TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Final Rule
LSA Document #23-819

DIGEST

MEDICAID ELIGIBILITY

Amends 405 IAC 2-1-1 to clarify definitions. Amends 405 IAC 2-1-2 to comply with federal code. Amends 405 IAC 2-3-1.1 to provide guidance on asset transfers. Amends 405 IAC 2-6-3 to maintain foster child Medicaid coverage. Adds 405 IAC 2-3-26 to implement rules for the treatment of resources being computed. Adds 405 IAC 2-3-27 to provide guidance on services agreements, personal needs contracts, or personal care agreements; 405 IAC 2-3-28 to clarify spousal impoverishment limits. Adds 405 IAC 2-3-29 to define "Miller Trust" and "Qualified Income Trust". Repeals 405 IAC 2-6-2. Effective 30 days after filing with the publisher.

HISTORY

Notice of First Public Comment Period published December 27, 2023: 20231227-IR-405230819FNA
Regulatory Analysis submitted with Notice of First Public Comment Period: 20231227-IR-405230819RAA
Date of First Hearing: January 29, 2024
Notice of Second Public Comment Period published March 20, 2024: 20240320-IR-405230819SNA
Regulatory Analysis submitted with Notice of Second Public Comment Period: 20240320-IR-405230819RAA
Date of Second Hearing: April 29, 2024

SUMMARY/RESPONSE TO COMMENTS

The Office of Medicaid Policy and Planning (OMPP) requested public comment from December 27, 2023, through January 29, 2024, and March 20, 2024, through April 29, 2024, and during the public hearings on January 29, 2024, and April 29, 2024. The comments received and the OMPP's responses to the comments are summarized as follows:

Commentor: Eric Essley, Leading Age Indiana
Summary of Comments: Leading Age Indiana suggested that the OMPP reconsider pursing a rule change related to spousal impoverishment rules.

Response to Leading Age Indiana: The OMPP appreciates the feedback from Leading Age Indiana. The updates to 405 IAC 2-3-26 are being made to make Indiana Medicaid consistent with federal law regarding the unexempt status of community spouse retirement accounts. Additionally, the rules of the Medicare Catastrophic Coverage Act of 1988 regarding the prevention of spousal impoverishment still apply for Medicaid applicants.

Commentor: Emily Munson, Indiana Disability Rights
Summary of Comments: Indiana Disability Rights suggested that the OMPP: (1) reconsider whether defining "retirement account" in 405 IAC 2-1-1 is necessary, (2) reconsider the definition of "retirement account" in 405 IAC 2-1-1 due to concerns about conflicting definitions for the M.E.D. Works program, (3) consider the extent of potential fraud regarding updates to 405 IAC 2-3-27 and other potential solutions besides rulemaking, (4) add language regarding remote notarization for 405 IAC 2-3-27, (5) consider the impact of 405 IAC 2-3-27 on Medicaid applicants who are vulnerable and in rural communities, (6) reconsider language limiting hours for single care providers under 405 IAC 2-3-27, (7) add language to 405 IAC 2-3-29 to clarify that the requirements of this section do not apply to the M.E.D. Works program, and (8) gather feedback from disabled Hoosiers regarding event accessibility protocols.

Responses to Indiana Disability Rights:
Comment 1: The OMPP appreciates the feedback of Indiana Disability Rights. The OMPP considers adding a definition for retirement accounts under 405 IAC 2-1-1 to be necessary.
Comment 2: The OMPP appreciates the feedback of Indiana Disability Rights. The OMPP considers adding a definition for retirement accounts under 405 IAC 2-1-1 to be necessary. Additionally, the definition under 405 IAC 2-1-1 will not impact individuals who participate in the M.E.D. Works program.
Comment 3: The OMPP appreciates the feedback of Indiana Disability Rights. The OMPP has explored other options to combat alleged fraud but has determined that a rule change is necessary to ensure that Indiana Medicaid continues to be good stewards of public funds.
Comment 4: The OMPP appreciates the feedback of Indiana Disability Rights. The OMPP does not feel that it is necessary to add language allowing remote notarization because remote notarization is legal in Indiana, pursuant to I.C. 33-42-17-3.

Comment 5: The OMPP appreciates the feedback of Indiana Disability Rights. The OMPP has taken into consideration Medicaid applicants who are vulnerable or who live in rural areas. As stated above, remote notarization is legal in Indiana, pursuant to I.C. 33-42-17-3, and can be utilized by Medicaid applicants and recipients who are vulnerable or who live in rural areas.
Comment 6: The OMPP has revised 405 IAC 2-3-27 based on Indiana Disability Right and the Indiana Chapter of the National Academy of Elder Law Attorneys comment to clarify that the OMPP is not limiting the number of care providers a Medicaid applicant or member may have under 405 IAC 2-3-27. If an applicant or member wishes to have 24-hour care provided by multiple care givers pursuant to 405 IAC 2-3-27, they may do so, however duplicate services cannot be provided by multiple care providers to the same Medicaid applicant or member.
Comment 7: The OMPP appreciates the feedback of Indiana Disability Rights, but does not feel like it is necessary to specifically exclude the M.E.D. Works program, as 405 IAC 2-3-29 only applies to individuals who use Special Income Level budgeting. M.E.D. Works does not use Special Income Level budgeting.
Comment 8: The OMPP appreciates the feedback of Indiana Disability Rights. The OMPP has been compliant with the rulemaking process as outlined in I.C. 4-22 *et seq*. and Executive Order 24-2, to ensure that the public has opportunity to submit written or oral comments for LSA #23-819. The OMPP will continue to seek input from the Office of Equity, Inclusion and Opportunity on how to better serve all Hoosiers.

Commentor: Jesslyn Smith, Indiana Chapter of the National Academy of Elder Law Attorneys (IN-NAELA)
Summary of Comments: IN-NAELA submitted written and oral comment and suggested the OMPP: (1) continue to exempt community spouse retirement accounts when determining Medicaid eligibility for an institutionalized spouse, (2) modify the language of 405 IAC 2-3-29(f) to clarify that more income than the excess income over the Special Income Level may be deposited into a Qualified Income Trust account, (3) expand the non-exhaustive list of allowable distributions from a Qualified Income Trust, (4) eliminate 405 IAC 2-3-29(c)(3) which requires Qualified Income Trusts to be irrevocable, (5) revise the language of 405 IAC 2-1-2(j) remove the requirement of a court order and clarify language, (6) expand the non-exhaustive list in 405 IAC 2-3-17, (7) remove or modify 405 IAC 2-3-28, and (8) remove or modify 405 IAC 2-3-27.

Responses to IN-NAELA:
Comment 1: The OMPP appreciates the feedback of IN-NAELA. The updates to 405 IAC 2-3-26 are being made to make Indiana Medicaid consistent with federal law regarding the unexempt status of community spouse retirement accounts.
Comment 2: The OMPP has amended 405 IAC 2-3-29(f) based on IN-NAELA's comment to clarify that more income than the excess income over the Special Income Level may be deposited into a Qualified Income Trust.
Comment 3: The OMPP appreciates the feedback of IN-NAELA. 405 IAC 2-3-29(e) is a non-exhaustive list. The OMPP will not be amending this section because the OMPP avoids using phrases like "*includes, but are not limited to*" while drafting administrative rules.
Comment 4: The OMPP has amended 405 IAC 2-3-29 based on IN-NAELA's comment to clarify that Qualified Income Trusts may be revocable or irrevocable.
Comment 5: The OMPP has amended 405 IAC 2-1-2(j) based on IN-NAELA's comment to allow personal representatives under 45 CFR 164.502(g)(4) to complete interviews for deceased members when there is no valid authorized representative on file with the FSSA.
Comment 6: The OMPP appreciates the feedback of IN-NAELA. 405 IAC 2-3-17(e) is a non-exhaustive list. The OMPP will not be amending this section because the OMPP avoids using phrases like "*includes, but are not limited to*" while drafting administrative rules.
Comment 7: The OMPP has amended 405 IAC 2-3-28 based on IN-NAELA's comment to clarify that spousal impoverishment protections do not apply when both spouses are in an institution as defined by 405 IAC 2-1-1(6).
Comment 8: The OMPP has amended 405 IAC 2-3-27 based on IN-NAELA and Indiana Disability Right's comment to clarify that the OMPP is not limiting the number of care providers a Medicaid applicant or member may have under 405 IAC 2-3-27. If an applicant or member wishes to have 24-hour care provided by multiple care givers pursuant to 405 IAC 2-3-27, they may do so, however duplicate services cannot be provided by multiple care providers to the same Medicaid applicant or member.

Commentor: Bridget O'Brien Swartz and Joseph Smith, National Academy of Elder Law Attorneys (NAELA)
Summary of Comments: NAELA echoed the written and public comments provided by the Indiana Chapter of the National Academy of Elder Law Attorneys and requested the withdrawal of the OMPP's changes to 405 IAC 2-3-26(d). Additionally, NAELA suggested that the FSSA seek other avenues to combat the Indiana Medicaid's projected deficit.

Response to NAELA: The OMPP appreciates the feedback of NAELA. The updates to 405 IAC 2-3-26 are being made to make Indiana Medicaid consistent with federal law regarding the unexempt status of community spouse retirement accounts. Additionally, the updates to 405 IAC 2-3-26 are not being made in response to Indiana

Medicaid's projected deficit.

Commentor: Jesslyn Smith, Indiana Chapter of the National Academy of Elder Law Attorneys (IN-NAELA)
Summary of Comments: IN-NAELA submitted written and oral comment and suggested the OMPP: (1) continue to exempt community spouse retirement accounts when determining Medicaid eligibility for an institutionalized spouse, consider delaying implementation of the proposed 405 IAC 2-3-26(d), or implement an exempt dollar amount for community spouse retirement accounts and, (2) remove the requirement for notarization, removes the daily hourly limit for caregivers, and consider adding language that sets an effective date for agreements in 405 IAC 2-3-27.

Responses to IN-NAELA:
Comment 1: The OMPP appreciates the feedback of IN-NAELA. The updates to 405 IAC 2-3-26 are being made to align Indiana Medicaid with federal law regarding the unexempt status of community spouse retirement accounts when determining Medicaid eligibility for an institutionalized spouse. This rule complies with both federal law and the CMS interpretation of same. IN-NAELA's request to seek an exemption from CMS is outside the scope of this rulemaking. Pursuant to point (1) above, OMPP has not allowed community spouse retirement accounts to be an exempt resource since 2014. When the OMPP discovered that the retirement account calculation was not being applied consistently in all regional offices and sought to clarify the correct process through a policy change, IN-NAELA requested that OMPP finalize the clarification via rulemaking.

We acknowledge IN-NAELA's objection to the effective date of this rule, however, providing an extension for implementation will increase the amount of time that determinations by OMPP are inconsistent with federal law and CMS guidance. OMPP regularly meets with IN-NAELA and other stakeholders regarding Medicaid eligibility issues and have discussed the unexempt status of community spouse retirement accounts for years prior to implementation. OMPP does not see an exemption for community spouse retirement accounts as necessary, due to the spousal impoverishment protections under the Medicare Catastrophic Coverage Act, which currently allows community spouses to keep up to a potential $154,140 in unexempt resources. Additionally, OMPP would like to note that Medicaid is a joint and federal state program that is designed to provide government subsidized health coverage for certain individuals who meet physical and or financial eligibility criteria.

OMPP will proceed to finalize the rule as proposed in order to be compliant with federal law and CMS guidance as soon as possible.
Comment 2: The OMPP has amended 405 IAC 2-3-27 based on IN-NAELA's comments to clarify that "payments for services were made at the time the services were rendered" will include payments that are made on a daily, weekly, or monthly basis. The OMPP appreciates the feedback of IN-NAELA and appreciates their concerns regarding notarization, limit on hours a caregiver may work daily, and potential issues with implementation. The proposed 405 IAC 2-3-27 takes into consideration agreements that are not notarized and does have an exception for agreements that were not notarized but have made payments at the time the services under the agreement was rendered.

405 IAC 2-1-1; 405 IAC 2-1-2; 405 IAC 2-3-1.1; 405 IAC 2-3-17; 405 IAC 2-3-26; 405 IAC 2-3-27; 405 IAC 2-3-28; 405 IAC 2-3-29; 405 IAC 2-6-2; 405 IAC 2-6-3

SECTION 1. 405 IAC 2-1-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-1-1 Definitions

Authority: IC 12-13-5-3; IC 12-13-7-3; IC 12-15-1-10
Affected: IC 12-15-4; IC 12-15-5

Sec. 1. The following definitions in this section apply throughout this article:
(1) "Applicant" means ~~the~~ **a** person for whom Medicaid is requested.
(2) "Community spouse" has the meaning set forth in 42 U.S.C. 1396r-5(h)(2).
~~(2)~~ **(3)** "Dependent child" means a nonmember child **either:**
(A) ~~under~~ **less than** eighteen (18) years of age; or
(B) between eighteen (18) and twenty-one (21) years of age and a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare ~~him or her~~ **them** for gainful employment.
A dependent child must be the biological or adoptive child of ~~the~~ **an** applicant or **a** member, or the biological or adoptive child of ~~the~~ **an** applicant's or **a** member's parent.
~~(3)~~ **(4)** "Essential person" means a person who:
(A) is not ~~the~~ **an** applicant's or **a** member's spouse or parent;
(B) lives in the place of residence of ~~the~~ **an** applicant or **a** member; and

(C) is considered by ~~the~~ **an** applicant or **a** member to be essential to ~~his or her~~ **their** well-being because ~~he or she~~ **the person** provides services to the applicant or member that would have to be paid for otherwise.

(5) "Ineligible spouse" has the meaning set forth in 20 CFR 416.1160(d).

~~(4)~~ **(6)** "Institution" means a Title XIX certified hospital, **a** nursing facility, **an** intermediate care facility for individuals with intellectual disabilities, ~~(ICF/IID),~~ or **a** public institution. ~~It~~ **The term** does not include a facility where federal financial participation is not available under 42 CFR 435.1009.

(7) "Institutionalized spouse" has the meaning set forth in 42 U.S.C. 1396r-5(h)(1).

~~(5)~~ **(8)** "Medicaid" means that program described by IC 12-15 and this title, in which the office administers benefits and ~~makes payments to~~ **pays** providers for covered services provided to members.

~~(6)~~ **(9)** "Member" means an individual ~~who has been~~ determined by the office to be eligible for payment of covered services under IC 12-15 or this title, or both.

~~(7)~~ **(10)** "Nonmember" means a person ~~who is~~ not receiving Medicaid.

~~(8)~~ **(11)** "Office" means the Indiana family and social services administration, and its offices, divisions, or designees.

~~(9)~~ **(12)** "Parent" or "parents" means the biological or adoptive parent or parents living with an unmarried applicant or member ~~who is~~ either:

(A) ~~under~~ **less than** eighteen (18) years of age; or

(B) between eighteen (18) and twenty-one (21) years of age and a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare ~~him or her~~ **them** for gainful employment.

(13) "Retirement account" means any of the following:

(A) An individual retirement account established by an employee or employer.

(B) An annuity described in Section 408 of the Internal Revenue Code.

(C) A Keogh plan.

(D) A 401(k).

(E) A 403(b).

(F) A defined benefit plan.

(G) An account similar to those listed in clauses (A) through (F).

~~(10)~~ **(14)** "Spouse" means the legal husband or wife of an applicant or **a** member ~~who is~~ either living with the applicant or member or physically separated from ~~him or her~~ **them** only for medical reasons.

(Office of the Secretary of Family and Social Services; 405 IAC 2-1-1; filed Mar 1, 1984, 2:31 p.m.: 7 IR 1012, eff Apr 1, 1984; filed Jun 19, 1984, 10:25 a.m.: 7 IR 1820, eff Jul 1, 1984; filed Apr 10, 1985, 2:20 p.m.: 8 IR 989; filed Apr 4, 1986, 11:07 a.m.: 9 IR 1854; filed Aug 15, 1986, 3:00 p.m.: 10 IR 6; filed May 11, 1987, 9:30 a.m.: 10 IR 1864; filed Apr 26, 1988, 12:55 p.m.: 11 IR 3028; filed Oct 6, 1989, 4:50 p.m.: 13 IR 282; filed May 2, 1990, 4:55 p.m.: 13 IR 1704; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2224; filed May 14, 1992, 5:00 p.m.: 15 IR 2189; filed Feb 16, 1993, 5:00 p.m.: 16 IR 1780; filed Nov 26, 1996, 4:30 p.m.: 20 IR 955; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA; filed Apr 8, 2014, 12:37 p.m.: 20140507-IR-405130533FRA; readopted filed Nov 13, 2019, 11:54 a.m.: 20191211-IR-405190487RFA; filed Jun 11, 2021, 2:35 p.m.: 20210707-IR-405190602FRA; filed Jun 26, 2024, 10:03 a.m.: 20240724-IR-405230819FRA) NOTE: Transferred from the Division of Family and Children (470 IAC 9.1-1-1) to the Office of the Secretary of Family and Social Services (405 IAC 2-1-1) by P.L.9-1991, SECTION 131, effective January 1, 1992.

SECTION 2. 405 IAC 2-1-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-1-2 Interview of applicants and members

Authority: IC 12-13-5-3; IC 12-13-7-3; IC 12-15-1-10
Affected: IC 12-15-4; IC 12-15-5

Sec. 2. (a) In addition to the requirements of 470 IAC 2.1-1-2, each applicant and member, or ~~the~~ **an** individual authorized to act ~~in the individual's~~ **on their** behalf, must be interviewed by the office at the time of the initial investigation and at each annual reinvestigation of eligibility.

(b) The initial investigation interview required under subsection (a) may be conducted:
(1) in a division or county office;
(2) at a home visit;
(3) by telephone; or
(4) at a community location designated by the division or **the division's** designee.

(c) The annual reinvestigation interview required under subsection (a) may be conducted:
(1) in a division office;
(2) at a home visit;
(3) by telephone;
(4) by mail; or
(5) at a community location designated by the division or **the division's** designee.

(d) ~~An application~~ **Applications** for Medicaid ~~shall be~~ **are** filed on the form prescribed by the division.

(e) ~~The~~ **An** applicant or **a** member may use an authorized representative to apply for Medicaid, ~~to~~ represent the applicant or member in ~~all~~ interviews, and ~~to~~ notify the division of any changes. The authorization must be ~~in writing~~ **submitted under 42 CFR 435.907(a),** except as provided in subsections (g) and (h).

(f) Notwithstanding the availability of an authorized representative, the division may require personal contact with ~~the~~ **an** applicant or **a** member ~~in order~~ to ~~obtain~~ **gather** information necessary for ~~the determination of~~ **determining** eligibility.

(g) The parents of an applicant or **a** member ~~under~~ **less than** eighteen (18) years of age may apply for Medicaid on behalf of the applicant or member without the written authorization specified in subsection (e).

(h) The written authorization specified in subsection (e) ~~shall~~ **is** not ~~be~~ required if medical documentation signed by a licensed physician shows that ~~the~~ **an** applicant or **a** member is medically unable to provide ~~such~~ **an** authorization. This subsection ~~shall~~ **does** not apply if the applicant or member is deceased at the time the application is being made.

(i) Unless there is a legally authorized agent, such as an authorized representative, employees of nursing facilities may not be interviewed on behalf of a resident in their facility unless certified medical documentation shows the applicant or member is medically incapable of being interviewed and there is no one else to act on the applicant or member's behalf. This subsection ~~shall~~ **does** not apply if the applicant or member is deceased.

(j) If a member dies before an interview for Medicaid benefits and there is not a valid authorized representative on file with the family and social services administration, only a personal representative as defined under 45 CFR 164.502(g)(4) may complete the interview.

~~(j)~~ **(k)** For ~~any~~ **an** applicant or **a** member of long term care services, ~~the~~ **an** application ~~of the individual~~ for ~~such~~ assistance, including ~~any~~ recertification of eligibility for ~~such~~ assistance, ~~shall~~ **must** disclose a description of any interest the individual or community spouse has in an annuity, or similar financial instrument as ~~may be~~ specified by the Secretary of Health and Human Services, regardless of whether the annuity is irrevocable or is treated as an asset, as follows:
(1) ~~Such~~ **The** application or recertification packet ~~shall include~~ **includes** a statement signed by the individual that the state will become a remainder beneficiary under ~~such an~~ **the** annuity or similar financial instrument ~~by virtue of the provision~~ **because** of **providing** Medicaid.
(2) ~~Upon~~ **On** disclosure by an applicant or **a** member under this subsection, the state will notify the issuer of the annuity of its right as a preferred remainder beneficiary for Medicaid furnished to the individual.

~~(k)~~ **(l)** The division ~~will~~ **shall** accept an application for Medicaid signed with an electronic signature.

~~(l)~~ **(m)** An applicant or **a** member ~~who does~~ not ~~meet~~ **meeting** the requirements of this section ~~shall be~~ **is** ineligible for Medicaid.

~~(m)~~ **(n)** The formal initial investigation interview required under subsection (a) is not required for individuals subject to the modified adjusted gross income methodology set forth under 42 CFR 435.603.

(Office of the Secretary of Family and Social Services; 405 IAC 2-1-2; filed Mar 1, 1984, 2:31 p.m.: 7 IR 1013, eff Apr 1, 1984; filed Jun 19, 1984, 10:25 a.m.: 7 IR 1821, eff Jul 1, 1984 [IC 4-22-2-5 suspends the effectiveness of

a rule document for thirty (30) days after filing with the secretary of state. LSA Document #84-29 was filed with the secretary of state June 19, 1984.]; filed Feb 16, 1993, 5:00 p.m.: 16 IR 1781; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; filed Feb 19, 2009, 10:53 a.m.: 20090318-IR-405080195FRA; filed Aug 18, 2009, 11:33 a.m.: 20090916-IR-405080325FRA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA; filed Apr 8, 2014, 12:37 p.m.: 20140507-IR-405130533FRA; readopted filed Nov 13, 2019, 11:54 a.m.: 20191211-IR-405190487RFA; filed Jun 11, 2021, 2:35 p.m.: 20210707-IR-405190602FRA; filed Jun 26, 2024, 10:03 a.m.: 20240724-IR-405230819FRA) NOTE: Transferred from the Division of Family and Children (470 IAC 9.1-1-2) to the Office of the Secretary of Family and Social Services (405 IAC 2-1-2) by P.L.9-1991, SECTION 131, effective January 1, 1992.

SECTION 3. 405 IAC 2-3-1.1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-3-1.1 Transfer of property; penalty

Authority: IC 12-13-7-3; IC 12-15-1-10
Affected: IC 12-15-4; IC 12-15-5; IC 12-15-39.6

Sec. 1.1. (a) The following definitions apply throughout this section:
(1) "Assets" includes ~~all~~ **the** income and resources of ~~the~~ **an** applicant or **a** member, and ~~of the~~ **an** applicant's or **a** member's spouse, including ~~any~~ income or resources ~~that~~ the applicant or member, or the applicant's or member's spouse, is entitled to receive but does not receive because of action by:
(A) the applicant or member, or the applicant's or member's spouse;
(B) a person, including ~~but not limited to,~~ a court or **an** administrative body with legal authority to act in place of or on behalf of the applicant or member, or the applicant's or member's spouse; or
(C) a person, including ~~but not limited to,~~ a court or **an** administrative body acting at the direction or ~~upon~~ **on** the request of the applicant or member, or the applicant's or member's spouse.
The term includes assets ~~that~~ an individual is entitled to receive but does not receive because of failure to take action subject to subsection (j).
(2) "Individual" means an applicant or **a** member of Medicaid.
(3) "Institutionalized individual" means an applicant or **a** member who is:
(A) an inpatient in a nursing facility;
(B) an inpatient in a medical institution for whom payment is made based on a level of care provided in a nursing facility; or
(C) receiving home and community based waiver services.
(4) "Net income" means the income produced by real property after deducting allowable expenses of ownership. Allowable and nonallowable expenses are as follows:
(A) The following are allowable expenses of ownership if the owner is responsible for the expenses:
(i) Property taxes.
(ii) Interest payments.
(iii) Repairs and maintenance.
(iv) Advertising expenses.
(v) Lawn care.
(vi) Property insurance.
(vii) Trash removal expenses.
(viii) Snow removal expenses.
(ix) Utilities.
(x) ~~Any~~ Other expenses of ownership allowed by the Supplemental Security Income program.
(B) The following are ~~not allowable~~ **nonallowable** expenses of ownership:
(i) Depreciation.
(ii) Payments on mortgage principal.
(iii) Personal expenses of the owner.
(iv) Mortgage insurance.
(v) Capital expenditures.
(5) "Noninstitutionalized individual" means an applicant or **a** member receiving any of the **following** services:
(A) Home health care services.
(B) Home and community care services for functionally disabled elderly individuals.
(C) Personal care services as defined in 42 U.S.C. 1396a(a)(24).
(6) "Qualified long term care insurance policy" has the meaning set forth in 760 IAC 2-20-30.
(7) "Uncompensated value" means the difference between the fair market value of ~~the~~ **an** asset and the value of the consideration received by ~~the~~ **an** applicant or **a** member in return for transferring the asset.

(b) A look back date is sixty (60) months before the first date as of which ~~the~~ **an** individual both:
(1) is an institutionalized individual; and
(2) has applied for Medicaid.

(c) If an applicant or **a** member of Medicaid, or the spouse of an applicant or **a** member, disposes of assets for less than fair market value on or after the look back date, the applicant or member is ineligible for Medicaid for services described in subsection (e) for a period of time known as the penalty period, ~~The penalty period~~ **which** is equal to the number of months specified in subsection (g), and ~~shall begin~~ **begins** on the later of the first day of the month in which assets have been transferred for less than fair market value, or the date on which the individual ~~would be~~ **is** eligible for services described in subsection (e), based on an approved application for ~~such~~ assistance without regard to ~~any~~ penalty periods, whichever is later, and ~~which~~ does not occur during any other period of ineligibility.

(d) A transfer of assets includes ~~any~~ cash, liquid ~~asset~~ **assets,** or property ~~that is~~ transferred, sold, given away, or otherwise disposed of as follows:
(1)Transfer includes ~~any~~ **the** total or partial divestiture of control or access, including ~~but not limited to,~~ any of the following:
(A) Converting ~~an~~ **the** asset from individual to joint ownership.
(B) Relinquishing or limiting ~~the~~ **an** applicant's or **a** member's right to liquidate or sell the asset.
(C) Disposing of a portion or ~~a~~ partial interest in the asset while retaining an interest.
(D) Transferring the right to receive income or a stream of income, including ~~but not limited to,~~ income produced by real property.
(E) Renting or leasing real property.
(F) Waiving the right to receive a distribution from a decedent's estate, or failing to take action to receive a distribution that ~~the~~ **an** individual is entitled to receive by law subject to subsection (j).
(G) For transactions converting funds to purchase a promissory note, loan, or mortgage unless ~~such~~ **the** note, loan, or mortgage:
(i) has a repayment term ~~that is~~ actuarially sound ~~in accordance with~~ **under the** actuarial publications of the Social Security Administration;
(ii) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and
(iii) prohibits ~~the cancellation of~~ **canceling** the balance upon the death of the lender.
(H) For the purchase of a life estate interest in another individual's home, unless the purchaser resides in the home for a period of at least one (1) year beginning immediately after the date of purchase.
(2) If an applicant or **a** member relinquishes ownership or control over ~~a portion~~ **part** of an asset, but retains ownership, control, or an interest in the remaining ~~portion,~~ **part,** the ~~portion~~ **part** relinquished is considered transferred.
(3) A transfer of ~~the~~ **an** applicant's or **a** member's assets completed by the applicant's or member's power of attorney or legal guardian is considered a transfer by the applicant or member.
(4) For purposes of this section, ~~in the case of~~ **if** an asset **is** held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected ~~portion~~ **part** of the asset, ~~shall be~~ **is** considered transferred by ~~the~~ **an** applicant or **a** member when ~~any~~ **an** action is taken, either by the applicant or member or by any other person, that reduces or eliminates the applicant's or member's ownership or control of the asset.
(5) This section applies without regard to the exclusion of the home described in 42 U.S.C. 1382b(a)(1).
(6) This section applies without regard to the exclusion of income-producing real property, except for property used in a trade or business. The transfer of income-producing real property other than property used in a trade or business is subject to penalty under subsections (h) and (l). **For purposes of this section,** "trade or business" means a trade or business ~~that is~~ actively managed or operated by ~~the~~ **an** applicant or **a** member.
(7) Except for the allowable transfer of assets described in 42 U.S.C. 1396p(c)(2), in all instances, the office must presume the transfer of assets occurred to become Medicaid eligible unless an individual can prove otherwise.
(8) The following requirements apply for verification of transfers:
(A) A determination by the office at the time of the application, renewal, or anytime on the discovery of a transfer whether an individual executed an improper transfer.
(B) The office is informed by an individual within ten (10) days of a transfer of assets or discovery of a transfer of assets.
(C) The office is provided with documentation by an individual verifying a transfer and the details of any exchanges or transactions.

(e) During the penalty period, an institutionalized individual is ineligible for Medicaid for the following services:
(1) Nursing facility services.
(2) A level of care in ~~any~~ **an** institution equivalent to that of nursing facility services.
(3) Home or community based waiver services.

(f) If an individual is ineligible for Medicaid for services under this section, expenses for those services are not allowable medical expenses in calculating an individual's nursing home liability for ~~any~~ **a** month of Medicaid eligibility.

(g) The number of months of ineligibility ~~shall be~~ **is** equal to the total, cumulative uncompensated value of ~~all~~ assets transferred by ~~the~~ **an** individual, or ~~the~~ **an** individual's spouse, on or after the look back date specified in subsection (b), divided by the average monthly cost to a private patient of nursing facility services in the geographic area, ~~that includes~~ **including** the county where the individual resides at the time of application. As used in this subsection, "geographic area" means the region identified in Section 2640.10.35.20 of the Family and Social Services Administration Program Policy Manual for Cash Assistance, Food Stamps, and Health Coverage. If, in calculating the period of ineligibility a fractional period of ineligibility is determined, the state shall not round down or otherwise disregard any fractional period of ineligibility.

(h) This subsection applies to the transfer of a stream of income, including ~~but not limited to,~~ the transfer of the income generated by income-producing real property. The uncompensated value of income transferred is determined by calculating the greater of **the:**
(1) ~~the~~ fair market value; or
(2) ~~the~~ actual amount;
of total net income ~~that~~ the property or other source of income is capable of producing during the lifetime of the transferor, based on life expectancy tables published by the office, and subtracting the income, if ~~any,~~ **applicable,** ~~that~~ the transferor ~~will receive~~ **receives** from the property or other source of income after the transfer.

(i) When an individual accepts a rental payment that is less than the fair market rental value for income-producing property, the uncompensated value of the transfer is determined by:
(1) calculating the difference between the fair market rental value and the amount of rent accepted; and
(2) multiplying the difference by the person's life expectancy based on life expectancy tables published by the office.

(j) This subsection applies to a transfer of assets ~~that results~~ **resulting** from failure to take action to receive assets to which one is entitled to receive by law. No penalty ~~will be~~ **is** imposed if any of the following circumstances ~~applies:~~ **apply:**
(1) ~~The~~ **An** applicant or **a** member, or ~~the~~ **an** individual with legal authority to act on behalf of ~~the~~ **an** applicant or **a** member, ~~is unaware of his or her~~ **does not know of their** right to receive assets, or ~~becomes aware~~ **knows** of the right to receive assets after the deadline for taking action has passed. If the office notifies the applicant or member of ~~his or her~~ **their** right to receive assets ~~prior to~~ **before** the deadline for taking action, the individual ~~will be~~ **is** presumed to ~~be aware of his or her~~ **know of their** right to receive assets unless subdivision (2) applies.
(2) A physician states ~~that the~~ **an** applicant or **a** member is not capable of taking action to receive the assets, and there is no guardian or other individual with the authority to act on the applicant's or member's behalf.
(3) The expenses of collecting the assets ~~would exceed~~ **exceeds** the value of the assets.
(4) ~~In the case of~~ **If** a surviving spouse ~~who~~ fails to take a statutory share of a deceased spouse's estate, no penalty ~~will be~~ **is** imposed if the deceased spouse has made other equivalent arrangements to provide for a spouse's needs. **As used in this subdivision,** "other equivalent arrangements" includes ~~but is not limited to,~~ a trust established for the benefit of the surviving spouse.

(k) An applicant or **a** member ~~shall not be ineligible~~ **remains eligible** for Medicaid under this section if any of the following apply:
(1) ~~The~~ Assets transferred were a home, and title to the home was transferred to any of the following persons:
(A) The spouse of the applicant or member.
(B) A child of the applicant or member who is:
(i) ~~under~~ **less than** twenty-one (21) years of age; or
(ii) blind or disabled as defined in 42 U.S.C. 1382c.

(C) A sibling of the applicant or member who:
(i) has an equity interest in the home; and
(ii) was residing in the applicant's or member's home for a period of at least one (1) year immediately before the date the applicant or member becomes an institutionalized individual.
(D) A son or daughter of the applicant or member, other than a child described in clause (B), who:
(i) was residing in the applicant's or member's home for a period of at least two (2) years immediately before the date the applicant or member becomes an institutionalized individual; and
(ii) the office determines has provided care to the applicant or member ~~that permitted~~ **permitting** the applicant or member to reside at home rather than in an institution or facility.

(2) ~~The~~ Assets were transferred to:
(A) the applicant's or member's spouse; or
(B) another **person** for the sole benefit of the applicant's or member's spouse.

(3) ~~The~~ Assets were transferred from the applicant's or member's spouse to another **person** for the sole benefit of the applicant's or member's spouse.

(4) ~~The~~ Assets were transferred to:
(A) the applicant's or member's child who is disabled or blind as defined in 42 U.S.C. 1382c; or
(B) a trust, including a trust described in section 22(i) of this rule, established solely for the benefit of the applicant's or member's child who is disabled or blind as defined in 42 U.S.C. 1382c.

(5) ~~The~~ Assets were transferred to a trust, including a trust described in section 22(i) of this rule, established solely for the benefit of an individual ~~under~~ **less than** sixty-five (65) years of age who is disabled as defined in 42 U.S.C. 1382c.

(6) ~~The~~ Assets transferred are disregarded for eligibility purposes through the use of a qualified long term care insurance policy under IC 12-15-39.6. If an asset is disregarded through the use of a qualified long term care insurance policy, that asset and any income generated by that asset may be transferred without penalty.

(7) A satisfactory showing is made to the office, ~~in accordance with~~ **under the** standards specified under 42 U.S.C. 1396p(c)(2)(C) by the Secretary of Health and Human Services, that:
(A) the applicant or member intended to dispose of the assets at fair market value or for other valuable consideration;
(B) the assets were transferred exclusively for a purpose other than to qualify for Medicaid; or
(C) ~~all~~ assets transferred for less than fair market value have been returned to the applicant or member. ~~In order~~ To establish that a transfer ~~was~~ **is** made exclusively for purposes other than qualifying for Medicaid, the applicant or member ~~must~~ **shall** submit sufficient evidence to show ~~that~~ the transfer ~~was~~ **is** made exclusively for reasons not related to Medicaid eligibility, estate recovery, or **a** lien.

(8) The office may waive the application of this section in cases of undue hardship, but only to the extent required by standards specified under 42 U.S.C. 1396p(c)(2)(D) by the Secretary of Health and Human Services and section 24 of this rule.

(l) For transfers of income-producing real property not used in a trade or business on and after July 1, 2003, six thousand dollars ($6,000) of the equity value ~~can~~ **may** be transferred without penalty if the transferred property produces an annual income of at least three hundred sixty dollars ($360). If the equity value of the property is less than six thousand dollars ($6,000), the property ~~can~~ **may** be transferred without penalty if the property produces an annual income of at least six percent (6%) of the equity. This six thousand ~~dollars~~ **dollar** ($6,000) exemption is a single, one (1) time exemption ~~that applies~~ **applying** to the total value of ~~all~~ **the** income-producing real property transferred by ~~the~~ **an** applicant during the applicant's lifetime. If the property does not produce an annual income of at least six percent (6%) of the lesser of six thousand dollars ($6,000) or the equity value, the entire equity is the uncompensated value.

(m) ~~In the case of~~ **If** a transfer by the spouse of an applicant or **a** member ~~that~~ results in a period of ineligibility for Medicaid, the office ~~shall apportion~~ **apportions** the period of ineligibility, or any ~~portion~~ **part** of that period, between the applicant or member and the applicant's or member's spouse, if the spouse otherwise becomes eligible for Medicaid, as specified in regulations ~~promulgated~~ **adopted** under 42 U.S.C. 1396p(c)(4) by the Secretary of Health and Human Services.

(Office of the Secretary of Family and Social Services; 405 IAC 2-3-1.1; filed May 1, 1995, 10:45 a.m.: 18 IR 2223; errata filed Jun 9, 1995, 2:30 p.m.: 18 IR 2796; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 13, 2002, 10:09 a.m.: 25 IR 2472; filed Apr 8, 2004, 3:16 p.m.: 27 IR 2479; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; filed Aug 18, 2009, 11:33 a.m.: 20090916-IR-405080325FRA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA; readopted filed Nov 13, 2019, 11:54 a.m.: 20191211-IR-405190487RFA; filed Jun 11, 2021, 2:35 p.m.: 20210707-IR-405190602FRA; filed Jun 26, 2024, 10:03 a.m.: 20240724-IR-405230819FRA)

SECTION 4. 405 IAC 2-3-17 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-3-17 Income eligibility of institutionalized applicant or member with community spouse; posteligibility

Authority: IC 12-15-1-10
Affected: IC 12-15

Sec. 17. ~~(a) As used in this section, "institutionalized spouse" and "community spouse" have the meanings set forth in 42 U.S.C.A. 1396r-5(h)(1).~~

~~(b)~~ **(a)** The income eligibility of an institutionalized applicant or member with a community spouse ~~shall be~~ **is** determined ~~in accordance with~~ **under** 405 IAC 2-1.1-5(g).

~~(c)~~ **(b)** If an applicant or **a** member is determined eligible for Medicaid under subsection ~~(b)~~ **(a),** posteligibility treatment of income to calculate the amount of income to be paid to the institution is determined as follows:

(1) Subtract from the applicant's or member's gross income determined ~~according to~~ **under the** ownership provisions set forth in 42 U.S.C.A. 1396r-5(b) those exclusions required by federal law.

(2) Subtract a spousal allocation equal to the community spouse's total income, ~~in accordance with~~ **under the** ownership provisions set forth in 42 U.S.C.A. 1396r-5(b), subtracted from the sum of nine hundred eighty-four dollars ($984), plus an excess shelter allowance determined under 42 U.S.C.A. 1396r-5(d)(4), subject to ~~all~~ **the** provisions of 42 U.S.C.A. 1396r-5(d), 42 U.S.C.A. 1396r-5(e), and 42 U.S.C.A. 1396r-5(g).

(3) Subtract an allocation for each dependent family member, as defined in subsection ~~(c)~~ **(d),** equal to one-third (1/3) of the amount by which nine hundred eighty-four dollars ($984) exceeds the family member's total income, subject to the provisions of 42 U.S.C.A. 1396r-5(d), 42 U.S.C.A. 1396r-5(e), and 42 U.S.C.A. 1396r-5(g).

~~(d)~~ **(c)** The spousal allocation calculated in subsection ~~(c)(2)~~ **(b)(2)** is deducted from the institutionalized applicant's or member's income only to the extent ~~that~~ it is actually made available to, or for the benefit of, the community spouse.

~~(e)~~ **(d)** "Dependent family member", for the purpose of determining the allocation in subsection ~~(c)(3)~~ **(b)(3),** is a person listed, as follows, ~~who resides~~ **residing** with the community spouse:

(1) Biological or adoptive children of either spouse ~~under~~ **less than** twenty-one (21) years of age.

(2) Biological or adoptive children of the community or institutionalized spouse who are:

(A) **at least** twenty-one (21) years of age; ~~or over;~~ and

(B) claimed for tax purposes by either spouse under the Internal Revenue Service Code.

(3) The parent or parents of the community or institutionalized spouse ~~who are~~ claimed as dependents by either spouse for tax purposes under the Internal Revenue Service Code.

(4) Biological and adoptive siblings of the community or institutionalized spouse ~~who are~~ claimed by either spouse for tax purposes under the Internal Revenue Service Code.

(e) A community or an institutionalized spouse may request a finding of exceptional circumstances resulting in significant financial duress, which are those that leave the community spouse unable to pay reasonable bills and expenses. The following requirements apply to a determination of significant financial duress:

(1) A demonstration by the spouse that due to exceptional circumstances, the community spouse has unmet needs resulting in significant financial duress.

(2) Proof of the community spouse's significant financial duress submitted in writing.

(3) In making the finding of significant financial duress, the office may consider the following expenses:

(A) Necessary medical services or other support services, including medical insurance, needed for the community spouse to remain in the community.

(B) Home repairs, including appliances, in the place of residence in which the community spouse resides to maintain the home.

(C) Physician approved items or services determined medically necessary for the spouse to remain in the community.

(4) Significant financial duress does not include:

(A) speculative future financial duress of the community spouse;
(B) the desire to make gifts or leave a legacy to family or charities; or
(C) restricting the community spouse's lifestyle, unless it would put them at risk of serious deprivation.

(5) A determination of significant financial duress is limited to the duration of the exceptional circumstances. The spouse shall submit proof of continuing exceptional circumstances on an annual basis, during their eligibility redetermination period.

(6) Failure to submit proof of continuing exceptional circumstances by the required deadline results in a determination that the exceptional circumstances no longer exist.

(f) A community or an institutionalized spouse dissatisfied with a determination made under 42 U.S.C. 1396r-5(e)(2) may request a hearing.

(g) The request for a fair hearing must comply with the form and time requirements of 405 IAC 1.1-1-3(b) and 405 IAC 1.1-1-3(c). The standards in 405 IAC 1.1-1-3 apply to a fair hearing under subsection (f).

(h) Resulting orders from a state court or administrative proceeding are enforced as follows:
(1) For new applications, the support income allocation begins when Medicaid eligibility is established.
(2) For members with ongoing Medicaid eligibility, the income allocation is adjusted in the month after the order is submitted to the division of family resources.

(Office of the Secretary of Family and Social Services; 405 IAC 2-3-17; filed Dec 1, 1989, 5:00 p.m.: 13 IR 628; filed May 2, 1990, 4:55 p.m.: 13 IR 1707; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2227; filed May 14, 1992, 5:00 p.m.: 15 IR 2191; filed Feb 16, 1993, 5:00 p.m.: 16 IR 1785; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2383; filed Feb 7, 2000, 3:26 p.m.: 23 IR 1377; errata filed Mar 20, 2000, 3:19 p.m.: 23 IR 2003; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Apr 16, 2003, 10:55 a.m.: 26 IR 2867; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA; filed Apr 8, 2014, 12:37 p.m.: 20140507-IR-405130533FRA; readopted filed Nov 13, 2019, 11:54 a.m.: 20191211-IR-405190487RFA; filed Jun 11, 2021, 2:35 p.m.: 20210707-IR-405190602FRA; filed Jun 26, 2024, 10:03 a.m.: 20240724-IR-405230819FRA) NOTE: Transferred from the Division of Family and Children (470 IAC 9.1-3-19) to the Office of the Secretary of Family and Social Services (405 IAC 2-3-17) by P.L.9-1991, SECTION 131, effective January 1, 1992.

SECTION 5. 405 IAC 2-3-26 IS ADDED TO READ AS FOLLOWS:

405 IAC 2-3-26 Resource eligibility of institutionalized applicant or member with community spouse; posteligibility

Authority: IC 12-15-1-10
Affected: IC 12-15

Sec. 26. (a) The rules for treatment of resources are computed under 42 U.S.C. 1396r-5(c).

(b) For purposes of this section, the term "resources" does not include resources excluded under section:
(1) 42 U.S.C. 1396b(a) or 42 U.S.C. 1396b(d); or
(2) 42 U.S.C. 1382b(a)(2)(A).

(c) For purposes of this section, resources are defined as cash, liquid assets, or any real or personal property an individual or an individual's spouse owns and is able to convert to cash.

(d) When the computation of spousal share at the time of institutionalization is calculated under 42 U.S.C. 1396r-5(c)(1), retirement accounts either or both spouses have an ownership interest in are included in the total value of resources. After eligibility is determined, any account solely in the community spouse's name is no longer counted in the institutionalized member's budget, unless excepted under section 1.2 of this rule.

(Office of the Secretary of Family and Social Services; 405 IAC 2-3-26; filed Jun 26, 2024, 10:03 a.m.:

SECTION 6. 405 IAC 2-3-27 IS ADDED TO READ AS FOLLOWS:

405 IAC 2-3-27 Compensation by services agreement; personal needs contract; personal care agreement

Authority: IC 12-15-1-10
Affected: IC 12-15

Sec. 27. (a) For purposes of this section, "agreement" refers to a services agreement, personal needs contract, or personal care agreement. To be considered an allowable transfer of assets as described in 42 U.S.C. 1396p(c)(2), an agreement must adhere to the following requirements:

(1) Be in writing.
(2) List the services provided to an applicant or a member.
(3) List the payment rate of the services provided to an applicant or a member.
(4) List the care provider or providers.
(5) Be signed by each party.
(6) Be notarized at the time the agreement is made.
(7) The requirements in subdivisions (1) through (6) are not required when documentation is submitted to the office stating payments for services were made at the time the services were rendered. Payments made on a daily, weekly, or monthly basis will be considered payments made at the time services were rendered. The fair market value of the services provided and the payment made is still reviewed for potential transfer of property penalties under this subsection. Lump sum payments or rolling credit accounts for services previously provided are not considered payments made at the time of the service.

(b) The rate of pay for care provided to an applicant or a member in an agreement must be commensurate with a reasonable wage, based on fair market value, frequency, and duration of the services.

(c) A detailed log of the services provided to an applicant or a member in an agreement must be maintained and include the following:

(1) The monetary value.
(2) Frequency and duration of the services.
(3) Description of the services provided.

(d) An agreement must provide for services for the benefit of an applicant or a member and cannot be retroactively dated or applied before the date the contract was notarized.

(e) Lump sum payments for future services are not valid and may result in a transfer of property penalty.

(f) An individual care provider under an agreement cannot provide services to an applicant or a member for more than sixteen (16) hours a day. Duplicate services cannot be provided by multiple care providers to the same applicant or member.

(g) Valid services do not include being on call or available to provide potential services to an applicant or a member.

(h) Services provided under an agreement for an applicant or a member may include the following:

(1) Preparing meals.
(2) Managing medication.
(3) Housekeeping.
(4) Paying household bills.
(5) Transportation to medical appointments.

(i) For ongoing Medicaid members, an agreement cannot duplicate services already provided or

allowable under the Medicaid program.

(Office of the Secretary of Family and Social Services; 405 IAC 2-3-27; filed Jun 26, 2024, 10:03 a.m.: 20240724-IR-405230819FRA)

SECTION 7. 405 IAC 2-3-28 IS ADDED TO READ AS FOLLOWS:

405 IAC 2-3-28 Spousal impoverishment protections

Authority: IC 12-15-1-10
Affected: IC 12-15-2; IC 12-15-3; IC 12-15-3-1.5

Sec. 28. Spousal impoverishment protections do not apply when both spouses are in an institution as defined by 405 IAC 2-1-1(6).

(Office of the Secretary of Family and Social Services; 405 IAC 2-3-28; filed Jun 26, 2024, 10:03 a.m.: 20240724-IR-405230819FRA)

SECTION 8. 405 IAC 2-3-29 IS ADDED TO READ AS FOLLOWS:

405 IAC 2-3-29 Qualified Income Trust; Miller Trust

Authority: IC 12-15-1-10
Affected: IC 12-15

Sec. 29. (a) For purposes of this section, the following definitions apply:
(1) "Special income level (SIL)" has the meaning set forth in 405 IAC 2-1.1-1(g).
(2) "Trust" refers to a Qualified Income Trust or Miller Trust, which complies with 42 U.S.C. 1396p(d)(4)(B).

(b) Individuals residing in nursing homes or receiving home and community based waiver services that have income over the SIL must create a trust and request approval for Medicaid.

(c) A transfer of resource penalty does not apply to a trust if the trust is:
(1) established for the benefit of an individual; and
(2) funded solely by the income of an individual, including accumulated interest.
A trust described in this subsection can be revocable or irrevocable.

(d) Under 42 U.S.C. 1396p(d)(4)(B)(ii), upon the death of a beneficiary, the state of Indiana receives the remaining funds in a trust up to the amount of Medicaid expenditures paid on the member's behalf.

(e) Allowable distributions from a trust include the following:
(1) A monthly personal needs allowance for a primary beneficiary if they are depositing their entire income into the trust.
(2) A monthly amount to the spouse of a primary beneficiary sufficient to provide but not exceed the minimum monthly maintenance needs allowance for the spouse, as provided by Title XIX of the Social Security Act.
(3) Incurred medical expenses of a primary beneficiary.
(4) The cost of medical assistance provided to a primary beneficiary, such as the patient liability.

(f) A trust must be funded at least each month in the amount of the beneficiary's monthly income exceeding the SIL.

(g) Funds in a trust must:
(1) be maintained in a separate account from any other account; and
(2) not be commingled with other accounts.

(Office of the Secretary of Family and Social Services; 405 IAC 2-3-29; filed Jun 26, 2024, 10:03 a.m.:

20240724-IR-405230819FRA)

SECTION 9. 405 IAC 2-6-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-6-3 Medicaid eligibility for former foster care children under age 26

Authority: IC 12-15-1-10
Affected: IC 12-14; IC 12-15

Sec. 3. (a) Beginning January 1, 2014, an individual who:
(1) is:
(A) ~~under~~ **less than** twenty-six (26) years of age; and
(B) not eligible for and enrolled in other mandatory Medicaid coverage;
(2) **on becoming eighteen (18) years of age,** was in foster care under the responsibility of ~~the state of Indiana~~ **a state** or ~~a~~ federally recognized tribe's responsibility, whether or not under ~~Title IV-E~~ **Title IV Part E of the Social Security Act**; and
(3) ~~enrolled in Medicaid or any Section 1115 waiver demonstration pursuant to 42 U.S.C. 1315 upon attaining eighteen (18) years of age;~~ **was enrolled in a state plan under Title XIX of the Social Security Act, or under a waiver of a state plan while in foster care;**
is eligible for Medicaid.

(b) The office shall not consider the income or resources of an individual described in subsection (a) when determining eligibility.

(Office of the Secretary of Family and Social Services; 405 IAC 2-6-3; filed Jun 11, 2021, 2:35 p.m.: 20210707-IR-405190602FRA; filed Jun 26, 2024, 10:03 a.m.: 20240724-IR-405230819FRA)

SECTION 10. 405 IAC 2-6-2 IS REPEALED.

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