

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
1301 Young Street, Room 833
Dallas, Texas 75202



Division of Medicaid & Children's Health, Region VI

June 7, 2010

Our Reference: SPA TX 09-032

Mr. Billy Millwee
Associate Commissioner for Medicaid & CHIP
Health and Human Services Commission
Post Office Box 13247
Mail Code: H100
Austin, Texas 78711

Dear Mr. Millwee:

We have reviewed the State's proposed amendment to the Texas State Plan submitted under Transmittal Number 09-032, dated September 25, 2009. This amendment revises the post eligibility treatment of income calculation by protecting an additional amount of an institutionalized individual's income, above the minimum amount already protected under the State plan, for those individuals who have greater personal needs.

Additionally, please note that when the State submits a State Plan Amendment (SPA) that may impact Indians or Indian health providers, CMS will look for evidence of the State's Tribal consultation process for that SPA. Pursuant to the new section 1902(a) (73) of the Act added by section 5006(e) of the American Recovery and Reinvestment Act (ARRA) of 2009, the State must submit evidence to CMS regarding the solicitation of advice prior to submission of the State Plan Amendment. Such consultation must include all federally-recognized tribes, Indian Health Service and Urban Indian Organizations within the State.

Based on the information submitted, we have approved the amendment for incorporation into the official Texas State Plan with an effective date change of September 1, 2009. A copy of the CMS-179 and the approved plan pages are enclosed with this letter.

If you have any questions, please contact Ford J. Blunt at (214) 767-6381.

Sincerely,

/s/

Bill Brooks
Associate Regional Administrator

Enclosures

Cc: Emily Zalkovsky, Policy Development Support

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: 09-032	2. STATE: TEXAS
		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE: September 1, 2009	
5. TYPE OF PLAN MATERIAL (<i>Circle One</i>): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT			
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (<i>Separate Transmittal for each amendment</i>)			
6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR §435.725		7. FEDERAL BUDGET IMPACT: a. FFY 2009 \$0 b. FFY 2010 \$0 c. FFY 2011 \$0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: SEE ATTACHMENT		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): SEE ATTACHMENT	
10. SUBJECT OF AMENDMENT: The proposed amendment adds language to allow a court ordered guardianship/fiduciary fee deduction from an institutionalized individual's total income when calculating the cost of institutional care.			
11. GOVERNOR'S REVIEW (<i>Check One</i>): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: _____		16. RETURN TO: Billy Millwee State Medicaid Director Post Office Box 13247, MC:H-100 Austin, Texas 78711-5200	
13. TYPED NAME: Billy Millwee			
14. TITLE: State Medicaid Director			
15. DATE SUBMITTED: September 25, 2009			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: 25 September, 2009		18. DATE APPROVED: 7 June, 2010	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: 1 September, 2009		20. SIGNATURE OF REGIONAL OFFICIAL: <i>[Signature]</i>	
21. TYPED NAME: Bill Brooks		22. TITLE: Associate Regional Administrator Div of Medicaid & Children's Health	
23. REMARKS:			

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM

State: TEXAS

Citation	Condition or Requirement
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B. Posteligibility Treatment of Institutionalized Individuals' Incomes

1. The following items are not considered in the posteligibility process:

1902(o) of the Act	a. SSI and SSP benefits paid under §1611(e)(1)(E) and (G) of the Act to individuals who receive care in a hospital, nursing home, SNF, or ICF.
Bondi v. Sullivan (SSI)	b. Austrian Reparation Payments (pension/ reparation) payments made under §500 – 506 of the Austrian General Social Insurance Act. Applies only if State follows SSI program rules with respect to the payments.
1902(r)(1) of the Act	c. German Reparations Payments (reparation payments made the Federal Republic of Germany).
105/206 of P.L. 100-383	d. Japanese and Aleutian Restitution Payments.
1. (a) of P.L. 103-286	e. Netherlands Reparation Payments based on Nazi, but not Japanese, persecution (during World War II).
10405 of P.L. 101-239	f. Payments from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent orange product liability litigation, M.D.L. No.381 (E.D.N.Y.)
6(h)(2) of P.L. 101-426	g. Radiation Exposure Compensation.
12005 of P.L. 103-66	h. VA pensions limited to \$90 per month under 38 U.S.C. 5503.

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DATE REC'D. <u>9-25-09</u>	
DATE APPV'D <u>6-7-10</u>	
DATE EFF <u>9-1-09</u>	
HCFA 179 <u>09-32</u>	

Supersedes TN: 98-02

TN No. 09-32

Approval Date 6-7-10

Effective Date 9-1-09

Supersedes TN No. 98-02

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
 MEDICAL ASSISTANCE PROGRAM

State: TEXAS

Citation	Condition or Requirement
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1924 of the Act
 435.725
 435.733
 435.832

B. Posteligibility Treatment of Institutionalized Individuals' Incomes, Cont.

2. The following monthly amounts for personal needs are deducted from total monthly income in the application of an institutionalized individual's or couple's income to the cost of institutionalized care:

Personal Needs Allowance (PNA) of not less than \$30 for Individuals and \$60 for Couples for all Institutionalized Persons.

- a. Aged Blind, Disabled:

Individuals: \$ 60.00

Couples: \$120.00

For the following persons with greater needs:

Supplement 12 to Attachment 2.6-A describes the greater need of an institutionalized individual with a court ordered guardianship/fiduciary fee when calculating the cost of institutionalized care.

- b. AFDC related:

Children: \$ 45.00

Adults: \$ 45.00

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HCFA 179 <u>09-32</u>	

For the following persons with greater need:

Supplement 12 to Attachment 2.6-A described the greater need; described the basis or formula for determining the deductible amount when a specific amount is not listed above; lists the criteria to be met;

- c. Individuals under age 21 covered in the plan as specified in Item B.7 of Attachment 2.2-A.

Supersedes TN: 06-19

TN No. 09-32

Approval Date 6-7-10

Effective Date 9-1-09

Supersedes TN No. 06-19

STATE	<u>TEXAS</u>
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A

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Attachment 2.6-A
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OMB No.:0938-0673

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM

State: TEXAS

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B. Posteligibility Treatment of Institutionalized Individuals' Incomes, Cont.

For the following persons with greater need:

Supplement 12 to Attachment 2.6-A describes the greater need; describes the basis for formula for determining the deductible amount when a specific amount is not listed above; lists the criteria to be met; and, where appropriate, identifies the organizational unit which determines that a criterion is met.

1924 of the Act

3. In addition to the amounts under item 2, the following monthly amounts are deducted from the remaining income of an institutionalized individual with a community spouse:
- a. The monthly income allowance for the community spouse, calculated using the formula in §1924(d)(3)(C), is the amount by which the maintenance needs standard exceeds the community spouse's income. The maintenance needs standard cannot exceed the maximum prescribed in §1924(d)(3)(C). The maintenance needs standard consists of a poverty level component plus an excess shelter allowance.
 - The poverty level component is calculated using the applicable percentage (set out in §1924(d)(3)(B) of the Act) of the official poverty level.
 - The poverty level component is calculated using a percentage greater than the applicable percentage, equal to ___% of the official poverty level (still subject to maximum maintenance needs standard).
 - The maintenance needs standard for all community spouses is set at the maximum permitted by §1924(d)(3)(C).

Except that, when applicable, the State will set the community spouse's monthly income allowance at the amount by which exceptional maintenance needs, established at a fair hearing, exceed the community spouse's income, or at the amount of any court-ordered support.

TN No. 09-32

Approval Date 6-7-10

Effective Date 9-1-09

Supersedes TN No. 98-02

SUPERSEDES: TN- 98-02

STATE	<u>Texas</u>	A
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DATE EFF	<u>9-1-09</u>	
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B. Posteligibility Treatment of Institutionalized Individuals' Incomes, Cont.

In determining any excess shelter allowance, utility expenses are calculated using:

- the standard utility allowance under §5(e) of the Food Stamp Act of 1977; or
- the actual unreimbursable amount of the community spouse's utility expenses less any portion of such amount included in condominium or cooperative charges.

b. The monthly income allowance for other dependent family members living with the community spouse is:

- one-third of the amount by which the poverty level component (calculated under §1924(d)(3)(A)(i) of the Act, using the applicable percentage specified in §1924(d)(3)(B)) exceeds the dependent family member's monthly income.
- a greater amount calculated as follows:

The following definition is used in lieu of the definition provided by the Secretary to determine the dependency of family members under §1924 (d)(1):

c. Amounts for health care expenses described below that are incurred by and for the institutionalized individual and are not subject to payments by a third party:

- (i) Medicaid, Medicare, and other health insurance premiums, deductibles, or coinsurance charges, or copayments.
- (ii) Necessary medical or remedial care recognized under State law but not covered under the State plan. (Reasonable limits on amounts are described in Supplement 3 to ATTACHMENT 2.6-A).

SUPERSEDES: TN- 98-02

TN No. 09-32

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B. Posteligibility Treatment of Institutionalized Individuals' Incomes, Cont.

435.725
435.733
435.832

4. In addition to any amount deductible under the items above, the following monthly amounts are deducted from the remaining monthly income of an institutionalized individual or an institutionalized couple:

a. An amount for the maintenance of each member of a family living in the institutionalized individual's home with no community spouse living in the home. The amount must be based on a reasonable assessment of need but must not exceed the higher of the:

- AFDC level; or
- Medically needy level:

- AFDC levels in Supplement 1
 Medically needy level in Supplement 1
 Other: \$ _____

b. Amounts for health care expenses described below that have not been deducted under 3c above (i.e., for an institutionalized individual with a community spouse), are incurred by and for the institutionalized individual or institutionalized couple, and are not subject to the payment by a third party:

- (i) Medicaid, Medicare, and other health insurance premiums, deductibles, or coinsurance charges, or copayments.
- (ii) Necessary medical or remedial care recognized under State law but not covered under the State plan. (Reasonable limits on amount are described in Supplement 3 to Attachment 2.6-A).

435.725
435.733
435.832

5. At the option of the State, as specified below, the following is deducted from any remaining monthly income of an institutionalized individual or an institutionalized couple:

A monthly amount for the maintenance of the home of the individual or couple for not longer than 6 months if a physician has certified that the individual, or one member of the institutionalized couple, is likely to return to the home within that period:

- No.
 Yes (the applicable amount if shown on page 5a).

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SUPERSEDES: TN- 98-02

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B. Posteligibility Treatment of Institutionalized Individuals' Incomes, Cont.

- Amount for maintenance of home is: \$_____.
- Amount for maintenance of home is the actual maintenance costs not to exceed \$ *_____.
- Amount for maintenance of home is deductible when countable income is determined under §1924(d)(1) of the Act only if the individual's home and the community spouse's home are different.

Amount for maintenance of home is not deductible when countable income is determined under §1924 (d)(1) of the Act.

* the SSI income limit (excluding the \$20.00 disregard)

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1924 of the Act	15. The agency complies with the provisions of §1924 with respect to income and resource eligibility and post eligibility determinations for individuals who are expected to be institutionalized for at least 30 consecutive days and who have a spouse living in the community.
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When applying the formula used to determine the amount of resources in initial eligibility determinations, the State standard for community spouses is:

- the maximum standard permitted by law;
- the minimum standard permitted by law; or
- a standard that is an amount between the minimum and the maximum: \$_____.

SUPERSEDES: TN- 98-02

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
 MEDICAL ASSISTANCE PROGRAM

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VARIATIONS FROM THE BASIC PERSONAL NEEDS ALLOWANCE

As earnings increase the following individuals have greater need due to work related expenses:

The method used to calculate the amount of Personal Needs Allowance that can be retained by persons living in ICF/MR facilities with earnings is as follows:

- If an individual earns \$30 or less:
 In addition to the basic Personal Needs Allowance of \$60, individuals with earnings up to \$30 keep an additional amount up to the \$30 earned.

- If an individual's net monthly earnings exceed \$30 but do not exceed \$120:
 In addition to the basic Personal Needs Allowance of \$60, individuals with earnings above \$30 but less than \$120 keep an additional amount which includes the first \$30 earned, plus one half of whatever amount exceeds that up to \$120.

- If an individual's net monthly earnings exceed \$120:
 In addition to the basic Personal Needs Allowance of \$60, individuals with earnings above \$120 keep an additional amount which includes the first \$30 earned, plus one half of whatever amount exceeds that up to \$120, plus 30% of the amount greater than \$120.

All institutionalized individuals may receive a deduction from the cost of care in an institution for court ordered guardianship/fiduciary fees. The deduction is limited to guardianship-related costs and fees, subject to the limitations of the Texas Probate Code.

SUPERSEDES: TN- 99-04

TN No. 09-32 Approval Date 6-7-10 Effective Date 9-1-09
 Supersedes TN No. 99-04