

# SPOUSAL IMPOVERISHMENT PROTECTIONS UNDER THE WISCONSIN MEDICAL ASSISTANCE PROGRAM FOR 2011

This publication explains the spousal impoverishment prevention provisions of the Wisconsin Medical Assistance program, also known as “MA,” “Medicaid” and “Title 19.” (Medicaid is Title 19 of the Social Security Act.) This brochure is updated three times annually: at the beginning of the year, in the spring and in the fall. The Medical Assistance program is complex and always changing. **This edition explains how these provisions operate as of January 2011.**

Federal and state spousal impoverishment prevention provisions were enacted to protect a spouse at home from becoming poor when his or her spouse is considered “institutionalized,” either because he or she resides in a nursing facility or because he or she receives certain long-term care services in the community. These provisions include asset and income protections that were created both to allow an institutionalized spouse to become eligible for Medical Assistance without depleting all the couple’s financial resources and to enable the community spouse to maintain financial independence during his or her spouse’s institutional care. These important provisions affect any married person who is institutionalized on or after September 30, 1989, with a spouse in the community. Under these rules, a community spouse may retain a significant share of the couple’s marital assets, regardless of title. In addition, a community spouse may be entitled to receive income from the institutionalized spouse on a monthly basis.

## ASSET PROTECTIONS

At the beginning of the first continuous period of institutionalization, the couple's total liquid assets from all sources is determined and added together regardless of title ownership. Wisconsin marital property law does not apply. Also, any "pre-marital agreement" the couple signed has no effect for Medical Assistance purposes. In general, certain resources are considered to be “exempt” and are therefore not counted in the asset assessment. For instance, the couple’s household goods and personal property are exempt, regardless of value. The house that is used as the community spouse’s primary residence is excluded, as long as he or she continues to reside there or as long as either spouse intends to return to it. At least one vehicle owned by the couple is exempt, regardless of value or purpose. Certain pre-paid burial arrangements for each spouse are excluded, and a small life insurance policy for the institutionalized spouse (face value of \$1,500 or less) is exempt. Contact the benefit specialist in your county aging unit or an elder law attorney in your area for a full explanation of burial exemptions. A community spouse’s retirement funds, including funds held in an IRA or a work-related pension plan, may be exempt.

Once the total amount of assets is computed, the community spouse is entitled to retain a “community spouse resource allowance” (CSRA). ***For Medical Assistance applications made after January 1, 2009, the community spouse may retain the GREATER amount of \$50,000 or one-half of the couple's combined assets, up to a maximum of \$109,500.*** (The latter figure is adjusted for inflation each January.) This formula is illustrated in the chart below:

<b>IF COUPLE'S COMBINED ASSETS ARE:</b>	<b>AT-HOME SPOUSE MAY KEEP:</b>
\$0 - \$50,000	ALL
\$50,001 - \$100,000	\$50,000
\$100,001 - \$219,120	HALF
\$219,120+	\$109,560

The institutionalized spouse may retain \$2,000 in liquid assets. It is crucial that the institutionalized spouse’s assets not exceed this limit in order to maintain Medical Assistance eligibility. Any month in which the institutionalized spouse’s assets exceed \$2,000, he or she will be found ineligible for Medical Assistance and can be billed for his or her care at the

facility's private pay rate. If the couple has more assets than the community spouse resource allowance (CSRA) plus \$2,000, the couple must spend the excess funds on daily living expenses, the nursing home spouse's care, bills and other permitted expenditures until the couple has only the CSRA, plus \$2,000. **Thus, it is extremely important that the couple determine the extent of their assets at the time one spouse is first institutionalized.**

It is not necessary to have all assets in the community spouse's name at the time the Medical Assistance application is submitted. However, the transfer of the assets to the community spouse must be made "as soon as practical" after Medical Assistance eligibility is established. In general, this means that the institutionalized spouse has until his or her first annual review of Medical Assistance eligibility to transfer to the community spouse all assets in excess of the \$2,000 limit. If assets that should be in the community spouse's name are still in the institutionalized spouse's name at the date of the first review, eligibility may be terminated.

Once Medical Assistance eligibility is established, none of the community spouse's resources are considered available to the institutionalized spouse. Therefore, the community spouse's assets can increase beyond his or her resource allowance after Medical Assistance eligibility is in place.

**EXAMPLE #1:** Mr. Winthrop entered a nursing home in 2011. Mrs. Winthrop remains in their home. The couple's combined assets total \$120,000 (not counting their home, car, personal property or burial items). Mrs. Winthrop may keep the GREATER of \$50,000 or one-half of the combined assets, up to a maximum of \$109,560. Thus, Mrs. Winthrop may keep \$60,000 ( $\frac{1}{2}$  of \$120,000 = \$60,000). Because Mr. Winthrop may only keep \$2,000 in assets to qualify for Medical Assistance, he will not be eligible until the couple has spent the excess of \$58,000 (\$60,000 - \$2,000). This amount can be spent, for example, on repairs to the home, paying off any remaining mortgage, Mr. Winthrop's monthly nursing home bill, items Mr. Winthrop needs for his move to the nursing home, unpaid medical bills, and so forth.

**EXAMPLE #2:** Mr. and Mrs. Winthrop, from Example #1, spent their excess \$58,000 on Mr. Winthrop's nursing home bill, some previous medical bills and a new furnace for their home (where Mrs. Winthrop continues to live). Later in 2011, Mr. Winthrop is eligible for Medical Assistance. After Mr. Winthrop is found eligible, Mrs. Winthrop receives a \$5,000 inheritance from her sister. This \$5,000 is hers to keep, in addition to the \$60,000 community spouse resource allowance. Medicaid law does not require her to pay any of the \$5,000 to the nursing home. In addition, her receipt of the inheritance has no effect on Mr. Winthrop's continued eligibility for Medical Assistance.

**EXAMPLE #3:** Mr. and Mrs. Gorski's only assets are their house, car and \$62,000 in savings. Mr. Gorski will enter a nursing home in 2011. Mr. Gorski can keep \$2,000. Mrs. Gorski will be able to retain the greater of \$50,000 or one-half of the remaining \$60,000 ( $\frac{1}{2}$  of \$60,000 = \$30,000). Thus, Mrs. Gorski may retain \$50,000.

## INCOME PROTECTIONS

The spousal impoverishment prevention provisions also protect a certain level of monthly income to allow the community spouse to maintain financial independence. This amount of income is called the minimum monthly maintenance needs allowance (MMMNA), and its limit is established annually according to the federal poverty guidelines. Currently, the MMMNA is set at \$2,428.33. If the community spouse's income is below \$2,428.33, there are two possible steps to raise his or her income to the MMMNA.

In the first step, some or all of the institutionalized spouse's "excess" income is allocated to the community spouse. If an income allocation is not sufficient to raise the community spouse's income to the MMMNA, then either spouse can request the second step--an increase in the community spouse resource allowance (CSRA) above the standard allowance for the strict purpose of protecting assets that generate income. For some community spouses, both of these steps will be necessary to raise their incomes to the MMMNA.

The community spouse's income can be raised to the MMMNA by allocating some or all of the institutionalized spouse's excess income to the community spouse. Excess income is any income remaining after a \$45 personal needs allowance is deducted from the institutionalized spouse's income.

**EXAMPLE #4:** Mr. O'Reilly is in a nursing home; his monthly income is \$1,600. Mrs. O'Reilly lives in the community; her monthly income is \$1,000. Because Mrs. O'Reilly's income is under the current MMMNA of \$2,428.33, she can receive an allocation of \$1,428.33 from Mr. O'Reilly's income. This allocation will raise Mrs. O'Reilly's income to the \$2,428.33 MMMNA income limit (\$1,000 income in her own name and \$1,428.33 allocated from Mr. O'Reilly's income). The remaining \$126.67 of Mr. O'Reilly's income (\$1,600 - \$45 personal needs allowance - \$1,428.33 allocation to Mrs. O'Reilly) will be paid to the nursing home as his Medical Assistance cost-sharing obligation.

**EXAMPLE #5:** Mr. Osterman is in a nursing home; his monthly income is \$850. Mrs. Osterman lives in the community; her monthly income is \$500. After deducting \$45 for Mr. Osterman's personal needs allowance, the remaining \$805 will be allocated to Mrs. Osterman. That allocation will bring Mrs. Osterman's income to \$1,305 (\$500 in her own name and \$805 allocated from Mr. Osterman's income). **Note that the government does not provide Mrs. Osterman with additional funds to bring her income to the MMMNA of \$2,428.33**

The second step in raising the community spouse's monthly income to the MMMNA is to protect additional assets by seeking an increased community spouse resource allowance (CSRA). If the community spouse's income is still below the MMMNA after an allocation from the institutionalized spouse's income is included, and if the couple own assets that generate income, then the community spouse's resource allowance can be raised above the standard allowance for the sole purpose of generating additional income from those assets. This increase in the resource allowance can be accomplished only by asking a state administrative law judge to set a higher CSRA than the chart on page one indicates. This method is illustrated in the example below.

**EXAMPLE #6:** Mrs. Larson is in a nursing home; her monthly income is \$500 (from Social Security). Mr. Larson is in the community. His income is \$1,200 (\$200 from a pension and \$1,000 from Social Security). Mr. Larson's income is below the MMMNA of \$2,428.33, so an income allocation from Mrs. Larson would be necessary. Mrs. Larson could allocate \$455 to Mr. Larson (\$500 - \$45 personal needs allowance), bringing Mr. Larson's income to \$1,655. Because Mr. Larson's income still falls short of the MMMNA by \$773.33, the Larsons are candidates for the second step in raising a community spouse's income--increasing Mr. Larson's resource allowance. The couple has \$80,000 in assets, consisting of two CDs. Together the CDs generate \$250 per month in interest income. According to the chart on the first page, Mr. Larson's community spouse resource allowance would be set at \$50,000. However, Mr. Larson may appeal that determination. He can request that an administrative law judge establish an increased resource allowance to include all of the couple's assets because the income generated by the assets is necessary to raise his income from \$1,655 to \$1,905 (\$1,655 + \$250 interest income). This \$1,905 is still below the MMMNA of \$2,428.33. Thus, an administrative law judge can raise Mr. Larson's CSRA to include the additional assets.

It is also possible for the community spouse to receive more than \$2,428.33 per month if the community spouse has "excess shelter expenses" and additional funds are available, either from the institutionalized spouse's income or from the couple's assets. Currently, the \$2,428.33 allowance can be increased to as much as \$2,739 to help the community spouse pay for high shelter expenses. If the community spouse's monthly shelter expenses exceed \$728.50, his or her income allowance can be increased by the amount of shelter expenses above \$728.50, either by receiving an increased income allocation from the institutionalized spouse or by raising the community spouse's resource allowance as described in Example #6.

The specific expenses that the county economic support office will use to determine the community spouse's shelter expenses are: (1) rent or mortgage (principal and interest); (2) second mortgage(s); (3) mobile home lot rent and loan payments; (4) property tax liability; (5) insurance for the residence; (6) required condominium or cooperative fees; (7) special assessment(s); and (8) a monthly utility allowance established under the FoodShare Program. Currently, that allowance is \$419 if the community spouse pays for heat; \$292 if the community spouse pays for at least 2 non-heat utilities; and \$29 if the only utility expense is the telephone bill.

**EXAMPLE #7:** Mrs. Ward (a community spouse) has a mortgage payment of \$350 per month, a pro-rated property tax obligation of \$195 per month and a pro-rated insurance obligation of \$25 per month. She pays all of her utilities, including heat (thus, she is entitled to a \$419 utility allowance). Her monthly shelter costs are \$989. Therefore, her excess monthly shelter costs are \$260.50 ( $\$989 - \$728.50 = \$260.50$ ). As a result, Mrs. Ward's monthly income allowance can be increased to \$2,688.83 (the standard MMMNA of  $\$2,428.33 + \$260.50$  in excess shelter expenses).

This increase in the monthly income allowance can be accomplished simply by presenting appropriate bills, receipts and other documents to the economic support office. In addition, a community spouse may seek an increased income allowance above the MMMNA to pay for basic, necessary living expenses by requesting a hearing before an administrative law judge. The community spouse must prove that "exceptional circumstances" require an income allowance above the MMMNA to avoid "financial duress."

If the community spouse's own monthly income is greater than \$2,428.33 (or the higher allowance if there are excess shelter expenses), the institutionalized spouse cannot give any of his or her income to the community spouse. Additionally, the community spouse's income above \$2,428.33 is not automatically paid to the nursing facility as part of the institutionalized spouse's cost-sharing obligation. Rather, the community spouse simply keeps all of his or her income, absent a court order requiring contribution to the institutionalized spouse's cost of care.

**EXAMPLE #8:** Mrs. Rodriguez is in a nursing home and eligible for Medical Assistance. Mr. Rodriguez continues to live in their home. Mr. Rodriguez's monthly income is \$2,455 (from Social Security, his retirement pension and interest on several investments). Mrs. Rodriguez's monthly income is \$1,000 (from Social Security and a small pension). Because Mr. Rodriguez's income is greater than the \$2,428.33 limit, none of Mrs. Rodriguez's income will be allocated to him. Mrs. Rodriguez will pay \$955 (\$1,000 less her \$45 personal needs allowance) to the nursing facility. However, none of Mr. Rodriguez's income will be used to pay the nursing home bill.

## DIVESTMENT

Divestment penalties may occur when you give away, transfer or sell any asset for less than fair market value. Disposing of certain assets for less than fair market value prior to applying for Medical Assistance may be considered divestment. This includes transfers to trusts. Transfers between spouses are not divestments. Therefore, spouses are permitted to transfer assets to each other without concern. Most transfers to other people, however, are considered divestments and may make an applicant ineligible for benefits under the Medical Assistance program. Significant changes in Medical Assistance law have made permissible transfers of resources more difficult, and potential penalties for disqualifying divestments have increased. It is important that you are aware of these rules and have accurate and up-to-date information about any changes. If you have questions about financial planning or transfers of assets or property, consult a private attorney who practices elder law.



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January 2011