spouse of an institutionalized person is treated as available to the community spouse for the purpose of determining the community spouse income allowance under Section 120.379(e).

4) An annuity that fails to name the State of Illinois as a remainder beneficiary as required under Section 120.385(b) shall result in denial or termination of eligibility for long term care services.

j) The principal of a trust fund established under the Self Sufficiency Trust Fund Program (see 20 ILCS 1705/21.1) is an exempt resource.

(Source: Emergency amendment at 36 Ill. Reg. 10253, effective July 1, 2012 through June 30, 2013)

**Section 120.379 Provisions for the Prevention of Spousal Impoverishment**
**EMERGENCY**

a) The provisions for the prevention of spousal impoverishment apply only to an institutionalized person (as defined in Section 120.388(c)) whose spouse resides in the community. For purposes of this Section, those persons shall be referred to as the institutionalized spouse and the community spouse.

b) Income. In determining the financial eligibility of an institutionalized spouse, only non-exempt income attributed to the institutionalized spouse shall be considered available. The following rebuttable presumptions shall apply in determining the income attributed to each spouse:

1) if payment of income is made solely in the name of one spouse, the income will be considered available only to that spouse;

2) if payment of income is made in the names of both spouses, one-half of the income shall be considered available to each spouse;

3) if payment of income is made in the names of either spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made to both spouses and no other interest is specified, one-half of the joint interest shall be considered available to each spouse);

4) if payment of income is made from a trust, the income shall be considered available to each spouse as provided under Section 120.347(h); and

5) if there is no trust or instrument establishing ownership, one-half of the income shall be considered available to the institutionalized spouse and one-half to the community spouse.

c) Resources. In determining the financial eligibility of an institutionalized spouse, the following shall apply:

1) At the beginning of a continuous period of institutionalization, the total value of resources owned by either or both spouses shall be computed.

2) Assessment. Upon the request of an institutionalized spouse, community spouse, or a representative of either, at the beginning of a continuous period of institutionalization, the Department shall conduct an assessment of the couple's resources for the purpose of determining the combined amount of nonexempt resources in which either spouse has an ownership interest. The person requesting the assessment shall be responsible for providing documentation and verification necessary for the Department to complete the assessment.

3) For purposes of this subsection (c), a continuous period of institutionalization is defined as at least 30 days of continuous institutional care. An initial assessment remains effective during that period if:

A) a resident of a long term care facility is discharged for a period of less than 30 days and then reenters the facility;

B) a resident of a long term care facility enters a hospital and then returns to the facility from the hospital;

C) a person discontinues receiving home and community-based services for a period of less than 30 days; or

D) a person discontinues receiving home and community-based services due to hospitalization and then is discharged and begins to receive home and community-based services.

4) At the time of an institutionalized spouse's application for medical

assistance, all nonexempt resources held by either the institutionalized person, the community spouse, or both shall be considered available to the institutionalized spouse. From this amount may be deducted and transferred to the community spouse the Community Spouse Resource Allowance (CSRA), as provided under subsection (d) of this Section. The remaining amount shall be the total amount of resources considered available to the institutionalized spouse.

d) Transfer of Resources to the Community Spouse. From the amount of nonexempt resources considered available to the institutionalized spouse, as described in subsection (c)(4) of this Section, a transfer of resources is allowed by the institutionalized spouse to the community spouse or to another individual for the sole benefit (as defined in Section 120.388(m)(2)(B)) of the community spouse in an amount that does not exceed the CSRA. The CSRA is the difference between the amount of resources otherwise available to the community spouse and the greatest of:

1) the greater of the minimum amount permitted under 1924(f)(2 of the Social Security Act, 42 USC 1396r-5(f)(2) or~~established annually by the US Department of Health and Human Services (DHHS) (as of January 1, 2011,~~ $109,560~~)~~;

2) the amount established through a fair hearing under subsection (f)(3) of this Section; or

3) the amount transferred under a court order against an institutionalized spouse for the support of the community spouse.

e) Deductions are allowed from an institutionalized spouse's post-eligibility income (pursuant to Section 120.61(d) and (e)) for a community spouse income allowance and a family allowance. The deductions are determined as follows:

1) Community Spouse Maintenance Allowance.

A) The amount of monthly income that may be deducted from the institutionalized spouse's post-eligibility income for the benefit of the community spouse is equal to the minimum monthly maintenance needs allowance (MMMNA) less the amount of monthly income otherwise available to the community spouse (as determined under subsection (b) of this Section.The amount

established as the MMMNA is greater of the minimum amount permitted under 1924(d)(3) of the Social Security Act, 42 USC 1396r-5(d)(3) or ~~(as of January 1, 2011,~~ $2,739 per month~~) shall be provided for calendar years after 2011 by DHHS~~.

B) The deduction is allowed only to the extent the income of the person is in fact contributed to the community spouse. However, the deduction for the community spouse income allowance shall not be less than the amount ordered by a court for support of the community spouse or the amount determined as the result of a fair hearing provided for under subsection (f) of this Section.

C) For purposes of this Section, all income of the institutionalized spouse that can be made available to the community spouse shall be made available before resources may be transferred in excess of the CSRA specified under subsection (d)(1) of this Section that will generate income to make up the difference between the MMMNA and the amount of income available to the community spouse.

2) Family Allowance. The amount of monthly income that may be deducted from the institutionalized spouse's post-eligibility income for the benefit of each family member is equal to one-third of the difference between the family maintenance needs standard (150% of the annual Federal Poverty Level for two persons) and any nonexempt income of the family member. Family members only include dependent children under age 21, dependent adult children, dependent parents or dependent siblings of either spouse who reside with the community spouse.

3) A deduction is also allowed from the institutionalized spouse's post-eligibility income for dependent children under age 21 who do not reside with the community spouse pursuant to Section 120.61(e)(5).

4) The term "dependent" has the meaning ascribed to a "qualified" person under 26 USC 152.

f) Fair Hearings. Either the institutionalized spouse or the community spouse may request a hearing (as described in 89 Ill. Adm. Code 104.1) under this Section for the following reasons:

1) either spouse is dissatisfied with a determination of:

   A) the community spouse income allowance under subsection (e)(1) of this Section;

   B) the amount of the monthly income treated as otherwise available to the community spouse (as applied under subsection (e)(1) of this Section);

   C) the attribution of resources under subsection (c)(4) of this Section; or

   D) the determination of the CSRA under subsection (d) of this Section.

2) Either spouse may request an increase in the MMMNA under subsection (e)(1). If either spouse establishes that, due to exceptional circumstances resulting in significant financial duress, the community spouse needs income above the level provided by the MMMNA, an amount adequate to provide that additional income shall be substituted. For purposes of this subsection (f)(2), significant financial distress means expenses that the community spouse incurs in excess of the income standard, including:

   A) recurring or extraordinary medical expenses of the community spouse that are not covered by any third party resource, including insurance or the Medical Assistance Program;

   B) amounts necessary to preserve, maintain or make major repairs to homestead property; or

   C) amounts necessary to preserve an income producing resource, subject to the limitations on that property under Section 120.381(a)(3) and as long as the expense is reasonable in relation to the income produced by the resource.

3) Either spouse may request that an alternative CSRA be substituted for the standard CSRA calculated under subsection (d) of this Section if it can be established that the standard CSRA (in relation to the amount of income it generates) is inadequate to raise the community spouse's income to the MMMNA.

A) Before a substitute CSRA may be allocated under this subsection (f)(3), the amount of income attributed to the institutionalized spouse that may be transferred to the community spouse under subsection (e) of this Section shall first be considered available to raise the community spouse's income to the MMMNA.

B) If the sum of income otherwise available to the community spouse and income that may be transferred from the institutionalized spouse is insufficient to raise the community spouse's income to the MMMNA, then a substitute CSRA may be allowed. The amount the substitute CSRA may exceed the CSRA provided for under subsection (d) of this Section is limited to the amount of resources necessary to generate income to raise the community spouse's total income to the MMMNA.

C) In determining the amount of income that a substitute CSRA under this subsection (f)(3) may generate, the Department will use, for purposes of comparison, the cost to purchase an actuarially sound single premium life annuity producing monthly payments that, when added to the community spouse's total income, will be sufficient to raise the community spouse's income to, but not more than, the MMMNA. If resources are insufficient to purchase an annuity that will raise the community spouse's income to the MMMNA, the Department will measure the amount of an allowable increase in the CSRA by the cost to purchase an actuarially sound single premium life annuity producing monthly payments using available resources.

D) It is the requesting person's responsibility to provide the Department with an estimate from a reputable company of the cost to purchase the annuity described in subsection (f)(3)(C).

E) The Department may compare the estimate with available information on the cost of other single premium life annuities.

F) In calculating the amount of the community spouse's income after approval of a substitute CSRA, the Department shall deem the amount of the monthly annuity payments as being available to the

community spouse, although it will not require the actual purchase of an annuity.

g) The appeal hearing described in subsection (d)(2) of this Section shall be held within 30 days after the date the appeal is filed.

h) A transfer of resources under subsection (d) of this Section from the institutionalized spouse to the community spouse shall be made as soon as practicable after the date of initial determination of eligibility and before the first regularly scheduled redetermination of eligibility, taking into account such time as may be necessary to obtain a court order under subsection (d)(3) of this Section. If a transfer of resources to a community spouse has not been made by the first scheduled redetermination and no petition for an order of spousal support is pending judicial review, the resources shall be considered available to the institutionalized spouse.

i) Assignment of Support Rights. The institutionalized spouse shall not be ineligible by reason of resources determined under subsection (c)(4) to be available for the cost of care when:

1) the institutionalized spouse has assigned to the State any rights to support from the community spouse (see Section 120.319);

2) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment, but the State has the right to bring a support proceeding against a community spouse without that assignment; or

3) the State determines that denial of eligibility would work an undue hardship (see Section 120.388(r)(1)).

j) If an institutionalized spouse or community spouse refuses to provide the Department the total value of assets, including income and resources, to the extent either the institutionalized spouse or community spouse has ownership interest in them, such refusal may result in the institutionalized spouse being denied eligibility and continuing to remain ineligible for long term care based on failure to cooperate.

k) The Department may pursue any available legal process to enforce its right of assignment to support against the community spouse or any other responsible

person pursuant to Section 120.319. ~~These processes may include, but shall not be limited to, the administrative support procedures provided under 89 Ill. Adm. Code 103.~~

1) The Department may seek support for an institutionalized spouse who has assigned his or her right of support from his or her spouse to the State, from the resources and income available to the community spouse.

2) The Department may bring an action in the circuit court to establish support orders or itself establish administrative support orders by any means and procedures authorized under the Public Aid Code, as applicable, except that the standard and regulations for determining ability to support in Section 10-3 of the Public Aid Code shall not limit the amount of support that may be ordered.

3) Proceedings may be initiated to obtain support, or for the recovery of aid granted during the period such support was not provided, or both, for the obtainment of support and the recovery of the aid provided. Proceedings for the recovery of aid may be taken separately or they may be consolidated with actions to obtain support. Such proceedings may be brought in the name of the person or persons requiring support or may be brought in the name of the Department, as the case requires.

4) The orders for the payment of moneys for the support of the person shall be just and equitable and may direct payment thereof for such period or periods of time as the circumstances require, including support for a period before the date the order for support is entered. In no event shall the orders reduce the community spouse resource allowance below the level established in subsection (d) of this Section or an amount set after a fair hearing pursuant to subsection (f) of this Section, whichever is greater, or reduce the monthly maintenance allowance for the community spouse below the level permitted pursuant to subsection (e) of this Section.

(Source: Emergency amendment at 36 Ill. Reg. 10253, effective July 1, 2012 through June 30, 2013)

**Section 120.380 Resources**
**EMERGENCY**

a) Unless otherwise specified and for purposes of this Part, the term "resource" (as