

I. PURPOSE

This Administrative Directive (ADM) advises social services districts of the elimination of the option to authorize Medicaid pending the liquidation of excess non-liquid resources and changes in the treatment of a homestead.

II. BACKGROUND

A. Conditional Eligibility

Previously, 18 NYCRR 360-4.4(e) provided social services districts with the option to authorize Medicaid for an applicant/recipient (A/R) pending liquidation of excess non-liquid resources (conditional eligibility). Social Services districts generally utilized this option when the homestead of an institutionalized person was no longer exempt as a resource.

However, Federal regulations at 42 CFR 435.845 (b) provide that, in determining the amount of an individual's resources for Medicaid eligibility, "States must count amounts of resources that otherwise would not be counted under the conditional eligibility provisions of the SSI or AFDC programs."

B. Homestead Exemption

Previously, 18 NYCRR 360-4.7(a)(1) provided that a homestead lost its exempt status if the owner was in a medical facility in permanent absence status as defined in Section 360-1.4(k), and no spouse, child under 21 years of age, certified blind or certified disabled child, or other dependent relative was living in the home.

As stated in GIS 93 MA/024, the adverse court decision in Anna W. v. Bane requires the State to conform to the policy used by the Supplemental Security Income (SSI) program regarding the exemption of the homestead of an SSI-related Medicaid A/R. Under the SSI program, the homestead is not a countable resource as long as the A/R, having left the home, indicates intent to return home (regardless of the individual's actual ability to return home).

State regulations have been revised to eliminate the option to provide conditional eligibility pending liquidation of excess non-liquid resources, and to continue to exempt the homestead of an SSI-related Medicaid A/R where there is an expressed intent to return home.

III. PROGRAM IMPLICATIONS

A. Elimination of Conditional Eligibility

1. Excess Resources

Unless incurred medical expenses reduce excess resources at or below the allowable resource standard, Medicaid cannot be authorized for any case with excess resources. (See 91 ADM-17 "Treatment of Medical Assistance Applications When There are Excess Resources and Outstanding Medical Bills" for excess resource spenddown policies and procedures.)

2. Available Resources

All resources owned by a Medicaid A/R are considered to be available unless there is a legal impediment that precludes liquidation. If there is a legal impediment to the disposal of a resource, the resource is not counted in determining resource eligibility until the legal impediment no longer exists. (See page 9.)

3. Mortgages

Mortgage agreements are assumed to be negotiable unless the A/R presents convincing evidence of a legal impediment to transferring ownership.

If there is no legal impediment to transferring the mortgage, the value of the mortgage is an available resource. The debtor's payments against the principal are considered the conversion of part of this resource, and thus are not counted as income in determining eligibility. The debtor's payments of interest are counted as unearned income. The value of the mortgage is the outstanding principal balance, unless the A/R documents that the current market value of the mortgage is less by submitting an evaluation from someone regularly engaged in the business of making such evaluations, such as a bank or other financial institution, licensed private investor or real estate broker.

If there is a legal impediment to transferring the mortgage, the value of the mortgage is not counted as an available resource. However, the debtor's payments of both principal and interest are counted as unearned income.

If a mortgage is sold by the A/R for less than fair market value, the sale should be reviewed as a potential prohibited transfer.

B. Homestead Exemption

1. Intent to Return to the Homestead

Regulation 18 NYCRR 360-1.4(f) currently reads as follows: "Homestead means the primary residence occupied by a medical assistance applicant/recipient and/or members of his/her family. Family members may include the applicant's/recipient's spouse, minor children, certified blind or certified disabled children, and other dependent relatives. The homestead includes the home, land and integral parts such as garages and outbuildings. The homestead may be a condominium, cooperative apartment or mobile home. Vacation homes, summer homes or cabins are not considered to be homesteads."

Regulation 18 NYCRR 360-4.7(a)(1) has been revised to provide that even if the homestead is not occupied by a family member listed above, the homestead remains exempt as long as the SSI-related Medicaid A/R, having left the homestead, expresses an intent to return home. Medical evidence is no longer relevant in determining the exempt status of a homestead.

The expression of intent to return home only affects the exempt status of a homestead. "Intent to return" has no impact on chronic care budgeting. An individual in a nursing facility is presumed to be permanently absent unless adequate medical evidence shows that the individual is expected to return home. (See 89 ADM-47 "Treatment of Income and Resources for Institutionalized Spouses/Individuals and Legally Responsible Relatives.")

The expression of intent to return home has no impact on the requirement to impose a lien. Social services districts are reminded that they must impose a lien on the real property of an institutionalized individual who is not reasonably expected to return home, unless the real property is the homestead and is occupied by a spouse, minor or certified blind or certified disabled child, or a sibling with equity interest who has lived in the home for one year prior to the A/R's admission to a medical facility. If adequate medical evidence documents that an individual is reasonably expected to return home, no lien can be imposed. If the individual is discharged from the medical institution and returns home, the lien must be removed. (See 02 OMM/ADM-3, "Medicaid Liens and Recoveries.")

2. Certain Relative(s) Resides in the Homestead

If an SSI-related Medicaid A/R has no intent to return, the homestead remains an exempt resource as long as a spouse, minor or certified blind or certified disabled child, or dependent relative continues to reside in the home. Dependent

relative means any of the following relatives of the A/R, provided that over 50 percent of the maintenance needs of the relative are met by the A/R: a child, stepchild, grandchild; parent, stepparent, grandparent; aunt, uncle, niece, nephew; brother, sister, stepbrother, stepsister, half-brother, half-sister; cousin; or in-law.

3. Opportunity to Transfer

The homestead is a countable resource when an SSI-related Medicaid A/R has no intent to return home and the home is not occupied by a relative described in 2. above. When the homestead of an institutionalized A/R is a countable resource, the social services district must provide the institutionalized A/R with an opportunity to transfer the home to a:

- sibling with equity interest who lived in the home for at least one year prior to the A/R's admission to a medical facility
- adult child who resided in the home for at least two years immediately before the date the individual became institutionalized, and provided care which permitted the individual to reside at home rather than in an institution or facility.

C. Life Estate Interest

For the purpose of determining countable resources, a life estate is not considered to be an available resource. Therefore, the value of a life estate does not impact resource eligibility, and no lien may be imposed on a life estate. However, transfer policies apply to a life estate. (See 96 ADM-8, "OBRA '93 Provisions on Transfers and Trusts," for detailed instructions regarding life estates.)

D. Calculation of Excess Resources

The equity value of real property (the fair market value less any legal encumbrances) is added to any other countable resources to determine the amount of excess resources.

The applicant is responsible for providing acceptable documentation of the fair market value of the property. In order to find the applicant eligible for Medicaid (or eligible subject to spending down a specified amount of excess resources), the social services district must have: an appraisal; the listed asking price accompanied by a market analysis or appraisal, if any; or, if neither is available, a full value tax assessment. However, if it is clear, based on the approximate value of the property, that the

applicant is ineligible due to excess resources, the district can rely on a statement from the applicant as to the property's value in order to make that determination.

When the property is sold, the net proceeds of the sale are counted as a resource. The costs associated with the sale of such an asset (e.g., advertising costs, commissions, closing costs, taxes, attorney's fees, repairs in connection with the sale of the property, etc.) will be offset against the proceeds of the sale.

IV. REQUIRED ACTION

A. Elimination of Conditional Eligibility

As stated in GIS 96 MA/036, for Medicaid cases active or pending on or after October 9, 1996, social services districts cannot authorize conditional eligibility for A/Rs pending liquidation of excess non-liquid resources, beginning with the December 1, 1996 budget.

Note: Medicaid must continue to be provided to a recipient who is receiving conditional Supplemental Security Income (SSI) benefits, under an agreement with the Social Security Administration to dispose of resources that exceed the SSI dollar limits on resources.

1. New Cases

Conditional eligibility cannot be authorized for Medicaid applications pending on or after October 9, 1996.

2. Undercare Cases

Any undercare case active on or after October 9, 1996 which was authorized for Medicaid pending the liquidation of excess non-liquid resources must be reviewed for continued resource eligibility at the next client contact, but no later than at recertification.

At the time of this resource review, the social services district must determine the current equity value of the non-liquid resource. The district must subtract the amount that the recipient will have to repay to the district, pursuant to the assignment of proceeds, for the period beginning with the Medicaid authorization and ending at the time of the review. If after this calculation the recipient continues to have excess resources, the social services district must provide adequate and timely notice and discontinue the case.

In addition, social services districts are reminded to provide for recovery of the amount expended by Medicaid from the date of authorization through the date of the discontinuance. In the event that a recipient requests a fair hearing with aid

continuing, if the district is upheld, the district may also seek to recover Medicaid paid on behalf of the recipient during the aid continuing period.

3. Reapplications

If an otherwise eligible individual who was denied Medicaid due to excess resources incurs medical bills that are at least equal to the amount of excess resources, Medicaid will be authorized for the individual beginning with the third month prior to reapplication, or the month in which the excess resources are spent down, whichever is later.

In some cases, although an individual will incur medical bills equal to the amount of the excess non-liquid resources that was calculated based on the appraisal, the actual net proceeds from the liquidation of the property will be less than the incurred medical bills. If the difference between the amount of excess resources that was calculated based on the appraisal and the amount of net proceeds is not the result of a prohibited transfer, districts must use the remaining outstanding viable medical bills to reduce the individual's excess income or Net Available Monthly Income (NAMI), beginning with the first month of Medicaid authorization.

B. Homestead Exemption

1. Intent to Return Home

Effective October 22, 1993, as long as an SSI-related Medicaid A/R expresses an intent to return home, the social services district must exempt the homestead as a countable resource. A written statement or documentation in the case record by the eligibility worker verifying that the individual stated his or her intent to the worker is sufficient documentation.

If the A/R is unable to state the intent to return home at the time of application, a past statement of intent is sufficient. If the A/R is able to state the intent to return home, a current statement is necessary.

If the A/R is incapable of stating his or her intent, and no past statement of intent exists, the A/R's authorized representative, power of attorney, health care proxy, or guardian may state the A/R's intent to return home. Authorized representative means the individual the applicant designates to represent him or her in the application process. Health care proxy means the individual the applicant legally authorizes to make decisions regarding medical treatment if the applicant becomes temporarily or permanently incapable of communicating his or her own care or treatment wishes.

2. Continued Intent to Return Home

The A/R's intent to return home must be verified and documented at each recertification, except that the last documented statement of intent will be sufficient in situations where the A/R is no longer capable of stating his or her intent.

3. Non-Homestead Property

Social services districts must not apply the intent to return policy to property that did not meet the definition of a homestead prior to the time the individual left the property. For example, the intent to return policy does not apply if the individual did not consider the property to be his or her primary residence at the time the individual left the property, or the individual never resided in the property.

4. Homestead Occupied by Certain Relatives

Even if an individual does not intend to return to the homestead, the social services district must exempt the homestead as long as a spouse, minor or certified blind or certified disabled child, or dependent relative continues to live there.

5. Opportunity to Transfer

When the homestead of an institutionalized A/R is a countable resource, the social services district must provide the institutionalized A/R with an opportunity to transfer the home to a:

- sibling with equity interest who lived in the home for at least one year prior to the A/R's admission to a medical facility
- adult child who resided in the home for at least two years immediately before the date the individual became institutionalized, and provided care which permitted the individual to reside at home rather than in an institution or facility.

If the institutionalized individual elects to transfer the home, the social services district must document the intent to transfer and allow a reasonable timeframe to accomplish the transfer (90 days, or longer if necessary due to difficulty or delay beyond the control of the institutionalized individual).

6. No Home Maintenance Deduction

There is no deduction from a permanently institutionalized individual's income for home maintenance expenses.

7. Non-SSI-Related Medicaid A/Rs

There is no change in the treatment of a homestead for medically needy ADC-related A/Rs. A homestead that is essential and appropriate to the needs of the household is exempt as a resource. A homestead that is essential and appropriate to the needs of the household is also exempt for individuals in the Family Health Plus, Low Income Families (LIF) and Single Individuals/Childless Couples (S/CC) categories.

8. SSI-Related Homestead Chart

The attachment to this ADM is a chart that details the treatment of a homestead for SSI-related institutionalized individuals. It indicates the effects of "intent to return" and certain relatives residing in the home on the resource status of a homestead and whether a lien would be imposed.

C. Life Estates

Social services districts must follow the life estate policy set forth in 96 ADM-8.

D. Calculating Excess Resources

1. Verification of Equity Value

The A/R is responsible for providing an appraisal or the listed asking price of non-liquid resources. The equity value (fair market value less any legal encumbrances) is added to any other countable resources to determine the amount of excess resources.

2. Incurred Medical Bills

If incurred medical bills do not at least equal the amount of excess resources, the individual is not eligible for Medicaid.

If an otherwise eligible A/R has incurred medical bills which equal or exceed the amount of excess resources, the non-liquid property does not have to be sold before Medicaid can be authorized.

For an otherwise eligible A/R, once incurred medical bills are at least equal to the amount of excess resources, Medicaid can be authorized for up to three months prior to the month of application or reapplication, or beginning with the month in which the excess resources are spent down, whichever is later. The excess income amount or NAMI will be reduced to account for older outstanding medical bills that Medicaid cannot cover, and which are not offset by any amount of excess resources. Applicants who are denied due to excess resources must be advised to reapply when medical bills are anticipated to equal or exceed the amount of excess resources.

3. Liquidation Costs

Once non-liquid property is sold, the selling price less any costs associated with the sale (e.g., advertising costs, commissions, closing costs, taxes, attorney's fees and repairs in connection with the sale of the property) is a countable resource.

4. Legal Impediment

All non-exempt resources are considered available and applied against the appropriate resource standard, unless there is a legal impediment that precludes the liquidation of the resource. A legal impediment exists when an A/R is legally prohibited from, or lacks the authority to, liquidate the asset. For example, a legal impediment exists when an A/R needs the consent of a co-owner of a jointly owned asset in order to sell the asset, and the co-owner refuses to give consent. If such consent is given, the asset is considered an available resource beginning with the month following the month of consent. However, if the co-owner agrees to purchase the A/R's share of the property, the asset is considered an available resource. (For rules governing treatment of jointly owned assets, refer to 96 ADM-8, "OBRA '93 Provisions on Transfers and Trusts.")

Please note that even when a legal impediment precludes the liquidation of a permanently institutionalized individual's interest in non-exempt real property, a lien must be imposed on the A/R's interest in the property. However, no lien may be imposed on non-exempt real property if the property is the institutionalized individual's former primary residence, and is occupied by a sibling with equity interest who has resided in the home for at least one year prior to the A/R's admission to a medical facility.

In instances where a guardianship petition has been filed, the resources of the A/R are not considered available until a guardian has been appointed, or the guardianship proceeding has been otherwise resolved. Once the guardian is appointed,

the resources of the A/R are considered available, and may result in ineligibility until incurred medical bills exceed the amount of excess resources, or until the resources are reduced at or below the allowable resource standard.

5. Mortgage

The A/R is responsible for providing documentation of the current market value of a negotiable mortgage. Documentation can be obtained from anyone regularly engaged in the business of making such evaluations (e.g., banks or other financial institutions, licensed private investors or real estate brokers). The estimate must show the name, title, and address of the source.

V. NOTICE REQUIREMENTS

The "Informational Notice to Institutionalized Individuals with Real Property" (Attachment I of 02 OMM/ADM-3, "Medicaid Liens and Recoveries") and the LDSS-4466 (Rev. 12/06/01), "Notice of Intent to Impose a Lien on Real Property (Institutionalized Individual)," (Attachment II of 02 OMM/ADM-3, "Medicaid Liens and Recoveries") have been revised to conform to the policy outlined in this ADM.

Social services districts must provide the revised informational notice to all persons requesting such information, and must include the notice with all applications involving an institutionalized person.

Social services districts must provide the LDSS-4466 (Rev. 12/06/01), "Notice of Intent to Impose a Lien on Real Property (Institutionalized Individual)," to the institutionalized individual and retain a file copy whenever a lien is imposed on real property. The case record should document the date a notice was given to the Medicaid recipient.

The informational notice must be reproduced by the social services district until such time as the notice becomes available. This notice may be reproduced on county letterhead. Any other modifications to the notice must be submitted to the following address in accordance with instructions contained in 97 ADM-13, "Procedure for Requesting Approval of Local Equivalent Forms":

Christina Larsen
New York State Department of Health
Office of Medicaid Management
ESP, Corning Tower, Room 2029
Albany, NY 12237

VI. ADDITIONAL INFORMATION

A. Incapacitated Person with Excess Resources

1. Petition for Guardianship

Social services districts are mandated to bring a proceeding for an appointment of a guardian for persons who meet the Protective Services for Adults (PSA) client characteristics as stated in Social Services Law and regulations. Not all incapacitated persons will meet this criteria. As indicated in 90 ADM-40, "PSA: Client Characteristics," in most cases, persons residing in long term residential care facilities do not meet the PSA eligibility criteria since such facilities are responsible for meeting the essential needs of their residents and for providing a safe environment in accordance with applicable laws and regulations. For persons who do not meet the PSA client characteristics but who do meet the legal standard for filing a guardianship petition, a local department of social services may choose to bring a petition on their behalf, but the district is not mandated to do so. As indicated in 93 INF-32, "Article 81 MHL: Response to Inquiries at Regional Meetings and Notice of Technical Amendments," providers of health care, day care, educational or residential services are not completely precluded from serving as guardian. If the district is unwilling to serve as the guardian for a resident of a residential care facility, the court may select the residential care provider if no one else is available.

When an individual is eligible for Medicaid and the appointment of a guardian is necessary in order for the individual to access or receive income or resources, the social services district may (but is not required to) pay for the court evaluator fees and other guardianship expenses from administrative funds, or if the person meets the eligibility criteria for PSA, the costs may be paid as a PSA expense.

2. Treatment of Resources

From the time the petition is filed until the court appoints a guardian, or the guardianship proceeding is otherwise resolved, the resources of the individual are not considered available, and therefore would not result in ineligibility for Medicaid. Once the guardian is appointed, the resources of the individual are considered available and may result in ineligibility until incurred medical expenses are at least equal to the amount of excess resources.

B. Discharge for Nonpayment

A nursing facility may provide a 30-day discharge letter to a resident who cannot pay for care received. However, a nursing facility cannot discharge a resident unless the facility ensures a safe discharge (see Public Health Law Section 415.3(h)(1)(i)(b)).

VII. SYSTEMS IMPLICATIONS

There are no systems implications.

VIII. EFFECTIVE DATE

The provisions of this ADM relating to conditional eligibility are effective November 1, 2002, retroactive to October 9, 1996.

The provisions relating to the treatment of a homestead are effective November 1, 2002, retroactive to October 22, 1993.

Kathryn Kuhmerker, Deputy Commissioner
Office of Medicaid Management

HOMESTEAD
**Resource Status and Placement of Lien for
 Institutionalized SSI-Related Medicaid A/Rs**

INTENT TO RETURN	RESOURCE STATUS	PLACE LIEN ¹
YES, intends to return		
a. Occupied by spouse, minor or certified blind or certified disabled child.	Exempt	No
b. Occupied by a sibling with equity interest who lived in the home for at least 1 year prior to the A/R's admission to a medical facility.	Exempt	No
c. Occupied by a dependent relative other than one described in a. or b. above.	Exempt	Yes
d. Not occupied by relative described in a., b., or c. above.	Exempt	Yes
NO, does not intend to return		
a. Occupied by spouse, minor or certified blind or certified disabled child.	Exempt	No
b. Occupied by a sibling with equity interest who lived in the home for at least 1 year prior to the A/R's admission to a medical facility.	Countable ²	No
c. Occupied by a dependent relative other than one described in a. or b. above.	Exempt	Yes
d. Not occupied by relative described in a., b., or c. above.	Countable	No

¹ If A/R is not reasonably expected to be discharged from the medical institution and return home.

² However, the property is not countable as a resource if: the sibling's name is on the deed and the sibling does not agree to liquidate the property or purchase the A/R's share of the property; **or** the sibling is a dependent relative of the A/R.

Note: In addition to homes, which are countable resources in accordance with the chart above, the equity value of other non-exempt real property is counted toward the Medicaid resource standard. A Medicaid A/R with excess resources is ineligible until incurred medical bills equal or exceed the amount of excess resources.