STATE OF RHODE ISLAND

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

Statement of Need for Emergency Filing

MEDICAID CODE OF ADMINISTRATIVE RULES

SECTION 0392: POST-ELIGIBILITY TREATMENT OF INCOME

The Executive Office of Health & Human Services (EOHHS) is re-filing (for a 60-day extension) this "emergency" amendment to rule #0392 "Post-Eligibility Treatment of Income" in order to incorporate recent changes to the federal 2016 Medicaid "Spousal Impoverishment Standards", the updated minimum monthly maintenance needs allowance (MMMNA), and the monthly housing allowances for community spouses that became effective July 1, 2016.

Because the revised standards were published by the federal Centers for Medicare and Medicaid Services (CMS) on May 31, 2016 and had to be in effect on July 1, 2016, EOHHS filed on an "emergency" basis to accommodate this compressed time line. The attached document is a re-filing of the original emergency rule.

Additionally, the State is adopting these amended rules to set forth these provisions in a timely manner in order to prevent wrongful denial, discontinuance, or interruption of benefits for Medicaid applicants and beneficiaries.

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Elizabeth H. Roberts, Secretary
Signed this day of October 2016

0392 Post-Eligibility Treatment of Income

0392.05 Overview

REV: 06/1994

Institutionalized Medicaid recipients are required to apply their income toward the cost of institutional care. Once Categorically Needy or Medically Needy eligibility has been established, and the applicant has been determined eligible for payment of institutional care services, a determination is made of the amount of income that the institutionalized individual must allocate to the cost of care.

The individual may protect certain prescribed amounts of income for specific needs. ONLY the prescribed amounts for the specific purposes may be protected. ALL of the institutionalized individual's remaining income must be used to reduce the Medicaid payment for institutional care. The applicant's income, protected amounts, and allocation to the cost of care are computed on a monthly basis.

The policy in this section applies to individuals who reside in nursing facilities and public medical facilities. See Section 0396 for the specific post-eligibility policies which apply to individuals who receive home and community based services under a waiver. For eligibility determination purposes, children receiving Medicaid under the "Katie Beckett" provisions are considered to be institutionalized. However, "Katie Beckett" eligible children are not subject to the post-eligibility process since only regular covered medical services are provided.

0392.10 Income for Post-Eligibility Purposes

REV: 03/1995

There are differences between the definition of income for determining Medicaid financial eligibility and the definition of income for post-eligibility purposes. In the post-eligibility process, income means all income that is defined to be part of the client's gross income when determining financial eligibility.

The income disregards which were excluded in the eligibility determination process are added back as countable income in the post-eligibility process.

Generally, certain types of income that are paid to a client for medical or social services and are excluded in determining financial eligibility are counted as income in the post-eligibility process. However, Aid and Attendance (A&A) benefits or benefits for unusual medical expenses (UME) paid by the Veterans Administration are excluded in determining financial eligibility and are also excluded as income in the post-eligibility process.

Likewise, SSI benefits are not considered to be income in the Medicaid eligibility process and are "invisible" (not countable) in the post-eligibility treatment of income as well.

0392.10.05 Income Ownership

REV: 06/1994

During any month in which an institutionalized spouse is in the institution, except with respect to trust property as provided below, no income of the community spouse shall be deemed available to the institutionalized spouse.

In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined to be eligible for Medicaid, the following rules apply, regardless of any state laws relating to community property or the division of marital property:

NON-TRUST PROPERTY

Non-trust property is all property not subject to a trust. The caseworker reviews the instruments, if any, which provides the income and applies its specific provisions regarding payment and availability of income. If the instrument providing the income lacks specific provisions relating to payment and availability of income, the following provisions apply:

- If payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

- If payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them;

- If payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to that spouse's interest. If payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse.

In the case of income not from a trust in which there is no instrument establishing ownership, subject to Section 0392.10.05.05, one-half of the joint interest shall be considered available to the institutionalized spouse and one-half to the community spouse.

TRUST PROPERTY

In the case of a trust, income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust:

- If payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

- If payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them;

- If payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest. If payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse.

0392.10.05.05 Rebutting Income Ownership
REV: 06/1994
The rules set forth in Section 0392.10.05 regarding non-trust property may be superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence that the ownership interests in income are other than as provided under that section.

0392.15 Income Applied to Cost of Care
REV: 06/1994

For each month in which Medicaid is requested to pay for the individual's institutional care, the individual must contribute his/her income to pay for institutional services, deducting only certain allowable amounts. The individual's income remaining after allowable deductions is paid to the institution as his/her contribution to the cost of the institutional care. Such income is known as APPLIED INCOME. The Medicaid payment to the institution is reduced by the applied income amount.

The calculation of applied income starts with the individual's gross income, which includes the deduction and disregard amounts which were subtracted from gross income in the determination of eligibility. To determine applied income, certain allowable deductions are subtracted from the recipient's gross income. The deductions, and the order in which they are subtracted from the recipient's gross income, are:

- Personal Needs Deduction (Regular) or $90 Reduced Pension Deduction;
- Personal Needs Deduction (Expanded);
- Personal Needs Deduction (Guardian and Legal);
- Community Spouse Allowance;
- Community Dependent Allowance;
- Medical Insurance Premiums;
- Medical/Remedial Items;
- Home Maintenance Deduction;
- First/Last Month Institutionalization Expenses.

0392.15.05 Personal Needs Deduction / $90 Pension
REV: 07/1999

This deduction is a personal needs deduction which is normally $50 per month, but may be larger for certain individuals with greater needs.

Beginning with benefits payable June 1, 1991 and continuing until September 30, 1997, Veterans Administration (VA) improved pensions payable to certain institutionalized veterans (those with neither spouse nor children, and who are eligible for Medicaid) are limited to $90 per month. This reduced pension amount is protected and can be used to meet the veteran's needs while in the institution. The Veterans' Benefits Act of 1992 extended the application of the law that limits VA pensions to $90 per month and bars Medicaid from counting the amount in the post-eligibility process to include surviving spouses with no children on the same basis that it applies to veterans. Therefore, for personal needs, a veteran or a surviving spouse of a veteran, with no

children, receiving a reduced pension is entitled to the greater of the $50 Personal Needs Allowance or, the $90 pension protected amount. In the post-eligibility added to the individual's other income. From the total income, subtract $90 for the veteran's personal needs.

0392.15.10 Personal Needs Deduction, Expanded
REV: 07/1999

Certain institutionalized individuals have higher than normal personal needs which result from their employment, and which allow them a personal needs deduction greater than the normal $50.

This higher personal needs deduction can be retained from the GROSS earned income of certain institutionalized individuals who are employed in public or private employment, or in sheltered workshops.

The employment and the retention of earned income must be therapeutic.

To be considered therapeutic, the employment must be part of a written plan to encourage the individual to attain his/her highest level of independence. For these individuals, an ADDITIONAL $85 plus one-half (1/2) the remainder of earned income per month may be protected for personal needs. The maximum expended personal needs allowance will vary with the amount of earnings, but can never exceed $400: ($50 + $85 + ($265 maximum) = $400).

0392.15.15 Increased Personal Needs Deduction
REV: 04/2001

An increased personal needs deduction is allowed for institutionalized individuals who incur certain fees.

Expenses which may result in an additional personal needs deduction under this provision are:

- Guardianship/Conservatorship Costs as provided in Section 0392.15.15.05;
- Legal Fees as provided in 0392.15.15.10;
- Tax Assessments as provided in Section 0392.15.15.15.

If specified criteria are met, the individual may retain income, in the form of an increased personal needs deduction, to meet the allowed expense(s).

0392.15.15.05 Guardian/Conservator Costs
REV: 04/2001

Individuals who have court-appointed guardians or conservators are allowed to retain income in the form of an additional Personal Needs Deduction to pay for certain court-approved guardian/ conservator's fees or court-ordered fees relating to the guardianship/conservatorship. Such fees include but are not limited to:

- Court filing fees;

- The cost of a Probate Bond;
- Court-approved guardianship/conservatorship fees; and
- Court-approved legal fees.

To be considered, the expense must be required for the individual to make income or resources available, or in the case of an incompetent individual who needs a court-appointed guardian, required to access or consent to necessary medical treatment (including applying for Medicaid). The individual must submit a copy of the Probate Court Order and any supporting documentation, including an itemized bill for allowable guardianship/conservatorship expenses, to the Medicaid agency.

Such cases are referred to the Office of Legal Services by the Administrator of Long Term Services and Supports (or his designee). The referral must contain a brief description of the case, a copy of the Probate Court Order, an itemized bill from the guardian, and any other supporting documentation submitted by the individual.

The Office of Legal Services may consider as deductions reasonable court-approved expenses (not covered by other sources) listed above, subject to the Rhode Island Supreme Court approved fee schedule (currently $30 per hour for guardians under "Executive Order" Number 95-01). When such guardianship fees have been approved by the Probate Courts, related guardian ad litem fees not exceeding $250 may also be recognized.

The total amount allowed must be reasonable shall be based the hours approved by the particular Probate Court for items as provided above at the rate of compensation paid for guardians ad litem in Family Court as specified in the then-current Rhode Island Supreme Court Executive Order on fee schedules.

Monthly deductions of up to one hundred twenty five dollars ($125) may be allowed for guardianship expenses. Monthly deductions up to one hundred twenty five dollars ($125) may also be allowed for related legal fees. An additional deduction from income of up to two hundred fifty dollars ($250) is recognized for allowable expenses related to a guardian-ad-litem during the month in which the individual pays the expense.

0392.15.15.10 Legal Fees
REV: 06/1994

Individuals who incur legal fees resulting from legal action to obtain income or resources for their support may retain income in the form of an additional Personal Needs Deduction to pay such fees. The maximum which may be deducted from income is the LESSER of the actual fee, or one third of the settlement amount.

0392.15.15.15 Tax Assessments
REV: 06/1994

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

0392.15.20 Community Spouse Allocation
REV: April 2015

Rhode Island is an income first state in which the income is first examined as part of the allocation. If the institutionalized individual has a community spouse, the individual may wish to allot an amount to the community spouse for his/her support. In reviewing for eligibility, DHS must consider all the income of the institutionalized spouse that could be made available to a community spouse has been made available before DHS allocates to the community spouse an amount of resources adequate to provide the difference between the minimum monthly maintenance needs allowance and all income available to the community spouse. This is applicable to individuals who became institutionalized individuals on or after February 8, 2006. Reference is made to applying this Section to fair hearings, as found in Section 0380.40.35. The amount of the community spouse allocation is based on the income already available to the community spouse. Thus, the calculation of this allocation is preceded by a determination of the community spouse's income.

If the institutionalized individual has a community spouse and other community dependents, s/he may choose in addition to the community spouse and can allocate only to his/her dependents.

The maximum amount that may be taken from an institutionalized individual's income for the support of a spouse and dependents in the community is $ 2,980.50 per month, except:

- In the case of a court order for spousal support; or
- In the case of a court order or a finding by an administrative hearing.

The allocation to community spouse is based upon the gross income otherwise available to the community spouse. The income of the community spouse is determined in the same manner as gross income for purposes of eligibility determination. No disregards or deductions are applied to the community spouse's gross income in determining the allocation from the institutionalized spouse.

0392.15.20.05 Calculation of Community Spouse Allocation
REV: ~~August 2015~~ October 2016

The calculation of the community spouse allowance considers the following:

- The community spouse's gross income; and
- The spouse allowance which consists of two parts, the basic allowance and the excess shelter allowance.

The BASIC ALLOWANCE to a community spouse with no other income is ~~$1991.25~~ $2002.50 per month.

An EXCESS SHELTER ALLOWANCE is added to the basic spouse allowance if the community spouse's shelter expenses exceed ~~$597.38~~ $600.75 per month.

0392.15.20.10 Excess Shelter Allowance
REV: ~~August 2015~~ October 2016

The excess shelter allowance is the amount by which the community spouse's shelter expenses exceed ~~$597.38~~ $600.75 monthly.

Only shelter expenses relating to the community spouse's principal place of residence may be used to calculate the excess shelter allowance.

Shelter expenses are defined as and limited to:

- Rent;
- Mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge;
- The STANDARD UTILITY ALLOWANCE, as updated annually in Sec.1038.20.05 of the SNAP Manual (Standard Utility Allowance), regardless of the actual utility costs, IF utility costs are incurred by the community spouse.

If the total allowable monthly shelter expenses are less than ~~$597.38~~ $600.75 there is no excess shelter allowance. The amount of shelter costs that EXCEEDS ~~$597.38~~ $600.75 is the excess shelter allowance.

0392.15.25 Dependent's Allocation with Community Spouse

REV: ~~August 2015~~ October 2016

Other family members of the institutionalized individual who live with the community spouse are also entitled to an allowance from the institutionalized individual. The dependent's allowance, when the dependent is living with the community spouse, is IN ADDITION to any spouse allowance, and MUST BE ALLOWED AS A DEDUCTION WHETHER OR NOT IT IS MADE AVAILABLE TO THE DEPENDENT(S) BY THE INSTITUTIONALIZED INDIVIDUAL.

To qualify for this dependent's allowance, the relative must live with the community spouse and must be:

- A minor (less than 18 years old) dependent child of either the institutionalized or the community spouse;
- A dependent parent of either spouse;
- A dependent sibling of either spouse (including an adoptive sibling or sibling of half blood).

Family members living with a community spouse for whom a dependent's allowance is sought must be determined to be financially dependent on the institutionalized individual. A family member is dependent if s/he is (or could be) claimed as a tax dependent of either the institutionalized spouse or the community spouse.

If the above criteria are met, the allowance for each dependent is calculated as follows:

- The allowance for a dependent with no income is ~~$663.75~~ $667.50 per month.

- If the dependent has income, his/her gross monthly income is deducted from the basic allowance of ~~$1991.25~~ $2002.50.

The difference between ~~$1991.25~~ $2002.50 and the dependent's monthly income is DIVIDED BY 3. The divisor 3 is a constant value in this computation. The QUOTIENT is the MONTHLY DEPENDENT'S ALLOWANCE FOR THAT PARTICULAR DEPENDENT.

0392.15.25.05 Dependent's Allocation / No Community Spouse
REV: 07/1999

Dependent family members of the institutionalized individual, WHEN THERE IS NO COMMUNITY SPOUSE, are entitled to an allowance from the institutionalized individual based on the Medically Needy Income Unit. To qualify for this dependent's allowance, the relative must be:

- A minor (less than 18 years old) dependent child;
- A dependent parent;
- A dependent sibling (including an adoptive sibling or sibling of half-blood).

Family member(s) for whom a dependent's allowance is sought must be determined to be financially dependent on the institutionalized individual. A family member is dependent if s/he is (or could be) claimed as a tax dependent.

The basic allowance for a dependent without a community spouse is equal to medically needy income limit for an individual, less any income of the dependent. If there is more than one dependent, the Medically Needy Income Limit for the family size is used.

0392.15.30 Fair Hearing
REV: 07/2006

If either the institutionalized spouse or the community spouse is dissatisfied with a determination of the community spouse monthly income allowance or the amount of income otherwise available to the community spouse, such spouse is entitled to a hearing. In addition, if either spouse establishes that due to extreme rare circumstances resulting in significant financial duress, the community spouse requires additional income, the hearing officer may order an allocation to provide such additional income as is necessary.

0392.15.35 Medical Insurance Premiums
REV: 07/2006

The deduction is the total of premiums paid for medical insurance coverage identified on the InRHODES system STAT/INSU or STAT/MEDI panels. If the institutionalized individual's Medicare premium is being paid by the State, it is not allowed as a deduction.

0392.15.40 Medical/ Remedial Care Costs
REV: 06/1994

The deduction consists of the cost of medical or remedial care recognized under state law but not covered under the Medicaid scope of services. This includes the cost of such items as chiropractic services, hearing aids for the Medically Needy, and certain ambulance services. Medical/remedial items which may be included in this deduction from the institutionalized individual's gross income are identified on the STAT/MEDX panel.

0392.15.45 Allocation for Home Maintenance

REV: 07/1999

If the institutionalized individual has no spouse living at home, and a physician has certified that s/he is likely to return home within six months, an amount can be allocated for the maintenance of the home. This deduction cannot exceed the Medically Needy Income Limit for one, nor can the amount be allocated for more than six months in any continuous period of institutionalization.

An institutionalized individual may not allocate income for both HOME maintenance and for the support of dependents at home.

The dollar amount per month that the individual is allowed to pay for expenses of the home are identified on the InRHODES system STATEMENT OF NEED/ HOME, RENT, and UTIL panels.

Expenses that can be deducted from the income are:

- Rent or mortgage;
- Taxes;
- Insurance;
- Special assessments and water bill.

THE MONTHLY TOTAL ALLOCATED CAN NOT EXCEED THE MONTHLY MEDICALLY NEEDY INCOME LIMIT FOR AN INDIVIDUAL. (See Section 0386.05)

0392.15.50 First/ Last Months of Institutional Expenses

REV: 07/2006

In determining the amount of income to be protected for the needs of an institutionalized individual WITHOUT a community dependent, the fact that a patient who is institutionalized for less than a full month will have out-of-institution expenses is recognized. In fact, the likelihood is great that an individual entering an institution during the middle of the month will have already expended his/her personal income for ONGOING EXPENSES.

This deduction is the amount of extra expenses allowed during partial months of institutionalization for an individual with no community spouse or dependents. It is manually entered and maintained in the InRHODES system by the Long Term Services and Supports worker.

Evidence of an on-going expense can be either a receipt for payment or a bill that is due. An UNPAID BILL need not be for the month of admission or the month of discharge from the facility; an overdue bill is still an ongoing expense for which the individual is liable.

However, a RECEIPT must be for an expense incurred for the month of admission and/or the month of discharge from the facility. (These concepts comport with the policy on spenddown.)

Copies of receipts and/or bills are inserted in the case record.

However, this section does not apply to an allocation if prohibited transfer(s) has/have occurred and caused a penalty period.

0392.20 Medicaid Payment for Institutional Care
REV: 07/2009

An allocation for the support of the community spouse and/or dependents, and the deduction allowed for medical insurance may only be subtracted from the recipient's income as described in Sections 0392.15.20 and 0392.15.35.

After the appropriate deductions have been subtracted from the institutionalized individual's income, the remaining balance of the income is applied to the cost of institutional care. The monthly Medicaid payment to the medical institution is reduced by the applied income amount.

0392.25 Institutionalized SSI Recipients
REV: 07/1999

Recipients of SSI are automatically Categorically Needy Medicaid recipients. If the applicant is eligible for payment of institutional care services (s/he has not incurred a period of ineligibility by a resource transfer), LTSS/AS staff determine the applicant's income to be applied to the cost of care in the institution. The SSI payment itself (and the State Supplement, if any) is excluded from consideration in the post-eligibility allocation of income to the cost of institutional care.

ALL OTHER INCOME of the SSI recipient is considered in the monthly income allocation from the first month of confinement in a Long-Term Care facility.

There are two groups of SSI recipients for whom post-eligibility applies:

- Community SSI recipients whose SSI benefits continue during inpatient confinement; and
- Employed individuals receiving SSI under Section 1619 who are institutionalized.

0392.25.05 Three (3) Month Continuation of SSI Benefits
REV: 06/1994

The Omnibus Budget Reconciliation Act (OBRA) of 1987 provides for the continuation of full SSI benefits for up to three (3) months to individuals who enter medical facilities, including acute care hospitals and nursing facilities, but who intend to return to their community residences within ninety (90) days. Retention of full SSI benefits is intended to allow these individuals to maintain their community residences while temporarily confined to a hospital or long-term care facility. To be eligible for continued SSI benefits, three conditions must be met:

- A physician must certify in writing that the individual's medical confinement is not expected to exceed ninety (90) days; and

- The individual must certify in writing that s/he needs the SSI benefit to maintain the home; and

- Documents attesting to the above conditions must be received by SSA not later than ten (10) days after the end of the month in which the individual entered the institution.

0392.25.05.05 Processing Continuation of SSI Benefits

REV: 06/1994

SSI recipients eligible for continuing SSI benefits may enter a LTSS facility from a hospital or may request placement directly from home.

SSI Recipient Entering an LTSS Facility from a Hospital

The Long-Term Care/Adult Services (LTSS/AS) worker obtains an application and supporting documentation in the normal manner in order to determine the income to be applied to the cost of care, to determine eligibility for Medicaid if SSI is terminated prior to discharge, and to determine if a prohibited resource transfer has been made. The worker communicates with the Social Security Administration to advise SSA of the recipient's entry into a LTSS facility.

SSI Recipient Requesting Placement Directly from Home

The LTSS/AS worker obtains an application and supporting documentation in order to determine income to be applied to the cost of care, to determine eligibility for Medicaid if SSI terminates prior to discharge, and to determine if a prohibited resource transfer has been made. The worker effecting the placement informs the individual of the availability of extended SSI benefits. If the individual intends to return home and medical evidence indicates that the individual will be able to do so within ninety (90) days, the LTSS/AS worker obtains a statement from the individual's doctor that indicates when the individual's return home is anticipated. The worker also obtains a signed statement from the individual which states that the SSI benefit is needed to maintain the home for his/her return. A copy of the doctor's statement and the individual's statement are sent to SSA. These documents must be received by SSI before the tenth day of the month following the month of institutionalization for SSA to continue full SSI benefits.

Termination or Reduction of SSI

If an SSI recipient remains institutionalized beyond the time limit, the SSI payment is terminated or reduced to the $30 level. LTSS/AS assumes responsibility for eligibility determinations for those individuals who no longer receive an SSI payment.

Allocation of Income to the Cost of Care

The SSI payment is excluded from the individual's gross income when calculating income to be applied to the cost of care.

0392.25.10 Employed/Institutionalized SSA 1619(B) Recipients

REV: 06/1994

Section 1619 of the Social Security Act provides for special SSI payments for disabled persons who are working. Persons who received SSI payments under Section 1619 of the Social Security Act in the month prior to institutionalization may receive two months of continued SSI benefits when admitted to:

- Eleanor Slater Hospital;
- Zambarano Hospital.

The LTSS/AS worker, as part of the normal intake process, secures an application and supporting documents from the individual. The worker determines if an individual admitted to one of the institutions listed above is a member of this group by communicating with the Social Security Administration. If so, the allocation of income to the cost of care EXCLUDES the SSI payment from the individual's gross income.

0392.30 Special Situations

REV: 07/2006

Some situations produce unusual results in the three-step sequence of financial determinations, especially in months in which the recipient is Medicaid-eligible for only a partial month, or in those circumstances in which the individual is Medicaid-eligible based on a flexible-test income calculation which includes projected institutional care expenses.

October 5, 2016
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