RHODE ISLAND GOVERNMENT REGISTER

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Executive Office of Health and Human Services

DIVISION: Medicaid Policy Unit

RULE IDENTIFIER: 210-RICR-40-00-3

REGULATION TITLE: SSI Financial Eligibility Determinations

RULEMAKING ACTION: Regular promulgation process

Direct Final: N/A

TYPE OF FILING: Amendments

TIMETABLE FOR ACTION ON THE PROPOSED RULE: Public comment will end on **Monday, October 29, 2018.**

SUMMARY OF PROPOSED RULE: Except as otherwise noted, the provisions in this Part apply to the determination of countable income and resources for Medicaid LTSS applicants and beneficiaries in the Integrated Health Care Coverage groups.

COMMENTS INVITED:
All interested parties are invited to submit written or oral comments concerning the proposed regulations by **Monday, October 29, 2018** to the address listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:
All written comments or objections should be sent to the Secretary of EOHHS, Eric J. Beane, c/o Elizabeth Shelov, Medicaid Policy Office, Rhode Island Executive Office of Health & Human Services
Mailing Address: Virks Building, Room 315, 3 West Road, Cranston, RI 02920
Email Address: Elizabeth.Shelov@ohhs.ri.gov

WHERE COMMENTS MAY BE INSPECTED: Mailing Address: Executive Office of Health & Human Services, Virks Building, Room 315, 3 West Road, Cranston, RI 02920

PUBLIC HEARING INFORMATION:
If a public hearing is requested, the place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/ interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call (401) 462-6266 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

ALTERNATIVE PUBLIC HEARING TEXT:
In accordance with R.I. Gen. Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) days of this notice.

FOR FUTHER INFORMATION CONTACT: Elizabeth Shelov, Interdepartmental Project Manager, Medicaid Policy Office, Rhode Island Executive Office of Health & Human Services, Virks Building, Room 315, 3 West Road, Cranston, RI 02920 or Elizabeth.Shelov@ohhs.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

Societal costs and benefits have not been calculated in this instance. To be in conformity with federal law, regulations, guidance and state law, the state has little discretion in promulgating this rule. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking: The basic tenets of the SSI methodology are established in the Social Security Administration's regulations at 20 C.F.R. § 416.101, *et seq*.

Regulatory Findings:

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendments:

The Executive Office of Health and Human Services proposes to amend this regulation to be consistent with a new regulation entitled "Medicaid Long-Term Services and Supports: Financial Eligibility, 210-RICR-50-00-6."

Among the proposed amendments:

- Correct cross-references to other Medicaid regulations to reflect re-codified sections;
- In the medically needy section (§ 3.1.7(3)), standards have been revised and LTSS medically needy eligibility health institution costs for 2018 have been inserted;
- LTSS spousal impoverishment standards have been updated in § 3.1.7(7);
- The student earned income exclusion has been revised in § 3.1.7(6);
- Dates related to the federally mandated income exclusions in section 3.4 have been updated;
- New provisions have been added in sections 3.5.5(A)(2) related to types of income and related exclusions;
- New section on "Achieving a Better Life Experience" (ABLE) accounts has been added in § 3.6.4(A)(10).

STATE OF RHODE ISLAND EXECUTIVE OFFICE OF HEALTH & HUMAN SERVICES

PUBLIC NOTICE OF PROPOSED RULE-MAKING

Section 210-RICR-40-00-3

"SSI Financial Eligibility Determinations"

The Secretary of the Executive Office of Health and Human Services (EOHHS) has under consideration the amendment of a Medicaid regulation entitled, "SSI Financial Eligibility Determinations, 210-RICR-40-00-3." The Executive Office of Health and Human Services proposes to amend this regulation to be consistent with a new regulation entitled "Medicaid Long-Term Services and Supports: Financial Eligibility, 210-RICR-50-00-6."

These regulations are being promulgated pursuant to the authority contained in R.I. Gen. Laws Chapter 40-8 (Medical Assistance); R.I. Gen. Laws Chapter 40-6 ("Public Assistance"); R.I. Gen. Laws Chapter 42-7.2; R.I. Gen. Laws Chapter 42-35; and Title XIX of the Social Security Act.

In accordance with R.I. Gen. Laws 42-35-2.8(c), an opportunity for a hearing will be granted if a request is received by twenty-five (25) persons, or by a governmental agency, or by an association having not less than twenty-five (25) members, within ten (10) days of this notice that is posted in accordance with R.I. Gen. Laws 42-35-2.8(a). A hearing must be open to the public, recorded, and held at least five (5) days before the end of the public comment period.

In the development of these proposed regulations, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small businesses in Rhode Island. No alternative approach, duplication or overlap, or impact upon small businesses was identified based upon available information.

These proposed rules are accessible on the R.I. Secretary of State's website: http://www.sos.ri.gov/ProposedRules/, the EOHHS website: www.eohhs.ri.gov, or available in hard copy upon request (401 462-1575 or RI Relay, dial 711). Interested persons should submit data, views, or written comments by **Monday, October 29, 2018** to: Elizabeth Shelov, Medicaid Policy Office, RI Executive Office of Health & Human Services, Virks Building, 3 West Road, Room 315, Cranston, RI 02920 or Elizabeth.Shelov@ohhs.ri.gov.

The Executive Office of Health and Human Services does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief or handicap in acceptance for or provision of services or employment in its programs or activities.

The EOHHS in the Virks Building is accessible to persons with disabilities. If communication assistance (readers /interpreters /captioners) is needed, or any other accommodation to ensure equal participation, please notify the EOHHS at (401) 462-1575 (hearing/speech impaired, dial 711) at least three (3) business days prior to the event so arrangements can be made to provide such assistance at no cost to the person requesting.

Original signed by:

Eric J. Beane, Secretary
Signed this 21st day of September 2018

210-RICR-40-00-3

TITLE 210 - EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

CHAPTER 40 - MEDICAID FOR ELDERS AND ADULTS WITH DISABILITIES

SUBCHAPTER 00 - INTEGRATED COVERAGE GROUPS

PART 3 – SSI Financial Eligibility Determinations

3.1 Overview of the SSI Methodology

3.1.1 Scope and Purpose

A. All SSI recipients are automatically eligible for Medicaid. The State has agreed to determine the eligibility of persons who have an SSI characteristic – 65 and older, blind or disabled – but do not qualify for cash benefits using the SSI methodology and in a manner that is no more restrictive than the way it is applied for SSI. For the purposes of this chapter, the methodology applies to adults with an SSI characteristic – often called SSI lookalikes – who have income at or below the SSI eligibility standard of about 74.5 percent of the FPL as well as those in the State's optional coverage group for low-income elders and adults with disabilities and all populations that qualify for MN eligibility under the Medicaid State Plan. The SSI methodology also applies to persons seeking Medicaid LTSS as indicated in this section.

B. The basic tenets of the SSI methodology are established in the rules for determining eligibility for SSI are set forth in the Social Security Administration's regulations at 20 C.F.R. § 416.101, *et seq*.

3.1.2 Organization of SSI Methodology Provisions in this Chapter

A. Sections pertaining to the SSI treatment of income and resources and their application are as follows:

1. § 3.1 of this Part – Overview of Methodology
2. § 3.2 of this Part – Treatment of Income
3. § 3.5 of this Part – Treatment of Resources
4. § 05-1.11 of this Chapter — Community Medicaid
5. ~~Sections 0380 through 0399 – Medicaid Code of Administrative Rules~~
   a. ~~Section 0380 – Resources Generally~~

~~b. Section 0382 – Evaluation of Resources~~

~~c. Section 0384 – Resource Transfers~~

~~d. Section 0392 – Post-Eligibility Treatment of Income~~

~~e. Section 0396 – Waiver Programs and Provisions~~

~~f. Section 0398 – Specific Waiver Programs~~

~~g.~~ ~~Section 0399 – The Global Consumer Choice Waiver~~

B. Except as otherwise noted, the provisions in this Part apply to the determination of countable income and resources for Medicaid LTSS applicants and beneficiaries in the Integrated Health Care Coverage groups. LTSS specific provisions related to the treatment of income and resources for IHCC members are set forth in Part 6 of Subchapter 00 of Chapter 50 of this Title. The income of ACA expansion adults in the Medicaid Affordable Care Coverage (MACC) category is evaluated in accordance with Part 3 of Subchapter 00 of Chapter 30 of this Title, except the person seeking Medicaid LTSS is treated as family of one irrespective of whether he or she lives at home or a health institution or community-based service setting. All Medicaid LTSS applicant and beneficiaries, without regard for the method of determining financial eligibility, are subject to the transfer of asset provisions in §§ 50-00-6.6 to 50-00-6.12 of this Title.

3.1.3 Definitions

A. For the purposes of this section, the following meanings apply:

1. "Child" means someone who is not married, is not the head of a household, and is either under age 18 or is under age 22 and a student for the purposes of IHCC group eligibility only. See definition of a child for MACC group eligibility in the Medicaid Code of Administrative Rules, Coverage Groups.

2. "Couple" means a person seeking initial or continuing eligibility for Medicaid and his or her spouse, regardless of whether the spouse is also an applicant or beneficiary unless otherwise indicated.

3. "Federal benefit rate" or "FBR" means the amount of the monthly cash assistance authorized for the recipients of the SSI program. The FBR is the SSI income eligibility standard, as adjusted for the number of cash recipients, living arrangement and SSP levels as indicated in the table in § 3.1.7 of this Part.

4. "Financial responsibility unit" or "FRU" means the group of persons living with the person seeking Medicaid benefits whose income and resources are considered available when determining financial eligibility and, as

such, may count and/or be attributed to others in the household when the deeming process applies.

5. “Medicaid eligibility group” means the total number of persons counted in a household – that is, the family size involved – when identifying the FPL income level that applies when determining a person’s Medicaid eligibility.

6. “Medicaid health coverage” means the full scope of essential health care services and supports authorized under the State’s Medicaid State Plan and/or Section 1115 demonstration waiver provided through an authorized Medicaid delivery system. The term does not apply to partial dual eligible persons who, under the provisions of this Chapter, qualify only for financial assistance through the MPPP to help pay Medicare cost-sharing.

7. "Medically necessary service" means a medical, surgical, or other services required for the prevention, diagnosis, cure, or treatment of a health-related condition including any such services that are necessary to slow or prevent a decremental change in medical and/or mental health status.

8. “Medically needy” or “MN” means the IHCC pathway for elders, persons with disabilities, parents/caretakers, and certain pregnant women and children with income above the limits for their applicable Medicaid coverage group who incur enough health expenses during a set period to spenddown to the eligibility threshold for coverage.

9. “SSI income methodology” means the basis for determining Medicaid eligibility that uses the definitions and calculations for evaluating income and resources established by the U.S. Social Security Administration (SSA) for the SSI program.

3.1.4 Key Elements of the SSI Methodology

A. Though the application of the SSI methodology sometimes varies across coverage groups, there are several key common elements, as follows:

1. Financial Determination – The basis for determining financial eligibility using the SSI methodology is a multi-step process for evaluating income and resources, including the formation of the FRU and Medicaid eligibility groups and the application of exclusions, deductions and disregards, all of which may be applied differently depending on eligibility pathway.

2. Characteristic Requirements – Due to the historical tie to the SSI program, some IHCC Community Medicaid group members must have certain characteristics related to age, blindness and disability, or clinical status to qualify for Medicaid health coverage. General characteristic requirements that drive eligibility for Community Medicaid are in Subchapter 05 of Part 1 of this Chapter.

3. LTSS Need and Level of Care – LTSS is a Medicaid State Plan benefit for both IHCC and MACC group beneficiaries who have the need for a level of care typically provided by a health care institution. Federal law defines "institution" narrowly in terms of three specific types of health facilities – nursing facilities (NF), intermediate care facilities for persons with developmental/intellectual disabilities (ICF-ID), and hospitals. To qualify for Medicaid-funded LTSS, MACC and IHCC group applicants and beneficiaries must meet ~~these~~ the functional/clinical criteria ~~and additional financial requirements related to the transfer of assets. Section 0399 identifies the level of need criteria. Transfer of assets provisions are located in the Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0384: Resource Transfers".~~ related to level of need for care in one of these health institutions located in Part 5 of Subchapter 00 of Chapter 50 of this Title.

4. General and Group Specific Eligibility Requirements - All persons seeking Medicaid benefits must also meet the general eligibility requirements related to residency, citizenship, third-party coverage and cooperation. The general eligibility requirements for IHCC Community Medicaid are specified in Subchapter 05 Part 1 of this Chapter as well as in the sections related to specific coverage group requirements. Documentation related to both financial and functional/clinical eligibility factors is specified in these same sections.

5. Clinical Reviews – Clinical reviews may consist of a determination of disability, an assessment of functional need and/or health status, or an evaluation whether an applicant or beneficiary requires the level of care provided in a health institution. ~~are an important component of the eligibility determination process for many of the IHCC eligibility pathways.~~ The criteria and processes for making these determinations may vary considerably in accordance with the type of Medicaid health coverage a person is seeking and the scope of Medicaid coverage available. ~~– for example, Community Medicaid v. Medicaid LTSS. The following identifies the entity responsible for clinical reviews and the associated coverage groups:~~

   ~~a. The SSA conducts disability determinations for SSI and SSP recipients with income up to the SSI standard.~~

   ~~b. The Medicaid Assessment and Review Team (MART) uses the SSA criteria to evaluate EAD applicants for disability.~~

   ~~c. The Office of Medical Review (OMR) uses clinical/functional disability criteria to evaluate the need a person has for an institutional level of care in a nursing facility or hospital.~~

~~d. Community Medicaid beneficiaries may be determined to be at risk for LTSS and eligible for a limited range of home and community-based services based on the criteria for a LTSS preventive level of need. LTSS preventive level services are described in Subchapter 05 Part 1 of this Chapter; the criteria used to evaluate a level of need are set forth in the Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0399, 'The Global Consumer Choice Waiver'". Such determinations are also made by OMR.~~

~~e. The Katie Becket Unit evaluates whether a child seeking Katie Beckett eligibility has a disabling impairment requiring an institutional level of care. The requirements for Katie Beckett eligibility are set forth in Part 50-10-03 of this Title.~~

~~f. The Division of Developmental Disabilities of the RI Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) determines whether a beneficiary meets the clinical criteria set in State law for a determination of disability associated with the level of care at an Intermediate Care Facility for persons with Intellectual/Developmental Disabilities (ICF-ID). BHDDH also determines whether certain behavioral health disabling conditions qualify for specialized services requiring a hospital level of care.~~

The provisions governing clinical reviews for the determination of disability for non-LTSS, Community Medicaid are located in § 40-05-1.10 of this Title. For Medicaid LTSS, the provisions governing functional/clinical eligibility are set forth in Part 5 of Subchapter 00 of Chapter 50 of this Title; for Katie Beckett eligibility, clinical reviews are conducted in accordance with Part 3 of Subchapter 10 of Chapter 50 of this Title.

3.1.5 Income

A. The evaluation of income is the process that determines the amount that counts when determining financial eligibility using the SSI methodology. For these purposes, income is defined as follows:

1. Earned Income -- Earned income is income from work and may be in cash or in-kind and may include more of a person's income than he or she actually receives if amounts are withheld because of a garnishment or to pay a debt or other legal obligation, or to make any other payments. See § 3.3 of this Part for more detailed information.

2. Unearned Income – Unearned income is all income that is not earned through employment whether received in cash or in-kind. The provisions governing the counting of unearned income are also located in § 3.3 of this Part.

B. The rules governing the determination of countable income for IHCC category Community Medicaid members are in § 40-05-1.11 of this Title. ACA expansion adult provisions related to income are set forth in Part 3 of Subchapter 00 of Chapter 30 of this Title. ~~and Executive Office of Health and Human Services "MEDICAL ASSISTANCE PROGRAM SECTION 0386 INCOME GENERALLY", "Medical Assistance Program- Section 0388- Treatment of Income", "Medical Assistance Program Section 0390 Flexible Test of Income", and "Medicaid Code of Administrative Rules, Section #0392, 'Post-Eligibility Treatment of Income'".~~

C. Medically need (MN) eligibility is an option for applicants and beneficiaries who have income above the limits established in this Part. See Part 2 of Subchapter 05 of this Chapter for non-LTSS MN; provisions pertaining to medically needy eligibility for Medicaid LTSS are located in Part 2 of Subchapter 00 of Chapter 50 of this Title.

3.1.6 Resources

A. A resource is cash or other liquid assets or any real or personal property that a person (or spouse, if any) owns and could convert to cash to be used for support and maintenance. For the purposes of determining financial eligibility using the SSI methodology, the following distinctions apply:

1. Liquid Resources – A liquid resource is any resource in the form of cash, or any other form which can be converted to cash within twenty (20) business days. Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit) and similar items. Liquid resources, other than cash, are evaluated according to the person's equity in the resources.

2. Non-liquid Resources – A non-liquid resource is a resource that is not in the form of cash or in any other form which cannot be converted to cash within 20 business days. Examples of resources that are ordinarily non-liquid include loan agreements, household goods, automobiles, trucks, tractors, boats, machinery, livestock, buildings and land. Non-liquid resources are evaluated according to their equity value except when otherwise indicated. The equity value of an item is the price that it can reasonably be expected to sell for on the open market in the particular geographic area involved, minus any encumbrances.

B. § 3.5 of this Part explains the types of resources and applicable exclusions in general when using the SSI method to determine financial eligibility. Subchapter 05 Part 1 of this Chapter focuses on Community Medicaid. Medicaid LTSS-specific provisions are ~~located in the Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0380, 'Resources Generally'", "Medicaid Code of Administrative Rules, Section #0382, 'Evaluation~~

~~of Resources'", and "Medicaid Code of Administrative Rules, Section #0384: Resource Transfers".~~ located in Part 6 of Subchapter 00 of Chapter 50 of this Title.

3.1.7 Income and Resource Standards

The following standards are used in the determination of the countable income and resources ~~eligibility~~ of an individual or couple when using the SSI method for determining Medicaid financial eligibility:

1. Monthly Federal Benefit Rate (FBR) – The FBR is set by the federal government and is based on the SSI monthly cash payment adjusted for living arrangement. Accordingly, the FBR serves as the SSI income eligibility standard and in the Medicaid eligibility determination process for calculating allowances and deeming purposes. The FBR is adjusted annually, as necessary, to reflect changes in the cost of living. The difference between is the amount of the FBR used to determine the income or resources that apply when deeming and at what amount. The FBR is also the basis for the income eligibility cap for LTSS in certain circumstances.

Monthly Federal Benefit Rate (FBR) – 2018	
Living Arrangement	**Monthly Payment**
Individual - Own Home	$ 750
Couple - Own Home	$ 1,125
Individual - Home of Another	$ 499.94
Couple - Home of Another	$ 750.25
Couple and Individual - Own Home	$ 376
Couple and Individual - Home of Another	$ 250.31

2. Optional State Supplemental Payment (SSP) Limits – The limits for SSP eligibility are tied to SSI and EAD eligibility. No SSP benefit is available if the beneficiary has income in excess of the amounts below:

Optional State Supplement Payment (SSP) Limits: 2018		
Living Arrangement	**Individual**	**Couple**
Living in a residential care and assisted living facility	LTSS	Limited to Individuals only
– SSP Category D SSP per month up to $332 per month	$ 2,250	
	Community Medicaid	
	$1,082 Maximum federal and state payment	
LTSS Living in a Community Support Living Program residence (assisted living or adult supportive care homes)– Category F SSP per month up to $797 per month	LTSS only $2,250 $1,547 Maximum federal and state payment	Not Applicable
Living in own household SSP up to $39.92 (I) and $79.38 (C)	$789.92	$1,204.38
Living in household of another SSP up to $51.92 (I) and $97.30 (C)	$551.86	$847.55
Living in a Medicaid-funded Institution Federal and State Supplement	$30 $50	$60 $100
~~Substantial Gainful Activity Limit -- $1,170 (blind $1,950)~~ ~~Earned income breakeven point -- $1,555 (I), $ 2,291 (C)~~		

Optional State Supplement Payment (SSP) Limits: 2018		
Living Arrangement	**Individual**	**Couple**
~~Unearned income breakeven point -- $ 755 (I), $1,123 (C)~~		

3. Medically Needy (MN) Monthly Income Standards – There are different MN income standards for determining eligibility for Community Medicaid and LTSS.

   a. Community Medicaid. For persons seeking non-LTSS Medicaid MN coverage, previously known as the flexible test of income, eligibility is reserved for applicants with income above the eligibility standard and high health care expenses who are able to spenddown to the applicable income limit during a specified MN eligibility period of six (6) months. MN beneficiaries are eligible for Medicaid health coverage once they have spent down to this limit, as indicated below.

      (1) Part 2 of Subchapter 05 this Chapter covers Community Medicaid MN eligibility in detail. Under the RI Medicaid State Plan~~.~~ ,MN coverage is available to elders and adults with disabilities, and MACC group parents/caretakers, children and pregnant women. There is no MN option for MACC adults, ages 19 to 64; members of this group who have a disability may apply through the EAD pathway and, if found to have a disability, may pursue Community Medicaid MN eligibility if they have income above 100 percent of the FPL. All MN beneficiaries are subject to the SSI method for determining eligibility, though income limits vary as indicated in the table below. Accordingly, for the purposes of determining eligibility, all are treated as members of the Community Medicaid group (hereinafter referred to as the Community Medicaid MACC group MN), even though the general population to which they belong is sometimes covered under a MACC group, using the MAGI-standard, such as children and pregnant women. ~~Subchapter 05 Part 2 of this Chapter covers Community Medicaid MN eligibility in detail.~~

      (2) Medically Needy Income Limit (MNIL). The MNIL provides the MN income eligibility threshold and is based on the limit set for the specific coverage group.

~~(AA) On the effective date of this rule, the MNIL for elders and adults with disabilities seeking Community Medicaid is set below the applicable income standard for EAD because of a federal regulation tying the limit to 133% of the Aid to Families and Dependent Children (AFDC) income eligibility level, as of July 16,1996.~~

~~(BB) Effective February 1, 2018, the MNIL for members of this population increases to 100 percent of the FPL, the income limit for EAD eligibility, the coverage group now most closely tied to the relevant cash assistance program for elders and adults with disabilities under the State's Section 1115 waiver.~~

~~(CC) For beneficiaries who would otherwise qualify for Medicaid in the MACC groups using the MAGI (see Medicaid Code of Administrative Rules, Section 1300 - Overview of Affordable Care Coverage Group Regulations), the MNIL is the applicable income limit for the population - children 261% of FPL, parents/caretakers 141% of the FPL, pregnant women 253% of FPL - plus the five (5) percent disregard, when applicable, required by the ACA.~~

b. LTSS. Persons seeking Medicaid LTSS who have income above the eligibility limits, but below the cost of care in an institution or HCBS setting also may seek MN eligibility. The MN eligibility period for LTSS is one month. The provisions governing MN eligibility for Medicaid LTSS are set forth in Part 2 of Subchapter 00 of Chapter 50 of this Title.

c. MN Standards. Current MN income eligibility standards ~~and amounts adjusted for family size~~ are as follows:

Medically Needy Income Standards **(Income must be above to qualify)**	
Coverage Group	**Medically Needy ~~Monthly Income Limit~~ Standard**
Non-LTSS Elders and Adults with Disabilities & Refugee Medical Assistance	~~$900 (Individual)~~ ~~$942 (Couple)~~ 100% FPL

Medicaid LTSS (Excluding ACA expansion Adults)	Average Monthly Cost of LTSS (Private Pay)
Parents/Caretakers	146% FPL (Includes 5% disregard)
Pregnant Women	258% FPL (Includes 5% disregard)
Children Under Age 19	266% FPL (Includes 5% disregard)

d. Medicaid LTSS MN Institutional Costs. To be eligible for Medicaid LTSS as medically needy, an applicant/beneficiary must have countable monthly income above the federal cap (300 percent of the SSI rate) and below the average cost of LTSS, at the private pay rate, in the health institution (nursing facility, ICF/I-DD, or long-term hospital) that typically provides the level of care he or she is seeking. The health institution private pay rate applies irrespective of whether LTSS is or will be provided in the health institution or at home or in a community-based service alternative. The private pay rates are as follows:

LTSS Medically Needy Eligibility Health Institution Costs -- 2018	
Health Institution	Average Private Pay Rate-Monthly/Daily
Nursing Facility, including skilled nursing	$9,581/$319
Intermediate Care Facility for persons with intellectual or developmental disabilities	$37,858/$1,261
Long-term care hospital	$45,599/$1,519

4. Federal Poverty Level Income Guidelines – Changed annually, the IHCC group income limits and, where applicable, companion SSI-related limits are as follows:

Federal Poverty Level (FPL) Income Limits **All IHCC Groups ~~2017~~**	
Coverage Group	**FPL Monthly Limits**
Elders and Adults with Disabilities (EAD)	At or below 100% FPL
Community Medicaid Elders and adults with Disabilities Medically Needy (MN)	Above 100% FPL Spenddown to ~~$900~~ Medically Needy Income Limit
Refugee Medicaid Assistance (RMA) MN	At or below 200% FPL Spenddown to ~~$900~~ Medically Needy Income Limit
Community Medicaid MACC Group MN	Varies by population as indicated above
QMB	100% Add $20
SLMB	120% Add $20
QI	135% Add $20
Sherlock Plan	250%
LTSS – SSI Pathway	Up to 300% SSI Level
LTSS – MAGI Pathway	Up to 133% of FPL and possible 5% disregard

Federal Poverty Level (FPL) Income Limits All IHCC Groups ~~2017~~	
Coverage Group	**FPL Monthly Limits**
LTSS Special Income/HCBS (217 lookalikes)	Up to 300% SSI Level
LTSS- MN Pathway	Up to cost of care

5. Resource Standards – Federal regulations requires states that have expanded IHCC group eligibility to low-income elders and adults with disabilities up to 100 percent of the FPL to use the same resource limits in effect for MN eligibility.

Resource Standards for IHCC Groups	
Coverage Group	**Limits**
Community Medicaid – EAD and MN	$4,000 (I) $6,000 (C)
Community Medicaid – MACC Group	Not Applicable
SSI –Protected Status	Varies by pathway. See § 05-1.5 of this Chapter
SSP – State Determination (EAD)	$4,000 (I) $6,000 (C)
SSP – SSA Determination	$2,000 (I) $3,000 (C)
Breast and Cervical Cancer	None
Refugee Medicaid	None
Sherlock Plan	$10,000 (1) $20,000 (C)
LTSS – SSI	$2,000
LTSS – Special Income/HCBS (217 lookalikes)	$4,000

Resource Standards for IHCC Groups	
Coverage Group	**Limits**
LTSS – Medically Needy	$4,000
MPPP	Varies by pathway – See Chart in § 05-1.6 of this Chapter

6. Student Earned Income Exclusion (SEIE) -- For students under age 22 and persons who are blind or living with a disabling impairment and regularly attending school, the SSI methodology provides the following income exclusion which is adjusted annually to reflect federal cost of living adjustments (COLAs), when there is one:

Student Earned Income Exclusion		
Year	**Monthly**	**Maximum in a Calendar Year**
2019	$1,820	$7,350
2017	$1,790	$7,200
~~2016~~	~~$1,780~~	~~$7,180~~
~~2015~~	~~$1,780~~	~~$7,180~~

7. LTSS Spousal Impoverishment – Effective January 1, 2018 unless otherwise indicated

   a. Minimum Monthly Maintenance of Need Allowance -- ~~$ 2,030.00 (effective 7-1-2017)~~ $2,057 (effective 7/1/2018)

   b. Maximum Monthly Maintenance of Need Allowance -- $ 3,090.00

   c. Community Spouse Monthly Housing Allowance -- ~~$609.00 (effective 7-1-2017)~~ $617.25 (effective 7/1/2018)

   d. Community Spouse Resource Standards:

      (1) Minimum -- $24,720

      (2) Maximum -- $123,600

e. Home Equity Limits

(1) Minimum -- $572,000

(2) Maximum – $858,000

8. Medically Needy Standards – Effective January 1, 2018

Family Size	MNIL January 2018	2018 Monthly
1	$10,800	$900
2	$11,300	$942
3	$14,000	$1,167
4	$15,900	$1,325
5	$17,900	$1,492
6	$20,200	$1,683
7	$22,200	$1,850
8	$24,400	$2,033
9	$26,300	$2,192
10	$28,500	$2,375
11	$30,500	$2,542
12	$32,600	$2,717
13	$34,600	$2,883
14	$36,800	$3,067
15	$38,800	$3,233

3.2 SSI Methodology: Treatment of Income

3.2.1 Scope and Purpose

This section focuses on the treatment of income and, specifically, the way earned and unearned income are defined and evaluated when calculating countable income. For the purposes of this section, countable income is the total income available to a person seeking Medicaid benefits subsequent to the application of any required exclusions, disregards, and/or deductions and, as appropriate, deeming. ~~Although the general rules for evaluating income do not vary across coverage groups, the manner in which they are applied when counting income differs for Community Medicaid versus LTSS Medicaid and, to a much more limited extent, for certain eligibility pathways~~.

3.2.2 Definitions

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

1. "Available income" means when the person has a legal interest in a liquidated sum and has the legal ability to make that sum available for support and maintenance.

2. "Countable income" means the total amount of earned and unearned income that is used to determine whether an applicant or beneficiary meets the standard for income eligibility for the applicable IHCC group.

3. "Deeming" means the process of attributing income and resources from non-applicant members of the household, a parent or spouse, to the person seeking Medicaid eligibility as low-income elder or adult with disabilities who is not seeking LTSS coverage.

4. "Infrequent income" means income that is received no more than once in a calendar quarter from a single source.

5. "PASS" means a written employment plan approved by the SSA that protects an SSI recipient's eligibility for Medicaid as long as the recipient continues to make progress toward work goals in accordance with a set timetable.

6. "Non-applicant person" ~~or "NAPP~~" means a parent, child or spouse of the applicant in the IHCC group who is NOT applying for or receiving Medicaid health coverage, but whose finances are considered for the purposes of determining income and resources. For the purposes of Medicaid LTSS eligibility, the term "non-LTSS spouse" refers to the member of a couple who is not applying for or receiving Medicaid/

7. "Unavailable income" means the person cannot gain access to the income.

3.2.3 State Responsibilities

In calculating countable income, all sources of income a person receives or may be eligible to receive is reviewed. Not all sources of income are reviewed when renewing eligibility as indicated in § 3.2.5 of this Part. When determining initial eligibility using the SSI methodology, State responsibilities include, but are not limited to, the following:

1. Evaluation of Income – All income, earned and unearned, must be evaluated including any that is self-reported in the application process or that may become known through authorized electronic data matches using information from other health and human services programs, such as SNAP, RI Works and outside data sources (State Wage Information Collection Agency or SWICA, SSA, DOH Vital Statistics, etc.).

2. Exclusions – Certain forms of earned and unearned income are excluded or treated as “not income” under federal law or regulations when determining income eligibility. The State also excludes certain types of income allowed under the Medicaid State Plan and Section 1115 waiver. All possible exclusions must be applied prior to the determination of eligibility.

3. Application of Disregards and Deductions – There are income disregards and deductions that apply when evaluating income. The State must apply these disregards and deductions in a specific order when calculating countable income.

4. Deemed Income, Non-LTSS only – A portion of the income of a non-applicant (NAPP) included in the FRU must be deemed as attributable if it is available to the applicant or beneficiary. Deeming is permitted from spouse-to-spouse, parent-to-child and sponsor to non-citizen included within the FRU, but never from sibling-to-sibling or child-to-parent. As only an applicant child seeking MN eligibility is subject to a State determination using the SSI methodology, the instances in which deeming will apply are limited. There is no resource limit in the MACC group for children, which is the principal eligibility pathway for person under age 19. The deeming of income is subject to conditions and limitations. § 05-1.11.4 of this Chapter sets forth the deeming of income provisions that apply to Community Medicaid when eligibility is determined by the State.

5. Availability -- In evaluating income, whether it is available affects how it is counted. Specifically, under certain circumstances, the amount of income that is determined to be available may be greater than the amount a person will be able to use. § 3.3 of this Part explains situations in which income may be unavailable.

6. Determination of Income Eligibility –Income evaluations are only one facet of the eligibility determination process that must be completed within the specific timeframes required set forth in § 2.4(A)(9) of this Subchapter. As

eligibility is considered across multiple pathways, failure to meet the income standard of one coverage group does not necessarily result in an immediate denial or termination of eligibility as indicated in § 2.6 of this Subchapter.

3.2.4 Beneficiary Responsibilities

All persons seeking initial or continuing Medicaid health coverage are required to provide timely and accurate information on all matters related to eligibility. In addition, although attestations and electronic verifications of income are conducted to the full extent feasible, supporting documentation must be provided in the manner indicated in the application process. Failure to provide timely and accurate information may result in delays in the determination process, reapplication, or denial of eligibility due to non-cooperation.

3.2.5 Types of Income

When determining financial eligibility for Medicaid using the SSI methodology, income types are as follows:

1. Not Income – Some items or payment received by a person are not counted as income in the month received, though they may be treated as resources, as indicated in § 3.6 of this Part, if they are retained in the month after receipt. Items that are not income include, but are not limited to:

    a. Converted resources including cash received from the sale of a resource, money withdrawn from a savings account or other liquid resources, reverse mortgages or home equity loans or lines of credit;

    b. Distributions from health flexible spending arrangements or a health savings account;

    c. Federal, state or local tax refunds;

    d. Interest on excluded resources;

    e. Health care services if given free of charge or paid for directly to the provider by someone else and room and board received during a medical confinement;

    f. Assistance provided in cash or in-kind (including food or shelter) through a government program whose purpose is to provide health care services and supports, or social services (including vocational rehabilitation);

g. Cash provided by any non-government health care program or under a health insurance policy if the cash is either a reimbursement for service costs incurred and already paid or an advance for future services;

h. Direct payment of health insurance premiums by anyone on a person's behalf;

i. Payments from the U.S. Department of Veterans Affairs resulting from unusual health care expenses, such as Aid and Attendance or Housebound Allowance;

j. Payments in cash or in-kind excluded by federal law, as indicated in subsection §§ 3.3 and 3.4 of this Part.

2. Countable Earned Income – Any earned income received as cash or an in-kind benefit a person receives in exchange for work must be considered in the financial eligibility determination process. Not all earned income is countable for Community Medicaid and several of the IHCC groups subject to the SSI methodology. In general, countable earned income includes, but is not limited to, the following with the exceptions noted:

a. Employee income. When derived from –

(1) Commissions

(2) Severance pay, based on accrued leave time

(3) Tips

(4) Vacation donation compensation

(5) Wages

(6) Any other forms of payment provided in exchange for work performed such as payment for babysitting, house-keeping, shoveling and so forth unless irregular or infrequent.

b. Irregular or infrequent income. Earned lump sum, non-gift, or income from an employer, trade or business above the first $30 received in a calendar quarter.

c. Net earnings from self-employment. This includes gross income minus all expenses the Internal Revenue Service (IRS) allows as a self-employment expense calculated on a taxable year basis.

d. Net rental income. The gross rental income minus verified rental and repair expenses, when the person spends an average of ten

(10) hours or more per week maintaining or managing the property. Rental deposits are not income while subject to return to the tenant. Rental deposits used to pay rental expenses become income at the point of use. Verified expenses for providing a room or food or both to a roomer or boarder are subtracted from rental income.

e. In-kind. Earned in-kind income is a non-cash payment a person receives in place of wages or money from self-employment. In-kind earned income can be for food or shelter, such as free rent in exchange for apartment maintenance or items that could be sold or converted to obtain food or shelter. The current market value of earned in-kind income is countable, unless the exclusions in § 3.3.7 of this Part apply.

f. Other income. Income received in exchange for work or service, such as jury duty pay, picket duty pay, blood and blood plasma sales and royalties and honoraria.

3. Countable Unearned Income – Unearned income is cash received that does not require performing a work or service. The following types of unearned income are countable to the extent indicated when determining eligibility using the SSI methodology:

a. Adoption assistance involving Title IV-E funds. This assistance is counted dollar for dollar and is exempt from the $20 general disregard. See § 3.3.3 of this Part below for types of adoption assistance that are not counted.

b. Alimony, spousal and other adult support. These payments are cash or in-kind contributions to meet some or all of a person's needs for food or shelter and are made voluntarily or because of a court order. Alimony payments are unearned income to an adult.

c. Annuities, pensions and other periodic payments. Payments counted in this category are usually related to prior work or service and include, for example, private pensions, Social Security benefits, disability benefits, Veterans benefits, Worker's Compensation, railroad retirement annuities and unemployment insurance benefits.

d. Child support and arrearage payments. When made for a deceased child, such payments are counted for the person who receives the payment. Otherwise, support payments are countable income for the child, excluding one-third, unless provided for health and/or other such purposes as indicated in § 3.3.3 of this Part.

e. Disability payments. If disability payments are part of an employer’s benefit package they are counted.

f. Extended income support payments through the Trade Adjustment Reform Act (TAA). The TAA is a federal program that provides support payments to individuals as a way of reducing the damaging impact of imports on certain sectors of the economy. Under the current structure, such payments are countable.

g. Foster care payments. When foster care payments are made under Title IV-E of the Social Security Act, they are countable income for the person receiving care. Such payments are federally funded and thus the income is not subject to the $20 general disregard. See § 3.3.4(A)(8) of this Part for types of foster care payments that are not counted.

h. In-kind. Unearned in-kind income is a non-cash payment a person receives that is NOT in place of wages or self-employment monies. In-kind unearned income can be either food or shelter or any item that can be sold or converted to buy food or shelter. See § 3.3.7 of this Part for treatment of income.

i. Interest, dividends and certain royalties. Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are compensation paid to the owner for the use of property, usually copyrighted material or natural resources. Such payments are countable as any income earned on resources unless specifically treated as non-countable under § 3.5 of this Part.

j. Irregular or infrequent lump sum. Unearned lump sum income that comes from an individual, organization, or investment if over $30 in a calendar quarter is counted. Treatment of lump sum income more generally is located in § 3.3.4 of this Part.

k. Net rental income. Net rental unearned income counts when the person spends an average of less than ten (10) hours per week maintaining or managing the property.

l. Regular and frequent gift income. Unearned income from gifts counts when receipt occurs on a continual basis, at expected intervals such as monthly, or periodically on an irregular basis.

m. Retirement, Survivor's, and Disability Insurance (RSDI). Monthly RSDI payments are countable as are other pensions and retirement pensions. The amount of any premiums deducted from RSDI for the optional Supplemental Medical Insurance (SMI) under Medicare are also counted.

n. Retroactive RSDI. Lump sum payments are counted in the month received. See § 3.3.4 of this Part for information on the treatment of lump sum income more generally.

o. Severance pay. Countable as unearned income only when it is not based on accrued leave time.

p. Spousal maintenance or allowance.

q. Student financial aid, in the following situations:

(1) Earnings through the Federal Work Study program are counted only for the Sherlock Plan, in accordance with Section 1373 if average gross monthly earnings exceed $65 and Social Security and Medicare taxes are withheld; and

(2) Distributions from a Coverdell Educational Savings Accounts are counted ONLY if not used or set aside for qualified educational expenses. Scholarships, grants, and fellowships. Unless authorized by Title IV of the Higher Education Act (HEA) or the Bureau of Indian Affairs (BIA), grants, scholarships, fellowships and other non-loan financial aid not used for or set aside for educational expenses is countable.

r. Tribal per capita payments from casinos.

s. Unemployment Insurance, including RI Temporary Disability Insurance (TDI) payments. Payments made through insurance programs that provide protection for lost wages as a result of an illness or injury that prevents work are countable unless explicitly prohibited by federal law.

t. Veteran's Administration (VA) benefits. Pensions are counted when not related to a disability. Any amounts allocated for a dependent child are not counted, however.

3.3 Factors Considered in the Treatment of Income

3.3.1 Scope and Purpose

When calculating countable income using the SSI methodology, certain disregards and exclusions apply: some only to earned income, others only to unearned income, and a few apply to both earned and unearned income. The availability of income also affects whether it is counted. This section focuses on these and any other factors considered in the treatment of income for Medicaid eligibility purposes across populations. The specific rules for how they apply when determining income eligibility for Community Medicaid are located in Subchapter 05 Part 1 of this Chapter; for Medicaid LTSS, ~~the general rules are~~

~~described in the Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0399, 'The Global Consumer Choice Waiver'" and "Medicaid Code of Administrative Rules, Section #0382, 'Evaluation of Resources'".~~ all special provisions that apply are located in §§ 50-00-6.2 to 6.12 of this Title.

3.3.2 Both Earned and Unearned Income Disregards and Exclusions

The following disregards and exclusions apply to both earned and unearned income:

1. Infrequent/Irregular Income Disregards– Income is considered to be infrequent if received only once during a calendar quarter from a single source. Income is considered to be received irregularly if a person is not expected to receive such income on a routine basis. Treatment of irregular and infrequent income is as follows:

    a. Disregarded. Amounts less than $30 per calendar quarter of earned income and $60 per calendar quarter of unearned income is disregarded.

    b. Countable. If the amount of irregular/infrequent income is above the amount allowed to be disregarded, all of the income is countable.

    c. A "calendar quarter" is defined in § 1.4(A)(3) of this Subchapter.

2. $20/Month General Income Disregard –The first $20 per month of unearned income is disregarded. For the disregard to apply to unearned income, the income must NOT be a benefit of a government funded-program in which a person's income was a factor in determining eligibility. The disregard is applied as follows:

    a. Order. The $20 disregard is applied to earned income only if it cannot be applied to unearned income.

    b. Limits. The dollar amount of the disregard is not increased when an applicant and NAPP spouse who are living together both have income. A couple, in which both spouses are Medicaid applicants or beneficiaries, receives one $20 exclusion per month.

3. PASS Disregard - Income, whether earned or unearned, of a person who is blind or living with a disabling impairment may be excluded if such income is needed to fulfill a Plan for Achieving Self-Support (PASS). This exclusion does not apply to applicants who are blind or a person with disabilities who is age 65 or older, unless the applicant was receiving an SSI or SSP related to blindness before reaching that age. For additional information on the PASS, see the federal SSI regulations at 20 C.F.R. §§ 416.1180 through 416.1182.

4. Federally Mandated Exclusions – Certain federal laws other than the U.S. Social Security Act exclude various types of earned and/or unearned income from the calculation of countable income in the financial eligibility process. A list of these exclusions is located in § 3.3 of this Part and is updated on a periodic basis.

3.3.3 Earned Income Disregards and Exclusions

Deductions to earned income as a result of disregards and exclusions are applied in accordance with certain rules. First, earned income is never reduced below zero as a result of applying disregards and exclusions. Second, any unused earned income disregard or exclusion is never applied to unearned income. Last, any unused portion of a monthly exclusion cannot be carried over for use in subsequent months. Within these rules, disregards and exclusions are applied as follows:

1. $65 and 1/2 Earned Income Disregard – If the applicant or non-applicant spouse is employed, earned income of $65/month plus one half (1/2) of the balance is disregarded. When both eligible spouses are employed, income is combined and then the disregard is applied.

2. AmeriCorps -- Payments made to participants in AmeriCorps State and National and AmeriCorps National Civilian Community Corps (NCCC) are disregarded. These payments may be made in cash or in-kind and may be made directly to the AmeriCorps participant or on the AmeriCorps participant's behalf. These payments include, but are not limited to: living allowance payments, stipends, educational awards, and payments in lieu of educational awards.

3. Child Care Tax Credit – The child care tax credit is given to taxpayers at the end of the tax year for each dependent child who is under the age of 17. The credit is disregarded as earned income as it reduces the taxpayer's liability on a dollar-for-dollar basis.

4. Earned Income Tax Credit/Refund – The earned income tax credit (EITC) is not counted, The EITC is a special tax credit for certain low income working taxpayers authorized that may be provided as refund through the federal Internal Revenue Service under of the Internal Revenue Code (IRC), 26 U.S.C § 32 or as an advance payment from an employer under 26 U.S.C § 3507. The EITC may or may not result in a payment to the taxpayer.

5. Impairment-Related Work Expenses – Earned income used by a person with disabilities to pay impairment-related work expenses is disregarded. For the disregard to apply, the person must be disabled but not blind and under age 65 or must have received SSI as a disabled individual (or

received disability payments under a former State plan) for the month before reaching age 65. In addition, the following must be met:

a. The severity of the impairment must require the person to purchase or rent items and services in order to work;

b. The expense must be reasonable;

c. The expense must be paid in cash (including checks, money orders, credit cards and/or charge cards) by the person and must not be reimbursable from another source, such as Medicare or private insurance; and

d. The payment for the expense must be made in a month the person receives earned income and both worked and used the services or the item purchased, or the person must be working and pay the expense before earned income is received.

e. Impairment-related work expenses that may qualify for this disregard are described in federal SSI regulations at 20 C.F.R. § 416.976.

6. Student Child Earned Income Exclusions (SEIE) – For a student under age 22 or a person who is blind or disabled and regularly attending school, a set amount of earned income per month up to a yearly maximum may be excluded. The federal government determines the monthly and maximum amounts based on variety of factors, and adjusts the figures annually to reflect increases in the cost living. ~~(In 2016, the exclusion is $1,780 monthly up to a yearly maximum of $7,180.)~~

7. Work-Related Expenses of Blind Persons – Earned income used to meet any expenses reasonably attributable to the earning of the income by a person who is blind and under age 65 or received SSI as a blind person for the month before reaching the age 65. Further, expenses may be disregarded if the person has an approved plan for self-support (PASS). The amounts must be reasonable and not exceed the earned income of the blind person or a blind spouse. See references on PASS, including types of expenses that qualify for this disregard in § 3.3.2(A)(3) of this Part.

3.3.4 Unearned Income Disregards and Exclusions

Exclusions on unearned income never reduce unearned income below zero. Except for the $20 general unearned income exclusion, no other unused unearned income exclusions may be applied to earned income. SSI methodology uses the following when considering whether an unearned income disregard or exclusion applies:

1. Assistance Based on Need – This is unearned income which is wholly funded by the State or a local subdivision. Assistance based on need is disregarded whether provided in-cash or in-kind as it is provided through programs that use a person's income as factor when determining eligibility for benefits or assistance. Assistance based on need that is not counted as unearned income includes the optional state supplemental payment (SSP).

2. Burial Funds – Interest earned on the value of excluded burial funds is excluded from income (and resources) if left to accumulate in the burial fund. Interest earned on agreements representing the purchase of an excluded burial space is excluded from income (and resources) but only if left to accumulate. If not left to accumulate – that is, paid directly to the person, spouse or parent - the receipt of the interest may result in countable income.

3. Child Support and Arrearage Payments -- One-third of a child support payment made to or for a child by a non-custodial parent is excluded. A parent is considered non-custodial if the parent and the child do not reside in the same household. The other types of these support and arrearage payments that are excluded are--

    a. Court ordered health care support payments;

    b. Payments to reimburse the custodial parent for health care expenses; and/or

    c. Payments received and retained by the DHS child support enforcement unit on behalf of a child enrolled in RI Works, foster care, or Medicaid LTSS Home and Community Based Services (HCBS), including through the Katie Beckett eligibility option.

4. Death Benefits – A death benefit is something received as the result of another's death.

    a. Proceeds of a life insurance policy received due to the death of the insured;

    b. Lump sum death benefit from SSA;

    c. Railroad Retirement burial benefits;

    d. VA burial benefits;

    e. Inheritances in cash or in-kind;

    f. Cash or in-kind gifts given by relatives, friends or a community group to "help out" with expenses related to the death.

g. Death benefits are excluded for any expenses paid by applicant or beneficiary related to the deceased's last illness and burial. Any benefits above the actual expenses paid are countable. Recurring survivor benefits such as those received under RSDI and private pension programs are not death benefits.

5. Disaster Assistance – At the request of a state governor, the President may declare a major disaster when the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and local governments, and federal assistance is needed. Under such circumstances, the value of disaster assistance provided by a government agency or an organization such as the Red Cross is excluded from countable income if the person resided in permanent or temporary housing in the disaster area prior to the date of the Presidential designation.

6. Federal Housing Assistance – The U.S. Department of Housing and Urban Development (HUD) and state and local governments and housing authorities provide various forms of assistance that help pay shelter costs. This includes subsidized housing, loans for modifications, mortgage supports and guaranteed loans. Housing assistance is excluded income if payment is made in the form of cash or a voucher and provided under the authority of any of the following, as amended:

   a. The United States Housing Act of 1937, 42 U.S.C. § 1437;

   b. The National Housing Act, 12 U.S.C. § 1715;

   c. Section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. § 1701s;

   d. Title V of the Housing Act of 1949, 42 U.S.C. § 1471; or

   e. Section 202(h) of the Housing Act of 1959, 12 U.S.C. § 1701q.

7. Food and Nutrition Assistance – Federal and state governments provide food and nutrition assistance via SNAP, national school breakfast and lunch programs, WIC and several other publicly funded programs that serve elders, children and persons with disabilities. Food and nutrition assistance from these program is excluded income.

8. Foster Care Payments – In contrast to countable payments made under 45 C.F.R. Part 1356 (Title IV-E), Foster Care payments provided under the Social Security Act, 45 C.F.R. Part 1357 and 45 C.F.R § 96(G) (Title IV-B or Title XX) are social services and are excluded from the foster child's income.

9. Gifts - Gifts from an organization which is tax exempt under the IRC to, or for the benefit of, a person under age 18, who has a life-threatening condition are excluded up to a maximum of $2,000 in a calendar year.

10. Grants, Scholarships, Fellowship – Grants, scholarships, and fellowships are educational financing instruments funded by private, nonprofit agencies, and federal, state and local governments. Any portion of a grant, scholarship or fellowship used to pay for qualified education expenses (tuition, fees or books, etc.) is not countable income. This exclusion does not apply to any portion set aside or actually used for room and board.

11. Home Energy Assistance Payments – Home energy or support and maintenance assistance is excluded if it is based on need and provided in-kind by a private nonprofit agency or in cash or in-kind by a supplier of home heating oil or gas, a utility company providing home energy, or a municipal utility providing home energy.

12. Refugee Cash Assistance – Refugee cash assistance payments and federally reimbursed general assistance payments to refugees are disregarded under a PASS, but otherwise it is counted. The $20 general income disregard does not apply to this income.

13. Relocation Assistance – This form of assistance is provided to people who are displaced by government projects which acquire real property whether under imminent domain or a similar action. Assistance provided in these circumstances is excluded as income.

14. Reparation Payments – Reparations associated with the following are excluded from income:

    a. Reparation payments received from the Federal Republic of Germany;

    b. Austrian social insurance payments based in whole or in part on wage credits granted under the Austrian General Social Insurance Act;

    c. Restitution payments made by the U.S. Government to Japanese Americans (or if deceased, their survivors) and Aleuts who were interned or relocated during World War II; and

    d. Agent Orange settlement payments.

15. RI Works Under a PASS – RI Works payments under a PASS are excluded. However, RI Works payments unless excluded under a PASS, are countable income. The $20 general income disregard does not apply to this income.

16. Student Loans – Federal and State funds or insurance are provided for educational programs at middle school, secondary school, undergraduate and graduate levels under Title IV of the Higher Education Act, 20 U.S.C. Parts 1070 through 1099d and student assistant programs of the Bureau of Indian Affairs. Any loan to an undergraduate student for qualified education expenses made and/or insured by the federal government or the State's higher education financing authority is excluded as both an income and resource.

3.3.5 Lump Sum Income Disregards and Exclusions

Lump sum income is irregularly or infrequently received income. It can be earned or unearned income. Whether lump sum income is countable when determining financial eligibility depends on what is received, how often it is received, and the health care program for which the person is eligible. Examples of lump sum income include:

1. Winnings (lottery, gambling), Insurance settlements

2. Worker's Compensation Settlements. Inheritances. Retroactive payments of RSDI, VA, and Unemployment Insurance

3. General Treatment of Lump Sum Income – For all IHCC groups subject to the SSI methodology, the following are excluded from lump sum income:

    a. Costs associated with getting the lump sum, such as attorney's fees.

    b. Any portion of the lump sum earmarked for and used to pay health expenses not covered by Medicaid or another form of insurance.

    c. Any portion of the lump sum recovered by the EOHHS or its agents.

    d. Any portion of the lump sum earmarked for and used to pay funeral and burial costs upon the death of a spouse or child.

4. RSDI and SSI Payments – When eligibility for RSDI and SSI benefits are first approved, beneficiaries often receive a one-time payment that includes retroactive payments back to the date of a disability. These RSDI and SSI payments are lump sums, and are treated somewhat differently depending on the person's Medicaid eligibility pathway:

    a. SSI/SSP Pathway. Retroactive lump sum payments of SSI and all other lump sum income (including RSDI) of a SSI/SSP recipient are excluded even if the lump sum is a retroactive payment for a period in which the recipient is a Medicaid beneficiary. The only exception is that any portion of a lump sum payment that is designated as a

benefit for a dependent of the beneficiary is counted as unearned income to the dependent in the month received.

b. Community Medicaid, MPPP, and Medicaid LTSS pathways.

(1) Retroactive RSDI lump sum payments are counted as unearned income in the month received. If the beneficiary is not receiving SSI, the RSDI payment is a resource in the following month if retained. RSDI payments are not counted as a resource for nine (9) months once converted from income.

(2) Retroactive lump sum payments of SSI are excluded as income and resources in the month received.

(3) Any retroactive SSI or RSDI lump sum payment received before March 2, 2004 is excluded as a resource.

5. Medicare Part B Reimbursements – A dual eligible beneficiary's Medicare Part B premium could be reimbursed in a lump sum if determined retroactively eligible as a SLMB. In such cases, the beneficiary will receive a reimbursement check from the federal CMS after the State has provided back payment for those retroactive months. A Medicare Part B reimbursement is counted if the beneficiary used Medicare Part B premiums as all or a portion of a spenddown expense. The lump sum reimbursement is excluded if the beneficiary did not use Part B premiums as an expense for spenddown purposes. Such reimbursements may be counted in the month received for Medicaid LTSS beneficiaries receiving RSDI.

3.3.6 Self-Employment Income

Self-employed beneficiaries are responsible for their own work schedules and are not covered under an employer's liability insurance or Workers' Compensation. Depending on the type of self-employment, a beneficiary may or may not have Social Security tax (FICA) deducted from pay. Examples of self-employment enterprises include, but are not limited to: Farming; Product Sales (involving personal goods such as jewelry, household goods, clothing and the like); Personal Training; Professional Consulting; Small businesses; Services (personal care or day care); and Skilled Trades (roofers, painters, home design, etc.). The process for evaluating self-employed income includes:

1. Treatment of self-employment income in general – Self-employment income is reported as earned or unearned on the application and is generally accepted as attested unless conflicts are identified. Net self-reported income – gross self-income minus allowable deductions for business – is countable as earned income.

2. Treatment of property related to self-employment income – Certain types of self-employment involve use of real property. Deductions from gross self- employment income for allowable expenses are made in accordance with federal Internal Revenue Service (IRS) requirements associated with the business use of the home/vehicle. Special treatment is required with the following:

   a. Rental income. Income from rental property is counted as earned income only in those months the applicant/beneficiary spends an average of at least 10 hours per week maintaining or managing the property. Otherwise, rent is treated as unearned income. Deductible expenses are subtracted from gross rent in the month they are incurred. Any expense over the income are subtracted from the next month's rent. Rental deposits used to pay rental expenses or repairs become income to the landlord at the point of use. Verified expenses for providing a room or food or both to a roomer or boarder are subtracted from rental income.

   b. Room/Board Income. Roomer/boarder situations include the following:

      (1) A roomer lives with the household and pays for lodging only.

      (2) A boarder eats with the household and pays for meals only.

      (3) A roomer and boarder lives and eats with the household and pays for lodging and meals.

      (4) Net self-employment income derived from room and board is countable. To determine net income in such cases, allowable expenses are deducted from gross receipts. For these purposes, allowable expenses include costs for providing a room, food or both to a roomer/ boarder; shelter costs based on percent of total rooms in the house that are for rent; and any costs related strictly to renting a particular room, such as accommodations related to a disability or to a particular boarder, such as a special diet.

   c. In-home Day Care. When a person provides family child care services in a home in which he or she has an ownership interest, net self-employment income is countable. In such instances, allowable expenses are itemized as business expenses for tax filing purposes and include food (meal and snacks) and educational and entertainment materials in addition to transportation and shelter costs. If the care is provided in a home in which there is no ownership interest, the applicant/beneficiary is treated as a private contractor and these additional allowable expenses are not

deducted from gross employment income. Payments made by the DHS to an in-home child care provider in association with the State's Child Care Assistance Program (CCAP) are countable.

3.3.7 In-Kind Income

In-kind income, whether earned or unearned, is generally counted at market value. Special rules apply when such income takes the form of food or shelter:

1. Earned In-kind – Food and shelter provided in lieu of a cash payment for work is countable and subject to the applicable income disregards.

2. Unearned in-kind – When no work is performed in exchange for room and shelter, its value is determined as follows:

    a. Assistance Household. If everyone in a household is receiving government assistance for income and maintenance based on need, income in the form of food or shelter is excluded regardless of value and source;

    b. Living in household of another. When a person is living in the household of another for an entire month and they do not have an ownership interest or pay an appropriate share of the monthly expenses for maintaining that household, a portion of the value of the food and shelter they receive is excluded.

        (1) If all meals and shelter are provided in-kind, the countable value is one-third of the FBR and the general income disregard does not apply. No other in-kind income is counted.

        (2) If food OR shelter is provided but not both, the presumed maximum value (PMV) rule applies. The PMV is equal to one-third of the FBR and the $20 disregard. This amount is counted unless the person can provide documented evidence that the market value of the food or shelter is below the PMV. All other disregards and exclusions apply.

    c. Living in own household. If the person lives in their own home and receives food and/or shelter in-kind, the PMV rule applies.

3.3.8 Availability

Under the following circumstances, the availability of income determines whether it is counted:

1. Support Payments – When an individual has been court-ordered to pay child support and/or spousal support to a former spouse, these payments

are not deducted from countable income to the applicant. When the child support/spousal support is paid directly to the former spouse or child's guardian by the employer or benefit payer, the income continues to be determined available to the applicant/beneficiary.

2. Income Deductions – Court-ordered income deductions are considered available income to the Medicaid beneficiary. A division of marital property in a divorce settlement is not considered a court-ordered income deduction in the context of this rule.

3. Loan Deductions – Deductions due to a repayment of an overpayment, loan, or other debt is considered as available income unless the amount being withheld to reduce a previous overpayment was included when determining the amount of unearned income for a previous month.

4. Garnishments and Liens – When either is placed against earned or unearned income of a person, the amount must not be deducted from countable income, regardless of the purpose for the garnishment or lien.

3.4 Federally Mandated Income Exclusions

Federally Mandated Income Exclusions
Agent orange settlement payments;
Child care assistance under the Child Care and Development Block Grant Act of 1990 (as in effect on ~~February 1, 2016~~ September 1, 2018);
The first two thousand dollars per calendar year received as compensation for participation in clinical trials that meet the criteria detailed in section 1612(b) of the Social Security Act (~~as in effect February 1, 2016~~ September 1, 2018);
Payments made for supporting services or reimbursement of out-of-pocket expenses to volunteers participating in corporation for national and community service (CNCS, formerly ACTION) programs: AmeriCorps program; Special and demonstration volunteer program; University year for ACTION (UYA);
Retired senior volunteer program (RSVP);
Foster grandparents program;
Senior companion program;
Energy employees occupational illness program payments;

Federally Mandated Income Exclusions
Federal food and nutrition programs:
Food assistance (formerly known as food stamps) U.S. department of agriculture food commodities distributed by a program (private or governmental); School breakfast, lunch, and milk programs; Women, infants, and children program (WIC); Nutrition programs for older Americans
Student financial assistance received under the Higher Education Act of 1965 (as in effect on ~~February 1, 2016~~ September 1, 2018) or Bureau of Indian Affairs is excluded from income and resources, regardless of use: Pell grants; Student services incentives;
Home energy assistance provided on the basis of need, in accordance with 20 C.F.R. § 416.1157 (as in effect on ~~February 1, 2016~~ September 1, 2018);
Matching funds that are deposited into individual development accounts (IDAs), either demonstration project or TANF-funded, in accordance with 42 U.S.C. § 604 (as in effect on ~~February 1, 2016~~ September 1, 2018);
Japanese-American and Aleutian restitution payments;
Payments to victims of Nazi persecution;
Netherlands WUV payments to victims of persecution from 1940-1945;
Department of defense payments to certain persons captured and interned in North Vietnam, in accordance with the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1998 (as in effect on ~~February 1, 2016~~ September 1, 2018);

Federally Mandated Income Exclusions
Radiation exposure compensation trust fund payments, in accordance with the Radiation Exposure Compensation Act of 1990 (as in effect on ~~February 1, 2016~~ September 1, 2018);
Veterans affairs payments made to or on behalf of:
Certain Vietnam veterans' natural children regardless of or age or marital status, for any disability resulting from spina bifida suffered by such children; Certain Korea service veterans' natural children regardless of their age or marital status, for any disability resulting from spina bifida suffered by such children; Women Vietnam veterans' natural children regardless of their age or marital status, for certain birth defects;
Austrian social insurance payments received under the provisions of the Austrian General Social Insurance Act, 20 U.S.C. § 1613(a), 20 C.F.R. § 416.1236 (as in effect on ~~February 1, 2016~~ September 1,2018). These payments must be documented and identifiable from countable insurance;
Payments made to Native Americans as listed in section IV of 20 C.F.R § 416(K) Appendix (as in effect on ~~February 1, 2016~~ September 1, 2018);
Payments from the Ricky Ray hemophilia relief fund or the class settlement in the case of Susan Walker v. Bayer Corporation, et al. under the Ricky Ray Hemophilia Relief Fund Act of 1988 (as in effect on ~~February 1, 2016~~ September 1, 2018).

3.5 SSI Methodology: Treatment of Resources

3.5.1 Scope and Purpose

For the purposes of Medicaid eligibility, the assessment of resources is not tied, at least directly, to their availability to pay for health care. Instead, a resource is defined broadly as cash or other property that a person owns or has access to that is or could be used for personal support and maintenance. This section describes the general treatment of resources when using the SSI-methodology to determine eligibility for the IHCC groups to which it applies. There are differences

in the types of resources that count and how they are reviewed for Community and LTSS Medicaid. Key differences in the review process are as follows:

1. Simplified Resource Review for Community Medicaid –States that have expanded eligibility for low-income elders and adults with disabilities up to 100 percent of the FPL have the authority under federal regulations to utilize a simplified standard when evaluating resources for initial eligibility and at renewal. Although the same resources are considered when using this simplified standard, they are evaluated in less depth than required for Medicaid LTSS eligibility because the provisions on resource transfers and spousal allocations do not apply. In addition, attestations with respect to certain resources are accepted at the time of initial application and the point of renewal. Depending on the availability of electronic data sources, verification through materials may be required subsequent to the determination of eligibility in the post-eligibility verification process. Note income and resource deeming is included in the simplified standard in RI.

2. Comprehensive Resource Review for LTSS – There are both MAGI and SSI-related eligibility pathways for LTSS that differ in terms of the treatment of income and resource limits, at least at the point in which an institutional level of care becomes required. Applicants evaluated using the SSI method (IHCC groups) are subject to a resource review and, in some instances, using specialized criteria as indicated in §50-00-6.3 of this Title; the resources of applicants seeking coverage through a MAGI pathway (MACC groups) are not an eligibility factor and therefore are not considered on that basis. However, all LTSS applicants, irrespective of eligibility pathway, are subject to an in-depth review of the transfer of assets – including income and resources – to ensure that the rules are applied equitably and in accordance with the standards set in federal and state laws and regulations governing estate recovery. The specific provisions applicable to the evaluation of resources and transfers if assets for Medicaid LTSS are set forth in ~~the Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0384: Resource Transfers".~~ § 50-00-6.6 of this Title.

~~3. Coverage Groups Exempt – Certain IHCC groups and individuals are exempt from the provisions of this section because they do not have a resource limit under applicable laws, and/or the Medicaid State Plan or the State's 1115 waiver; or their eligibility is tied to another federal or State program. Exempt groups are as follows:~~

~~a. All beneficiaries automatically eligible for Medicaid on the basis of the current or past receipt of SSI.~~

~~b. Beneficiaries receiving Transitional Medical Assistance (TMA) under the Executive Office of Health and Human Services~~

~~"Medicaid Code of Administrative Rules: Section 0342 'Medicaid Coverage for Children and Families'".~~

~~c. Beneficiaries eligible for Medicaid While Working, the SSI protected coverage groups with 1619(b) status, pursuant to Subchapter 05 Part 1 of this Chapter.~~

~~d. Women who have met the eligibility criteria established by the RI Department of Health related to treatment for breast and/or cervical cancer in accordance with Subchapter 05 Part 1 of this Chapter.~~

~~e. Children and youth eligible for Medicaid through the RI Department of Children, Youth and Families in conjunction with the foster care provisions under Title IV-E of the Social Security Act or the provisions of the Chafee Act.~~

~~f. Medicaid beneficiaries receiving refugee cash assistance through the RI Department of Human Services.~~

3.5.2 Definitions

A. For the purposes of this section the following terms apply:

1. "Annuity" means a purchased contract in which one party (annuity issuer) agrees to pay the purchaser, or the person the purchaser designates (the payee or payees), a return on money deposited with the annuity issuer (either in the form of a single lump sum or several payments deposited over several months or years) according to the terms of the annuity contract.

2. "Available resource" means that a person has the legal ability to access and use the resource(s) for support and maintenance. A resource is considered unavailable when there is a legal impediment that prevents the person from utilizing it for such purposes.

3. "Burial expense fund" means any resources set aside for the payment of burial services or expenses. Includes burial fund and burial space funds designated for a person or a person's spouse related to burial, cremation or other burial-related expenses. May take the form of revocable burial contracts, revocable burial trusts, other revocable burial arrangements (including the value of certain installment sales contracts for burial spaces); cash accounts and other financial instruments with a definite cash value or irrevocable burial contracts.

4. "Equity value" means the price an item can be reasonably expected to sell for on the local open market minus any encumbrances.

5. “Fair market value” means a certified appraisal or an amount equal to the last or average price of the property or good on the open market in the locality at the time of the transfer transaction or contract for sale, if earlier.

6. “Guardian” means a person or institution appointed by a court in any state to act as a legal representative for another person, such as a minor or a person with disabilities.

7. “Home” means a residential property in which the person and/or person's spouse possess an ownership interest providing it also serves as the principal place of residence of the applicant and/or the applicant's spouse or dependent child.

8. “Intent to return” means an expression by a person indicating that he or she plans to live in the home used as the principal place of residence after a temporary absence. The intent to return home is subjective rather than objective and, as such, must be expressed by the applicant or beneficiary, or an authorized representative, and take the form of a signed, written statement.

9. “Life estate” means a legal arrangement entitling the owners to possess, rent, and otherwise profit from real or personal property during their lifetime.

10. “Liquid resources” means cash or other personal property that can be converted to cash within twenty (20) working days.

11. “Non-liquid resources” means property that is not cash, including real and personal property that cannot be converted to cash within twenty (20) working days.

12. “Ownership interest” means the person seeking Medicaid holds sole or joint legal title to the residential property or is a party to a legal covenant establishing property ownership, such as a life estate.

13. “Principal place of residence” means the residential property where the beneficiary, and/or in the instances specified the spouse or a dependent child of such a person lives the majority of the time during the year – one hundred and eighty-three (183) days in the previous twelve (12) months.

14. “Real property” means land and generally whatever is erected, growing on, or affixed to land.

15. “Representative payee” means an individual, agency, or institution selected by a court or the Social Security Administration to receive and manage benefits on behalf of another person.

16. “Resource transfer” means the conveyance of right, title, or interest in either real or personal property from one person to another. The conveyance may be by sale, gift, or other process.

17. “Temporary absence” means a limited period in which an applicant/beneficiary is not residing in the home in which he/she has an ownership interest due to a hospitalization or convalescence with a relative. Temporary absences do not affect the determination of a person’s principal place of residence.

18. “Trust” means property that is legally held or managed by a person or organization other than by its owners.

3.5.3 State Responsibilities

In calculating countable resources, the State’s responsibilities include, but are not limited to:

1. Scope of Resource Evaluation – The resources of the person seeking Medicaid and each member of the FRU when deeming applies are evaluated at the time of initial application, when a beneficiary reports, or the State receives, information about a change in an eligibility factor, including in conjunction with the annual renewal of Medicaid eligibility and when applying for Medicaid LTSS or moving across eligibility pathways.

2. Factors Affecting the Evaluation of Resources – The following factors must be considered when evaluating resources:

    a. Availability. The extent to which a resource can be legally accessed, and used for income support and maintenance, affects how resources are evaluated and counted. Availability is often affected when more than one person has an ownership interest in the same resource.

    b. Liquidity. The ease of converting a resource into cash – sometimes referred to as a liquid asset – is considered when determining how it is treated for financial eligibility purposes.

    c. Equity value. Equity value of a resource is considered when determining the amount of a resource that counts. In general, equity value means the price an item is expected reasonably to sell for on the local open market minus any encumbrances.

    d. Countable v. Excluded Resources. A resource is may be counted or excluded when determining financial eligibility. The State must consider whether a resource is counted or subject to a general or coverage group-specific exclusion and then assure any applicable exclusions are considered as follows –

(1) Countable Resource: A resource, whether real or personal property, that is available to the applicant or beneficiary and thus counts toward a resource limit. Resource deeming applies unless otherwise specific when determining eligibility for IHCC groups providing Community Medicaid;

(2) Excluded Resource: A resource that is not counted toward the resource limit because of a specific provision in federal or state laws or regulations. Some resources are excluded categorically under federal law or regulations; other resources are excluded regardless of value for some IHCC coverage groups but at a set amount for other groups - there is no limit on the value of a home for Community Medicaid but a cap based on equity value for LTSS; and still other resources are excluded only to the extent they do not exceed a specific threshold amount, such as life insurance face value limit.

3. Deemed Resources – non-LTSS only – The resources of members of the FRU must also be evaluated and any that are countable attributed to the applicant(s) in the deeming process in accordance with Subchapter 05 Part 1 of this Chapter. For Medicaid LTSS, there is no deeming and the evaluation of resources is always based on the applicant or individual - that is, an FRU and Medicaid eligibility unit size of one – unless both spouses are seeking coverage subsequent to the initial determination of eligibility.

4. Determination of Resource Eligibility – Resource eligibility is determined by comparing the countable resources of the FRU to the resource limits for the applicable IHCC group adjusted for the Medicaid eligibility group size.

3.5.4 Beneficiary's Responsibilities

Applicants and beneficiaries are responsible for: providing accurate information about their resources in the application process and submitting any necessary documentation and/or signed authorizations that may be necessary for verification purposes.

3.5.5 Types of Resources and Related Exclusions

A. The SSI-methodology generally divides resources into non-liquid and liquid resources. Except for cash, any kind of property may be either liquid or non-liquid. A third distinction has been added below for resources of both kinds managed by a third-party, such as trusts.

1. Non-Liquid Resources – A non-liquid resource is property that is not cash, including real and personal property that cannot be converted to cash

within twenty (20) business days. Real property, life estates, life insurance and burial funds, described below, are some of the more common kinds of non-liquid resources. Certain other noncash resources, though they may occasionally be liquid, are nearly always non-liquid including, but not limited to, household goods and personal effects, vehicles, livestock, and machinery. Types of non-liquid resources evaluated when determining eligibility for IHCC groups are as follows:

a. Home and Adjoining Land (real property). A home is a residential property which includes the shelter where a person lives, the land on which the shelter is located, related outbuildings, and surrounding property not separated from the home by intervening property owned by others. Public rights of way, such as roads that run through the surrounding property and separate it from the home, do not affect the exemption of the property. A home in which the applicant or the spouse of an applicant has an ownership interest is excluded as resource, regardless of its value, for EAD or MN Community Medicaid. A home is also excluded for LTSS, but only up to the equity value limits established in ~~the Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0380, 'Resources Generally'~~". § 3.1.7(7)(e) of this Part and the provisions set forth in § 50-00-6.3 with respect to the intent to remain are met. Factors affecting application of the exclusion include -

   (1) Principal Place of Residence. The excluded home must serve as the owner's principal place of residence. A home serves as the principal place of residence if the person or spouse with an ownership interest, sibling with an equity interest and/or dependent (minor child or relative with a disability) resides in the home for at least six (6) months and one day (183 days) in any given year.

   (2) Multiple Residences. Although an applicant may own residential properties either alone or in conjunction with others, only one is considered a home and may be treated as an excluded resource at any given point in time. Even in situations in which both spouses in the household are applicants, the value of only one home may be excluded. When the person and his/her spouse/dependent child make conflicting claims over which residential property is subject to the home exclusion the following decision rules apply:

      (AA) If the applicant and applicant's spouse live in separate residential properties in Rhode Island in which they share ownership, the home exclusion applies to the residential property where the person lived at the time

the application for Medicaid health coverage was received by the State.

(BB) If each spouse lives in a separate residential property in Rhode Island, in which they share ownership, and both spouses apply for Medicaid, the home exclusion applies to the property where the spouse who applied first resides.

(CC) If both spouses apply on the same day, the spouses must agree in writing which home is to be excluded. If no agreement can be reached, the home exclusion is applied to the residential property with the greatest value.

(3) Out-of-State Residences. To be eligible for Medicaid, a person must be a Rhode Island resident and, as such, have intent to stay in the state permanently or for an indefinite period. Accordingly, an applicant who declares an out-of-state residential property as a home to return to is not considered a Rhode Island resident for the purposes of determining Medicaid eligibility. The out-of-state residence is considered a countable resource.

(4) Multi-State Residences – When a person owns residential properties both in and out-of-state, the home exclusion is applied to the residential property located in Rhode Island. The value of any out-of-state residential property is a countable resource, even if it is the principal place of residence of the applicant's spouse/dependent child, as long as the applicant maintains an ownership interest in any Rhode Island residential property.

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

(6) Sale of the Home – The home exclusion remains in effect if the Medicaid beneficiary or spouse with an ownership interest is making an effort to sell the home. For Medicaid LTSS purposes, the provisions in § 50-00-6.3(B)(2)(c) apply if the home serves as the principal place of residence for an applicant or beneficiary. If efforts to sell a home that is not or no longer meets the criteria to be excluded under this

subpart are unsuccessful, the value of the home is treated as a countable resource unless documentation of such efforts is provided by a competent authority such as an attorney or real estate broker. Even when such documentation is provided, there is a limit on the length of time the resource is treated as unavailable as indicated in § 50-00-6.5.4.

(7) Proceeds from the Sale – Once a home has been sold, the proceeds are excluded for six (6) months from the date they are received for Community Medicaid eligibility in accordance with Part 1 of Subchapter 05 of this Chapter. Unless obligated or used for the purchase, repair or construction of another domicile or another excluded resource, the proceeds become countable on the FOM in the month after the ~~exclusion expires~~ sale Medicaid LTSS eligibility.

(8) Temporary Absences – A home exclusion is unaffected by temporary absences due to placement in a health facility or institutional setting, including a correctional facility, provided that the owner has not placed the home in a revocable trust and the owner and:

(AA) Intends to return to the home even if the likelihood of return is apparently nil;

(BB) Has a spouse or dependent residing in the home; or

(CC) Has a health condition that prevented the owner from living there before.

b. Business/Trade Property (real property). Real estate used in business or a trade is excluded regardless of its equity value and whether it produces income.

c. Income Producing Real Estate (real property). Up to $6,000 of the equity value in non- business real estate (excluding the home), mortgages, deeds of trust or other promissory notes may be excluded. For the exclusion to apply, the property must produce an annual income of six (6) percent of the net market value or current face value of the property.

d. Vehicle (personal property). Any motorized mode of transportation that moves persons or articles from place to place. This includes automobiles, trucks, motorcycles, tractors, snowmobiles, recreational vehicles, campers, and motorized boats. One vehicle that is used as the primary source of transportation for the applicant

or beneficiary is excluded, regardless of its value. The equity value above $4,500 of any other vehicles owned by members of the FRU is counted.

e. Life estate (real property). Life estate means a legal arrangement entitling the owner of the life estate (sometimes referred to as the "life tenant") to possess, rent, and otherwise profit from real or personal property during their lifetime. The amount of a life estate that is countable depends on when it was established, whether the applicant(s) have the legal right to sell the home, and the portion of the proceeds of the sale, if allowed, is available. The owner of a life estate sometimes may have the right to sell the life estate but does not normally have future rights to the property. Life estates are only excluded in full when the owner retains the power to sell or mortgage the home. If the owner does not retain this right, ~~see Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0382, 'Evaluation of Resources'".~~ the provisions in § 50-00-6.9.1 of this Title apply.

f. Burial Funds (personal property) -- Any funds clearly designated for burial expenses including burial spaces and related items and services. May take the form of contracts, revocable or irrevocable trusts, or other agreements, accounts, or instruments with a cash value. The following applying when determining the amount of burial expenses that may be excluded under one of the following:

(1) Burial fund exclusion (BFE). The BFE allows an individual to exclude up to $1,500 of resources for services ~~include~~ including preparing the body for burial and services that are not performed at the burial site; the exclusion for a couple is $3,000; and for a person seeking MN eligibility is $4,000. These resources must be clearly designated for the person or their spouse's burial, cremation, or other burial-related services; they cannot be commingled with other resources intended for burial. This exclusion applies only if the funds set aside for burial expenses are kept separate from all other resources not intended for burial. The BFE is reduced by the face value of any whole life insurance policy excluded under this section as well as any amounts for such services covered in a revocable burial contract.

(2) Burial space exclusion (BSE). The BSE allows burial space items to be excluded without limiting their value. Burial space items include the burial site, a repository for bodily remains, services performed at the burial site, and items related to the burial site. Only burial space items may be excluded under the BSE. Burial services are never excluded under the BSE.

(3) Irrevocable burial contracts. If a burial contract is irrevocable, the funds deposited into the agreement are unavailable and cannot be withdrawn by the person or the funeral provider until the time of need. Irrevocable burial contracts include those funded by life insurance, those funded by annuities, and those in which the person directly pays the funeral provider. Interest earned on these contracts may be separately designated as revocable or irrevocable. If the interest is designated as irrevocable, it is unavailable. If the interest is designated as revocable, it is a counted resource. The maximum amount of an exclusion for an irrevocable contract is $15,000.

(4) Revocable burial contracts. If an agreement is revocable, the funds deposited into the agreement are available and can be withdrawn at any time. A revocable burial contract may be an excludable resource depending on what burial costs it is intended to cover and whether any portion of the allocated funds can be excluded due to the BSE or BFE. When a revocable burial contract is a countable resource, either the amount the owner would receive if the contract was revoked, or the current market value if it is a saleable contract, is counted less the BFE amount if not otherwise applied – that is, $1,500 for an individual, $3,000 for a couple, or $4,000 for a person seeking MN eligibility.

g. Personal Effects and Household Goods (personal property). Personal effects are items goods such as clothing, heirlooms, jewelry and accessories. Household goods include home furnishings, such as furniture, rugs, and decorations and recreational items, such as televisions, table or digital games, musical instruments and equipment. Such items are excluded.

h. Life Insurance Policy. A contract between the policy holder and an insurer in which the insurer agrees to pay a designated beneficiary a sum of money in exchange for a premium, upon the death of the insured person – in this case the applicant/beneficiary (often the policy holder). Whole life insurance is permanent and builds cash value over the insured person’s lifetime because it has an added investment component along with its death benefit. The value of a whole life insurance policy is only counted if the person, or the person’s spouse (couple) is the owner. Policies on the life of a person or applicant’s spouse owned by another member of the FRU are not considered even when deeming applies (non-LTSS). Whether a policy is counted as resource depends on two factors:

(1) Cash surrender value. Cash surrender value is the amount which the insurer will pay (usually to the owner) upon cancellation of the policy before death of the insured or before maturity of the policy.

(2) Face value. Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provision.

(3) Counting rule. If the total face value of all life insurance policies on any person is at or below ~~$1,500, or~~ $4,000 ~~for MN only~~, no part of the cash surrender value of the life insurance is included when determining countable resources. If the face value is above ~~these amounts~~ $4000 only the cash surrender value above $4,000 is a countable resource. The total amount of the cash surrender value above $4000 is added to all other countable resources when determining whether an applicant or beneficiary is at or below the resource limit for Medicaid financial eligibility. The cash surrender value below $4000 is treated as an unavailable resource unless or until the policy is cashed out. Term insurance and burial insurance are not taken into account.

2. Liquid Resources –A liquid resource is cash or other property that can be converted to cash within twenty (20) business days. Accounts in financial institutions; retirement funds; stocks, bonds, mutual funds, and money market funds; annuities; mortgages and promissory notes; and home equity conversion plans, described below, are some of the more common kinds of liquid resources.

a. Annuities. A contract reflecting payment to an insurance company, bank, charitable organization, or other registered or licensed entity; it may also be a private contract between two parties. The purchase of an annuity may constitute a disqualifying transfer that results in a period of ineligibility for seeking initial or continuing Medicaid LTSS. The applicable provisions related to asset transfers are set forth in § 50-00-6.7 of this Title. In addition, ~~There~~ there are two phases to an annuity, each of which also affects how it is treated as resource: an accumulation phase and a payout phase. Annuities also vary significantly by type, how beneficiaries are treated, and how they accumulate and pay out money, such as lump sum v. scheduled, usually on a monthly basis. All these factors influence whether the value of the annuity is counted or excluded. In addition, the State considers whether the annuity is a liquid resource, and ownership. Since annuities are trust-like instruments, terminology similar to

trusts is used when it describes the availability of cash from annuities. The amount of any penalties paid when cashing-in an annuity is deducted from the amount of the payout. In general, exclusions are as follows:

(1) Annuity that can be surrendered, cashed in or assigned. An annuity that can be surrendered, cashed in or assigned by the owner is presumed to be a revocable annuity. A revocable annuity is considered a countable resource when the person seeking Medicaid is the owner. An annuity is presumed to be revocable when the annuity contract is silent on revocability.

(2) Annuity owned by someone other than the applicant or spouse. An annuity is an unavailable resource when the owner of the annuity is not the person or the person's spouse or either spouse has abandoned all rights of ownership. However, if payments from the annuity are being made to the person seeking Medicaid (or spouse), those payments may be counted as income and considered for both income eligibility and deeming purposes.

(3) Treatment by Phase. An annuity owned by a person seeking Medicaid is a countable resource in its accumulation phase because it can be liquidated for a lump sum or sold. An annuity in its pay-out phase is considered an excluded resource if the person only has the right to liquidate the annuity for the present value of all future payments and this commuted value is less than its equity value.

b. Cash and Accounts in Financial Institutions. Cash on hand is a countable resource. In addition, accounts held in financial institutions – checking and draft accounts, savings and share accounts, money market account, and certificates of deposit – are all countable resources for both the person seeking Medicaid and members of the FRU for deeming purposes. In instances in which an account is jointly held, the value is apportioned equally among owners unless there is a title or deed to the contrary. In cases in which there is ownership in common or in entirety, the provisions in § 3.6.2(A)(4) of this Part apply. For the purposes of calculating Medicaid LTSS eligibility, an applicant who is a joint owner of an account is presumed to be legally able to withdraw and obtain unrestricted access to funds in the account. An applicant may rebut this presumption by providing documentation such as a deed or title. Absent such documentation, the full value of the account is treated as a countable resource when determining financial

eligibility including allocation of resources for Medicaid LTSS eligibility in accordance with § 50-00-6.5.2 (D).

c. Investments. Stocks, bonds, mutual funds and other investment instruments are evaluated in terms of sole or joint ownership in the same manner as cash and then as follows:

(1) Savings Bonds. For U.S. Savings Bonds, the value of the bond is the amount that is paid out if the bond is cashed. The value of the bond is a countable resource, unless the bond cannot be cashed for a legal reason other than the standard 12-month waiting period.

(2) Bonds and Securities. The cash value of bonds/securities is the bid price. The bid price is a countable resource unless it was not paid for in full at the time of purchase – that is, bought on the margin. Any debt owed is deducted from the value when calculating the amount of the resource that is countable.

(3) Stocks. The value of a stock is the closing price if it is publicly traded. The value of stocks is a countable resource.

d. Loans. A loan is an oral or written contract or ~~written~~ statement clearly indicating a borrower's indebtedness, the personal or real property used to secure the borrowed amount (collateral), if any, and the terms of repayment. Loans may be made through commercial entities including financial institutions and informally between persons and entities. The treatment of loans depends on whether it is "bona fide" – that is, the terms of the loan agreement are made in good faith and are enforceable under applicable state law (the borrower can be sued if the loan is not paid back), the agreement is in effect at the time the lender transfers funds, the loan is secured, and the borrower agrees to the terms of repayment. Any loan that is not bona fide may be treated as a gift, unless it qualifies as a promissory note under subsection (e) below; in such instances, the full value of the loan may be counted as income and/or a resource depending on whether the applicant is the lender or borrower and the manner in which it is paid. In addition, such loans may be considered a disqualifying transfer for Medicaid LTSS purposes if their fair market value cannot be discerned in accordance with § 50-00–6.8. In general, unless explicitly excluded as a resource under § 3.6.4 of this Part, bona fide loans are treated as follows for the lender or borrower:

(1) Borrower. The amount of the loan that the borrower must repay, along with any interest, is excluded as a countable

resource in the month the loan is executed. Any portions of the loan remaining on the FOM after the month it is executed is a countable resource.

(2) Lender. The amount the lender loans and the loan repayments may be treated as countable resources depending on the circumstances of its execution. If a loan is negotiable and can be sold or discounted on the open market it is considered a countable resource. Interest is always treated as unearned income; principal payments are the conversion of a resource are not treated as income.

e. Mortgages. A debt instrument, secured by the collateral of specific piece of real estate property, that a borrower is obliged to pay back without paying the entire purchase price upfront by making a predetermined set of payments. A borrower is considered an owner of a mortgaged property for the purposes of determining Medicaid eligibility before the debt is paid-off as long as payments are being made. The countable value of a mortgage for real property that is not excluded as a principal place of residence or otherwise explicitly under this Part is the remaining balance on the contract; or the gross price for which it can be sold or discounted on the open market minus any legal debts, claims, or liens against the property, unless proof is provided that there is a legal bar to sale or a reliable third-party provides proof demonstrating a lower value. The purchase of a mortgage may be treated as a disqualifying transfer for Medicaid LTSS purposes if made for less than fair market value in accordance with § 50-00-6.8.

f. Promissory notes. A promissory note is a written, unconditional agreement, usually given in return for goods, money loaned, or services rendered, whereby one party promises to pay a certain sum of money at a specified time (or on demand) to another party. It may be given in return for goods, money loaned, or services rendered to the owner of the agreement (the seller). A promissory note is a liquid resource. The property itself is not a resource because the seller cannot legally convert it to cash while it is encumbered by the agreement. If payments received by the seller consist of both principal and interest, only the interest portion is income. The principal portion is the conversion of a resource and is not income but is an available resource unless it is non-negotiable and the person provides evidence of a legal bar to the sale of the promissory note. Treatment of a promissory note for Medicaid LTSS eligibility related to the transfer of assets is located in § 50-00-6.8.

g. Retirement funds. Any resource set aside by a person to be used for self- support upon their withdrawal from active life, service, or business. Retirement funds include, but are not limited to, certain IRAs, Keogh plans, 401K plans, pensions, mutual funds, stocks, bonds, securities, money market accounts, whole life insurance, and retirement annuities. The value of a retirement fund is the amount of money that can currently be withdrawn from the fund, less any penalties for withdrawal. Retirement funds are excluded when owned by either the person seeking Medicaid or a spouse when the couple is living together and: termination of employment is required to obtain a payout from the fund; the owner is not eligible for periodic payments and does not have the option of withdrawing a lump sum; or either spouse is drawing down on the fund at a rate consistent with their life expectancy. When funds are being drawn down, the payout is treated as countable income for financial eligibility purposes~~. In addition,~~ and there is no deeming under § 40-05-1.11.2 of this Title or attribution under § 50-00-6.5.2 ~~of retirement funds~~ to a non-applicant spouse ~~to a person by a NAPP spouse~~ or child. In instances in which the retirement accounts are countable as resource, the amount counted is the amount that can be withdrawn from the account, less any penalties. Any taxes owed as a result of the withdrawal are not deducted when determining the countable value of the retirement fund. Medicaid LTSS-specific provisions related to the treatment of retirement funds are located in § 50-00-6.3.

h. Education funds. Resources set aside to pay for qualified education expenses such as 529 accounts and Coverdell Educational Savings Accounts. The full amount of such funds is typically excluded even if the beneficiary is a member of the FRU.

i. Health savings accounts (HSAs). Accounts used to set aside funds to meet medical expenses. Unless the individual can demonstrate that the funds in their HSA are not available to them, the HSA is a countable resource.

B. ~~Resources managed by a third party~~ Resources, liquid and non-liquid, managed by a third party include, but are not limited to, trusts, guardianship accounts, and retirement funds. Resources of a person managed by a third party, such as a trustee, guardian, conservator, or agent under a power of attorney are considered available to that person as long as he or she can direct the third party to dispose of the resource or the third party has the legal authority to dispose of the resource on the person's behalf without the person's direction.

~~a~~1. Guardianship funds -- A person or institution appointed by a court in any state to act as a legal representative for another person, such as a minor or a person with disabilities. Guardianship funds are presumed to be

available for the support and maintenance of the protected person and, as such, are a countable resource if he or she is seeking Medicaid That person may rebut the presumption of the availability of guardianship funds by presenting evidence to the contrary, including, but not limited to, restrictive language in the court order establishing the account or in a subsequent court order regarding withdrawal of funds.

~~B~~2. Power of attorney --Funds managed by an agent under a power of attorney are not property of the agent and cannot be counted as resources of the agent.

~~c~~3. Representative payee -- A person, agency, or institution selected by a court or the SSA to receive and manage benefits on behalf of another person. A representative payee has responsibilities to use these payments only for the benefit of that person, to notify the payer of any event that will affect the amount of benefits the person receives or circumstances that would affect the performance of the representative payee's responsibilities, and account periodically for the benefits received. Funds managed by a representative payee are not property of the representative payee and cannot be counted as resources of the representative payee.

~~D~~4. Trust -- A property interest that usually takes the form of fund comprised of a variety of liquid and non-liquid resources, including but not limited to, cash, stocks, bonds, personal effects, life insurance, business interests, and real estate – that is held by a person or entity (called a "trustee") who is legally responsible for ensuring the property owned by trust is used to benefit another person (the "trust beneficiary). The person who transfers the resources to the trust is known as the "grantor." In some instances, the grantor is also named as a trust beneficiary or "grantee." The treatment of a trust for Medicaid eligibility purposes depends on its type, whether the property it holds is accessible, and who is the grantor, grantee and/or trustee. ~~Trusts –~~ In general, the treatment of trusts ~~depends on the specific type and whether they revocable or irrevocable by the grantor – that is, the person who established the trust. For LTSS eligibility purposes, the evaluation of trusts considers whether there have been any impermissible disqualifying transfers~~ is determined in accordance with § 50-00-6.11 of this Title. ~~Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0382, 'Evaluation of Resources'", identifies the types of trusts and how they are treated. For Community Medicaid purposes, the following rules apply:~~

~~(1) Revocable trusts. If the trust can be revoked by the grantor under RI law, the principal and interest are treated as a resource.~~

~~(2) Irrevocable trusts. If the trust cannot be revoked by the grantor – portions of principal that could be paid to the beneficiary are a countable resource.~~

3.6 Factors Considered in the Treatment of Resources

3.6.1 Scope and Purpose

There are several common features in process for evaluating resources when using the SSI methodology that apply across IHCC groups, whether using a full or simplified review. The purpose of this section is to set forth these features and identify any exceptions where appropriate.

3.6.2 Process Rules

A. The following process rules apply generally in the evaluation of resources across IHCC groups.

1. First of the Month Rule –Countable resources are determined as of the first of the month (FOM). This determination is based on the resources the person owns, their value, and whether or not they are excluded as of the first of the month.

2. Resource Changes – What a person owns in countable resources can change during a month, but the change is always effective with the following month's resource determination. The kinds of changes that may occur include:

    a. Changes in value of existing resources. The value of an existing resource may increase or decrease.

    b. Disposition or acquisition of resources. A person may dispose of an existing resource, such as close a savings account and purchase an item, or may acquire a new resource, such as an inheritance which is subject to the income-counting rules in the month of receipt).

    c. Change in exclusion status of existing resources. A person may replace an excluded resource with one that is not excluded, such as sell an excluded vehicle for non-excluded cash, or vice versa (use non-excluded cash to purchase an excluded automobile). Similarly, a time-limited exclusion (such as the period for exclusion of retroactive Title II – RSDI – benefits) may expire.

    d. Change in resource form. The sale or transfer of a resource is treated as a change in the form of the resource rather than in countable income.

3. Resource Reduction – If countable resources exceed the limit as of the first moment of a month, the applicant is not eligible for that month, unless the resources are reduced by expenditures on certain allowable expenses.

~~a. Community Medicaid. When a person seeking Community Medicaid has resources in excess of the general limits for a particular IHCC group, the Integrated Eligibility System evaluates eligibility for other forms of coverage and, if no other forms of eligibility are available, a notice is issued which explains the opportunity for resource reduction. In such instances, eligibility may be established by incurring and paying for a health care or other allowable expenses that equals or exceeds the amount of the excess resources. The expense and proof of payment must be provided within thirty (30) days of the notice of ineligibility.~~

~~b. Medicaid LTSS. For persons applying for Medicaid, funded LTSS, income and/or resource reduction is generally part of the application review process and is referred to as the pre-eligibility evaluation of medical expenses (PEME). See Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0399, 'The Global Consumer Choice Waiver'".~~

~~c. Allowable expenses.~~ In general, allowable expenses for resource reduction include:

~~(1)~~a. Health care services that are not covered under the Medicaid State Plan and the State's Section 1115 demonstration waiver and are not reimbursable by a third- party such as Medicare, or some form of insurance. Such expenses must occur in a month of eligibility, including periods of retroactive eligibility when applicable. Certain LTSS home health care services are allowable expenses for Community Medicaid applicants when delivered by certified providers but only up to the amount Medicaid pays for the same or similar services on a fee-for-service basis. Additional rules apply for Medicaid LTSS and are available at § 50-00-6.5.5.

~~(2)~~b. Tax payments based on assessments by the federal Internal Revenue Service, the Rhode Island Department of Revenue or, other State or municipal taxing authority.

~~(3)~~c. Fees for court-appointed guardians or conservators including, but not limited to, court filing fees, the cost of a Probate Bond, court-approved guardianship/ conservatorship fees, and court-approved legal fees.

~~(4)~~d. Legal fees associated with disposing or gaining access to resources.

4. Evaluation Factors - The methods for evaluating resources vary depending on the standard of review, as indicated above, as well the type of resources. In general, each type of resource has its own unique deductions, exclusions, and methods for determining its countable value. Unless a resource is excluded, the ownership interest in a resource is evaluated in accordance with the following:

    a. Countable value. The countable value of a resource is the equity value. The equity value is the current fair market value minus any legal debt or encumbrances on the item. To be considered a debt against the resource, the debt must be legally recognized as binding on the resource's owner. The current fair market value is the amount an item can be sold for on the open market.

    b. Jointly Owned Resources. When two or more parties share rights to sell, transfer, or dispose of part or all of personal or real property, the ownership share held by each person must be evaluated. This rule applies to resources such as joint checking or savings accounts and real estate held in common. In instances in which the document creating the joint interests, such as a deed to real estate or a bank account signature card, specifies the shares of the parties, the fair market value of the entire resource is divided between the joint owners according to the shares specified. Attribution of jointly owned resources is otherwise determined as indicated below:

        (1) Tenancy in common. Applies to all jointly owned resources which do not specify the ownership portion of each party – as in cases of joint tenancy or tenancy in its entirety – and, as result, the ownership portion may be unequal. When the person seeking Medicaid and/or spouse has a tenancy in common with someone outside the household, the total value of non-liquid resources is divided among the total number of owners in direct proportion to the ownership interest held by each. By contrast, when a liquid resource such as an account in a financial institution is held in common, the entire equity value of funds in the account is considered available to its owner.

        (2) Joint tenancy. Occurs when each of two or more persons has an equal undivided interest in the whole resource. When a person owns a resource as a joint tenant, the entire equity value of the resource is considered available to that person. When the instrument creates an unequal interest between the joint tenants, only the portion available to the member of the FRU is counted.

(3) Tenancy in its entirety. The value of any resource owned in its entirety by a person – joint savings account – is considered available to its owner and is included as such for deeming in Community Medicaid and the allocation of resources for Medicaid LTSS.

c. Counting Order. If excluded funds are combined with countable resources, it is assumed the countable resources are spent first.

d. Prudent-person standard. The prudent-person standard is used when determining whether a lower fair market value for a resource is reasonable. For example, for property sold at an auction, the current fair market value is considered to be the highest bid unless there is evidence that the transaction constitutes a resource transfer rather than a sale.

5. Legal Factors Affecting Availability – A court restriction may make all or part of the resource unavailable. Other legal restrictions on resources may be included in: liens, domestic orders, divorce decrees, child support orders, probate matters, tax intercepts and garnishments, and/or bankruptcy proceedings.

6. Identifiability – Some resources must be identifiable to be excluded and, as such must be distinguishable from other resources. A resource is identifiable if:

a. The funds are kept physically apart from other funds, such as in a separate bank account.

b. The funds are not kept physically apart from other funds, but can be identified using a complete history of account transactions dating back to the initial date of deposit based on the records of the account holder.

c. When a withdrawal is made from a commingled account, the non-excluded funds are assumed to be withdrawn first, leaving as much of the excluded funds in the account as possible.

d. The excluded funds remaining in the account can only be increased by deposits of subsequently received excluded funds and excluded interest. If interest on the excluded funds is excluded, the percent of an interest payment to be excluded is the same as the percent of funds in the account that is excluded at the time the interest is posted. The excluded interest is then added to the excluded funds in the account.

~~e. The requirements related to identifiability vary for Community Medicaid and Medicaid LTSS.~~

3.6.3 Mandatory Resource Exclusions

A. Resource exclusions may be mandated under the SSI methodology or by federal laws other than the Social Security Act as well as by the State and various other program requirements.

1. Exclusions Required by Federal Law – Federal law establishes that certain resources are excluded when determining Medicaid eligibility using the SSI methodology across all IHCC coverage groups. A list of mandated federal exclusions based on how they are treated if identifiable is located in § 3.7 of this Part.

2. Required by State law or regulation – Rhode Islanders are permitted a state tax deduction for funds committed to the State-administered 529 education account. Funds contributed to such an account are excluded, except for the amount of the RI tax deduction, as long as they are set aside for qualified educational expenses.

3.6.4 Special and Limited Time Exclusions

A. There are a number of special and time-limited exclusions that apply across the IHCC groups as well. ~~Additional LTSS-specific time-limited exclusions are located in the Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0384: Resource Transfers~~". Applicable general time-limited exclusions are as follows:

1. Retroactive Social Security and SSI/SSP – Retroactive payments of federal SSI, SSP (the state only supplement to SSI), or RSDI benefits are excluded for nine (9) months beginning on the FOM after the month of receipt. These payments are also excluded as resources during the month of receipt.

2. Funds for Replacing Excluded Resources – Cash and interest earned on that cash are excluded when received from any source, including casualty insurance, when it is for the purpose of repairing or replacing an excluded resource that is lost, stolen, or damaged. The exclusion is allowed for nine (9) months from the month of receipt of such funds and may be extended for an additional nine months for good cause.

3. Earned Income Tax Credit – State and federal earned income tax credit refunds and advance payments are excluded as resources for one year beginning the month after receipt.

4. Health and Human Services Payments – Cash received for health and human services is excluded for the calendar month following the month of receipt. The month following the month of receipt, the cash counts as a resource if it has been retained.

5. Victim's Compensation Payments – State-administered victims' compensation payments are excluded for twelve (12) months after the month of receipt.

6. Relocation Payments – State and local government relocation payments are excluded for twelve (12) months after the month of receipt.

7. Expenses from Last Illness and Burial – Payments, gifts, and inheritances occasioned by the death of another person are excluded provided that they are used for expenses resulting from the last illness and burial of the deceased and by the end of the calendar month following the month of receipt.

8. Long-term Care Insurance Partnership – Amounts equal to the amount paid monthly in benefits from the time of application for long-term care insurance are disregarded as a resource when determining Medicaid eligibility under the Federal Deficit Reduction Act of 2005. For purposes of LTSS eligibility, the same amount is excluded when determining the amount to be recovered from a beneficiary's estate.

9. Dedicated home repair and modification funds – Up to an additional $4,000 may be set aside for a limited period – not to exceed one year – in a separate dedicated account for the purposes of home repairs/modifications that enable a Medicaid LTSS beneficiary to continue to receive home-based care. Funds may only be used for such expenses when they are not covered by a third-party, including Medicare, Medicaid and any federally or state-funded housing or assistance authority, and must be spent on repairs and modifications necessary to ensure a beneficiary is able to safely continue to obtain care in his or her own home. The set-aside must be approved by a Medicaid LTSS specialist based on documentation that the repairs/modifications are required for the person's health and safety and the cost estimates are deemed reasonable – estimates from a properly qualified contractor. Documentation that repairs are needed may be provided by a health practitioner or contractor. Any funds remaining in the account at the eligibility renewal after the account was established or used for purposes other than qualified home repairs or modifications are counted as a resource on the first day of the month following the renewal date.

10. ABLE accounts – The federal Achieving a Better Life Experience Act (ABLE) of 2014 amends Section 529 of the IRS code to permit states to create tax-advantaged savings accounts for persons who have proof of a documented disability or blindness, the onset of which occurred before age twenty-six (26). In accordance with R.I. Gen. Laws § 40-7.2-20.1 *et seq.*, balances held in an ABLE account are excluded when determining financial eligibility for non-LTSS Medicaid under this Part and Medicaid LTSS pursuant to Part 6 of Subchapter 00 of Chapter 50. For persons

eligible for Medicaid based on receipt of Supplemental Security Income (SSI), as described in Part 1 of Subchapter 05 of this Chapter, balances of up to $100,000 are excluded in the determination of financial eligibility. An SSI recipient with an ABLE account in excess of this balance loses SSI cash benefits until the balance is below this limit but is deemed eligible for the purposes of maintaining Medicaid eligibility. The resource exclusion for Medicaid eligibility continues to apply unless or until the contributions for the person benefiting from the ABLE account exceeds the annual limit of $15,000 or the maximum life-time limit of $395,000. ABLE accounts are managed by the State and funds must be used only for the Qualified Disability Expenses established in federal and State laws. Additional information on ABLE accounts is located at the RI Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) website at: http://www.bhddh.ri.gov/developmentaldisabilities.

3.6.5 Determination of Resource Eligibility

Once the appropriate exclusions have been applied and the value of each type of resource is determined, the value of all countable resources (including deemed resources) are added together to determine the total countable resources for the Medicaid eligibility group for the family size involved. If the resources of the Medicaid eligibility unit fall below or are equal to the applicable eligibility resource standard, the resource test is passed. If an excess resource amount remains after all exclusions have been applied, the applicant/beneficiary has not passed the resource test and must either reduce resources in accordance with the applicable provisions in § 3.6.2(A)(3) of this Part or give away excess resources subject to the transfer of resources rule for Medicaid LTSS ~~coverage as provided for in the Executive Office of Health and Human Services "Medicaid Code of Administrative Rules, Section #0384: Resource Transfers"~~ set forth in § 50-00-6.6 of this Title.

3.7 Federally Mandated Exclusions

A. The following is a list of federally mandated exclusions based on whether or not they are identifiable:

Federally Mandated Resource Exclusions
Identifiable and Excluded Indefinitely (unless otherwise indicated)
Agent Orange Settlement Fund payments
Blood Product Settlement payments

Federally Mandated Resource Exclusions
Corporation for National and Community Service (CNCS) payments. Payments to volunteers, including the following payments authorized under the Domestic Volunteer Services Act, are excluded: AmeriCorps Urban Crime Prevention Program Special Volunteer Programs under Title I Demonstration Programs under Title II Senior Corp: Retired Senior Volunteer Program (RSVP) Foster Grandparent Program Senior Companions
Individual Development Accounts (IDA)
Japanese and Aleutian Restitution payments
Jensen Settlement Agreement payments. Payments received by class members are excluded. Funds received under this agreement from countable resources at the time of application and at each renewal are deducted.
Low Income Home Energy Assistance Program (LIHEAP) payments
Nazi Persecution payments
Radiation Exposure Compensation Trust Fund (RECTF) payments
Real estate taxes, homeowner’s insurance and funds set aside for upkeep expenses of the property. Up to one year’s expenses are excluded. Funds must be kept in a separate account.
Relocation Assistance payments, federal
Ricky Ray Hemophilia Relief Fund payments

Federally Mandated Resource Exclusions
Student financial aid received under Title IV of the Higher Education Act or Student financial aid received from the Bureau of Indian Affairs (BIA) Non-Title IV and non-BIA grants, scholarships, fellowships and other non-loan financial aid, if used or set aside to pay educational expenses until the month following the last month the student is enrolled in classes. Distributions from a Coverdell Educational Savings Accounts (ESA) if the funds are used for educational expenses. Excluded for the designated beneficiary of the account for nine months following the month of receipt of a distribution. Excluded for anyone who is not a beneficiary who contributes money to the account beginning the month after the month the funds are transferred into the account. Excluded, due to being a conversion of a resource, for a contributor who is the designated beneficiary beginning with the month after the month the cash is transferred into the account. Veteran's Affairs (VA) benefits designated as educational assistance both under graduate and graduate students until the month following the last month the student is enrolled in classes. Plan to Achieve Self Support (PASS) student financial aid. Training expenses paid by the Trade Adjustment Reform Act of 2002 Qualified Tuition Programs (QTP), also known as a 529 Plans, for the designated beneficiary (the student or future student) who is not the owner of the account and does not have any rights to the funds in the account. The account is counted as resource for the owner.
Tribal payments and interests. The following tribal resources are excluded. Tribal trust or restricted lands, individual interest Tribal per capita payments from a tribal trust Tribal land settlements and judgments
Uniform Gift to Minors Act/Uniform Transfers to Minors Act (UGMA/UTMA) The full value of resources established under the UGMA/UTMA is excluded.

Federally Mandated Resource Exclusions
An adult designated to receive, maintain and manage custodial property on behalf of a minor beneficiary is not the owner of UGMA/UTMA resources because the adult cannot legally use any of the funds for his or her support and maintenance. When the UGMA/UTMA property is transferred to a beneficiary at the end of the custodianship (usually at the age of 18 or 21 depending on state law) the property becomes available to the beneficiary. It is counted as income in the month of transfer and as a resource in the following month.
Veterans' Children with Certain Birth Defects payments
Vietnamese Commando Compensation Act payments
Excluded Resources Regardless of Identifiability (unless otherwise noted)
Adoption Assistance payments are excluded in the month of receipt and thereafter.
Accrued Interest on resources is excluded if any excess is properly reduced at eligibility redetermination.
Alaska Native Claims Settlement Act (ANCSA) payments
Appeal Payments are excluded as resources in the month received and for three months after the month of receipt.
Clinical trial participation payments excluded by SSI. The first $2,000 a person receives during a calendar year is excluded.
Cobell Settlement for American Indians for a period of 12 months beginning with the month of receipt. This exclusion applies to all household members.
Crime victim payments
Disaster assistance, federal payments
Disaster assistance, state payments

Federally Mandated Resource Exclusions
Filipino Veterans Equity Compensation (FVEC) payments
Foster Care payments
Gifts to Children with Life Threatening Conditions from 501(c)(3) tax-exempt corporation. These are not considered resources of a parent and apply only to children who are under age 18. Cash gifts up to $2,000 in any calendar year are excluded. The amount of total cash payments that exceed $2,000 each year are counted as a resource. Multiple cash gifts in the same calendar year are added together and up to $2,000 of the total is excluded, even if none of the cash gifts exceeds $2,000 individually.
Homestead real property
Household goods and personal effects
James Zadroga 9/11 Health and Compensation Act of 2010
Kinship payments
Proceeds from the Sale of a Homestead are excluded if a person: Plans to use the proceeds to buy another homestead, and Does so within three full calendar months of receiving the funds
Reimbursements for replacement of lost, damaged or stolen excluded resources are excluded for the month of receipt and nine months thereafter. The funds are excluded for up to nine more months if the person tries to replace the resources during that time, but cannot do so for good reason.
Representative Payee Misuse payments. If a person’s Supplemental Security Income (SSI), Retirement, Survivors and Disability Insurance (RSDI) benefits, or Veterans Benefits for the Elderly is reissued because an individual representative payee misuses benefits, the reissuance is excluded as a resource for nine months if retained after the month of receipt.

Federally Mandated Resource Exclusions
Retroactive RSDI and SSI benefits are excluded for the nine (9) calendar months following the month in which the person receives the benefits. Any accrued interest on that account is counted as income in the month received and as a resource in the following months.
State Annuities for Certain Veterans
Relocation payments, State and local
Tax credits, rebates, and refunds are excluded for 12 months after the month of receipt
Term life insurance