

Aged, Blind and Disabled Manual	Section: Institutional Medicaid
Policy Manual Number: 125.015	Chapter: Resource Assessment

## RESOURCE ASSESSMENT

**Legal Authority:** 42 USC 1396r-5(c)(1)(B); 42 USC 1396r-5; Tenn. Comp. R. & Regs. 1200-13-20

### 1. Policy Statement

The Medicare Catastrophic Coverage Act of 1998 amended Medicaid income and asset limit rules so that the community spouse of an individual applying for Institutional Medicaid does not become impoverished as a result of the spouse gaining Medicaid eligibility. When determining eligibility for the institutionalized spouse, a calculated amount of the couple's assets is allocated to the community spouse to be used for his own needs. The Medicaid rules that govern the special treatment of a community spouse's income and resource allocation are referred to as spousal impoverishment policy. The main purpose of the spousal impoverishment policy is to ensure that the community spouse has sufficient income and assets to remain in her home.

The process for determining the amount of resources that will be allocated to the community spouse begins by taking a snapshot of all of the couple's countable resources. The community spouse's share of resources is determined, and that amount is subtracted from the total resources in order to determine the institutionalized individual's resource eligibility. Any amount of resources in excess of the \$2,000 limit (after the community spouse's share has been subtracted) must be depleted prior to the applicant gaining TennCare Medicaid eligibility.

### 2. The Resource Assessment

#### a. Defined

The resource assessment is a snapshot of all countable assets owned by the couple at the time the individual enters the nursing facility but conducted when the individual applies or when an assessment is requested prior to application. In the case of an application for Home and Community Based Services (HCBS), it is a snapshot at the time of application resulting in enrollment in a HCBS waiver. All of the countable resources owned individually or jointly by both spouses are counted; resources excluded under the *ABD Countable and Excluded Resources* policy are not counted in the resource assessment. Only one resource assessment must be completed for a married couple.

#### b. Who is Required to Have a Resource Assessment

A resource assessment is required for all individuals applying for Institutional Medicaid who have a legal spouse living in the community, whose whereabouts are known. If an estranged community spouse refuses to cooperate with providing verifications of assets owned by either spouse, the community spouse should be notified of the State's requirement to determine the applicant's resource amount and spousal allocation for resources owned by the applicant and the community spouse. Undue hardship may be requested with the *Undue Hardship Waiver Form*. TennCare staff should contact the Eligibility Policy Unit for further guidance in these cases. If the community

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spouse lives out of state, the resource assessment is required if the community spouse can be located and the couple is still legally married.

The resource assessment and Community Spouse Resource Maintenance Allowance (CSRMA) may be allowed if a couple is still legally married, but living separately and consider themselves separated, if the whereabouts of the community spouse are known or he can be located.

**c. Request Time Frame**

The resource assessment may be requested whether or not the resident is applying for TennCare Medicaid at the time of admission to a nursing facility. Generally, it may be to each spouse’s benefit to have the assessment done at the time of admission, even if no concurrent application for TennCare Medicaid is made, since the availability of documentation at this time may result in the protection of a greater amount of assets for the community spouse. Under no circumstances can a resource assessment be completed prior to the date of admission to a long-term care facility (LTCF) or application for HCBS.

If the request for the assessment is delayed until the time of application, the assessment will be done retroactively to the time of admission, but the results may be limited by the availability of documentation. When a TennCare Medicaid application is made, the results of the assessment are used as part of a formula to determine how much of the total assets may be protected for the community spouse. The remaining resources after allocation to the community spouse are considered available to the institutionalized individual.

If it is discovered at application, or at any time after the assessment is completed, that not all resources were reported or known, the assessment is recalculated. Resources available at the beginning of the period of institutionalization, regardless of interruptions of confinement in long-term care, must be reconstructed and documented.

Transfer of assets is not considered at the time an assessment only is requested (i.e., no TennCare Medicaid application filed concurrently).

**d. Longevity of the Assessment**

An assessment remains in effect until a TennCare Medicaid application is filed, regardless of any interruptions in long-term care.

If a resource assessment is completed and the individual applies for TennCare Medicaid, but is found ineligible, the original resource assessment is still valid if the individual applies again in the future.

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**e. Application Filed at Assessment Request**

When an assessment is requested, the individual or representative must provide all necessary documentation and verification in a timely manner to ensure that an accurate assessment can be completed within a reasonable amount of time (i.e., 30 days from the date all required documentation is received).

Transfer of assets is considered as part of the application process whether a resource assessment has been previously requested or is requested at application.

**3. Responsibilities of LTCF**

LTCFs are required by law to notify all admitted residents, spouses, and representatives of their right to request an assessment of the resident’s assets and the assets of the community spouse.

The provider must inform all residents, spouses and representatives orally and in writing that they may request an assessment of their resources by contacting TennCare.

**4. Resource Assessment Procedure**

When a resource assessment is requested, appropriate documentation must be provided to verify resources included in the resource assessment. Once the assessment is completed and the amount of CSRMA is determined, a notice of the CSRMA determination is sent to the head of the household and, if applicable, the authorized representative.

**5. CSRMA**

**a. CSRMA Amount**

The CSRMA is based on the spouses’ combined countable resources documented in the resource assessment. The amount of the CSRMA is the greater of:

- i.** One-half (1/2) of the total countable resources, but not less than \$25,728 or greater than \$128,640 (as of January 2020);
- ii.** One-half (1/2) of the total countable resources, but not less than \$25,284 or greater than \$126,420 (as of January 2019);
- iii.** One-half (1/2) of the total countable resources, but not less than \$24,720 or greater than \$123,600 (as of January 2018);
- iv.** One-half (1/2) of the total countable resources, but not less than \$24,180 or greater than \$120,900 (as of January 2017);
- v.** One-half (1/2) of the total countable resources, but not less than \$23,844 or greater than \$119,220 (as of January 2015);
- vi.** One-half (1/2) of the total countable resources, but not less than \$23,448 or greater than \$117,240 (January – December 2014);

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- vii. The court-ordered amount; or
- viii. The amount determined by an appeals officer due to a hardship situation (extreme financial duress).

When an application is filed by or on behalf of the spouse seeking LTSS, the CSRMA amount determined in the resource assessment is the amount allocated to the community spouse. This amount is deducted from the combined resources of both spouses as of the first day of the first month for which assistance is requested. None of the community spouse’s share of the resources is considered available to the individual when determining his TennCare Medicaid eligibility.

**b. Refusal of CSRMA**

A community spouse who receives Families First (FF), Supplemental Nutrition Assistance Program (SNAP) benefits, Supplemental Security Income (SSI), TennCare Medicaid, Veterans Affairs (VA) pension, Qualified Medicare Beneficiary (QMB) benefits, or other needs-based assistance may accept or decline all, some or none of the CSRMA if the allocation would cause the loss of or decrease in those program benefits. If the community spouse accepts only a portion of the CSRMA, the remainder amount is counted as part of the institutionalized spouse’s resources.

**c. CSRMA Examples**

*Example 1: The combined resources of Mr. and Mrs. Smith total \$26,000. The total divided by 2 equals \$13,000. Mr. Smith’s, the community spouse’s, share of the total resources is the required minimum (\$25,728). This leaves \$272 available to the institutionalized spouse. Mrs. Smith is resource-eligible for Institutional Medicaid.*

If the resources determined available to the institutionalized spouse exceed the \$2,000 resource limit, the institutionalized individual is not eligible until resources are within allowable limits. See the *ABD Countable and Excluded Resources* policy.

*Example 2: The combined resources of Mr. and Mrs. Revco total \$52,000. The total divided by 2 equals \$26,000. Since one-half of the total is above the required minimum, Mrs. Revco’s share equals \$26,000. This leaves \$26,000 available to the institutionalized spouse. Mr. Revco must decrease his share of the resources to \$2,000 in order to be resource-eligible. When total resources do not exceed \$28,000 (\$26,000 + \$2,000), Mr. Revco will be resource eligible.*

**6. Resource Transfer as a Result of Assessment**

**a. CSRMA “Grace Period”**

Sometimes a legal transfer of resources must occur to effectuate the results of a resource assessment (e.g., separating commingled funds, removing a spouse’s name from a resource, establishing separate bank accounts). Following a resource assessment and initial approval of eligibility, resources must be transferred within 12 months of the approval. Both spouses must agree to the

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transfer in order to use the institutionalized spouse's share in determining her eligibility. The transfer may require conveyance of resources from the institutionalized individual to the community spouse, or vice versa.

**b. Transfer Refusal**

When the community spouse refuses to transfer resources to the institutionalized individual, the institutionalized spouse may still be eligible if the Eligibility Appeals Unit finds that undue hardship circumstances exist.

**c. Hardship**

Hardship may be determined when the institutionalized spouse and/or his spouse have resources in excess of the resource limit, the institutionalized spouse is otherwise eligible, and for whom TennCare Medicaid ineligibility will result in loss of essential nursing care which is not available from any other source.

If the community spouse has available assets, she is legally obligated to provide support. Hardship cannot be determined to exist unless assets have been reallocated as the result of an appeal decision or a court order.

**7. CSRMA Appeals**

**a. When the Individual and/or Spouse Has Appeal Rights**

Appeal rights are considered only after a TennCare Medicaid application has been filed and either spouse alleges that the assessment or eligibility determination decision is incorrect. An assessment completed exclusive of a filed application cannot be appealed.

**b. CSRMA Revisions**

The amount of the community spouse's resource maintenance allowance may only be revised by TennCare if additional verification or documentation is provided.

The CSRMA may only be revised when:

- i.** The initial assessment was alleged to be incorrect and an appeals hearing officer confirms the allegations;
- ii.** An appeals hearing officer determines a larger CSRMA is necessary to raise the community spouse's available income to the Maintenance Needs Standard or to an amount by which exceptional maintenance needs, established at a fair hearing, exceed the community spouse's income; or
- iii.** A court order is received against an institutionalized spouse for the support of the community spouse and resources are transferred pursuant to the court order.

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**c. Allocation of Additional Resources to the Community Spouse**

**i. When Additional Resources May be Allocated to the Community Spouse**

In the event that the institutionalized spouse does not have enough income to provide the community spouse with sufficient income to meet the Maintenance Needs Standard and the CSRMA is not enough to offset the income shortfall, additional resources may be allocated to the community spouse by an appeals hearing officer if the couple has additional resources above the community spouse’s protected amount (CSRMA).

The Deficit Reduction Act (DRA) of 2005 requires all states to allocate the maximum amount of available income of the institutionalized spouse to the community spouse before granting an increase in the CSRMA. This is referred to as the “income-first” method.

**ii. Procedure**

TennCare uses the Single Fixed Annuity model to address appeals when there is insufficient income to provide the community spouse with the Maintenance Needs Standard and the couple has additional resources. A single fixed annuity can turn a portion of an individual’s savings in to income payments made for the rest of the individual’s life. The procedure for establishing a single fixed annuity is listed below.

1. Additional resources may be allocated to the community spouse through the administrative appeals process to make up any shortfall between the amount of income allocated from the institutionalized spouse to the community spouse and the Maintenance Needs Standard, if determined appropriate.
2. The amount of additional resources that are necessary to cover the income shortfall shall be determined in reference to the purchase of a single premium annuity as follows:
  - a. By calculating the shortfall between the amount of income allocated and the Maintenance Needs Standard, and then determining the amount of resources that must be invested in a single premium annuity in order to generate the income necessary to cover the shortfall.
  - b. The amount of resources needed to cover the shortfall shall be determined in reference to an annuity calculator as adopted by TennCare.
  - c. Additional resources may be allocated to the community spouse if the amount of resources needed to cover the shortfall is greater than the CSRMA.
3. The additional resource allocation to the community spouse does not require the actual purchase of a single premium annuity that is used for purposes of calculating the amount of the additional resource allocation.

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4. If a single premium annuity is actually purchased pursuant to these rules, the annuity must comply with all other relevant requirements of state and federal law. See Annuities in the *Transfer of Assets and Penalty Periods* policy.
5. The amount of additional resources that are necessary to cover the shortfall shall not be determined in reference to any investment which contemplates the return of the entire principal at maturity.

Example: Mr. Smith enters a nursing facility in January 2018, requests a resource assessment, and submits an application for Institutional Medicaid. Mrs. Smith lives in the home and is not applying for or receiving Medicaid. Mr. Smith has an approved PAE in TPAES. Mr. Smith receives \$800/month in Social Security benefits and \$200/month in pension. Mrs. Smith has no income. Mrs. Smith's total shelter cost is \$500 per month and she receives the Standard Utility Allowance (\$311). Her calculated CSIMA is \$2,232. Mrs. Smith is allocated all of Mr. Smith's income (less \$50 Personal Needs Allowance (PNA)), which is \$950. Given that the income allocation is less than the CSIMA, there is an income shortfall of \$1,282.

The Smiths have \$260,000 in combined countable resources. Mrs. Smith receives the maximum resource allocation of \$123,600. The remaining \$136,400 is available to Mr. Smith. Given that Mr. Smith's resources exceed the \$2,000 resource limit, Mr. Smith is resource-ineligible for TennCare Medicaid.

The Smiths appeal the TennCare Medicaid denial on the basis of Mrs. Smith's income shortfall as the community spouse. An appeals hearing officer determines that the CSRMA, in relation to the amount of income it generates, is insufficient to raise the community spouse's available income to the Maintenance Needs Standard, and that additional resources above the CSRMA are needed in order to make up the shortfall. The CSRMA can then be overridden by the appeals hearing officer.

## **8. Transfer of Assets for Less than Fair Market Value (FMV)**

A transfer of assets for less than FMV is not considered to have occurred when resources are transferred from the institutionalized individual to the community spouse or vice versa in accordance with a completed resource assessment. This also holds true for any spouse-to-spouse transfers that take place after September 30, 1989. There will be no penalty applied for transfers between spouses after that date.

Should the spouse who received the allocation according to the resource assessment then transfer the resource to someone else for less than FMV, the transfer will not be treated as a transfer of assets since the resources of a couple are treated separately after the establishment of Institutional Medicaid eligibility.

Transfer of assets for less than FMV is considered part of the application process whether or not a resource assessment has been requested previously or is requested at application. Transfer of assets is

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not considered if only a resource assessment is requested (no TennCare Medicaid application filed concurrently). See *Transfer of Assets and Penalty Periods* policy.



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