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**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

Proposed Rule
LSA Document #02-234

DIGEST

Amends 405 IAC 2-3-17 and 405 IAC 2-3-21 to specify that the Medicaid personal needs allowance is the amount set by Indiana statute. Adds 405 IAC 7 concerning eligibility requirements and benefits issuance for supplemental assistance for personal needs for Medicaid recipients residing in health care facilities. Effective 30 days after filing with the secretary of state.

405 IAC 2-3-17

405 IAC 2-3-21

405 IAC 7

SECTION 1. 405 IAC 2-3-17 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 12-8-6-5; IC 12-15-1-10

Affected: IC 12-15-4; IC 12-15-5; IC 12-15-7-2

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) The income eligibility of an institutionalized applicant or recipient with a community spouse shall be determined as follows:

- (1) Determine the applicant’s or recipient’s countable income under section 3 of this rule and in accordance with income ownership provisions set forth in 42 U.S.C.A. 1396r-5(d).
- (2) Subtract from the amount determined in subdivision (1) the individual income standard specified in section 18 of this rule.
- (3) If the remainder calculated in subdivision (2) is zero dollars (\$0) or less, the applicant or recipient is eligible for medical assistance.
- (4) If the remainder calculated in subdivision (2) is greater than zero dollars (\$0), the applicant or recipient is eligible if his or her estimated medical expenses exceed this remainder.

(c) If an applicant or recipient is determined eligible for medical assistance under subsection (b), 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 recipient’s gross income determined according to ownership provisions set forth in 42 U.S.C.A. 1396r-5(b) those exclusions required by federal law.
- (2) Subtract the minimum personal needs allowance ~~of fifty dollars (\$50)~~ **specified in IC 12-15-7-2.**
- (3) Subtract an amount for increased personal needs as allowed under Indiana’s approved Medicaid state plan. The increased personal needs allowance includes, but is not limited to, court ordered guardianship fees paid to an institutionalized applicant or recipient’s legal guardian, not to exceed thirty-five dollars (\$35) per month. Guardianship fees include all services and expenses required to perform the duties of a guardian, as well as any attorney fees for which the guardian is liable.
- (4) Subtract a spousal allocation equal to the community spouse’s total income, in accordance with 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 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).

(5) Subtract an allocation for each dependent family member, as defined in subsection (e), 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) The spousal allocation calculated in subsection (c)(4) is deducted from the institutionalized applicant's or recipient's income only to the extent that it is actually made available to, or for the benefit of, the community spouse.

(e) "Dependent family member", for the purpose of determining the allocation in subsection (c)(5), is a person listed, as follows, who resides with the community spouse:

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

(2) Biological or adoptive children of the community or institutionalized spouse who are twenty-one (21) years of age or over and who are claimed for tax purposes by either spouse under the Internal Revenue Service Code.

(3) The parent(s) 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.

(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) 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 2. 405 IAC 2-3-21 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-3-21 Posteligibility income calculation

Authority: IC 12-8-6-5; IC 12-15-1-10

Affected: IC 12-15-4; IC 12-15-5; IC 12-15-7-2

Sec. 21. Except as provided in section 17 of this rule, the following procedures are used to determine the amount of income to be paid to an institution for an applicant or recipient who has been determined eligible under section 20 of this rule and who is residing in a Title XIX certified hospital, nursing facility, intermediate care facility for the mentally retarded, or public institution:

(1) Determine the applicant's or recipient's total income which is not excluded by federal statute. Total income includes amounts deducted in the eligibility determination under section 20 of this rule.

(2) Subtract the minimum personal needs allowance of ~~fifty dollars (\$50)~~ **specified in IC 12-15-7-2.**

(3) Subtract an amount for increased personal needs as allowed under Indiana's approved Medicaid state plan. The increased personal needs allowance includes, but is not limited to, court ordered guardianship fees paid to an institutionalized applicant or recipient's legal guardian, not to exceed thirty-five dollars (\$35) per month. Guardianship fees include all services and expenses required to perform the duties of a guardian, as well as any attorney fees for which the guardian is liable.

(4) Subtract the amount of health insurance premiums.

(5) Subtract an amount for expenses incurred for necessary medical or remedial care recognized by state law but not covered under the state plan, subject to any reasonable limits set forth in Indiana's approved Medicaid state plan.

(6) The resulting amount is the amount by which the Medicaid payment to the facility shall be reduced.

(Office of the Secretary of Family and Social Services; 405 IAC 2-3-21; filed Feb 16, 1993, 5:00 p.m.: 16 IR 1788; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2384; filed Feb 7, 2000, 3:26 p.m.: 23 IR 1378; errata filed Mar 20, 2000, 3:19 p.m.: 23 IR 2003; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

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

ARTICLE 7. STATE SUPPLEMENTAL ASSISTANCE FOR PERSONAL NEEDS

Rule 1. Eligibility Requirements

405 IAC 7-1-1 Eligibility; benefit calculation

Authority: IC 12-8-6-5; IC 12-15-1-10

Affected: IC 12-15-7-2; IC 12-15-7-6; IC 12-15-32-6.5

Sec. 1. (a) An individual is eligible for supplemental assistance for personal needs if the following criteria are met:

- (1) The individual is receiving Medicaid and is residing in a Medicaid certified health care facility.**
- (2) The individual is receiving the reduced benefit amount paid by the Supplemental Security Income (SSI) program under 20 CFR 416.414 to SSI recipients who are in medical care facilities throughout a calendar month.**
- (3) The individual qualifies for a benefit based on his or her income as required in subsection (b).**

(b) The monthly benefit amount for supplemental assistance for personal needs is calculated by subtracting the following from the personal needs allowance specified in IC 12-15-7-2 or IC 12-15-32-6.5:

- (1) The amount of the reduced SSI benefit paid to an SSI recipient who is in a medical care facility throughout a calendar month.**
- (2) The amount of the recipient's other countable income as used in the posteligibility calculation under 405 IAC 2-3-17 or 405 IAC 2-3-21.**

(c) The amount remaining in subsection (b)(2) is the amount of the supplemental assistance for personal needs benefit payment, except that a remaining amount of fifty cents (\$.50), but not more than one dollar (\$1) will result in a benefit of one dollar (\$1), and a remaining amount of less than fifty cents (\$.50) will result in a determination of ineligibility for supplemental assistance for personal needs. Other remaining amounts that include fifty cents (\$.50) or more will be rounded up to the next dollar, and those that include amounts of less than fifty cents (\$.50) will be rounded down to the next dollar amount.

(d) The effective date of supplemental assistance for personal needs is the later of the following:

- (1) The month in which the individual's SSI is reduced to the amount allowed for SSI beneficiaries in health care facilities.**
- (2) The month after the individual's Medicaid eligibility has been authorized with a posteligibility budget under 405 IAC 2-3-17 or 405 IAC 2-3-21.**

(e) A recipient of supplemental assistance for personal needs becomes ineligible beginning the month following the month in which the criteria in subsection (a) are no longer met. A recipient of supplemental assistance for personal needs who dies is entitled to the benefit for the month of death. (*Office of the Secretary of Family and Social Services; 405 IAC 7-1-1*)

Rule 2. Benefit Issuance

405 IAC 7-2-1 Benefit issuance; representative payee

Authority: IC 12-8-6-5; IC 12-15-1-10

Affected: IC 12-15-7-2; IC 12-15-7-6; IC 12-15-32-6.5

Sec. 1. (a) A benefit check shall be issued not later than five (5) calendar days after the first day of each benefit month in the name of the eligible individual, or to a representative payee authorized in accordance with subsection (d).

(b) Lost or stolen checks shall be reissued not later than fifteen (15) days after the recipient or representative payee submits to the local office of family and children the proper affidavit prescribed by Indiana and signed by the payee confirming that the check was not received.

(c) Benefit checks that are returned in the mail will be reissued in accordance with the procedures of the state

auditor's office, not later than fifteen (15) days after written documentation from the payee of the correct and current address of the payee.

(d) An individual who signs the representative payee agreement for state supplemental assistance for personal needs will be permitted to receive the benefit check on behalf of the recipient if the recipient does not object. A representative payee must use the benefit check solely for the personal needs of the recipient. If at any time, proof is submitted to the satisfaction of the local office of family and children that a representative payee is not fulfilling his or her obligations under the agreement to provide for the personal needs of the recipient, the local office of family and children may require that another individual be selected as the representative payee. (Office of the Secretary of Family and Social Services; 405 IAC 7-2-1)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 26, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to 405 IAC 2-3-17 and 405 IAC 2-3-21 to specify that the Medicaid personal needs allowance is the amount set by Indiana statute, and new rules under 405 IAC 7 concerning eligibility requirements and benefits issuance for supplemental assistance for personal needs for Medicaid recipients residing in health care facilities. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services