

Chapters 477 NAC 20 through 28 apply to the following: Aged, Blind, and Disabled (ABD); Medically Needy (MN); Medicaid Insurance for Workers with Disabilities (MIWD); Women's Cancer Program; Transitional Medical Assistance (TMA); Former Foster Care; Emergency Medical Services Assistance (EMSA); Children and Young Adults Eligible for IV-E Assistance

CHAPTER 26-000 SPOUSAL IMPOVERISHMENT MEDICAID PROGRAM BUDGETING

26-001 SPOUSAL IMPOVERISHMENT MEDICAID PROGRAM (SIMP): The budgeting procedures used when a client is residing in a specified living arrangement and has a spouse who has remained in the community. The client in the specified living arrangement is considered the alternate care spouse.

The alternate care spouse must be residing in one of the following living arrangements for these special budgeting procedures to apply:

1. A long-term care facility, including Assisted Living Waiver;
2. A medical institution or nursing facility;
3. A center for the developmentally disabled;
4. Receiving or eligible for Home and Community-Based Waiver services; or
5. Receiving or eligible to receive Program of All-Inclusive Care for the Elderly (PACE).
See Appendix 477-000-042 for procedures.

26-002 DEFINITIONS

26-002.01 Community Spouse: A spouse who is

1. Not applying for or receiving Medicaid, including PACE;
2. Not residing with the alternate care spouse unless the alternate care spouse is in the home and eligible for Home and Community-Based Waiver Services, including PACE; and
3. Not in a hospital, skilled nursing facility, intermediate care facility, or intermediate care facility for persons with a developmental disability.

26-002.02 Family Members: Minor children residing with a community spouse, dependent parents, or siblings of the community spouse or alternate care spouse who reside with the community spouse and could be claimed as dependents for tax purposes.

26-002.03 Allocated Maintenance Allowance: The amount deducted from an alternate care spouse's income to meet the maintenance needs of the community spouse and family members.

26-002.04 Maintenance Need Standard: The income standard to which the community spouse's and other family members' income is compared for the purpose of determining the amount of allowance that may be made from the alternate care spouse's income.

26-003 RESOURCES

26-003.01 Assessment of Resources:

26-003.01A Resources Reserved for the Community Spouse: Resources may be reserved for the community spouse when the alternate care spouse is residing continuously in a specified living arrangement and applies for Medicaid. The amount of resources that a community spouse may reserve is based on the Consumer Price Index. This figure is adjusted annually. See Appendix 477-000-029 for the amount of resources a community spouse may reserve and examples. The reserved amount of resources is calculated from the total resources owned by the couple and must be verified.

26-003.01B Assessment of Resources: Either spouse may request an assessment of resources no earlier than the beginning of a period of continuous residence in a specified living arrangement. If the institutionalized individual has not already met the 30 day continuous stay, then the facility must state that the stay is likely to be at least 30 days, or would have been except for death. The completion of a Home and Community-Based Waiver or PACE assessment meets the criteria for the likely thirty(30)-day period.

A couple is allowed only one assessment. An Assessment of Resources must be completed by the Department, listing all verified countable resources owned jointly or individually by the couple in the month the spouse entered the specified living arrangement. If a transfer or sale of resources occurred during the month the spouse entered the specified living arrangement, then the Assessment of Resources must list all countable resources owned jointly or individually by the couple on the day the spouse entered the specified living arrangement. The couple is allowed resource exclusions listed at 477 NAC 23-001.06 and 477 23-001.06A.

Ownership of the home, one automobile, and all essential property (business property and \$6,000 equity in non-business property used to produce goods for home consumption) may be transferred to the community spouse. Other resources transferred to the community spouse are limited to that spouse's protected resource amount. The alternate care spouse is not eligible for Medicaid if resources in excess of the protected amount have been transferred.

If the community spouse transfers away any resource for less than fair market value, it is a deprivation of resources. The couple or its representative has the responsibility to verify all resources.

26-003.01C Appeal of Assessment: The Assessment of Resources notifies the couple that they may appeal the assessment. The couple may appeal:

1. The value assigned to the resource(s); and
2. The amount reserved for the community spouse.

If the couple shows that the community spouse requires more than the limit, s/he may be allowed to reserve more. In order to appeal, the alternate care spouse must apply for Medicaid, even if s/he has excess resources.

Note: Income from the institutionalized spouse must first be used before additional reserved resources for the community spouse may be considered.

26-003.01D Treatment of Resources Not Included on Assessment: Because the resource assessment is completed only once, the total value of countable resources that are owned by either or both spouses and that are acquired, discovered, or lose their exclusion after completion of the assessment and before the designation are considered available resources and cannot be used to increase the community spouse's resource allowance calculated at the time of the assessment. Examples of resources that may lose their exclusion are the home if the community spouse no longer resides in it or business property in which the community spouse is no longer actively engaged in operating.

26-003.01E Continued Validity of Assessment: The Assessment of Resources remains valid as long as the alternate care spouse does not return to the home without waiver services (even if s/he moves from one specified living arrangement to another). If the alternate care spouse returns home without waiver services, the Assessment of Resources becomes invalid. If the alternate care spouse returns to a specified living arrangement, the original Assessment of Resources is again valid.

26-003.02 Designation of Resources:

26-003.02A Designation of Resources: When the spouse in the specified living arrangement is eligible for Medicaid, a Designation of Resources must be completed. The Designation of Resources lists the amount of resources retained by each spouse. All resources must be re-verified.

26-003.02B Transfer of Ownership: Once it has been determined that the alternate care spouse is otherwise eligible, the case is approved without waiting for completion of the transfer. The couple must complete the transfer within 90 days, otherwise the case is closed. Transfers of countable resources from the alternate care spouse to the community spouse are not considered a deprivation of resources as long as the amount transferred to the community spouse, when added to his/her own resources, does not exceed the amount the community spouse is allowed to reserve as calculated at the time of assessment.

The alternate care spouse may be eligible in the retroactive months if the couple's resources did not exceed the allowable limit plus the amount reserved for the community spouse, even if the couple has not completed a Designation of Resources or necessary transfers of ownership. Excluded resources transferred solely to the community spouse are not a deprivation of resources. If the community spouse disposes of a resource for less than fair market value, it is considered deprivation of a resource.

26-003.02C Treatment of Resources Not Included on Designation: Resources that are acquired or that lose their exclusion after a Designation of Resources is signed are counted as follows:

1. A resource in the name of the alternate care spouse is considered his/hers;
2. A resource in the name of the community spouse is considered his/hers; or
3. A resource that is jointly owned is divided between the spouses.

Examples of resources that may lose their exclusion are the home when the community spouse no longer resides in it or business property in which the community spouse is no longer actively engaged in operating.

The alternate care spouse may transfer a resource that is in his/her name or his/her share of a jointly owned resource to the community spouse if the amount of resources combined with the community spouse's other resources does not exceed the reserved amount calculated at the time of assessment. This may occur if the community spouse has had to use some of the assets reserved at the time of the assessment. It allows the alternate care spouse to transfer resources back to the community spouse so that the community spouse may maintain the reserved amount on the Assessment of Resources.

The alternate care spouse must provide a written statement of his/her intent to transfer the resource. The alternate care spouse is allowed 90 days from the date of report of the resource to complete the transfer.

26-003.02D Assigning Support Rights: If the couple has resources that exceed the allowable amount and refuse to spend down, which prevents Medicaid eligibility for the alternate care spouse, the Department has the legal right to bring support proceedings against the community spouse.

26-003.02E Continued Validity of the Designation: The Designation of Resources remains valid even if either spouse enters a different specified living arrangement. If the couple lives together in the home without eligibility for waiver services, the designation becomes invalid. Spouse-for-spouse responsibility again applies.

If the alternate care spouse later moves out of the home or becomes eligible for waiver services, the original designation again becomes valid and the alternate care spouse is allowed a resource level for one. If the community spouse applies for Medicaid, s/he must reduce his/her designated resources to the maximum allowable for

1. One, if the couple is not in the home together or in the home with eligibility for PACE or waiver services; or
2. Two, if the couple is in the home and ineligible for PACE or waiver services.

26-003.03 Maximum Available Resource Levels For SIMP: The established maximum for available resources that a client may own and still be considered eligible for Medicaid, according to unit size, are as follows:

1. One member unit - client only: \$4,000 if a couple has a valid Designation of Resources and
 - a. There is an eligible spouse and an ineligible spouse, the resource level for the eligible spouse is \$4,000; or
 - b. If the ineligible spouse later becomes eligible, each spouse is allowed \$4,000.
2. Two member unit: \$6,000
 - a. Client and eligible spouse;
 - b. Client and ineligible spouse; or
 - c. Client and ineligible spouse who have designated resources but the client returns home or is no longer eligible for waiver services.

26-004 INCOME TREATMENT AND BUDGETING

26-004.01 SIMP Budgeting: A SIMP budget is required for an eligible spouse in a specified living arrangement and an ineligible spouse in the community.

1. The SIMP budget is used to calculate the amount of income (if any) to be allocated from the eligible spouse to the ineligible spouse and/or family members.
2. The SIMP budget is used to calculate eligibility for Medicaid only or Medicaid with a share of cost for the eligible spouse.

The community spouse or other family member shall not be on Medicaid if s/he is included in this budgeting procedure. S/he may be eligible in his/her own right, but may choose not to apply if this is to his/her benefit.

See 25-001.04D for Computation of Net Income.

26-004.02 SIMP Budgeting Effective and End Dates

SIMP budgeting procedures apply beginning with the month an eligible spouse enters a specified living arrangement (even if it is a partial month) and cease with the first full month the alternate care spouse is no longer in a specified living arrangement. An Assessment

and Designation of Resources shall be completed (see 477 NAC 26-003.01B and 26-003.01F).

If the spouse no longer meets the definition of a community spouse, SIMP budgeting ends the first month possible.

26-004.03 Budgeting the Alternate Care Spouse: The following amounts are deducted from the alternate care spouse's net earned and unearned income in computing the alternate care spouse's budget:

1. Medically Needy Income Level or FPL (see Appendix 477-000-012);
2. Guardian/conservator fee up to \$10;
3. Amount allocated to the community spouse and/or family member(s); and
4. Medicare premium and/or health insurance premium. If the couple has a combined health insurance premium, one-half of the amount is allowed on the client's budget.

This is calculated on the SIMP budget.

26-004.04 Income When the Eligible Spouse Is in a Specified Living Arrangement and the Ineligible Spouse and/or Family Member(s) Is in the Community

26-004.04A Income Provisions: All income is included in the budget calculation, including Supplemental Security Income (SSI) and income of minors.

All income must be verified.

26-004.04B Allocation of Income: When computing the Medicaid budget for an alternate care spouse in a specified living arrangement, only his/her income (SIMP budget) is considered. Income of a community spouse is not considered available to the alternate care spouse. Some of the income of the alternate care spouse may be allocated to the community spouse and/or family members to bring their income up to a minimum monthly amount. The amount that may be allocated is computed on the SIMP budget.

If the community spouse does not provide verification of his/her income, the SIMP budget is not used. A Medicaid budget would be used for the client and no allocation of the client's income would be made to the community spouse.

When allocated allowances are not made available to the community spouse, these allowances shall not be deducted from the client's income from the SIMP budget. The allowances for other family members shall be deducted, even if the institutionalized spouse does not make these allowances available to the family members.

26-004.04C Determining Ownership of Income: All income must be verified to determine the amount of the income and the individual in whose name the income is received.

1. If payment is made in the name of both spouses, one-half is considered available to each spouse.
2. Income shall be divided by the number of payees if payment is made in the name of one or both spouses and a third party.
3. Only the spouse's proportionate share is considered available to him/her.
4. If income is paid to one spouse and a third party but the verification reveals that the income is intended for both spouses, both spouses shall be included in the division to determine the proportionate share.

If income does not specify either spouse, one-half of the amount is considered available to each spouse.

The client may appeal the assumption of ownership of income.

26-004.04D Determining the Spousal Maintenance Need Standard:

1. The percentage of the Federal Poverty Level (FPL) shall be determined (see Appendix 477-000-012); and
2. Added to excess shelter costs, if any (see Appendix 477-000-012 for the shelter allowance resource limit).

Excess shelter cost is the amount by which the rent or cost of home ownership (e.g., mortgage, taxes, insurance, or cooperative/condominium maintenance fees) plus a utility standard exceed the prescribed shelter limit.

The utility standard shall be allowed even if utilities are included in the rent.

Shelter costs shall not be prorated even if someone lives with the community spouse.

26-004.04E Determining a Family Member's Maintenance Need Standard:

1. The percentage of the FPL shall be determined (see Appendix 477-000-012);
2. The family member's gross income subtracted; and
Note: SSI is included as income.
3. The result shall be divided by three.

A separate calculation must be completed for each family member. This is calculated on the SIMP budget.

26-004.04F Determining the Allocated Maintenance Allowance: In determining the amount of income from the alternate care spouse that may be allocated to the community spouse and other family members, the following shall be completed:

1. The family maintenance need standard shall be determined;
2. The spousal maintenance need standard shall be added; and
3. The gross income of the community spouse shall be subtracted. SSI is included. If the community spouse has self-employment income, adjusted gross income shall be used.

The spousal maintenance allowance must not exceed the maximum in Appendix 477-000-028. If a court has ordered the client to make support payments to the spouse in excess of the maximum, the court order takes precedence over the maximum.

The couple may appeal the allocated maintenance allowance. To support an increase in the maintenance allowance, either spouse must establish that the community spouse needs income above the maintenance allowance because of exceptional circumstances resulting in significant financial duress. If the couple wins their appeal, the community spouse may reserve more than the maximum maintenance allowance.

This is calculated on the SIMP budget.