

**I-1660 SPOUSAL IMPOVERISHMENT RESOURCE PROVISIONS (LTC/HCBS)****I-1661 GENERAL INFORMATION & DEFINITIONS**

This policy allows certain LTC/HCBS applicants/beneficiaries and individuals residing in medical institutions for a continuous period of institutionalization (at least 30 consecutive days), to allocate resources:

- To a community spouse who lives in a non-institutionalized living arrangement, and
- For the community spouse's own use and maintenance.

**Exception:**

The spousal impoverishment provisions do not apply to individuals residing in a Group Home.

Verify that the marriage is legal.

Apply this policy to an LTC/HCBS institutionalized individual who has a community spouse and who:

- Meets all other eligibility requirements, and
- Entered LTC/HCBS on or after September 30, 1989.

The maximum amount of the couple's combined countable resources that may be allocated to the community spouse can be found at [Table Z-800 Spousal Impoverishment Maintenance Needs and Resource Standards](#).

**Exception:**

An increase in the spouse's resource allocation may be granted to generate additional income if the available income is below the spousal allowance.

Before a requested increase in the community spouse resource allocation can be granted, all available income of the institutionalized spouse must be allocated or

attributed to the community spouse.

**Example:**

Community spouse's monthly income is \$500 below the spousal maintenance needs. Before the community spouse would be allowed to allocate additional assets to income-producing assets, the institutionalized spouse would have to transfer as much of the \$500 from their income as possible to the community spouse.

Referrals for increases in the community spouse's resource allowance must be sent to State Office Eligibility Policy section for a decision.

When a court order of support exists which stipulates that an amount greater than the Spousal Resource Standard be allocated to the community spouse for his use and maintenance, the court-ordered amount shall be used as the Spousal Resource Standard.

### **Allocated Resources**

The amount of resources that may be transferred from the combined countable couple resources to the community spouse or to another person for the benefit of the community spouse, in order to be disregarded in the determination of continuing eligibility for the institutionalized spouse.

### **Community Spouse**

The LTC/HCBS institutionalized individual's legal spouse who lives in a non-institutionalized setting. A person receiving HCBS is considered institutionalized for Medicaid purposes.

### **New Admission**

A first time admission or a readmission after an absence of 30 days or more from an LTC/HCBS institutionalized setting.

**Note:**

Hospitalization is not considered an absence for purposes of this definition.

**Separate Resources of Community Spouse**

Resources acquired by the community spouse outside of marriage either by prior ownership or inheritance and which are held separately and are identifiable as owned solely by the community spouse.

**Separate Resources of LTC/HCBS Institutionalized Individuals**

Resources acquired by the LTC/HCBS institutionalized spouse outside of marriage either by prior ownership or inheritance and which are held separately and are identifiable as owned solely by the institutionalized spouse.

**Shared Resources**

Resources acquired during the marriage including community assets, which may be held in the name of one or both members of the couple.

**Spousal Resource Standard**

The maximum allowable amount of a couple's combined countable resources which may be allocated for the use and maintenance of the community spouse. Refer to [Table Z-800 Spousal Impoverishment Maintenance Needs and Resource Standards](#).

**I-1663****SPOUSAL RESOURCES ASSESSMENT**

An assessment of the couple's resources, shall be completed for the beginning of each continuous period of institutionalization:

- At the request of an institutionalized individual, the community spouse, or the authorized representative of either spouse whether or not Medicaid application is made, or

- At the time a Medicaid application is made if not previously completed at the time of admission to an LTC/HCBS institution.

**Note:**

If an application for Medicaid is not made at the time of admission to the institution and the assessment is not completed at the time of admission, the assessment at the time of the Medicaid application shall be based on resources at the beginning of the most recent continuous period of institutionalization.

When an assessment is done prior to application, compare the countable resources at application to the resources of the institutionalized spouse as determined in the resource assessment. Refer to **I-1664, Resources Assessment**. Evaluate any significant difference as a transfer of resources for less than Fair Market Value (FMV). Refer to [I-1670, Transfer of Resources for Less than FMV](#).

**Note:**

When a couple requests an assessment and no application, an application form is not required. Verify ownership interest and current value of resources. If necessary documentation and/or verification is not provided timely, notify the couple in writing that the assessment cannot be completed.

The couple who is not applying has no right to appeal a resource assessment decision. As a part of Patient Rights, nursing homes are required to advise all new admissions of their right to request an assessment of couple resources. Although it is not required that either spouse apply for assistance, they shall be encouraged to apply to protect the date of application and to provide appeal rights. Advise the couple that they will also be required to meet all other applicable eligibility factors.

**I-1664****RESOURCE ASSESSMENT PROCEDURES**

Complete a resource assessment for the couple as of the first day of the month of the most recent new admission to the LTC/HCBS facility as follows:

\*\*Determine the separate assets of the community spouse, separate

assets of the institutionalized spouse and shared assets of the couple. Combined countable couple assets which are considered to be the total assets of the institutionalized spouse include separate resources of the community spouse, separate resources of the institutionalized spouse and shared assets of the couple. Refer to Section I of the [LTC Spousal Resources Assessment/Worksheet \(Form 4 LTC/SP-R\)](#)

- Step 1. Determine the total countable separate resources of the community spouse. Do not count shared resources.
- Step 2. Determine the total countable separate resources of the institutionalized spouse. Do not count shared resources.
- Step 3. Determine the total countable shared resources of the couple. Do not include separate resources.
- Step 4. Combine sums from Step 1, Step 2, and Step 3. The total is considered countable couple assets.
- Step 5. \*\*Subtract the appropriate spousal impoverishment maximum protected resource amount from countable couple resources to determine the countable resources of the LTC/HCBS institutionalized spouse. Refer to [Z-800 Spousal Impoverishment Maintenance Needs and Resource Standards](#).

Compare the institutionalized spouse's countable resources to the SSI individual resource limit.

When remaining resources are equal to or below the SSI individual resource limit, the institutionalized spouse is eligible. When remaining resources are above the SSI individual resource limit, the individual is not eligible.

If the institutionalized spouse is ineligible the couple shall be notified of the decision and the right to appeal.

If the institutionalized spouse is eligible based on the provisions for allocating resources to the community spouse, inform the couple that resources allocated to the community spouse must be transferred to the community spouse to remain eligible and that they will be allowed

until the first renewal to effect the transfer.

Obtain the signatures of both members of the couple acknowledging that they have been informed of their right to transfer allocated resources to the community spouse without penalty until the first renewal.

**Note:**

One month, open and closed certifications do not have renewal dates. The transfer to the community spouse shall be completed prior to any subsequent certifications.

The institutionalized spouse may remain eligible under the allocation of resources provisions until the first renewal to allow reasonable time for the couple to complete the actual transfer of assets to the community spouse. Couples should be encouraged to effect such transfer at the earliest possible date. Documentation of the transfer of assets to the community spouse shall be maintained in the case record.

Allocated resources transferred to the community spouse are not subject to the Transfer of Assets provisions.

Amounts in excess of the allocated resource transferred to the community spouse by the institutionalized spouse or by the community spouse themselves shall be considered under the transfer provisions.

Prior to any actual transfer, inform the couple that resources transferred to the community spouse will make at least one spouse ineligible for Medicaid if the community spouse applies for assistance.

**Note:**

If ineligibility is established based on income information on the application form:

- Complete the assessment, and
- Advise the couple that even if the resources are spent they are currently ineligible based on income. There are no provisions for disposing of income to become eligible.

Determine total countable resources within 45 days of the request for assessment. The determination shall be made within 10 days of

receipt of the requested documentation or verification, if the assessment is delayed beyond 45 days because of:

- Non-receipt of documentation, or
- Failure of the requesting couple to provide needed information.

Document in detail efforts to complete assessments timely.

Provide a copy of the assessment work sheet to the LTC/HCBS institutionalized individual and his spouse. The work sheet indicates:

- The couple's total countable resources,
- The amount that can be allocated to the community spouse, and
- The amount that will be counted for the LTC/HCBS institutionalized individual.

**Note:**

Spousal impoverishment provisions do not apply beginning the first full calendar month following changes that result in an institutionalized spouse no longer being institutionalized or no longer having a community spouse.

Determine countable resources for each individual member of the couple. Refer to [I-1630, Need - SSI-Related Resources](#).

## **I-1665      TRANSFER TO COMMUNITY SPOUSE**

If resource eligibility depends on the transfer of allocated resources, and the couple intends to transfer resources:

- Complete [Form 4 LTC/SP-R1](#) and obtain the signatures of both members of the couple acknowledging that they have been informed of their right to transfer the allocated resources to the community spouse, and
- Inform the couple:

- That allocated resources may be transferred to the community spouse without penalty, and
- That for ongoing certifications the couple will be allowed until the first renewal to effect the transfer of allocated resources.

**Note:**

One month, open and closed certifications do not have renewal dates. The transfer to the community spouse shall be completed prior to any subsequent certifications.

The institutionalized spouse is resource eligible if the couple signs acknowledgements of spousal transfer policy ([Form 4 LTC/SP-R1](#)).

Determine resource eligibility for the applicant/beneficiary at the first renewal of eligibility or subsequent application for assistance. Include all countable resources retained in the name of the institutionalized spouse. For ongoing certifications if allocated resources were not transferred, ineligibility is effective the month of renewal and an advance notice is required prior to any termination of coverage.

**Note:**

For applicants who were certified for a one month, open and closed certification, they are not eligible until resources are transferred. Report any ineligible payments.

Additional resources acquired after certification by the institutionalized spouse may be transferred to the community spouse to the extent that the maximum has not already been transferred.

**Example:**

Mrs. Jones entered a nursing facility 1-1-2005, Spousal Resource Standard \$95,100.00 \*\* for institutionalized spouse. Mr. Jones had \$20,000.00 in resources, Mrs. Jones had \$20,000.00 in resources, and they had \$10,000.00 joint resources. Mrs. Jones transferred her resources and her share of the joint resources to Mr. Jones which gave him a total of \$50,000.00 in resources. Two years later, Mrs. Jones receives an inheritance of \$20,000.00 which is over the resource allowance for an institutionalized individual. (The inheritance is counted as income in the month it is received.) In the same month she received the inheritance she transferred it to Mr.



Jones. The transfer is allowed as long as the amount is below the maximum resource allowance at the time Mrs. Jones entered the facility.  $\$50,000.00 + \$20,000.00 = \$70,000.00$  which is below  $\$95,100.00$ .

An increase in or additional resources acquired by the community spouse after certification has no effect on resource eligibility for the institutionalized spouse.

**Example:**

Mrs. Jones enters a LTC facility. The spousal allocation of resources is done and the resources transferred to Mr. Jones before the first renewal. Mr. Jones retains the allocated resources and uses them appropriately to meet his needs. Three years later, Mr. Jones is involved in an accident and receives a very large settlement. Even though Mr. Jones might now have resources above the spousal resource amount, we would not recalculate the spousal assessment.

**Request for Extension**

If for any reason the applicant/beneficiary has not been able to complete the transfer by renewal or new application, email \*\* documentation of the situation, including the reason that the resources have not been transferred to the [Medicaid Eligibility Policy Unit](#) \*\*.

Requests for each extension must include:

- An itemization of resources to be transferred,
- The actions taken to effect the transfer, and
- The reasons for which the extension is needed.

If the request for an extension is not approved, the beneficiary is ineligible retroactive to the date the extension was denied. Report any ineligible payments.

**I-1666**

**TRANSFER OF RESOURCES BY COMMUNITY SPOUSE**

The community spouse must retain allocated resources or use them to

meet his needs or the needs of the institutionalized spouse.

Transfer of allocated resources by the community spouse for less than FMV will be counted as though the institutionalized spouse had made the transfer. \*\*

Transfer by the community spouse of his/her separate resources for less than FMV will be counted as though the institutionalized spouse had made the transfer. Refer to [I-1670, Transfer of Resources For Less Than FMV](#).

Consider transfer of resources if countable resources retained by the institutionalized spouse are transferred:

- By the institutionalized spouse to the community spouse, or
- By the community spouse.

Refer to [I-1670, Transfer of Resources for Less than FMV](#).

#### **I-1667 REVISIONS TO ALLOCATED RESOURCES**

Revise allocated resource amounts only if:

- An error was made in the initial determination, or
- Inaccurate information was provided at the initial determination.

#### **I-1668 UNDUE HARDSHIP ([Refer to Section H-860](#))**

#### **I-1669 NOTIFICATION**

Notify the applicant/beneficiary, community spouse, and responsible party in writing:

- Of the value of resources allocated to the community spouse,
- That the allocated resources must be transferred to the

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community spouse by the first ***renewal*** for the LTC/HCBS institutionalized spouse to remain eligible, and

- That the allocated resources from a one month certification must be transferred to the community spouse prior to any subsequent certifications.

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