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Medicaid Eligibility for Married Couples

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I. Introduction

Married individuals applying for Medicaid benefits encounter a host of potentially complicated eligibility issues depending both upon their spouses' eligibility for benefits and on the couples' living arrangements. Sometimes a married individual is treated as an individual, with only his or her income and resources taken into account and measured against an individual eligibility standard. /1/ In other circumstances, that same individual would have a portion of his or her spouse's income or resources deemed to him or her. /2/ When both members of a couple are eligible for benefits, they can sometimes choose to have their eligibility determined by the method most favorable to them. At other times, they do not have this option. /3/ The effects of each of these eligibility methodologies on any particular couple may vary depending upon which spouse's name is on the check with the largest amount and which spouse is applying for the benefits. This column explores the various criteria that confront low-income couples applying for Medicaid and attempts to sort out the rules' application to varying situations.

II. The Basic Rules on Spousal Responsibility

The Medicaid Act authorizes consideration of a spouse's "financial responsibility" for an applicant or recipient in determining eligibility. /4/ While consideration of such financial responsibility must be done in the context of the Act's requirement that only income and resources that are available to the recipient can be considered, availability is judged "as determined in accordance with standards prescribed by the Secretary." /5/ The Secretary has, in fact, promulgated standards for considering spousal income and resources in determining eligibility. /6/ The Secretary's authority to do this, and the rules themselves, have been upheld by the Supreme Court. /7/ The process of considering the income of one person as belonging to another is known in both the SSI and Medicaid programs as "deeming."

A. Deeming of Income and Resources in the SSI Program

The first line of Medicaid eligibility in most states is automatic entitlement due to SSI eligibility. /8/ In addition, states may use SSI deeming rules in their other Medicaid eligibility determinations. /9/ SSI deems income from an "ineligible spouse," who is defined as "someone who lives with you as your husband or wife and is not eligible for SSI benefits." /10/ Thus, deeming applies, generally, only when two people are living together as husband and wife. SSI rules list in detail ineligible spouses' income that is excluded in the deeming process. The exclusions include income excluded by other Federal laws, public income maintenance payments (including VA pension income), housing assistance, the value of food stamps, and tax refunds. /11/

Once the spouse's income is determined after applying the exclusions, deductions are made for ineligible children and for aliens sponsored by the spouse. /12/ The remaining income is measured against the difference between the SSI rate for one person and the rate for a couple. If the income is more than that difference (which is $218 in 1993), then the applicant's eligibility is determined by using the standard and methodology for an eligible couple. /13/

When spouses separate or divorce, or when the ineligible spouse dies, deeming ends in the first month following the event. /14/ When the recipient enters a medical care facility and a reduced benefit of $30 applies, deeming ends in the first month to which the reduced rate applies. /15/

SSI rules concerning deeming of resources are much simpler than those for income: the applicant's resources are deemed to include those of an ineligible spouse that are not otherwise excluded. /16/

B. Deeming of Income and Resources in the Medicaid Program

Medicaid deeming rules, applicable to those who are not entitled to Medicaid by virtue of their receipt of SSI, may vary according to whether the individual is "optionally categorically needy" or "medically needy."

1. Optionally Categorically Needy

The rule applicable to optionally categorically eligible individuals /17/ living with an ineligible spouse is that income from an ineligible spouse must be deemed, regardless of whether or not it is actually contributed. If the couple do not live together, only income actually contributed by the ineligible spouse can be considered. /18/ Section 209(b) states must use this rule, or may use a more restrictive rule, if it was in effect on January 1, 1972. /19/

2. Medically Needy

For medically needy individuals, i.e., those who do not meet the standards for an optional category and who become eligible by spending down excess income, states must consider the income and resources of an ineligible spouse if they are actually contributed. They may consider income and resources that are not actually contributed. This rule applies in both SSI and section 209(b) states. /20/

C. Deeming of Income and Resources When Couples Separate

When couples separate, different rules apply. According to the current Code of Federal Regulations, if both spouses apply or are eligible and the applicant is not in an institution, income and resources of both are considered together for six months following the month in which they separate. This section of the rule is probably no longer valid since SSI law was changed, effective October 1990, to treat separated couples as separate individuals the month following separation. /21/

If only one spouse applies or is eligible, or if both apply and they are not eligible as a couple, only income of the ineligible spouse that is actually contributed can be counted, beginning with the month after they separate. /22/ Section 209(b) states follow this rule. They may also use a more restrictive one if it was in effect on January 1, 1972. /23/ Regulations governing the medically needy program are silent on deeming when couples do not live together; they state only the generic rule discussed above.

III. Eligibility When One Spouse Is in an Institution

A. Protection Against Spousal Impoverishment

If the applicant is in a medical institution, the rules in the "spousal impoverishment" portion of the law apply. /24/ These rules apply in all states and to all categories of eligibility. /25/ Income deeming ceases the day the individual enters the institution. /26/ On the other hand, all resources owned by either spouse, whether jointly or separately, are deemed available to the applicant, except for the spousal allowance determined according to one of the several methods set forth in the law. /27/

B. Ownership of Income

A separate but related issue about spousal income in connection with a married individual's eligibility for Medicaid in an institution concerns the ownership of income within the family unit. The SSI program, and to a large degree the Medicaid program, have generally relied on the "name-on-the-check" rule to determine who owns a particular source of income. Thus, if the husband's name is on the check, the income is attributed to

the husband. This rule conflicts with community property concepts of ownership, in which each spouse is considered to own one-half of the marital property, regardless of the name on the check. This conflict was resolved, in 1987, by the Ninth Circuit Court of Appeals in favor of having states apply community property principles to determine Medicaid eligibility. /28/ At the time the issue was first litigated, the particular relevance of using community property principles was that at-home spouses could keep more money for their own living needs than was otherwise allowed by federal law. (Federal regulations defined a very small amount of income that could be contributed by an institutionalized spouse from his or her own income to the spouse at home. The redefinition of who owned the income freed the at-home spouse from having to rely on a contribution from the other spouse.) Since the 1988 spousal impoverishment amendments to Medicaid increased the allowance for the at-home spouse by nearly threefold, the original application of community property principles is less relevant.

Determining which spouse owns the income does remain critical, however, in community property states that use an income cap (of up to 300 percent of the SSI single person benefit rate, or $1,302, in 1993) on nursing facility eligibility. /29/ In an income-cap state that does not also have a medically needy program, /30/ a person with an income of $1 over the cap is ineligible for Medicaid payments for nursing home care. Thus, for example, if a husband and wife each receive a monthly check in his or her own name, of $1,350 and $650, respectively, only the wife would be eligible for nursing home care. The husband's income exceeds the cap. If, however, community property principles of ownership are applied to the same couple, their combined income is $2,000, of which each owns $1,000. By using this process, either member of the couple is eligible for Medicaid services in a nursing facility. Despite the favorable Ninth Circuit rulings on the use of community property principles, HHS is currently challenging their use in New Mexico, claiming that the property principles conflict with another section of the Medicaid statute that limits payments for which federal financial participation is available. /31/

The issue of income ownership is important. Without being able to split the total household income in half, some spouses cannot be eligible for Medicaid in a nursing facility. If Medicaid will not pay, the other spouse must either care for the individual at home, or use his or her own income to help pay the nursing home bill, leaving the spouse with virtually nothing to live on. On the other hand, once the applicant spouse has been determined to be eligible for Medicaid, the at-home spouse is entitled to the protection of the spousal impoverishment provisions, which are determined in a posteligibility process. /32/

C. Posteligibility Ownership of Income

Just to keep the process interesting, the posteligibility determination of what contribution, if any, is made to the at-home spouse relies principally on the name-on-the-check rule, as specified in the statute. /33/ In the example described above, using community property principles to determine eligibility, either spouse could be eligible for Medicaid benefits in a

nursing home. Then, if the husband were applying, the posteligibility process would measure the wife's income, which is $650 when using the name-on-the-check rule, against the federal statutory minimum of $1,149 (there is a possibility of this amount being supplemented through the application of an excess shelter costs formula, through a fair hearing, or by a court support order) and the wife would be entitled to a $499 contribution from her husband. If, on the other hand, the wife were in the institution and applying for Medicaid, the husband would receive no basic contribution at all from his wife's income because his income, using the name-on-the-check rule, is $1,350, greater than the statutory minimum.

D. Protection of Resources

Although it is the income protection of the spousal impoverishment provisions that most benefits and is the most important to legal services clients, the resource section raises an issue worth noting. The statute provides for a "snapshot" of the couple's assets at the beginning of the period of institutionalization, regardless of whether the institutionalized individual is eligible for Medicaid at that time. /34/ This provision was included in the law to protect the couple's assets from depletion during a period prior to Medicaid eligibility--to ensure that the amount protected for the spouse at home was actually identified and set aside. This computation determines which assets will be included in the pool that is to be divided, and the portion of the at-home spouse's protected share. Then, for many people, there is a period involving the depletion of excess resources of the institutionalized spouse, followed by the application for Medicaid. The law states that, at the time of application, all countable resources of both spouses, minus the amount protected for the at-home spouse, are considered available to the applicant. /35/ The law is silent about what happens to resources acquired by the at-home spouse between the "snapshot" and the time of application. Under HCFA's interpretation, the spousal share remains constant after it is calculated. /36/ This view, however, may result in hardship to some spouses and does not appear to accord with the intent of the law, since it does not allow some spouses to retain the maximum protected amount. For example, in 1993, if a couple has $80,000 in countable resources at the time one spouse is institutionalized, the at-home spouse is entitled to $40,000. This amount results from application of the formula that the at-home spouse is entitled to the greater of $14,148 (in 1993) or one-half of the couple's countable resources, but not more than $70,740 (in 1993). If, between the time of the institutionalization and the time of application for Medicaid, the at-home spouse acquires an additional $25,000 in resources, he or she is, according to HCFA, not entitled to keep it, even though the additional resource, combined with his or her allowance of $40,000, is still under the federal statutory maximum.

The conference report on the Medicare Catastrophic Coverage Act of 1988, the legislation that included these provisions, suggests an alternative interpretation. In its discussion of the rules for treatment of resources, the report states:

All resources held by either spouse are considered available to the institutionalized spouse except that the resources held in the name of the community spouse are not considered available unless they exceed a community spouse resource allowance as of the application date or[,] if greater, the amount retained under court order. /37/

The italicized language suggests the following analysis. First, the resource determination is made by using the resource allowance in effect on the application date. The resource allowance changes on January 1st of each year, however, since it is indexed to the Consumer Price Index. Thus, Medicaid agencies are faced with situations in which one-half of a couple's countable resources exceed the resource allowance in effect at the time of institutionalization, but not the amount in effect at the time of application. The report's language tells the agency to allow for the greater amount. Rigid adherence, then, to the allowance determined at the time of institutionalization is not legally required, and the resource allowance could be increased for after-acquired resources as well. This issue has neither been litigated nor been the subject of regulations or further legislative clarification. Advocates are faced with a case-by-case consideration of the problem.

E. Transfers of Assets by a Community Spouse

A section of the Medicaid law that prohibits transfer of assets for less than fair market value /38/ affects couples when one spouse is receiving nursing facility care. Transfer penalties apply to people applying for, or receiving, nursing facility care (whether in a nursing facility or in another institution providing that type of care), or care under a home and community-based services waiver. /39/ The basic rule is that an applicant or recipient who transfers resources for less than fair market value within thirty months before applying for Medicaid, or after Medicaid eligibility has been determined, is denied Medicaid for a period of time calculated by the use of a formula. /40/ There are statutory exceptions to this rule. /41/ In the case of couples, in which one is applying for or receiving Medicaid, the law is a bit complicated. The basic rule requires a penalty for transfers by the applicant or the spouse:

> [A penalty must apply] in the case of an institutionalized individual . . . who, or whose spouse, at any time during or after a 30-month period immediately before the date the individual becomes an institutionalized individual . . . disposed of resources for less than fair market value. /42/

The exceptions paragraph, however, seems to exempt all spousal transfers from penalty:

> [The penalty does not apply to the extent that] (B) the resources were transferred (i) to or from (or to another for the sole benefit of) the individual's spouse or (ii). . . . /43/

The use of the phrase "to or from" suggests that transfers from a spouse to anyone should be exempted from the penalty. Unfortunately, this reading renders virtually meaningless

the earlier section in the basic rule. HCFA has attempted to reconcile these two sections by adopting the fiction that the phrase "to or from" actually means "between." /44/ The language was added by the Omnibus Budget Reconciliation Act of 1989 (OBRA-89), /45/ apparently in response to a perceived loophole in the earlier language that penalized transfers by the applicant only (not those by the spouse) and exempted from penalty transfers to a community spouse. The community spouse was then free to transfer anything to anybody, without penalty to the institutionalized spouse.

The House Committee report on the 1989 amendment states:

> The Committee bill would clarify that, for purposes of the prohibitions on transfers of assets, transfers by a spouse of an institutionalized individual would be subject to the same treatment as transfers by the institutionalized individual. For example, if, prior to the institutionalization of her spouse, and within 30 months of the institutionalized spouse's application for Medicaid, a spouse were to withdraw savings from a joint account (sic), place them in her own account, and then give them to a child who is not a minor or disabled, the institutionalized spouse would be subject to a delay in eligibility for Medicaid coverage. /46/

The report does not address the meaning of the language added to the exceptions section. The application of the 1989 language, as interpreted by HCFA, has exceptionally harsh results. It appears to preclude the spouse of an institutionalized individual from ever giving away his or her money as long as the other spouse is receiving Medicaid for nursing facility services. This appears to be true despite the fact that the spouse is entitled to a substantial portion of the couple's assets (in 1993, a minimum of $14,148 and a maximum of $70,740 without the use of any estate planning strategies) at the initial eligibility determination, and that there is no further deeming of that spouse's assets to the Medicaid recipient once the initial eligibility determination has been made. /47/ Thus, although a spouse may acquire greater assets after the Medicaid applicant has qualified, the spouse does not have freedom of control over its use. As with the ambiguous resource allowance provision discussed above, there has been no legislative, litigative, or administrative clarification of this difficult language.

IV. Eligibility for Couples in Institutions

Under the SSI statute, when members of a couple separate, they are treated as individuals the month following the month of separation. /48/ When both members of the couple are eligible and are living in the same institution, their benefit rate is determined as they would be for two, separate individuals. /49/ The SSI statute, however, also authorizes state Medicaid programs to treat couples in institutions as couples, if treating them as two eligible individuals "would prevent either of them from receiving benefits or assistance under such plan or reduce the amount thereof." /50/ This authority for the states to use the criteria that most benefits the couple may be most significant in an income-cap state, or in

any situation in which the income is unequally distributed between the spouses. Little guidance exists as to exactly how this provision is supposed to work; legislative history is nonexistent. /51/ Do income-cap states use a percentage (e.g., 300 percent) of the SSI rate for a couple to take advantage of this provision, or do they use a percentage of an amount that is twice the individual rate? Do they pool the couple's income, as they normally would to determine couples' eligibility, then measure it against a couple's standard?

One HCFA regional administrator has interpreted the income cap as applied to couples in a way that does not seem to comply with the intent of the SSI/Medicaid provision authorizing treatment under the most favorable criteria. In a Transmittal Notice to all Medicaid agencies in HCFA Region IV, HCFA states:

> [T]he regulations require that an individual under a special income level be considered an individual, rather than a member of a couple.
>
> This means that the correct total income standard for a couple eligible under a special income level is twice the individual standard, or $2,316 [in 1990]. However, . . . eligibility for each member of the couple is based on a comparison of that individual's income to the individual special income level standard, ... Thus, if one member of a couple has income which exceeds that amount that individual cannot be eligible under a special income level, even if the couple together has income below the combined total of $2,316. /52/

The above interpretation renders the statutory provision allowing states to allow institutionalized couples to choose the most favorable eligibility criteria virtually meaningless, and may be challengeable as being in conflict with the statute.

V. Application of Federal Poverty Guidelines in Determining Eligibility for the QMB Program

The Qualified Medicare Beneficiary (QMB) Program pays Medicare premiums, deductibles, and coinsurance for Medicare beneficiaries whose income and resources fall below statutorily defined levels, regardless of whether the individual is otherwise eligible for Medicaid. Income eligibility is determined by evaluating an applicant's income according to SSI principles (or using a methodology more liberal than SSI) /53/ then measuring the income against 100 percent of the official poverty level "applicable to a family of the size involved." /54/ Questions have arisen as to what the family size involved should be in situations where only one member of a couple or family is eligible. A plain reading of the statute, as well as common sense, suggests that the standard should be the poverty level for the actual number of members of the family since the applicant's income is presumably used to support the entire family. The federal income poverty guidelines themselves define "family" as "a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one

family." /55/ Some states have chosen a different reading of the law, and have measured the income against a standard for one person, regardless of the actual family size. This practice is being challenged in state court in Nevada. The case has survived a motion to dismiss. /56/

Where both members of a couple are eligible as QMBs, the legislative history of the QMB law supports the use of a methodology for determining income that is different from the one used in the SSI program. /57/ Under that methodology, a couple's income is combined and then divided by two. The standard for a single individual is applied to the resulting amount. One court, however, arrived at a different conclusion, holding that the couple's total countable income must be measured against the poverty standard for two people. /58/

VI. Conclusion

Advocates can better assist their married clients by becoming familiar with the myriad of issues and criteria that govern eligibility determinations for married people. Whether a spouse is or is not an "eligible spouse," methods states use to determine income ownership, and whether one or both members of a couple reside in an institution are all issues that can have a significant effect on the applicant spouse's eligibility and the amount of income left to satisfy the ineligible spouse's living needs.

footnotes

/1/ E.g., married individuals living apart after the month in which they separate.

/2/ This is the general rule for couples who live together.

/3/ States have the option of permitting couples in institutions to be treated as couples, instead of as individuals according to the normal rule, if to be treated as individuals would cause one or both to be denied eligibility. Couples at home are treated as couples.

/4/ 42 U.S.C. Sec. 1396a(a)(17)(D). The authority is actually stated in the negative: The state must have eligibility standards and procedures that "do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21. . . ." Id.

/5/ 42 U.S.C. Sec. 1396a(a)(17)(B).

/6/ 42 C.F.R. Sec. 435.602 (general); Secs. 435.712, 435.723 (requirements for optional categorically needy applicants); Sec. 435.734, with cross-reference to Sec. 435.723

(requirements for Sec. 209(b) states); Secs. 435.821, 435.822, 435.823 (requirements for Medically Needy in both SSI and Sec. 209(b) states).

/7/ Schweiker v. Gray Panthers, 453 U.S. 34 (1981) (deeming of income between spouses in Sec. 209(b) states); Herweg v. Ray, 455 U.S. 265 (1982) (deeming in SSI states) (Clearinghouse No. 23,363).

/8/ 42 U.S.C. Sec. 1396a(a)(10)(i).

/9/ See, e.g., 20 C.F.R. Sec. 416.1161a.

/10/ 20 C.F.R. Sec. 416.1160(d). A spouse not eligible as aged, blind, or disabled might nevertheless receive Medicaid as an essential person, under certain circumstances. See, e.g., 42 U.S.C. Sec. 1396a (note citing Pub. L. No. 93-66, Sec. 230, 87 Stat. 159 (July 9, 1973)); 42 C.F.R. Sec. 435.131; 42 C.F.R. Sec. 436.230.

/11/ 20 C.F.R. Sec. 416.1161(a) and app. to subpart K.

/12/ 20 C.F.R. Sec. 416.1163(a).

/13/ 20 C.F.R. Sec. 416.1163(d), (e).

/14/ 20 C.F.R. Sec. 416.1163(f)(2), (4).

/15/ 20 C.F.R. Sec. 416.1163(f)(5).

/16/ 20 C.F.R. Sec. 416.1202(a).

/17/ 42 U.S.C. Sec. 1396a(a)(10)(A)(ii). These are people who do not receive income assistance under the AFDC or the SSI program, but who fit into one of a number of special population groups defined in the law.

/18/ 42 C.F.R. Sec. 435.712.

/19/ 42 C.F.R. Sec. 435.734.

/20/ 42 C.F.R. Secs. 435.822, 435.823.

/21/ 42 U.S.C. Sec. 1382c(b) (as amended by Pub. L. No. 101-239, Sec. 8012(a) (1989)). State methodologies for Medicaid cannot be more restrictive than those used in SSI for the SSI-related population. 42 U.S.C. Sec. 1396a(r)(2).

/22/ 42 C.F.R. Sec. 435.723(c)(2), (d).

/23/ A question arises as to whether deeming regulations may be rendered somewhat obsolete for some Medicaid eligibility categories by the passage of Sec. 303(e) of the Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360 (codified at 42 U.S.C. Sec. 1396a(r)(2)). This provision of the law allows states to use methodologies that are more liberal than those used for the relevant income program in determining eligibility for Medicaid.

/24/ 42 U.S.C. Sec. 1396r-5.

/25/ 42 U.S.C. Sec. 1396r-5(a)(1).

/26/ 42 U.S.C. Sec. 1396r-5(b)(1).

/27/ 42 U.S.C. Sec. 1396r-5(c)(2).

/28/ Washington v. Bowen, 815 F.2d 549 (9th Cir. 1987). Accord California Dep't of Human Servs. v. HHS, 823 F.2d 323 (9th Cir. 1987).

/29/ 42 U.S.C. Sec. 1396a(a)(10)(A)(ii)(V). This provision of the Medicaid statute allows states to cover, as optionally categorically needy, people in institutions for at least 30 days whose income is less than 300 percent of the single person SSI federal benefit rate. This amount is $1,302 for 1993. While many states use the cap provision for some of their nursing home population as a matter of administrative convenience, other states cover nursing home care for only this population. That is, they do not have a medically needy program that covers nursing home residents.

/30/ There are roughly 19 such states. It seems to be extraordinarily difficult to find accurate information on the number of income cap states. The most recent compilation of such information, THE MEDICAID SOURCE BOOK (1993), by the Subcommittee on Health and Environment, U.S. House of Representatives' Committee on Energy and Commerce, lists 17 states as having caps and having no medically needy program for nursing home residents: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Iowa, Louisiana, Mississippi, Nevada, New Jersey, New Mexico, South Dakota, Texas, and Wyoming. In addition, in the past year or two, both Oregon and Kansas have eliminated their medically needy programs and implemented cap-only programs.

/31/ New Mexico Dep't of Human Servs. v. HHS, No. 92-9552 (10th Cir. Jan. 8, 1993) (appeal of a state plan amendment denial).

/32/ 42 U.S.C. Sec. 1396r-5(d) states that the income protections are computed "after an institutionalized spouse is determined or redetermined to be eligible for medical assistance."

/33/ 42 U.S.C. Sec. 1396r-5(b)(2). The provision states that "[i]n determining the income of an institutionalized spouse or community spouse for purposes of the post-eligibility income determination described in subsection (d) of this section, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply." What follows is more or less a codification of the "name-on-the-check" rule.

/34/ 42 U.S.C. Sec. 1396r-5(c)(1).

/35/ 42 U.S.C. Sec. 1396r-5(c)(2).

/36/ "There is no penalty if resources are transferred 'to or from' (i.e., between) spouses whether or not an institutionalized individual's spouse is in the community." Transmittal No. 46, STATE MEDICAID MANUAL, part 3--Eligibility (July 1990).

/37/ H.R. REP. No. 100-661, Medicare Catastrophic Coverage Act of 1988, Conference Report to accompany H.R. 2470, May 31, 1988, 260. Italics added.

/38/ 42 U.S.C. Sec. 1396p(c).

/39/ 42 U.S.C. Sec. 1396p(c)(3).

/40/ 42 U.S.C. Sec. 1396p(c)(1).

/41/ 42 U.S.C. Sec. 1396p(c)(2).

/42/ 42 U.S.C. Sec. 1396p(c)(1).

/43/ 42 U.S.C. Sec. 1396p(c)(2)(B).

/44/ See Transmittal No. 46, supra note 36.

/45/ Pub. L. No. 101-239, Sec. 6411(e)(1)(A), (e)(1)(B)(i).

/46/ H.R. REP. No. 247, 101st Cong. 1st Sess. 491 (1989), reprinted in 1989 U.S.C.C.A.N. 2217.

/47/ "During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this subchapter, no resources of the community spouse shall be deemed available to the institutionalized spouse." 42 U.S.C. Sec. 1396r-5(c)(4).

/48/ 42 U.S.C. Sec. 1382c(b). The current language of the statute amends prior language which required treatment of a separated couple as a couple for six months following the

separation. The section was amended by Pub. L. No. 101-239, Sec. 8012 (Dec. 19, 1989), and became effective October 1, 1990.

/49/ 42 U.S.C. Sec. 1382(e)(1)(B)(iii).

/50/ 42 U.S.C. Sec. 1382(e)(5).

/51/ See, e.g., S. REP. No. 466, 99th Cong., 2d Sess. (1986), reprinted in 1986 U.S.C.C.A.N. 6087. This report, accompanying Pub. L. No. 99-643, which included the original language concerning couples' eligibility for Medicaid in institutions in its section 9, contains no discussion whatsoever of section 9.

/52/ HCFA Transmittal Notice, Region IV (Program Identifier: MCD-49-90) (June l, 1990) ("To All Title XIX Agencies and Welfare Agencies in AL, GA, KY, MS, SC, and TN, from George R. Holland").

/53/ 42 U.S.C. Sec. 1396a(r)(2)(A). For a thorough discussion of this provision of the law prohibiting states from using methodologies that are more restrictive than those used in SSI and allowing them to use less restrictive methodologies, see Patricia Nemore & Jeanne Finberg, MCCA Updates: Qualified Medicare Beneficiaries and Restrictive Medicaid Rules, 26 CLEARINGHOUSE REV. 601 (Oct. 1992).

/54/ 42 U.S.C. Sec. 1396d(p)(2)(A).

/55/ 58 Fed. Reg. 8287, 8288 (1993) (annual update of the HHS poverty guidelines) (definitions). This definition is preceded by a disclaimer that no single definition is used by all federal programs utilizing the guidelines.

/56/ Lyons v. Griepentrog, No. 92,00319A (lst Jud. Dist. for Carson City, Nev., July 13, 1992) (order denying motion to dismiss).

/57/ See H.R. REP. No. 105, 100th Cong., 2d Sess. 208, reprinted in 1988 U.S.C.C.A.N. 857, 883.

/58/ Kaw v. Commissioner, 951 F.2d 444 (1st Cir. 1991) (Clearinghouse No. 45,849).