

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

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

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defined in 42 USC 1382b, except subsection (a)(1) of that section, which excludes the home as a resource) means cash or any other personal or real property that a person owns and has the right, authority or power to liquidate.

- b) A resource is considered available to pay for a person's own care when at the disposal of that person; when the person has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance or medical care; or when the person has the lawful power to make the resource available or to cause the resource to be made available.
- c) The value of nonexempt resources shall be considered in determining eligibility for any means-tested public benefit program administered by the Department, the Department of Human Services or the Department on Aging if eligibility is determined, in part, on the basis of resources as provided under this Section.
- d) Determination of Resources.
 - 1) In determining initial financial eligibility for medical assistance, the Department considers nonexempt verified resources available to a person as of the date of decision on the application for medical assistance. The date of verification (see Section 120.308(f)) may be prior to the date of decision. Resources applied to a spenddown obligation in a retroactive month (see Section 120.61(b)) shall not be treated as available in the determination of initial financial eligibility. Money considered as income for a month is not considered a resource for that same month. If income for a month is added to a bank account that month, the Department will subtract the amount of income from the bank balance to determine the resource level. Any income remaining in the following months is considered a resource.
 - 2) An applicant for medical assistance may be eligible for up to 3 months prior to the date of application if the person would have been eligible for medical assistance at the time he or she received services if he or she had applied, regardless of whether the person is alive when the application for medical assistance is made. In determining financial eligibility for retroactive months, the Department will consider the amount of income and resources and exemptions available to a person as of the first day of each of the backdated months for which eligibility is sought. ~~Resources spent prior to the end of the month of application to purchase a Pre-paid Funeral/Burial Contract in compliance with Section 120.381(b), (c) or (d),~~

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~~to pay for incurred medical expenses or to pay legal fees up to \$10,000 (which shall be adjusted annually for any increase in the Consumer Price Index), incurred in the month of application or in any of the three months prior to the month of application, that are related to the eligibility application for long term care assistance shall not be considered available.~~

- 3) In determining a person's spenddown obligation (see Section 120.384), the Department considers the amount of nonexempt resources available as of the date of decision, in the case of initial eligibility, and the first day of the month, in the case of retroactive eligibility, that are in excess of the applicable resource disregard (see Section 120.382).
- e) Subject to subsection (c) of this Section and 89 Ill. Adm. Code 113.140, the entire equity value of jointly held resources shall be considered available in determining a person's eligibility for assistance, unless:
- 1) The resource is a joint income tax refund, in which case one-half of the refund is considered owned by each person; or
 - 2) The person documents that he or she does not have access to the resource. Appropriate documents may include, but are not limited to, bank documents, signature cards, trust documents, divorce papers, and papers from court proceedings that show the person is legally unable to access the resource; or
 - 3) The resource is held jointly with an individual eligible under any means-tested public health benefit program (other than the Supplemental Nutrition Assistance Program) administered by the Department, the Department of Human Services, or the Department on Aging; or
 - 4) The person can document the amount of his or her legal interest in the resource and that such amount is less than the entire value of the resource, then the documented amount shall be considered. Appropriate documentation may include, but is not limited to, bank documents, trust documents, signature cards, divorce papers, or court orders that show the person's legal interest is less than the entire value of the resource; or
 - 5) The person documents that the resource or a portion of the resource is not owned by the person and the person's accessibility to the resource is

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changed (see subsections (e)(2) and (4) of this Section for documentation examples).

- f) In determining the eligibility of a person for long term care services whose spouse resides in the community, all nonexempt resources owned by the institutionalized spouse, the community spouse, or both shall be considered available to the institutionalized spouse in determining his or her eligibility for medical assistance. From the total amount of such resources may be deducted a Community Spouse Resource Allowance as provided under Section 120.379.
- g) Trusts established prior to August 11, 1993 shall be treated in the manner described in Section 120.346.
- h) Trusts established on or after August 11, 1993 shall be treated in the manner described in Section 120.347.
- i) The value of a life estate shall be determined at the time the life estate in the property is established and at the time the property (for example, resources) is liquidated. In determining the value of a life estate and remainder interest based on the value of the property at the time the life estate is established or of the amount received when the property is liquidated, the Department shall apply the values described in Section 120.Table A. The life estate and remainder interest are based on the age of the person at the time the life estate in the property is established and at the time the property is liquidated and the corresponding values described in Section 120.Table A.
- j) A person's entrance fee in a continuing care retirement community or life care community (as those entities are described in 42 USC 1396r(c)(5)(B)) shall be considered an available resource to the extent that:
 - 1) the person has the ability to use the entrance fee, or the contract provides that the entrance fee may be used to pay for care should other resources or income of the person be insufficient to pay for the care;
 - 2) the person is eligible for a refund of any remaining entrance fee when the person dies or terminates the continuing care retirement community or life care community contract and leaves the community; and
 - 3) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

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- k) Non-homestead real property, including homestead property that is no longer exempt (see Section 120.381(a)(1)), is considered an available resource unless:
- 1) the property is exempted as income-producing to the extent permitted under Section 120.381(a)(3), ~~except Section 120.381(a)(3) shall not apply to farmland property and personal property used in the income producing operations related to the farmland (e.g., equipment and supplies, motor vehicles, tools, etc.);~~
 - 2) ownership of the property consists of a fractional interest of such a small value that a substantial loss to the person would occur if the property were sold;
 - 3) the property has been listed for sale, in which case the property will not be counted as available for at least six months as long as the person continues to make a good faith effort to sell the property. This effort can be verified by evidence, including advertisements or documentation of the listing of the property with licensed real estate agents or brokers that includes a report of any offer from prospective buyers. The Department will review cases in which the property has not been sold after six months and will consider the following factors in determining if extensions of the initial six months are warranted:
 - A) the asking price is less than the fair market value of the property;
 - B) the property is marketed through a qualified realtor who is acting in good faith;
 - C) there is not a substantial market for the type of property being sold; and
 - D) the person has not rejected any reasonable offer to buy the property; or
 - 4) the homestead property that is no longer exempt (see Section 120.381(a)(1)) is producing annual net income for the person in an amount that is not less than six percent of the person's equity value in the property. In determining net income, the Department shall recognize business expenses allowed for federal income tax purposes.

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(Source: Amended by emergency rulemaking at 36 Ill. Reg. 10253, effective July 1, 2012 through June 30, 2013)

Section 120.381 Exempt Resources**EMERGENCY**

- a) The following resources are exempt from consideration in determining eligibility for medical assistance:
 - 1) Homestead Property.
 - A) Homestead property is any property in which a person (and spouse, if any) has an ownership interest and that serves as the person's principal place of residence. This property includes the shelter in which a person resides, the adjoining land on which the shelter is located and related outbuildings.
 - B) If a person (and spouse, if any) moves out of his or her home without the intent to return, the home is no longer exempt because it is no longer the person's principal place of residence. If a person leaves his or her home to live in a long term care facility, the property is considered exempt, irrespective of the person's intent to return, as long as a spouse or dependent relative of the eligible person continues to live there. The person's equity in the former home is treated as an available resource effective with the first day of the month following the month it is no longer his or her principal place of residence.
 - C) Subject to federal approval, real property, including real property claimed as homestead, held in trust is not exempt unless the Department determines that the person's spouse, minor child or disabled child resides in the property.
 - 2) Personal effects and household goods are exempt to the extent they are excluded under 20 CFR 416.1216.
 - 3) Resources (for example, land, buildings, equipment and supplies or tools), including farmland property and personal property used in the income producing operations related to the farmland (for example, equipment and