

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

(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

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supplies, motor vehicles or tools) necessary for self-support up to \$6,000 of the person's equity in the income producing property are exempt provided the property produces a net annual income of at least six percent of the excluded equity value of the property. The equity value in excess of \$6,000 is not excluded. If the activity produces income that is less than six percent of the exempt equity due to reasons beyond the person's control (for example, the person's illness or crop failure) and there is a reasonable expectation that the property will again produce income equal to six percent of the equity value (for example, a medical prognosis that the person is expected to respond to treatment or that drought resistant corn will be planted), the equity value in the property up to \$6,000 is exempt. If the person owns more than one piece of property and each produces income, each is looked at to determine if the six percent rule is met and then the amounts of the person's equity in all of those properties are totaled to see if the total equity is \$6,000 or less. The total equity value of all properties that is exempt under this subsection is limited to \$6,000.

- 4) Automobile.
 - A) Exclude one automobile, regardless of value, used by the client, spouse or other dependent if:
 - i) it is necessary for employment;
 - ii) it is necessary for the medical treatment of a specific or regular medical problem;
 - iii) it is modified for operation by, or transportation of, a handicapped person;
 - iv) it is necessary because of factors such as climate, terrain or distance to provide necessary transportation to perform essential daily activities; or
 - v) one vehicle for each spouse is exempt in determining the amount allowed as the Community Spouse Resource Allowance (as described in Section 120.379(d)).
 - B) If not excluded in subsection (a)(4)(A) of this Section, one

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automobile is excluded to the extent its equity value does not exceed \$4500. Any excess equity value is applied toward the applicable resource disregard (see Section 120.382).

- C) For all other automobiles, apply the equity value toward the resource disregard (see 89 Ill. Adm. Code 113.142).
- 5) Life insurance policies with a total face value of \$1,500 or less and all term life insurance policies. If the total face value exceeds \$1,500, the cash surrender value must be counted as a resource.
- 6) For purposes of this Section, the term "equity value" refers to:
 - A) in the case of real property, the value described in Section 120.385(c); and
 - B) in the case of personal property, the price that an item can reasonably be expected to sell for on the open market in the particular geographic area involved, minus any encumbrances (as described in Section 120.385(c)(1)(C)).
- b) Burial spaces that are intended for the use of the person, his or her spouse, or any other member of his or her immediate family are exempt. Immediate family is defined as a person's minor and adult children, including adopted children and stepchildren, a person's brothers, sisters, parents and adoptive parents, and the spouses of these individuals.
- c) Funds that are set aside for the burial expenses of a person and his or her spouse in a bank account owned by the person that is clearly identified as a burial fund is exempt up to \$1500. This amount is reduced by the face value of any excluded life insurance on the person and the amount of any funds held in an irrevocable trust or other irrevocable arrangement that is available for burial expenses per person.
- d) Prepaid Funeral/Burial Contracts. Prepaid funeral/burial contracts are exempt to the following extent:
 - 1) Funds in a revocable prepaid funeral/burial contract are exempt up to \$1500, except that any portion of a contract that clearly represents the

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purchase of burial space, as that term is defined for purposes of the Supplemental Security Income program, is exempt regardless of value.

- 2) Funds Effective January 1, 2012, funds in an irrevocable prepaid funeral/burial contract are exempt up to ~~\$5,874~~\$10,000, except that any portion of a contract that clearly represents the purchase of burial space, as that term is defined for purposes of the Supplemental Security Income program is exempt regardless of value~~which shall include the costs of both goods and services.~~ This amount shall be adjusted annually for any increase in the Consumer Price Index. The amount exempted shall be limited to the price of the funeral goods and services to be provided upon death. The contract must provide a complete description of the funeral goods and services to be provided and the price thereof. Any amount in the contract not so specified shall be treated as a transfer of assets for less than fair market value.
 - 3) A prepaid, guaranteed price funeral/burial contract ~~up to \$10,000, which shall include the costs of both goods and services and which shall be adjusted annually for any increase in the Consumer Price Index,~~ funded by an irrevocable assignment of a person's life insurance policy to a trust, is exempt. The amount exempted shall be limited to the amount of the insurance benefit designated for the cost of the funeral goods and services to be provided upon the person's death. The contract must provide a complete description of the funeral goods and services to be provided and the price thereof. Any amount in the contract not so specified shall be treated as a transfer of assets for less than fair market value. The trust must include a statement that, upon the death of the person, the State will receive all amounts remaining in the trust, including any remaining payable proceeds under the insurance policy up to an amount equal to the total medical assistance paid on behalf of the person. The trust is responsible for ensuring that the provider of funeral services under contract receives the proceeds of the policy when it provides the funeral goods and services specified under the contract. The irrevocable assignment of ownership of the insurance policy must be acknowledged by the insurance company.
- e) Resources necessary for fulfillment of an approved plan for achieving self-support under 42 CFR 416.1220.
 - f) Resources excluded by express provision of 20 CFR 416.1236 (2009).

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- g) *Donations or benefits from fund raisers held for a seriously ill client provided the client or a responsible relative of the client does not have control (for example, not available to the client or the responsible relative) over the donations or benefits or the disbursement of donations or benefits [305 ILCS 5/5-2].*
- h) Payments made to veterans who receive an annual disability payment or to the survivors of deceased veterans who receive a one-time lump sum payment from the Agent Orange Settlement Fund or any other fund referencing Agent Orange product liability under Public Law 101-201.
- i) Money received from the Social Security Administration under a Plan to Achieve Self-Support (PASS) and held in a separate account.
- j) Disaster relief payments provided by federal, State or local government or a disaster assistance organization.
- k) The amount of earned income tax credit that the client receives as advance payment or as a refund of federal income tax.
- l) For disabled persons who have lost eligibility under Section 120.510 and who are only requesting services other than those described in Section 120.61(a) (except that subsection's reference to services provided through a Community Integrated Living Facility (CILA)), the following additional exemptions shall apply:
 - 1) Retirement accounts that a person with a disability cannot access without penalty before the age of 59½ and medical savings accounts established pursuant to 26 USC 220; and
 - 2) Up to \$25,000 if the person owned assets of equal value when his or her eligibility under Section 120.510 ended.
- m) The amount of damages recovered by a resident of a nursing home for any act that injures the resident pursuant to 210 ILCS 45/3-605.
- n) Certain payments received under the American Recovery and Reinvestment Act of 2009.
 - 1) Payments to World War II veterans who served in the Philippines and spouses of those veterans under Div. A, Title X, Sec. 1002 of P.L. 111-5.

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- 2) Payments or reimbursements for Premium Assistance for COBRA Continuous Coverage under Div. B, Title III, Sec. 3001 of P.L. 111-5.
- o) Certain payments received under the American Recovery and Reinvestment Act of 2009 are exempt as an asset the month of receipt and two months thereafter.
 - 1) Making Work Pay Credit under Div. B, Title I, Sec. 1001 of P.L. 111-5.
 - 2) Tax Credit for Certain Government Retirees under Div. B, Title II, Sec. 2202 of P.L. 111-5.
- p) Economic Recovery Payments under the American Recovery and Reinvestment Act of 2009 under Div B, Title II, Sec. 2201 of P.L. 111-5 are exempt as an asset the month of receipt and nine months thereafter.

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

Section 120.385 Factors Affecting Eligibility for Long Term Care Services**EMERGENCY**

- a) For purposes of this Section, the terms "institutionalized persons" and "long term care services" shall have the meanings described in Section 120.388 of this Part. The terms "institutionalized spouse" and "community spouse" shall have the meanings described in Section 120.379(a) of this Part.
- b) Disclosure of Annuity and Naming the State as Remainder Beneficiary.
 - 1) Effective January 1, 2012, an application (or redetermination related to an application) for long term care services shall include a disclosure by an institutionalized person or his or her community spouse of any interest either or both may have in any annuity or similar financial instrument purchased, regardless of whether the annuity is irrevocable or is treated as an asset. The application or recertification form shall also include a statement that the State of Illinois becomes a remainder beneficiary under such an annuity or similar financial instrument to the extent that the State has provided medical assistance to the institutionalized person.