principal place of residence after a temporary absence. The intent to return home is

subjective rather than objective and, as such, must be expressed by the applicant or an authorized representative of the applicant in the form of a signed, written statement.

**OWNERSHIP INTEREST:** The individual holds sole or joint legal title to the residential property or is a party to a legal covenant establishing property ownership, such as a life estate.

**PRINCIPAL PLACE OF RESIDENCE:** The residential property where the applicant, and/or in the instances specified in this section, a spouse or a dependent child lives the majority of the time during the year. For example, one hundred and eighty-three (183) days in the previous twelve (12) months.

**RESIDENT OF RHODE ISLAND:** The applicant has an intent to stay in the state permanently or for an indefinite period, in accordance with the provisions set forth in Section 0106.05 through 0106.25 of the Medicaid Code of Administrative Rules.

**TEMPORARY ABSENCE:** A limited period of time in which the applicant is residing away from home for reasons essential to personal welfare (e.g., protective or rehabilitative services), related to medical or social needs (e.g. hospitalization or nursing home care), or over which the applicant has no direct control.

**Application of the Home Exclusion**

The home of an institutionalized applicant is an excluded resource, if it is located in Rhode Island, if the applicant's equity value of the home is less than five hundred and ~~forty-three~~ fifty-two thousand dollars ($~~543,000.00~~ 552,000.00) and the applicant expresses an intent to return to the home. Individuals whose spouse, child under twenty-one (21), or child who is blind or disabled (as defined by section 1614 of the Social Security Act) lawfully resides in the individual's home would not be excluded from eligibility. This provision would not prevent an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home. If the applicant does not maintain a Rhode Island home, the home exclusion applies to the principal place of residence of the community spouse or a dependent child.

In the case of a life estate, the applicant's equity value of the life estate of an institutionalized individual is an excluded resource if the applicant's equity value of the life estate is less than five hundred and ~~forty-three~~ fifty-two thousand dollars ($~~543,000.00~~ 552,000.00), the applicant expresses an intent to return to the home and the home must be located in Rhode Island.

Individuals whose spouse, child under twenty-one (21), or child who is blind or disabled (as defined by section 1614 of the Social Security Act) lawfully resides in the individual's home would not be excluded from eligibility. This provision would not prevent an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

The use of a Qualified LTC Insurance Partnership policy will not affect an individual's ineligibility for payment for nursing facility services, or other LTSS services, when the individual's equity interest in home property exceeds the limits set forth in section 1917(f) of the Act, as amended by the DRA.

The value of any land/building contiguous to the home is also excluded.

**0382.10.05.05 Home and Associated Land Definitions**
REV: 06/1994

**Home and Associated Land Definition -** The home exclusion applies to any land which appertains to the home and other buildings located on such land. To appertain to the home, the real property must adjoin the plot on which the home is located and not be separated from it by intervening real property owned by others.

Where real property adjoins the plot on which the home is located and has contact with that plot, it does not matter if there is more than one document of ownership (e.g., separate deeds). It also does not matter that the home was obtained at a different time from the rest of the real property, or that the holdings may be assessed and taxed separately. In considering whether real property appertains to the home plot, easements or public rights of way (e.g., streets, roads, utility lines) which run through or by the land and separate the land from the home plot or from the rest of the land are not considered. Watercourses, such as streams and rivers, do not separate land, but are included in the term "land." Land parcels which are adjoined side-to-side, corner-to-corner, or in any other fashion are considered to appertain to each other.

If some indication arises that a portion of the property is separated from the home property and does not appertain to the home, the extent of the home property as provided is determined.

Where there is no indication that the plot on which the home is located is separated from other real property, nothing further is needed.

If any of the individual's property is not contiguous with the home plot, the extent of the home property is documented. A copy of the tax assessment bill, title, deed, or other pertinent documents that the individual has in his/her possession is placed in the case record. A description of the property situation and whether all the land appertains to the home is obtained. If the individual cannot provide this evidence or the evidence is insufficient, the agency representative contacts the local tax jurisdiction regarding the property boundaries and records the information.

If the property on which the home is located is recorded as a single holding and treated as a single holding for tax assessment purposes, the agency representative treats the property as a single piece of property to which the home plot is adjoined by the rest of the land. If there has been subdividing of the original holding but the residue is treated as a single holding for tax assessment purposes, the same assumption applies.

If two or more holdings, including one or more homes, are reported to be a combined property and are treated as two or more holdings for recording and tax assessment purposes, the agency representative obtains a description of the holdings and their relationship to one another. A sufficient description is a sketch which shows the locations of the boundaries and the shelter used as a home in relation to the boundaries. The agency representative obtains the description by direct observation of the property or from the public records. If the description is by an individual, the description is recorded on the property sheet.

Where it is determined that land owned by the individual does not appertain to the home plot, such land and any buildings on it cannot be part of the home exclusion.

**0382.10.05.10 Multiple Residences**
REV: 03/2004

When an applicant with an ownership interest in multiple residential properties has not lived in any one for the majority of the time during the preceding twelve (12) months, the home exclusion is applied to the state residential property identified as the applicant's address on one of the following, in order of preference:

1. A valid Rhode Island driver's license;

2. The most recent voter registration form;

3. A government check or electronic deposit receipt (e.g., Social Security, SSI, State Treasury) issued within the last sixty (60) days; or

4. The most recent U.S. federal income tax return submitted by, or on behalf, of the applicant.

The home remains excluded during the applicant's temporary absence if the applicant expresses an intent to return to the home; or the applicant's spouse/dependent child resides in the home.

All other residential properties in which the applicant or the applicant's spouse maintains an ownership interest shall be treated as countable resources, in accordance with Section 0308.10.

**0382.10.05.15 Out-of-State Residences**
REV: 03/2004

To be eligible for Medicaid, an applicant must be a Rhode Island resident and, as such, have an intent to stay in the state permanently or for an indefinite period. Accordingly, an applicant who has expressed the intent to return to an out-of-state residential property shall not be considered a Rhode Island resident for the purposes of determining eligibility for Medicaid.

When an applicant owns residential properties both in and out-of-state, the home exclusion may only be applied to the property located in Rhode Island. The value of out-of-state residential property is a countable resource, even if it is the principal place of residence of the applicant's spouse/dependent child, as long as the applicant maintains an ownership interest in a Rhode Island residential property.

If the applicant does not own real property in Rhode Island, but lives and intends to remain in the state, the home exclusion may be applied to an out-of-state residential property if, and only if, it is the principal place of residence of the applicant's spouse or dependent child.

An out-of-state residential property may otherwise only be deemed temporarily excluded when it is determined that:

- There is a legal impediment to the sale of the property due to joint ownership (as specified in Sections 0356.10.10, 0356.10.10.05, 0382.10.10, and 0382.10.10.05); or

- The property is an unavailable resource as defined in Sections 0356.10.10.10, and 0382.10.10.10.

**0382.10.05.20 Temporary Absence and Intent to Return**
REV: February 2014

The home may be excluded during an applicant's temporary absence (e.g., due to hospitalization or nursing home care) when both of the following conditions are met:

- The applicant intends to return to the home; and

- The home is located in Rhode Island.

**Initial Application**

At the time of initial application, a signed statement (Form MA-400) must be submitted to the Medicaid agency indicating when the applicant left the home and whether the applicant intends to return to the home. If a community spouse or a dependent child continues to live in the home during the applicant's temporary absence, the value of the home is not counted as a resource regardless of whether the applicant has expressed an intent to return to the home.

The statement indicating the applicant intends to return to the home shall remain valid from the date it is received by the Medicaid agency until eligibility is redetermined unless the temporary absence ends first, or, as is specified in Sections 0382.10.05.25 and 0382.10.05.30, the applicant acts in a manner that indicates an intent to the contrary.

**Redetermination of Eligibility**

At the time eligibility is redetermined, whether due to recertification or a change in other eligibility factors, the Medicaid agency shall verify whether there has been a change in the intent to return to the excluded home. Providing all other eligibility requirements have been met, the home shall remain excluded if the applicant continues to express an intent to return at that time.

**0382.10.05.25 Contrary Acts**
REV: February 2014

If the Medicaid agency learns at any time that the applicant is acting in a manner that is inconsistent with the statement expressing an intent to return, the home may be treated as a countable resource. For example, an applicant who has taken the steps required to sell or transfer ownership interest in an excluded home is acting in a manner that is contrary to an intent to return, as it is defined in this section. If, upon review of the applicant's actions, it is determined that such acts are sufficient to invalidate an expression of the intent to return, the Medicaid agency shall provide the applicant with timely and adequate notice of the decision to treat the home as a countable resource.

**0382.10.05.30 Diminished Capacity**
REV: February 2014

In the event that the Medicaid agency finds that the applicant's capacity to express a clear intent to return to the home is diminished, as evidenced by a legal judgment of incompetence, or a documented mental or medical condition, an authorized representative of the applicant may submit a sworn affidavit, indicating an intent to return on the behalf of the applicant.

For the purposes of this section, an authorized representative of the applicant is any of the following:

- The person who completed and signed the application for Medicaid for the incapacitated applicant, providing the person is not an employee or representative of an institution or organization with a fiduciary interest in the care of the applicant (e.g. nursing home/assisted living employee, hospital worker, etc.);

- The applicant's spouse, child, parent, sibling, or legal guardian; or

- An individual who meets the criteria established in RIGL Section 5-37.3-3 (The Confidentiality of Health Care Information Act).

**0382.10.05.35 Limitations**
REV: February 2014

Although an applicant may own several residential properties either alone or in conjunction with others, only one shall be considered a home and, as such, may be treated as an excluded resource at any given point in time. Even in situations in which both spouses in the household are applicants, the value of only one home may be excluded.

When the applicant and the applicant's spouse/dependent child make conflicting claims over which residential property is subject to the home exclusion, the following decision rules shall apply:

- If the applicant and applicant's spouse live in separate residential properties in Rhode Island, in which they share equal ownership, the home exclusion applies to the residential property where the applicant(s) lived at the time the Medicaid agency received the application. If both applicants apply on the same day, the applicants must agree in writing which home is to be excluded. If no agreement can be reached, the home exclusion shall be applied to the residential property with the greatest value.

- If, at the time eligibility is redetermined, an applicant who is temporarily absent expresses an intent to return to a residential property other than the one excluded at the time the initial application was made, the residential property may only be excluded if it is located in Rhode Island and is the home - i.e. principal place of residence – of the applicant's spouse or dependent child. However, the value of the residential property excluded at the time of initial application shall be treated as a countable resource.

**0382.10.10 Legal Impediments to Real Estate Sale**
REV: 06/1994

Other persons, in addition to an applicant and spouse (if any), may share in ownership of property in which the individual, spouse, or child is not living. If so, the property is considered to be

unavailable if the individual or couple is not legally free to dispose of the property because the other owner(s) will not consent to sell. Notwithstanding the above, the applicant/recipient must make every effort to sell their equity share of that real estate.

An unavailable resource is not countable in the eligibility determination.

**0382.10.10.05 Types of Ownership of Real Estate**
REV: July 2014

Whether the applicant is free to dispose of his/her share depends on the type of ownership. The agency representative should examine the deed to determine the type of ownership. The following types of ownership are the most common.

**Joint Tenants**

Joint Tenancy is when two or more persons own the property. (The property may be either real property or personal property). Upon the death of any Joint Tenant, title automatically vests in the surviving Joint Tenants without the necessity of a Probate proceeding. While alive, any Joint Tenant can convey his/her interest to a third person. After such a conveyance, the new parties own the property as Tenants in Common (see below).

**Tenants in Common**

Tenancy in Common is when two or more persons own the property with no right of survivorship between them. Upon the death of any owner, that owner's interest in the property will pass under the deceased's will or, in the absence of a will, under the applicable laws of intestacy. While alive, any Tenant-in- Common can convey his/her interest to a third person.

**Tenants by the Entirety**

Only a married couple can hold property as Tenants by the Entirety. It is the most common form of ownership for married couples who own property together. Like a Joint Tenant, the survivor will automatically own the property upon the death of one spouse. Unlike a Joint Tenant, however, both Tenants by the Entirety must join in any deed of an interest in the property. Property owned by a married couple under a Tenancy by the Entirety cannot be sold without the consent of both spouses. In the event a spouse refuses to dispose of the property, it is excluded as a resource of the applicant/ recipient.

The agency representative obtains documents (usually a copy of the deed) to establish the nature of the shared ownership.

It is presumed that an individual who owns an interest in property as a Joint Tenant or Tenant in Common is free to sell his/her ownership interest without the consent or signature of the other owner(s). If the property is not otherwise excludable, the applicant's proportional share of the equity value of the property is counted toward the resource limit. (Unless stated otherwise in the deed, the applicant's proportional share of ownership is the ratio of 1 to the total number of owners.)

It is presumed that a Tenant by the Entirety is NOT able to liquidate his/her interest without the consent of the other owner. The individual's share of the resource is NOT countable, pending the individual's action to make the resource available for his/her support.

**Life Estate with Enhanced Powers**

A deed containing a life estate with enhanced powers is also known as an "enhanced life estate deed" or a "Ladybird deed." An enhanced life estate deed permits an individual to reserve the rights to sell, convey, mortgage, revoke, amend, and otherwise dispose of the property during his/her lifetime, but upon his/her death it passes to a remainderman, without the need for probate. The deed specifies who will become the owner of the property upon death. (See section 0382.56 herein for treatment of an enhanced life estate deed).

**0382.10.10.10 Documentation of Non-Availability of Real Estate**
REV: February 2014

When the individual claims that s/he is unable to liquidate a real property resource, s/he must provide documentation from a competent authority (e.g. real estate broker, attorney) that s/he cannot sell the property. The agency representative refers the case to the Office of Legal Services for a decision as to whether the property can be liquidated.

All cases in which real estate is determined to be not countable under these provisions must be referred to the Office of Legal Services for review. As a CONDITION OF ELIGIBILITY, an applicant/recipient must take all reasonable actions to liquidate the resource. The Office of Legal Services determines what actions are reasonable based on review of each particular situation.

**0382.15 Intangible Personal Property**
REV: 06/1994

Intangible personal property includes those resources which are in cash or payable in cash on demand, and financial instruments convertible into cash. The most common types of intangible personal property are savings accounts, checking accounts, NOW accounts, certificates of deposit, money market accounts, stocks, bonds, and mutual funds.

Other intangible resources include promissory notes, loans which may not be secured by promissory notes, and mortgages. Such personal property is always a countable resource, except as excludable under this section.

**0382.15.05 Cash**
REV: 06/1994

Cash is money on hand or available in the form of currency or coins. Foreign currency or coins are cash to the extent that they can be exchanged for U.S.-issued currency. Cash on hand is always counted as a resource except when it is a business resource necessary to the operation of a trade or business that is excluded as necessary for self-support.

The applicant's statement of the amount of cash on hand is acceptable without verification, unless the amount could impact the applicant's eligibility.

**0382.15.10 Checking and Savings Accounts**
REV: 06/1994

The terms checking/savings accounts include any and all accounts, certificates, money market or broker's funds and instruments or devices having the general characteristics commonly associated in the community with checking and savings accounts. The countable resource from such accounts is the amount that the individual/deemor can withdraw, subject to the policy below.

A penalty for early withdrawal of the funds in a time deposit does not prevent the resource from being countable. If there is a penalty for early withdrawal of funds, the penalty amount is deducted from the balance of the account in determining the countable resource.

In determining the amount of money in, or the existence of, a bank account at least three bank statements (AP-91) are sent. One is sent to the bank where the individual has or had an account. The others are sent to the banking institutions most likely to have been used by the individual considering the location of home and/or employment. If the statement(s) shows deposit and withdrawal activity or cash flow inconsistent with the applicant's/ recipient's alleged financial situation during 30 months prior to application or while receiving assistance, the agency representative determines if funds were transferred to another individual and/or whether such funds are still available to the applicant/recipient.

**0382.15.10.05 Availability of Funds**
REV: 06/1994

Funds maintained in checking or savings accounts are usually payable on demand. An individual should be able to withdraw money from a checking account on the same day (s)he presents a check.

Funds can usually be withdrawn from a savings account the same day the request is made.

However, some unusual circumstances may occur which prevent the immediate withdrawal of money, and may result in the resource being unavailable. For example, if there is a joint account with only one individual having authority to withdraw money and that individual dies, a prolonged period may elapse before the surviving owner can withdraw the money.

Certain time deposits (e.g., savings certificates or certificates of deposit) may not be legally available to the applicant/deemor until a specific point in time. If so, the policy in Section 0380.30 regarding availability of resources is applied to determine if the resource is not countable until the maturity of the certificate.

**0382.15.10.10 Joint Checking and Savings**
REV: 06/1994

Whenever the applicant is a joint account holder who has unrestricted access to the funds in the account, ALL of the funds in the account are PRESUMED to be the resources of the applicant or deemor. The applicant or deemor will be offered the opportunity to submit evidence in rebuttal of this presumption. A successful rebuttal will result in finding that the funds (or a portion of the funds) in the joint account are not owned by the applicant or the deemor and, therefore, are not the resources of the applicant.

**0382.15.10.15 Presumption of Owner, One Account**
REV: 06/1994

When only one holder of a joint account is an applicant who has unrestricted access to the funds in the account, explain to the applicant that ALL of the funds in the account are presumed to be the applicant's. This presumption is made regardless of the source of the funds.

**0382.15.10.20 Presumption of Owner, Two or More**
REV: 06/1994

When two or more eligible individuals or applicants (with or without ineligible individuals) are holders of the same joint account and each has unrestricted access to the funds in the account, the agency representative explains the presumption that each eligible individual or applicant owns an EQUAL SHARE of the total funds in the account. This presumption is made regardless of the source of the funds.

**0382.15.10.25 Presumption of Owner, Joint Account**
REV: 06/1994

The presumption of ownership which apply to applicants who are joint account holders also apply to deemors who are joint account holders. When a deemor is a joint account holder with an applicant and each has unrestricted access to the funds in the account, ALL of the funds in the account are presumed to be the applicant's resources. If two or more applicants are joint account holders with a deemor, then each eligible applicant owns an equal share of the total funds in the account. If two deemors, who are not considered parents, hold a joint account, "divide" the funds EQUALLY between them for deeming purposes.

**0382.15.10.30 Determining Access to Funds**
REV: 06/1994

The determination of accessibility depends upon the legal structure of the account. Where an applicant is a joint holder of a bank account and is legally able to withdraw funds from that account, (s)he is considered to have unrestricted access to the funds.

It is possible to have ownership interest in a bank account but have restricted access to the funds. An example of language which restricts access is: "In trust for John Jones and Mary Smith, subject to the sole order of John Jones, balance at death of either to belong to the survivor." In this example, only John Jones has unrestricted access. When it is clearly established that all funds in an account are legally accessible to the applicant only in the event of the death of the co-owner, the applicant's access to the funds is restricted and the funds are not a countable resource. Regardless of whether the applicant has unrestricted access to the resources of an individual whose resources must be DEEMED, the funds in the account are deemable resources to the applicant.

If unrestricted access is an issue which cannot be resolved with the evidence on hand, the agency representative requests the financial institution to provide additional information. This may include the exact language used in the document which established the account, a description of any legal restrictions on the individual's access to the funds, etc.

If there is a legal impediment to the access to funds which may be owned by the recipient, see policy on availability of resources, Section 0380.30.

**0382.15.10.35 Rebuttal of Presumption of Owner**
REV: 06/1994

There may be a situation where an individual has unrestricted access to the funds in a joint account but does NOT consider himself/herself an owner of the funds (either fully or partially).

For example, the individual may allege that all of the funds in the account are deposited by other account holder(s). The individual may declare that (s)he has never withdrawn funds from the account or, withdrawals were made, the funds were used for or given to the other account holder(s); i.e., the applicant acts as agent for the other account holder(s).

**0382.15.10.40 Rebuttal Procedures**
REV: February 2014

When a joint account is alleged or discovered during the applicant process, the agency representative explains the applicable ownership presumption to the applicants or deemors.

If the applicant disagrees with the presumption of ownership, the agency representative provides an explanation of the rebuttal procedure. If the individual chooses not to rebut the presumption of ownership, the resource determination proceeds in the usual manner.

If the individual wishes to rebut the presumption, the agency representative explains to the individual that all of the necessary rebuttal evidence must be submitted within thirty days.

An additional thirty day period is granted if the applicant establishes good cause for his or her inability to provide the necessary documentation within the initial thirty day period.

IF the required information is not provided, the presumption of ownership issued to determine the value of resources.

Once the rebuttal evidence is submitted, the Medicaid agency determines who owns the funds in the joint account and documents the findings for the record.

If the applicant is ineligible due to any other factor of eligibility (such as excess income) or if a successful rebuttal would not change a determination of ineligibility due to other excess resources, it would then be unnecessary to initiate the rebuttal procedure.

**0382.15.10.45 Evidence for a Successful Rebuttal**
REV: February 2014

In order for an applicant/recipient to rebut successfully the presumption of full or partial ownership, ALL of the following evidence is required:

- A statement by the applicant or deemor on an AP-92 containing the penalty clause, giving his/her allegation regarding ownership of the funds, the reason for establishing the joint

account, the date the account was made joint, the source of the funds, who made deposits and the source of the deposits, who made withdrawals from the account, how the withdrawals were spent, whose Social Security number was on the account; and

- Corroborating statements (on form AP-92A) from other account holder(s); and

- Submittal of the original and revised (if any) account records showing that the change above was made. Photocopies are necessary for the record; and

- The AP-92 from the applicant and the AP-92A(s) from the joint account holder(s) must provide the information needed to establish that none of the funds, or only a portion of the funds, are owned by the applicant. The applicant must submit all available documentary evidence to support the statements in the AP-92 and AP-92A(s). The evidence should, if available, include a financial institution record, or other source document. A source document is a passbook or other document which shows deposits, withdrawals, and interest for the period for which ownership is being rebutted. The documentary evidence should support the allegations of ownership, and should not contradict the statements on the AP-92 and AP-92A.

It is the applicant's or deemor's responsibility to provide the required evidence. The Medicaid agency provides assistance in obtaining the evidence only when the individual is unable to do so.

If the applicant alleges that there is no documentary evidence available, s/he must submit evidence to substantiate the allegation.

If the rebuttal is successful, a new account must be established in the name of the applicant which contains only the applicant's funds, or a change must be made in the account designation which removes the applicant's name from the account, or restricts the applicant's access to the funds in the account.

**0382.15.10.50 Minor/Incompetent Co-Holder**
REV: 06/1994

If either the applicant or the co-holder of the joint account is incompetent or a minor, it is necessary to obtain a corroborating statement from that individual. That person's incompetency or age may be the reason why the applicant is listed as a joint account holder. In this event, the agency representative obtains a corroborating statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account. If there is no third party, the agency representative makes a rebuttal determination without a corroborating statement.

The decision is documented with an explanation why no corroborating statement was obtained. The agency representative determines if the rebuttal is successful.

The rebuttal process may result in determinations showing the applicant owned varying dollar amounts for prior periods.

**0382.15.15 Stocks, Bonds, Like Securities**
REV: 06/1994

Securities may include stocks, bonds, and other securities held individually, or as shares in a mutual fund.

**0382.15.15.05 Stocks**
REV: 06/1994

A stock is a negotiable instrument which represents ownership in a corporation. Most stocks are assigned a certain value, known as "par value." Par value, which in many cases is only one dollar, has no significance or correlation to the actual market value of stock.

The value of stock is normally determined by the demand for it when it is bought or sold on one of the stock exchanges or on the "over- the-counter" market. The value of stock frequently varies significantly. The daily fluctuating prices of most stocks are listed on the New York Stock Exchange, the American Stock Exchange or on the "over-the-counter" market. There are also several regional exchanges located in large cities which list stocks not shown on the major exchanges. Many newspapers publish the closing prices for stocks listed on the New York and American Exchanges.

The value of the stock should be determined through one of the listings after verifying the identity of the stock and number of shares held.

**0382.15.15.10 Municipal and Corporate Bonds**
REV: 06/1994

A bond is not cash but a promise to pay cash to the holder (bearer) of the bond. The term "bond" signifies an obligation in writing to pay a sum of money at a future specified date, usually to the bearer. It is a negotiable instrument and is transferable. The term "bond" is commonly understood in financial circles to be the obligation of a state, its sub-divisions (counties, districts or municipalities) or private corporations. These entities issue municipal or corporate bonds to raise money for improvement projects.

To redeem a municipal or corporate bond for its stated value, it must be held until the specified date of maturity. However, if a person wants to cash in a bond before its maturity date, the current cash value is determined by the market for such bonds, which is similar to stocks. If there is a great demand for certain bonds, the market value may be more than its face value; or less, if there is little or no demand. The bond's current market value may be substantially less than the face value. The current market value of a bond can be determined in the same manner as stocks.

When an individual requests that his/her municipal or corporate bond(s) be sold, it takes about 7 to 10 work-days from the day the brokerage firm completes the transaction to the time the seller receives the proceeds from the sale.

**0382.15.15.15 U.S. Savings Bonds**
REV: 06/1994

U. S. Savings Bonds are backed by the Federal Government. There are several series of U.S. Savings Bonds, which normally can be quickly converted into cash at local banks. However, some

bonds must be held at least 60 days from the date of issue before they can be converted into cash, and others must be held for a minimum of 6 months before they can be liquidated. During the period in which the bonds cannot be liquidated, they are not available, and are not countable resources. U.S. Savings Bonds are usually registered in the name of the owner (the name shown on the face of the bond) and are redeemed by the owner completing a form on the back of the bond.

When it is necessary to establish the value of a U.S. Savings Bond, the date of issue on the face of the bond is controlling. The bond's value depends on the time elapsed from the date of issue.

Although many U.S. Savings Bonds have a table of values on the reverse of the bond, this table is often inaccurate since the interest rate may have changed since the bond was issued. Contact a bank for documentation of a U.S. Savings Bond's current value.

**0382.15.15.20 Mutual Funds**
REV: 06/1994

A mutual fund is a company that buys and sell securities and other investments as its primary business. Shares in mutual funds represent ownership in the investments held by the fund. The value of the mutual fund shares varies with market conditions. The current value of the shares of many funds is published in the financial section of newspapers. If the current value of the fund is not published, it must be obtained from a broker, or from the fund itself. Most mutual fund shares may be liquidated on demand.

**0382.15.15.25 Presumption of Owner and Rebuttal**
REV: 06/1994

Jointly-held financial instruments described in Sections 0382.15.15.05 through 0382.15.15.20 above are subject to the same presumptions of ownership share as for real estate, e.g., the applicant is presumed to own his/her proportional share of the resource. For example, if the applicant owns shares of stock jointly with a sibling, the applicant is presumed to own half the stocks. This presumption is subject to the rebuttal procedure set forth in Sections 0382.15.10.10.25 through 0382.15.10.10.40.

**0382.15.20 Promissory Notes, Loans and Mortgages**
REV: 06/1994

In some financial transactions, the applicant may be the lender who is the person to whom money is owed. This section sets forth the policy for considering transactions or agreements in which the applicant is the lender, or the person to whom money is owed.

Section 0382.15.25 provides policy when the applicant is the borrower, and receives the proceeds of a loan.

Types of instruments in which the applicant may be the lender are:
**Promissory Notes**

A promissory note is a written agreement signed by a person who promises to pay a specific sum of money at a specified time, or on demand, to the person or organization named on the note as holder.

The note may be secured by real estate (a mortgage), or a security agreement on personal property (chattel mortgage). A promissory note held by an individual is a resource of the individual.

**Loans**

A loan is a transaction in which one party advances money (or other property) to another party who promises to repay the amount of the loan in full within his/her lifetime, with or without interest. The loan agreement may be oral or written. When an applicant has loaned money to another, the loan is a resource to the applicant, subject to the policy regarding its negotiability, valuation and salability set forth in the following sections.

**0382.15.20.05 Negotiability of Instruments**
REV: 06/1994

Promissory notes, mortgages, and loan agreements generally may be sold or discounted. For example, a bank may be willing to pay $450 for a $500 promissory note due in one year's time. Promissory notes, mortgages, and loans are negotiable if the owner (lender) has the legal right to sell the instrument, or has an interest in the instrument which can be converted into cash. Examination of the instrument establishes negotiability. Negotiable instruments are countable resources. Questions regarding negotiability are referred to the Office of Legal Services for review. Instruments determined to be non-negotiable by the Office of Legal Services are considered unavailable resources.

**0382.15.20.10 Valuation**
REV: February 2014

Once negotiability is established, the instrument is considered a resource in the amount of the outstanding principal balance, unless the promissory note, loan, or mortgage: (1) has a repayment term that is actuarially sound; (2) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and (3) prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan, or mortgage that does not satisfy the three requirements, the value of such document shall be the outstanding balance due as of the date of the individual's application for Medicaid long term care services.

Instruments that do not meet these criteria need to be examined under the transfer of resource policies found at Section 0384.

**0382.15.20.15 Salability**
REV: February 2014

If the individual is unable to sell or liquidate the resource because no market exists, the resource is considered to be unavailable, and is not countable. To establish unavailability, the individual must present:

- Evidence showing that the instrument was offered for sale for example, newspaper advertisement; and

- Statements from two different reliable sources stating that, in their opinion, the instrument cannot be sold, and the reason(s).

The case must be referred by memo to the Assistant Administrator for a determination regarding availability, who will consult with the Office of Legal Services, as necessary.

**0382.15.20.20 Treatment of Count/Non-Countable Instruments**
REV: 06/1994

If the instrument is determined to be a non-countable resource, the entire amount of any payments on the loan are considered to be unearned income. If the instrument is a countable resource, the principal portion of each payment is considered to be a converted resource; the interest portion is unearned income.

**0382.15.25 Proceeds of a Loan**
REV: 06/1994

The policy set forth in this section pertains when the applicant is the BORROWER, and receives the proceeds of a loan.

When the applicant is the borrower, the proceeds of a bona fide loan which requires repayment by the applicant are not income or resources in the month of receipt, but become a countable resource if retained beyond that month. If the loan is not bona fide, the proceeds are countable as unearned income when received.

For a loan to be considered bona fide, the terms of the loan must be legally binding on the borrower under State law.

**0382.15.25.05 Commercial Loans**
REV: 06/1994

Loans granted by organizations that are in the lending business (such as banks, finance companies, and credit unions) are considered to be bona fide. There will be a formal written contract between the organization and the borrower which specifies the promise to pay a sum on a certain date, or when certain circumstances are met.

**0382.15.25.10 Informal Loans**
REV: February 2014

Loans which are negotiated between individuals may be less formal, even unwritten. A bona fide loan may exist without a written contract. The loan need not be secured by specific items of collateral.

A loan agreement (oral or written) must include all the following to be considered bona fide:

- The borrower's acknowledgement of an obligation to repay (with or without interest); and

- A timetable and plan of repayment; and

- The borrower's express intent to repay the loan by pledging real or personal property or anticipated income. It is not necessary that the loan be secured by real or personal property. It is necessary that the borrower express intent to repay the loan when funds become available in the future and indicate that s/he will begin repaying the loan when s/he receives future anticipated income.

If the agreement is oral, statements are obtained from all parties to the loan, and any witnesses to the transaction. The agency representative evaluates the statements to determine if the loan is bona fide.

All documents relating to informal loans are photocopied and retained in the case record. Questionable situations are referred by memo through LTSS/AS to the Office of Legal Services for review.

All available documentation is attached to the memo.

**0382.15.30 Retirement Funds**
REV: 06/1994

Retirement funds are annuities or work related plans for providing income when employment ends (such as a pension, disability or retirement plan administered by an employer or union), or funds held in Individual Retirement Accounts (IRAs), or plans for self- employed individuals, sometimes referred to as Keogh plans.

An applicant who owns a retirement fund must apply for the benefits of such fund or liquidate the fund. However, the applicant is not required to terminate active employment in order to make a retirement fund available. If the applicant must terminate employment in order to receive benefits from the retirement fund, the fund is not a countable resource.

If the applicant is eligible for periodic retirement benefits (monthly, quarterly payment, etc.), the retirement fund is not a resource, but the payments from the fund are unearned income when received.

If an applicant owns a retirement fund and is not eligible for periodic payments, but has the option of withdrawing the funds, the retirement fund is counted as a resource. The resource is the amount the applicant can actually withdraw from the account. If there is a penalty assessed for early withdrawal, the resource is the amount available after these penalties are deducted. If taxes are owed on the funds, any taxes due are NOT deducted in determining the value of the retirement fund.

**0382.15.35 Annuities**
REV: February 2014

An annuity is an investment of funds from which an individual is paid or promised regular payments over a lifetime or a fixed period of time. Generally an annuity is established with a lump sum of money which is paid to a bank, insurance company, or other entity.

A deferred annuity is one under which payments begin at some date to be specified in the future. Once an individual selects a periodic payment option (frequency, amount and duration of payments), and begins to receive income, the annuity has been annuitized.

An annuity may guarantee periodic payments for a stated period (termed period certain) or guarantee periodic payments for the remainder of the life of the individual, without regard to how long the individual lives (termed life annuity).

All applicants must disclose any interest in an annuity that the applicant or his/her spouse has at the time of application and/or recertification of eligibility. Under 42 U.S.C.1396p(e), as amended by the Deficit Reduction Act, the State becomes a remainder beneficiary of all of the couples' annuities (or other similar financial document) which were purchased or transacted by either spouse on or after February 8, 2006 by virtue of the provision of such Medicaid up to the amount of Medicaid paid on behalf of the institutionalized spouse.

Upon the determination that an applicant is eligible for benefits under LTSS-Medicaid, the Medicaid agency will notify the issuer of any annuity disclosed for purposes of section 1917(c)(1)(F) of the State's rights as a preferred remainder beneficiary.

The Medicaid agency will additionally require the issuer of the annuity to notify the Medicaid agency regarding any changes in disbursement of income or principal from the annuity.

When determining eligibility for Medicaid COUNT AS AN AVAILABLE RESOURCE:

The cash value of an annuity which can be surrendered or "cashed in." The cash value is equal to the amount of money used to establish the annuity, plus any earnings, minus any earlier withdrawals and surrender fees. No consideration in determining cash value is given for income tax withheld or tax penalties for early withdrawal.

Annuity contracts that do not allow for cash surrender but instead allow the owner to sell the annuity on the open market are assignable. Annuity contracts that are silent regarding assignability are presumed to be assignable. Assignable annuities are countable resources. The countable value of the resource is equal to the outstanding principal balance, unless the individual can furnish evidence from a reliable source which shows that the annuity is worth a lesser amount. Reliable sources include banks, other financial institutions, insurance companies, brokers, viatical settlement companies, etc.

**Count as Available Income:**

Payments made to the individual from an annuity are counted as unearned income. Any change in the income from the annuity must be reported within ten (10) days to the agency and may affect eligibility and/or post eligibility treatment of income.

**Transfer of Asset Provisions for Institutionalized Individuals May Apply When:**

A non-cashable, non-assignable annuity was purchased by the individual (or by the individual's spouse):

- Within thirty-six (36) months (if purchased prior to February 8, 2006), or OR

- Within sixty (60) months (if purchased or after February 8, 2006)

- Immediately prior to, or any time after, the date the individual was both institutionalized and applied for Medicaid. See Sec. 0384.10 for description of how the 5-year look-back on resource transfers is phased in).

In this case, a determination must be made as to whether its purchase constitutes a transfer of assets for less than fair market value.

**Determine Whether Any Annuities Create a Penalty Period of Ineligibility For LTSS-Medicaid**

A non-cashable, non-assignable annuity purchased by the individual (or by the individual's spouse) may be determined to be a transfer of assets for less than fair market value, and therefore create a penalty period of ineligibility.

There are two situations in which this may occur:

1. When the asset was literally converted, within certain time frames, into an annuity which does not meet the criteria for being a "VALID TRANSFER FOR FAIR MARKET VALUE" in return (See the remainder of this Section, along with Section 0356.15.35 AND 0384.35 for detailed discussions of these topics).

and/or

2. When the annuity (if purchased on or after February 8, 2006) does not name the "State as Beneficiary" of the annuity.

When such an annuity does not comply with this requirement, it is defined as being a transfer for less than fair market value.

(This requirement to name the state as beneficiary is found in Section 1917(c)(1)(F)(i) of the Social Security Act (42 U.S.C.) 1396p(c)(1)(F)(i)), as added by section 6012(b) of the Deficit Reduction Act of 2005, and as amended by the Tax Relief and Health Care Act of 2006. (See the remainder of this Section, along with Section 0356.15.35 AND 0384.35 for detailed discussions of these topics).

Time-frames for evaluating the transfer of resources DHS may "look back" at resource transfers for the 36 months, or for the 60 months, immediately prior to the date that the individual was both institutionalized, and applied for LTSS-Medicaid.

(Transfers which occurred prior to February 8, 2006 are subject to the 36 month "look back").

(Transfers which occurred on or after February 8, 2006 are subject to the 60 month "look back").

Additionally, transfers which occur any time after the application are also evaluated to determine whether they generated a penalty period of ineligibility for LTSS-Medicaid.

(See Section 0356.15.35 and 0384.10 and 0384.35 for detailed discussions of these topics).

To be considered a valid transfer for fair market value, an annuity must:

- Be irrevocable and non-assignable;
- Provide regular payments in both frequency and amount, with no deferral and no balloon payments, to or for the sole benefit of the individual; and
- Be actuarially sound. Scheduled payments must return at least the principal within the number of years of expected life remaining for the individual.

Life expectancy tables compiled from information by the Office of the Chief Actuary of the Social Security Administration for this purpose are used to determine the number of years of expected life remaining for the individual. (See MCAR Section 0382.15.35.05).

If based on life expectancy tables compiled by the Social Security Administration's Office of the Actuary and published by HCFA CMS, the individual is not expected to live longer than the guaranteed period of the annuity, the guaranteed period of the annuity, the annuity is not actuarially sound, and a transfer of assets for less than fair market value has taken place. The transfer is considered to have taken place at the time the annuity was purchased. The uncompensated value of the transfer is based on the amount projected to be paid beyond the individual's reasonable life expectancy. (See Section 0384- Resource Transfers).

If an annuity is purchased or transacted on or after February 8, 2006 whether by the applicant or by their spouse, the beneficiary clause of the annuity must provide that the beneficiary of the annuity is as follows:

- Must, except as provided in this section, name the State of Rhode Island as the remainder beneficiary in the first position for at least the amount of Medicaid paid on behalf of the institutionalized individual.
- If, however, the institutionalized individual has a minor or disabled child, such child may be named as the beneficiary in the first position, provided the State of Rhode Island is named as beneficiary of the annuity in the second position for at least the amount of Medicaid paid on behalf of the institutionalized individual.
- In the event such child or his or her representative disposes of any such remainder for less than fair market value, the State of Rhode Island must be named in the first position.
- Any change in the beneficiary clause must be reported to the Medicaid agency within ten (10) days of any change, and may result in a transfer of assets penalty.

An institutionalized spouse, that is, an institutionalized individual who has a community spouse:

- Must, except as provided in this section, name the State of Rhode Island as the remainder beneficiary in the first position for at least the amount of Medicaid paid on behalf of such institutionalized spouse.

- However, the institutionalized spouse may name as the beneficiary in the first position his or her community spouse or his or her minor or disabled child, provided the State of Rhode Island is named as beneficiary of the annuity in the second position for at least the amount of Medicaid paid on behalf of the institutionalized spouse.

- In the event the community spouse or such child or his or her representative disposes of any such remainder for less than fair market values, the State of Rhode Island must be named in the first position.

- Any change in the beneficiary clause must be reported to the Medicaid agency within ten (10) days of any change, and may result in a transfer of assets penalty.

A community spouse:

- Must name the State of Rhode Island as the remainder beneficiary in the first position for at least the amount of Medicaid paid on behalf of his or her institutionalized spouse.

- The community spouse may not change the beneficiary of the annuity after the death of the institutionalized spouse.

- Any change in the beneficiary clause, before or after the death of the institutionalized spouse, must be reported to the Medicaid agency within ten (10) days of any change and may result in a transfer of assets penalty.

In the event the community spouse becomes institutionalized and applies for Medicaid, the beneficiary clause must be amended to additionally name the State of Rhode Island as the remainder beneficiary in the first position for at least the amount of Medicaid paid on behalf of such community spouse who becomes institutionalized, at the time such spouse applies for Medicaid for himself or herself, if the annuity was purchased during the look-back period.

Cases involving annuities are referred by field staff to the LTSS Administrator (or his/her designee) for evaluation. The agency representative forwards a copy of the annuity document, including date of purchase to the LTSS Administrator.

The LTSS Administrator (or his/her designee) consults, as needed, with the Office of Legal Services, and determines:

- Whether the annuity is an available or unavailable resource;

- The countable amount of the resource (i.e., the cash surrender value and/or negotiable value of the annuity); and

- Whether the State has been made a remainder beneficiary for at least the amount Medicaid paid on behalf of the institutionalized individual; and

- Whether a transfer of assets for less than fair market value has occurred as well as the amount of the uncompensated value and date of the transfer.

**0382.15.35.05 Life Expectancy Tables**
REV: 12/2000

Life expectancy tables are to be used when evaluating annuities.

The Social Security Administration issues an "Annual Statistical Supplement" in April of each year (based on the annual April report of the Social Security Trustees). This supplement contains the Life Expectancy Table, including any updates for that year.

This table is titled "Period Life Table" on the Social Security Administration's website.

It may be viewed on the internet by the following steps:
1. go to http://www.ssa.gov/OACT/
2. then click on "Actuarial Publications"
3. then click on "Statistical Tables"
4. then click on "Life Tables."

This address and process are expected to remain in effect indefinitely, per the S.S.A.

**0382.20 Life Insurance**
REV: 06/1994

Life insurance that is owned by the applicant (or deemor) is a resource which is evaluated according to the face value threshold limits set forth in Section 0382.20.15. Policies on the applicant's life owned by others are not countable unless deeming policies apply. However, regardless of ownership, all policies on the individual's life are recorded in the case file for use in the event a subsequent request for assistance with burial expenses is made.

**0382.20.05 Types of Policies**
REV: 06/1994

A life insurance policy can be either a group or individual policy.

Group insurance policies generally have no cash surrender value.

Group policies are usually issued through a company or organization insuring the participating employees or members and perhaps their families. The group policy may be paid partially by the employer.

This is not counted as a resource. The individual policy is paid for entirely by the owner of the policy.

Individual policies include policies having no cash surrender value (term insurance) and those having a cash surrender value (ordinary life, limited payment life, or endowment).

**0382.20.10 Life Insurance Terminology**
REV: 06/1994

**Face value** is the amount for which a policy is written, or the benefit amount. For example, a $10,000 insurance policy has a face value of $10,000.

**Cash surrender value** -- As the premiums of certain life (not term insurance) policies are paid over time, a cash value accumulates in the policy. The cash surrender value is the amount of cash which may be advanced to the policy owner when the policy is surrendered according to the conditions stipulated in the policy.

**A term insurance policy** is a contract of temporary protection. The insured pays relatively small premiums for a limited number of years, and the company agrees to pay the face amount of the policy only if the insured should die within the time specified in the policy. If the insured outlives the period, he receives nothing.

It is a temporary protection. Usually a term insurance policy has no cash surrender value and is not counted as a resource.

An **ordinary life** (known as whole or straight) policy is a contract for which the insured pays the premium during his life time or to age one hundred (unless purchased by a single premium or by letting dividends accumulate). The company pays the face value of the policy to the beneficiary upon the death of the insured. This policy has a cash surrender value, usually after the second year.

The policy combines protection and savings with the emphasis on protection for the whole life.

A **limited payment life policy** is a contract for which the insured makes payments for a definite number of years (20 or 30) after which no more payments are required. The policy remains in force for life and affords the same protection as an ordinary life policy. The policy has a cash surrender value.

An **endowment insurance** promises payment upon death of the insured within a specified period or upon his survival to the end of a specified period. An endowment has a cash surrender value.

**Insured person** - The insured person shown on the policy identifies the person whose life is insured. The $1,500 ($4,000 for Medically Needy) face value exclusion applies to all policies on each insured person which are owned by the applicant (individual or couple).

The exclusion applies to policies the applicant holds on his life, the life of a family member, or the life of any other person.

Where the face value exclusion is exceeded on one insured person, this does not affect its application to policies on another insured person.

**Joint policies** generally cover a married couple, often with whole life for one spouse and term for the other spouse.

**Family policies** cover each family member on one policy. They are sometimes a combination of whole life for the father and term for the mother and children.

**Owner of the policy** - The owner of the policy is the only person who can receive the proceeds under the cash surrender provisions of the policy. If the applicant is the insured person, but not the owner, the value of the policy does not count as his/her resource unless deeming policy applies. Conversely, if another individual is the insured person, but the applicant is the owner, the value of the policy counts as his/her resource (subject to the $1,500/$4,000 face value exclusion).

If the consent of another person is needed to cash in a policy, and consent cannot be obtained after a reasonable effort, the insurance policy is excluded.

**0382.20.15 Policy and Procedure for Evaluation**
REV: 06/1994

STEP 1: Determine the face value of each insurance policy on the individual as listed on the application. Total the face values of all policies owned by the individual or couple, or in a deeming situation, policies owned by a spouse or parent. If the total face value of all the policies is less than the appropriate face value threshold for exclusion ($1,500 for Categorically Needy determinations, $4,000 for Medically Needy), no further determination is needed. There is no countable resource from life insurance. If the total exceeds the appropriate face value threshold limit, all the policies must be reviewed further.

STEP 2: Exclude all policies that do not have a cash surrender value (e.g., group insurance, term insurance). Sum up the face values of all remaining policies to determine the total face value of all policies which do have a cash surrender value. If the total face value is now less than the appropriate limit, there is no countable resource from life insurance.

STEP 3: If the total face value still exceeds the appropriate face value threshold limit, determine the total cash surrender value of all policies. The total cash surrender value of all policies counts toward the basic resource limit.

Staff should note that the tables of values accompanying many policies may be inaccurate due to the existence of a loan on the policy, or due to changes in the rate at which the policy gains value. The cash surrender value of each policy should be obtained directly from the issuing insurance company.

STEP 4: Retain copies of all policies and relevant documents for the case record.

If countable resources exceed the appropriate basic resource limit, due in whole or in part to the countable value of life insurance, the individual/couple is ineligible and may pursue one of the following options:

- Cash in a policy to bring the resource within the limit;
- Spend down the cash amount by which the resource exceeds the eligibility limit of combined cash, stocks, bonds and personal property;

- Adjust the insurance to bring it within the eligibility limit;
- Determine eligibility for a Burial Funds Set-Aside (Section 0382.45); or
- Elect to retain the resources and the case will be rejected/ closed.

**0382.20.20 Policies Owned by Spouses**
REV: 06/1994

Policies owned separately by a married couple on the same person (e.g., a child) must be evaluated together (e.g., the married couple may each hold a policy on a child with a face value of $1,000). Since the COMBINED total face value exceeds the $1,500 Categorically Needy face value limit, the entire cash surrender value of both policies counts as a resource in the Categorically Needy determination. Conversely, because the combined face values are less than the $4,000 medically needy face value limit, there is no countable resource in a medically needy determination.

**0382.25 Household and Personal Effects**
REV: February 2014

Household goods and personal effects are excluded if their total current market value does not exceed the following threshold values:

- For Categorically Needy eligibility $2,000;
- For Medically Needy eligibility $5,000.

An applicant's household goods and personal effects are excludable unless there is strong evidence that their value is exceptional or unusual. For the purpose of determining the total joint resources of a couple, the spousal share of resources, the community spousal resource allowance, and Medicaid eligibility for an institutionalized individual with a community spouse, all household goods and personal effects are excluded, regardless of value.

Household appliances, furniture, carpeting, drapes, utensils, garden equipment, etc. are essential for the care and maintenance of the premises to support an adequate standard of health or the normal life comforts. Clothing, hobbies of reasonable value, jewelry, family heirlooms, and other effects typically restricted to the use of one individual are also essential to maintaining a reasonable living standard.

**0382.25.05 Items of Exceptional Value**
REV: 06/1994

When there is evidence that the applicant possesses household or personal items of unusual or exceptional value, there shall be verification that such item is a resource by establishing the fair market value (FMV) for it. Items of unusual value are those not essential to the physical health and safety, or items not normally used to maintain an adequate standard of comfort and convenience for the household.

Recreational boats, expensive jewelry (one wedding ring and one engagement ring are always excluded), art objects, or valuable collections are luxury items of unusual value and represent resources that can, along with other countable resources, exceed the resource limit for eligibility.

In such cases, a FMV is established for each such item and the amount is added to the $1,000. The $2,000 exclusion is subtracted.

(Do not include excluded items in this computation.) If there is a balance which, when added to other countable resources, would exceed the basic resource limit and render the individual/couple ineligible, it is then necessary to establish the equity value of the items and recompute in the same manner, as above. If the total equity value of household goods and personal property computed as above is in excess of the tangible personal property limit ($2,000, for Categorically Needy determinations, or $5,000 for Medically Needy determinations), the value in excess of the tangible personal property limit is a resource countable toward the appropriate basic resource limit.

**0382.30 Automobile(s)**
REV: 06/1994

An automobile is any vehicle which is used to provide necessary transportation, such as passenger automobiles, trucks, boats and special vehicles (e.g., snowmobiles, animals or animal-drawn vehicles).

**0382.30.05 Exclusion Based on Use**
REV: February 2014

One automobile (motor vehicle) will be totally excluded regardless of value if (for the individual or member of the individual's household):

- It is necessary for employment; or
- It is necessary to get to medical treatment for a specific or regular medical problem (used at least four times a year to receive treatment or to pick up prescribed medication for a specific medical problem); or
- It is modified for operation by or for transportation of a disabled person.

**0382.30.10 Threshold Exclusion**
REV: 06/1994

If no automobile (motor vehicle) is excluded based on use, one automobile is excluded from counting as a resource to the extent its NADA book value does not exceed a threshold of $4,500. If the automobile exceeds the $4,500 threshold, the amount in EXCESS of $4,500 is counted toward the basic resource limit. Equity value is not used in applying this provision. However, the lowest nada value assigned to the type of automobile is used, minus the amount allowed for any equipment the automobile does not have.

**0382.30.15 Additional Vehicles**
REV: 06/1994

The equity value of any additional automobiles or motor vehicles is counted toward the basic resource limit.

**0382.35 Burial Spaces**
REV: 06/1994

Burial space owned by the individual intended for use by the individual, his/her spouse or another member of the individual's immediate family is excluded from resources.

Burial space owned by an individual from whom resources are deemed to an applicant is excluded if the burial space is intended for use by the individual, the individual's spouse or another member of the individual's immediate family.

**0382.35.05 Definitions**
REV: 06/1994

The following definitions apply to determinations regarding burial spaces:

**Burial Space**
Burial spaces are conventional gravesites, crypts, mausoleums, urns or other repositories which are customarily and traditionally used for the remains of deceased individuals.

**Immediate Family**
Immediate family includes an individual's minor and adult children, stepchildren, adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those individuals.

Dependency and living-in-the-same household are not factors. Immediate family does not include the members of an ineligible spouse's family unless they meet this definition.

**0382.35.10 Examples of Burial Space Eval**
REV: February 2014 Repealed

**0382.40 Irrevocable Burial Contracts, Trusts**
REV: 06/1994

Funds in an irrevocable agreement which are available only for burial are excluded from countable resources. These are:

- Funds which are held in an irrevocable burial contract, or irrevocable burial trust; or
- An amount in an irrevocable trust specifically identified for burial expenses.

When, prior to application, an individual has an irrevocable contract or trust, the funds are not considered as a countable resource. To determine revocability or irrevocability, the contract or trust must be evaluated. A photocopy must be filed in the record.

**0382.40.05 Identification of a Revocable Contract/Trust**
REV: February 2014

A burial arrangement that may be liquidated by the mutual consent of the buyer (the individual) and the seller (the funeral director) is considered revocable unless the seller refuses to consent to liquidation. A statement of the seller's willingness or unwillingness to liquidate the arrangement is obtained and a copy placed in the record. If the seller is willing to liquidate, the arrangement is considered revocable; if the seller is unwilling to liquidate, the arrangement is considered irrevocable.

Any questions regarding revocability will be sent in writing through the Assistant Administrator in Long Term Care, with appropriate documentation, who will consult with the Office of Legal Services, as necessary.

If the contract or trust is revocable, it may be considered as "funds set aside for burial" or cash, depending on the amount of other resources. If the contract or trust is irrevocable, then the amount allowed as "funds set aside for burial" must be reduced by the amount held in the irrevocable burial arrangement.

**0382.40.10 Post-Eligibility Burial Agreement**
REV: 06/1994

After eligibility has been established, an individual who wishes to do so may place some or all of his/her resources that are within the resource limit, in an irrevocable burial arrangement without affecting eligibility.

**0382.45 Funds Set Aside For Burial**
REV: 06/1994

In addition to cash which may be retained under the appropriate basic resource limit, the applicant is permitted to set aside up to $1,500 in a separately identifiable fund for burial purposes. Funds can include a revocable burial contract, burial trust or any separately identifiable resource. If the conditions set forth below are met, the set-aside amount is excluded from resources.

The maximum amount which may be excluded from resources as a burial set aside is $1,500 for both Categorically Needy and Medically Needy determinations. The maximum excludable set aside amount is reduced by amounts held in irrevocable burial contracts and certain insurance policies, as specified below. At each application it is necessary to learn whether any funds are set aside for burial of the eligible individual or the eligible individual's spouse. If there are no such funds, no special procedures are required.

**0382.45.05 Computation of Burial Set-Aside Funds**
REV: 06/1994

If the applicant has funds set aside for burial, the amount which is excluded from resources is determined in the following manner:

- Start with the maximum of $1,500 for an individual and $1,500 for the spouse. Funds can include a revocable burial contract, burial trust or any separately identifiable resource.

- Reduce the maximums by the face value of any non-term life insurance policies on the individual's life, owned by the individual or the spouse, if the cash surrender values of the policies were excluded in determining countable resources according to policy in section 0382.20, Life Insurance. For Categorically Needy individuals, this means the total face values of such non-term life insurance policies which have cash surrender values and the total face values are $1,500 or less. For Medically Needy individuals, this means the total face values of such non-term life insurance policies which have cash surrender values and the total face values are $4,000 or less. (The face amounts of term life insurance or other life insurance on the individual's life, owned by his/her spouse, which have no cash surrender values, have no affect on the amount that can be set aside for burial).

- Reduce the balance further by the amount held by each individual in an irrevocable burial arrangement as defined in 0382.40.

- When both of these resources have been deducted from the $1,500 limit, any remaining balance may be set aside in a burial fund which meets the following requirements.

The funds must be:

- Separately identifiable and not combined with other funds or resources which are not set aside for burial. If they are combined, they must be restructured into separate accounts with separate account numbers within the month of application, if eligibility is to exist for that month.

- Clearly designated as set aside for burial. If the funds are not so designated, the funds may be excluded if the individual states that he/she intends to use the funds for burial and submits, within 30 days of application, a statement (AP-5.2) and documentary evidence that the funds have been designated as set aside for burial. Where the funds are set aside in a bank account, it is necessary to obtain a copy of the account to verify the existence and amount of the "set-aside account. The designation that the funds are for burial need not be indicated on the account since banks will not normally allow the designation.

Obtain a statement (AP-5.2) from each individual and/or deemor regarding the revocable burial agreement, trust and/or fund set aside for burial. The statement must be dated and must include the amount, account number (if applicable) and other pertinent information in each such arrangement. If a contract or trust, the statement should be fastened to the record copy of the contract or trust.

Once excluded from resources, any increase in the value of excluded burial funds due to interest on such funds which was left to accumulate, or appreciation of such funds which occurred after the date of first eligibility, is excluded.

Once a burial set-aside is excluded in whole or in part from resources, the excluded funds may not be used for any purpose other than burial expenses. An individual with set-aside must be advised

that if the excluded set aside funds are used for any purpose other than burial, the amount used must be counted as income.

Eligibility will need to be redetermined (including this additional income) for the period during which the income was used. Any question of fraud should be referred in accordance with Section 107.

**0382.45.10 Burial Set-Aside Examples**
REV: February 2014 Repealed

**0382.50 Trusts**
REV: February 2014

A trust is an arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or certain designated beneficiaries.

When an applicant or recipient is a party to a trust, the trust must be reviewed to determine if it has an impact on the individual's eligibility for Medicaid. Trusts and portions of trusts may be treated as available income, available resources or as a transfer of assets for less than fair market value. Trusts are referred to the LTSS Administrator for evaluation.

Trusts established prior to 8/11/93, called Medicaid Qualifying Trusts, are treated under provisions contained in 0382.50.05 and 0382.50.05.05.

Trusts established on or after 8/11/93 are evaluated in accordance with provisions contained in 0382.50.10.

Exceptions to trust provisions are contained in 0382.50.25.

The following definitions apply in general to trusts created other than by will:

A trust is any arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or other designated beneficiaries. The term "trust" also includes any legal instrument or device that is similar to a trust. It does not cover trusts established by will. If the trust includes assets of the individual and other person(s), this policy applies only to the portion of the trust attributable to the individual. A trust must be valid under Rhode Island law.

A revocable trust is one which:

- Under RI law can be revoked by the grantor;
- Provides for modification or termination by a court; or
- Terminates if some action is taken by the grantor.

An irrevocable trust is one which cannot, in any way, be revoked by the grantor.

The grantor/settlor is the person who creates a trust. For purposes of this policy the term grantor/settlor includes:

- The individual;
- The individual's spouse;
- A person, including a court or administrative body, with legal authority to act on behalf of the individual or the individual's spouse; and
- A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

The beneficiary/grantee is the person(s) for whose benefit the trust exists. In some cases, the person creating the trust (the trustor) is named as one of the beneficiaries.

The trustee is the person or entity (such as a bank or insurance company) that holds and manages a trust, and has fiduciary responsibilities. In most cases, trustees do not have the legal right to use the trust fund for their own benefit.

The trustee's discretion is the power the terms of the trust grant expressly to the trustee to use judgment as to when and/or how to handle trust income and/or principal. Not all trusts grant discretion to a trustee.

The trust principal is the property or funds placed in trust by the trustor who set up the trust.

Trust income is the amount earned by trust property. Trust income may take various forms, such as interest, dividends, or rent. Trust income may also be called trust earnings.

A trust document is the legal document setting forth the terms of the trust.

**0382.50.05 Trusts Established Prior to 8/11/93**
REV: February 2014

A trust, or similar legal device, is called a Medicaid qualifying trust when it:

- Was established prior to 8/11/93 by the individual, the individual's spouse or legal guardian, or the individual's legal representative acting on his/her behalf;
- Was established through a method other than a will;
- Names the individual as a beneficiary;
- Gives a trustee any discretion to disburse funds from the trust to or for the benefit of the individual; and
- Was created for a purpose other than to qualify for Medicaid.

Medicaid Qualifying Trusts may be irrevocable or revocable. There are no "use" limits on the funds in a Medicaid Qualifying Trust; trusts established by the individual to pay for special needs (e.g., medical, rehabilitative, or educational) may be considered Medicaid Qualifying Trusts insofar as they meet the criteria above.

However, if a beneficiary of a trust is an intellectually disabled individual who resides in an Intermediate Care Facility for the Mentally Retarded (ICF-MR), that individual's trust is NOT considered a Medicaid Qualifying Trust, provided the trust or initial trust decree was established prior to April 7, 1986, and is solely for the benefit of that intellectually disabled individual.

Legal instruments such as trusts are almost always drafted by an attorney. It is the grantor (beneficiary) himself who actually establishes or creates the trust when he signs or executes it.

**0382.50.05.05 Evaluating a Medicaid Qualifying Trust**
REV: February 2014

In the determination of financial eligibility and in the post- eligibility treatment of income, count as available to the applicant the maximum amount which the trustee(s) may distribute from a Medicaid Qualifying Trust. The maximum amount is the amount that the trustee could disburse if (s)he exercised his/her full discretion under the terms of the trust.

Distributions are considered available to the individual establishing the trust whether or not the distributions are actually made or the trustee(s) exercise their authority under the trust.

The amount from the trust that is deemed to be available as a resource to the beneficiary is the maximum amount that could have been distributed to the beneficiary from the principal of the trust under the terms of the trust, provided the trustee exercised his full discretion under the terms of the trust to distribute the maximum amount to the beneficiary.

The amount from the trust that is deemed to be available as income to the beneficiary is the maximum amount that could have been distributed to the beneficiary from the income of the trust under terms of the trust, provided the trustee exercised his full discretion under the terms of the trust to distribute the maximum amount to the beneficiary.

The maximum distributable amounts deemed available include only those amounts which can be but are not distributed from either the income (interest) or principal of the trust. Amounts which are actually distributed to the beneficiary for any purpose, including amounts to pay for the beneficiary's health, personal and other maintenance needs, are treated as income and/or resources, depending on whether the distribution was made from the income or principal of the trust.

**0382.50.10 Trusts Established on or After 8/11/93**
REV: February 2014

The following provisions apply to trusts established by the individual (as defined below) other than by will on or after 8/11/93. These rules apply without regard to:

- The purpose for which the trust was established;
- Whether the trustees have or exercise any discretion under the trust;

- Any restriction on when or whether distribution can be made from the trust; or
- Any restriction on the use of distributions from the trust.

The term individual includes: the individual; the individual's spouse; any person, including a court or administrative body, with legal authority to act on behalf of the individual or the individual's spouse; and any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse. A trust must be valid under RI law.

## I. **Revocable Trusts**

A revocable trust is a trust which under RI law can be revoked by the grantor. A trust which provides for modification or termination by a court is considered to be revocable since the grantor can petition the court to terminate the trust. A trust which is called irrevocable but which terminates if some action is taken by the grantor is also a revocable trust. For example, a trust may require the trustee to terminate a trust and disburse funds to the individual if the individual leaves a nursing facility. This would be considered to be a revocable trust.

Revocable trusts are treated as follows:

- The entire corpus of the trust is treated as a countable resource;
- Payments made from the trust to or for the benefit of the individual are counted as available income;
- Any other payments made from the trust are considered to be a transfer of assets for less than fair market value and are subject to a transfer penalty as provided Section 0384 when payment was made within sixty (60) months immediately prior to or any time after the individual was both institutionalized and applied for Medicaid.
- The home or former home of the individual held in a revocable trust established on or after December 1, 2000 is a countable resource. Where the home is an asset of the trust, it is not subject to the exclusion provision contained in 0382.10.05.

## II. **Irrevocable Trusts**

An irrevocable trust is one which cannot, in any way, be revoked by the grantor. Irrevocable trusts are treated as follows:

- Payments from trust income or principal which are made to or for the benefit of the individual are treated as income to the individual;
- Portions of the principal which could be paid to or for the benefit of individual are treated as an available resource;
- Payments from income or principal which under the trust could have been made to or for the benefit of the individual, but are instead made to someone else and not for the benefit of the individual are treated as a transfer of assets for less than fair market value and are subject to

a penalty if made with thirty-six (36) months immediately prior to or any time after the month the individual was both institutionalized and applied for MA.

- Portions of the trust which cannot under any circumstances be paid to or for the benefit of the individual are treated as a transfer of assets for less than fair market value and are subject to a penalty if made within sixty (60) months immediately prior to or any time after the month individual was both institutionalized and applied for MA.

- The home or former home of the individual held in an irrevocable trust established on or after December 1, 2000 is not subject to the intent to return exclusion provision contained in 0382.10.05.

For portions of trusts which are treated as a transfer, the date of the transfer is considered to be the date the trust was established or, if later, the date which payment to the individual was foreclosed. The uncompensated value of the transfer can be no less that its value on the date of transfer.

When additional funds are added to a trust, the addition of those funds is considered to be a new transfer of assets, effective on the date the funds were added to that portion of the trust.

**0382.50.15 Trust Evaluation Process**
REV: February 2014

When field staff encounters a trust, the individual must provide a copy of the trust document or other device, and relevant documents to verify the value of any investments and distributions that have been made by the trustee. A memorandum, along with copies of the trust document and all documentation, is forwarded to the LTSS Administrator for a determination of: a) the amount of countable income and/or resources; and b) the date and amount of any prohibited transfer of assets. Copies are retained in the case record. The Office of Legal Services is available for consultation with the Administrator to aid in establishment of the countable resource amount. The countable income/resource amount is added to other countable income/resources to determine eligibility. The imposition of a penalty related to a prohibited transfer is calculated based on the date of the transfer and the uncompensated value of the transfer.

**0382.50.20 Exceptions to Trust Provisions**
REV: July 2014

The following trusts receive special treatment in the determination of eligibility for Medicaid. Under certain circumstances, no transfer of assets is considered to have taken place as a result of establishing the trust. The income and resources considered available to the individual are only those made available by the trust.

1. **Special Needs Trust**, defined as a trust which:

- Contains the assets of an individual under age 65 who is disabled (as defined by the SSI program);

- Was established as a trust for the sole benefit of the individual by a parent, grandparent, legal guardian or court; and

- Provides that upon the death of the individual, the State will receive all amounts remaining in the trust, up to an amount equal to the total Medicaid payments made on behalf of the individual.

The trust may contain assets of individuals other than the disabled individual.

This exemption remains once the individual turns age 65 as long as there are no changes in the terms of the trust once the individual attains age 65. Any assets added to the trust as of age 65 are not subject to this exemption.

AND

2. **Pooled Trust**: A pooled trust is a trust that can be established for a disabled individual under the authority of 1917(d)(4)(C) of the Social Security Act (the Act). The statute provides an exception to imposing a transfer penalty for funds that are placed in a trust established for a disabled individual. The pooled trust (or more accurately, a sub-account within the pooled trust) is established for each individual beneficiary.

All the beneficiary sub-accounts are pooled for investment and management purposes. Upon the death of the disabled individual, the balance remaining in the account is paid back to the State Medicaid agency in an amount equal to the Medicaid paid on behalf of the beneficiary. The statute also allows the trust to retain some portion of the balance remaining after the death of the beneficiary, which is not to exceed $15,000.

A pooled trust is a trust that contains the assets of a disabled individual and meets the following conditions:

- The trust is established and managed by a non-profit association;

- A separate account is maintained for each beneficiary of the trust, but for purposes of investment and management of funds, the trust pools the funds in these accounts;

- Accounts in the trust are established solely for the benefit of the disabled individual by the individual, parent, grandparent, legal guardian or by a court; and

- To the extent that any amounts remaining in the beneficiary's account upon his/her death are not retained by the trust, the trust pays to the State the amount remaining in the account, up to the total amount of Medicaid paid on behalf of the individual.

**0382.50.25 Claims of Undue Hardship**
REV: February 2014

Trust provisions shall be waived if application of those provisions would cause the individual undue hardship. Undue hardship exits when:

1) Application of trust or transfer of asset provisions would deprive the individual of medical care to the extent that his/her life or health would be endangered or would deprive the individual of food, shelter, clothing or other necessities of life; AND

2) All appropriate attempts to retrieve the prohibited transfer have been exhausted; AND

3) The nursing facility has notified the individual of its intent to initiate discharge or the agency providing essential services under a home and community based waiver has notified the individual of its intent to discontinue such services for reasons of non-payment; AND

4) No less costly non-institutional alternative is available to meet the individual's needs.

Undue hardship does not exist when application of the trust provisions merely causes inconvenience or restricts lifestyle but would not put him/her at risk of serious deprivation.

When eligibility for Medicaid has been denied due to imposition of trust provisions, the individual may claim undue hardship. The individual must submit a written request and any supporting documentation. The individual's request for consideration of undue hardship does not limit his or her right to appeal denial of eligibility for reasons other than hardship.

Claims of undue hardship are forwarded to the Long Term Care Administrator for evaluation. The LTSS Administrator may instruct the agency representative to obtain documentation from the individual which can include but is not limited to the following:

- A statement from the attorney, if one was involved;
- Verification of medical insurance coverage and statements from medical providers relative to usage not covered by said insurance;
- A statement from the trustee and/or transferee.

The LTSS Administrator, in consultation with the Office of Legal Services, determines whether undue hardship exists. The individual is provided written notification of the Medicaid agency's decision, along with appeal rights, within sixty (60) days of the Medicaid agency's receipt of the request.

**0382.55 Life Estate**
REV: 07/2006

A life estate is a legal procedure giving a person certain rights in a property for his/her lifetime. Usually a life estate conveys the property to one party (the life estate holder) for life and to a second party (remainderman) when the life estate expires. The holder of the life estate agreement is entitled to all of the income produced by the property unless the life estate specifies otherwise. The agreement which creates a life estate is a will, a deed or some other legal instrument.

The physical property has one value and the life estate has another, separate value. The value of the life estate is based on the equity value of the property and the age of the life estate holder.

The life estate holder may use the property as his home for the rest of his life, or he may rent the property or sell his interest.

A primary obligation of the life estate holder is to preserve the property in the same condition as when s/he received it so that, at his/her death, it will pass to the remainderman in much the same condition.

The remainderman has an ownership interest in the physical property but s/he cannot possess or use the property until termination of the life estate. Unless restricted by the life estate agreement, the remainderman can sell his/her interest in the property before the life estate expires.

**0382.55.05 Life Estate Exclusions**
REV: ~~01/2014~~ February 2015

A life estate in real property located in Rhode Island that is the home of the applicant/recipient is excluded, if the equity value of the life estate is less than five hundred and ~~forty-three~~ fifty-two thousand dollars ($~~543,000.00~~ 552,000.00) (and the applicant intends to return to the home) or is the primary residence of the LTSS resident's spouse, minor child or disabled child of any age.

Please note that under the Deficit Reduction Act of 2005, if an individual has purchased a life estate in another individual's home on or after July 1, 2006, the individual must have resided in the home for a period of at least one (1) year after the date of purchase. A life estate may be excluded if the life estate cannot be sold.

If the life estate cannot be sold, then the value is not available to the applicant and it is excluded on that basis.

The salability of the life estate must be reviewed at each redetermination.

**0382.55.10 Evaluation of Life Estate/Remainder Interest**
REV: February 2014

The value of a life estate or remainder interest is based on the equity value of the real property and the mortality table.

To determine the value of a life estate, the Office of LTSS will:

- Determine the EQUITY VALUE of the real property by subtracting any encumbrances from the Fair Market Value;

- Round the age of the estate holder to the nearest year;

- Consult the Life Estate and Remainder Interest Tables which provide the value of a life estate and the value of a remainder estate at any given age. Multiply the equity value of the real property by the appropriate figure from the Life Estate and Remainder Interest Tables.

**0382.55.15 Resource Transfer**
REV: 07/2006

When an individual owns real estate and establishes a life estate for himself or herself in the property, the individual has transferred an asset, the remainder interest. These transfers are handled the same way as any other transfer of real property. Please refer to the above sections regarding the requirements of life estates and apply the transfer rules as found at section 0384. The value of the transfer is the remainder interest in the life estate.

The remainder interest is the equity value of the property minus the value of the life estate.

**0382.56 Life Estate with Enhanced Powers**
EFF: July 2014

01. Every applicant or recipient of Medicaid who owns a life estate in property (as defined in section 0382.10.10.05 herein) that is his or her primary residence, with a retained right to revoke, amend or redesignate the remainderman, will not be eligible for Medicaid, unless the applicant or recipient exercises the retained power thereby conveying all outstanding remainder interest to him or herself.

02. Said real estate shall be transferred to the Medicaid applicant or recipient by a warranty deed or quitclaim deed created, executed and recorded. Thereby, said applicant or recipient shall hold said real estate in fee simple.

03. An applicant or recipient who has reserved a life estate with retained rights to revoke, amend or redesignate the remainderman by a deed created, executed, and recorded prior to July 1, 2014 shall not be ineligible for Medicaid on the basis of such deed, regardless of whether the remainderman designated in such deed is a person or persons, a trust or entity.

**Evaluation of Real Estate / Transfers**

04. ***Evaluation of a Life Estate with Enhanced Powers*:** The property of a Medicaid applicant or recipient who: 1) owns a life estate in property that is his or her primary residence; and 2) exercises a retained right to revoke, amend or redesignate the remainderman in compliance with the provisions of this section; and 3) who is otherwise determined to be eligible for Medicaid; shall be evaluated in accordance with the provisions of section 0382.10 herein and all of the subsections thereunder.

05. ***Transfers***: Transfers for life estates with enhanced powers shall be treated in accordance with section 0382.10 herein and all of the subsections thereunder and in a manner similar to other resource transfers as provided herein.

**0382.60 RSDI and SSI Retroactive Payments**
REV: February 2014

An RSDI or SSI retroactive payment due for one (1) or more prior months is excluded from resources for six (6) months following the month of receipt.

This exclusion applies to retroactive payments received by the individual, the individual's spouse and/or any other individual whose income is deemed to the individual (or spouse).

RSDI benefits are regularly paid for the prior month. Therefore, a retroactive RSDI payment is one made for a month that is two (2) or more months prior to the month of payment.

This exclusion applies to retroactive payments only if they remain in the form of cash or identifiable funds; this exclusion does not apply once the retroactive payment has been converted to any other form.

If a resource is excluded under this policy, the case record must clearly indicate the resource, its amount and the period of the exclusion. If the excluded resource in conjunction with other resources would render the individual ineligible for Medicaid the redetermination must be scheduled for the month prior to the month in which the period of exclusion ends.

Although excluded from resources, retroactive RSDI benefits are countable unearned income in the month received. As such, they are included in the calculation of income, and the calculation of the excess income under the flexible test policy. Such benefits are also included in the calculation of monthly income to be applied to the cost of care of a recipient in an LTSS facility, or the cost of services received under a Waiver.

**0382.65 Resources for Self-Employment**
REV: February 2014

Resources essential to the recipient's (or deemor's) means of self-support are excluded from countable resources if the property is currently used to produce income, or will be used to produce income within one year, such as the boat of a shell fisherman during the winter. Such resources are the tools and equipment necessary for and normally used in the operation of a trade or business, or for an employee to perform his/her job.

**0382.70 Plan for Achieving Self-Support**
REV: 06/1994

When a blind or disabled individual has a specific plan approved by the Social Security Administration (SSA) for achieving self-support (PASS), resources (and income) necessary for accomplishing the objective of the plan are excluded from countable resources.

To document the exclusion, the applicant must provide a copy of the approved plan, or, with the applicant's permission, a copy must be obtained from SSA.

**0382.75 Resources Excluded by Statute**
REV: 06/1994

The statutory exclusion of resources retained from such benefits obtains so long as the resource is maintained in a separate and identifiable account, and not commingled with other, countable resources. Except as noted below or in the policy on specific types of resources (e.g. burial set-asides), interest or dividends paid on the excluded resource are not excluded from counting as income, or if retained, as resources.

**0382.75.05 Disaster Assistance**
REV: 06/1994

Disaster assistance provided under a federal statute pursuant to a Presidential declaration of a disaster, which is excluded from income, is also excluded from resources for a period of nine (9) months from the date of receipt. In addition, interest earned on such funds is also excluded from income and resources for a period of nine months. The exclusions may be continued for one additional nine month period if circumstances beyond the control of the recipient make it impossible for him/her to use the funds for the purpose intended within the first period.

**0382.75.10 German Reparation Payments**
REV: February 2014

As a result of the court case Grunfeder v. Heckler (9th Cir. 1984) and section 4715 of OBRA '90, German Reparation Payments are not counted for any Medicaid Program purpose. German Reparation Payments are disregarded in Medicaid eligibility determinations and in the post-eligibility process, and payments retained beyond the month of receipt are excluded from resources.

**0382.75.15 Agent Orange Settlement Payment**
REV: 06/1994

OBRA '89 (Federal Omnibus Budget Reconciliation Act) provides that Agent Orange Settlement Payments paid from a trust fund set up, pursuant to the Agent Orange product liability settlement, by manufacturers of a chemical defoliant used by the U.S. military in Vietnam are excluded from income and resources for veterans or their survivors.

**0382.75.20 Burial Spaces, Accrual Income**
REV: 06/1994

OBRA '89 provides that interest earned on the value of agreements representing the purchase of burial spaces (provided that the burial spaces are excluded from resources and provided that the interest is left to accrue) is excluded from income and resources in eligibility determinations.

The intent of the statute is that interest left to accumulate together with the excluded value of the burial space should not be counted as income or resources because it is not intended to be used for the purchase of food, clothing, or shelter (the criteria used to define countable income).

**0382.75.25 Restitution Pay to Japanese, Aleutian Islanders**
REV: February 2014

Public Law 100-83 provides for the U. S. Government to make individual restitution payments to certain Japanese-Americans and Aleuts who were relocated or interned during World War II. In certain instances, payments on behalf of deceased individuals will be made to survivors. The payments will be $20,000 to Japanese-Americans, and $12,000 to Aleuts. Payments made under this law are not to be considered resources (or income) for Medicaid purposes.

The recipient should have documentation of the amount of the payment. If documentation is not available, or a potential recipient wishes to inquire about eligibility for benefits, s/he may write to:

Office of Redress Administration
U. S. Dept. of Justice
P. O. Box 66260
Washington, D. C. 20035-6260

**0382.75.30 Qualified Long Term Care Insurance Partnership (QLTCIP) Payments**
REV: July 2014

The Deficit Reduction Act of 2005 provides:

1. That an amount equal to the benefits paid under a Qualified LTC Insurance Partnership policy, as of the month of application, is to be disregarded from an individual's resources in determining eligibility for Medicaid, and

2. That same amount is to be disregarded in the determination of the amount to be recovered from a beneficiary's estate. The amount that will be protected during estate recovery is the same amount that was disregarded in the eligibility determination. (See Sec.0382.80 regarding the Qualified Long Term Care Insurance Partnership program).

**0382.80 Qualified Long Term Care (LTC) Insurance Partnership**
REV: February 2014

RI has established a Qualified Long Term Care Insurance Partnership (QLTCIP) program.

This Qualified LTC Insurance Partnership provides:

1. For the disregard of a Medicaid applicant's resources in an amount equal to the benefits paid by their QLTCIP policy as of the time of their application for Medicaid, and

2. For the total amount paid by the individual's QLTCIP policy at the time of death to be disregarded in the determination of the amount to be recovered from a beneficiary's estate.

The amount that will be protected during estate recovery is the same amount that was disregarded in the eligibility determination.

(There may be continuing QLTCIP policy payments after Medicaid eligibility is established, so if the person later gains assets, he/she may have more protected than he/she had at the time of eligibility. Thus, the total amount paid by the individual's QLTCIP at the time of death is to be disregarded in the determination of the amount to be recovered from a beneficiary's estate).

**0382.80.05 Basis of the QLTCIP Resource Disregard**
REV: February 2014

The insurance benefits upon which the resource disregard may be based include:

1. Benefits paid as direct reimbursement of LTSS expenses;

2. As well as benefits paid on a per diem, or other periodic basis, for the periods during which the individual received LTSS services.

The LTC insurance benefits may have been paid to, or on behalf of, an individual who has received Medicaid.

It is not required that benefits available under a Partnership policy be fully exhausted before the disregard of resources can be applied.

**0382.80.10 Home and Associated Land Exclusion**
REV: July 2014

The use of a qualified partnership policy will not affect an individual's ineligibility for payment for nursing facility services, or other LTSS services, when the individual's equity interest in home property exceeds the limits set forth in Sec. 0382.10.05.

**0382.80.15 Technical Requirements for QLTCIP Policies**
REV: 07/2008

The policy must be a qualified partnership policy as certified by the Rhode Island Department of Business Regulation.

**0382.80.20 Changes in QLTCIP Policies**
REV: 07/2008

Changes in a QLTCIP policy after it is issued will not affect the applicability of the disregard of resources as long as the policy continues to meet all of the requirements referenced above.

**0382.80.25 Converting an Existing LTSS Policy to QLTCIP**
REV: 07/2008

If an individual has an existing LTC insurance policy that does not qualify as an LTC Partnership policy due to the issue date of the policy, and that policy is exchanged for another, the State Insurance Commissioner or other State authority must determine the issue date for the policy that is received in exchange.

To be a qualified Partnership policy, the issue date must not be earlier than the effective date of the state's Qualified LTC Partnership. Only QLTCIP policies qualify for the resource disregard.

**0382.80.30 Interstate Reciprocity of QLTCIP Policies**
REV: 07/2008

The U.S. Secretary of Health & Human Services will develop standards for reciprocal recognition of Partnership policies among Partnership States.

This will enable individuals who purchase a Partnership policy in one state, and later move to another Partnership State, to enjoy the same protections in the new state.

**0382.80.35 Rationale for Establishing a QLTCIP Program**
REV: 07/2008

States that implemented LTC Partnerships more than 10 years ago continue to operate these successful programs. These States have found that while thousands of their residents have purchased LTC insurance policies, only a small fraction of these insured individuals ever find the need to apply for Medicaid. The continued success of these Partnerships for more than a decade encouraged all states to consider the benefits of implementing a Partnership.

**0382.85 Severability**
EFF: July 2014

If any provisions of these regulations or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of these regulations which can be given effect, and to this end the provisions of these regulations are declared to be severable.

Friday, March 06, 2015
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