

TO BE RESCINDED

5160:1-3-05.14 **Medicaid: resource exclusion.**

(A) This rule describes excluded resources for the purpose of determining medicaid eligibility.

(B) Resource exclusions.

(1) Resources excluded by federal laws other than the Social Security Act, in accordance with 20 C.F.R. 416.1236 (as in effect on October 1, 2016), unless otherwise noted:

(a) Unspent payments received under the Agent Orange Compensation Exclusion Act (as in effect on October 1, 2016);

(b) Unspent payments to certain individuals of Japanese ancestry and Aleuts;

(c) Unspent payments to victims of Nazi persecution;

(d) Unspent payments received under the Radiation Exposure Compensation Act (as in effect on October 1, 2016);

(e) Unspent Austrian social insurance payments paid under paragraphs 500 and 506 of the Austrian General Social Insurance Act (as in effect on October 1, 2016);

(f) Unspent payments received as a result of the Netherlands' Act on Benefits for Victims of Persecution from 1940-1945 (as in effect on October 1, 2016);

(g) Payments made to Native Americans as listed in section IV of 20 C.F.R 416 Subpart K Appendix (as in effect on October 1, 2016).

(h) Payments from the Ricky Ray hemophilia relief fund or the class settlement in the case of "Susan Walker v. Bayer Corporation," et al. under the Ricky Ray Hemophilia Relief Fund Act of 1988 (as in effect on October 1, 2016);

(i) The first two thousand dollars per calendar year received as compensation for participation in clinical trials that meet the criteria detailed in section 1612(b)(26) of the Social Security Act (as in effect October 1, 2016);

- (j) Payments made for supporting services or reimbursement of out-of-pocket expenses to volunteers participating in corporation for national and community service (CNCS, formerly ACTION) programs:
 - (i) AmeriCorps program;
 - (ii) Special and demonstration volunteer program;
 - (iii) University year for ACTION (UYA);
 - (iv) Retired senior volunteer program (RSVP);
 - (v) Foster grandparents program;
 - (vi) Senior companion program;
- (k) Unspent payments received under the Energy Employees Occupational Illness Compensation Program Act of 2000 (as in effect on October 1, 2016). Interest received on any unspent payment is a countable resource;
- (l) Student financial assistance received under the Higher Education Act of 1965 (as in effect on October 1, 2016) or bureau of Indian affairs is excluded from income and resources, regardless of use:
 - (i) Pell grants;
 - (ii) Student services incentives;
 - (iii) Academic achievement incentive scholarships;
 - (iv) Byrd scholars;
 - (v) Federal supplemental education opportunity grants;
 - (vi) Federal educational loans (federal PLUS loans, Perkins loans, Stafford loans, Ford loans, etc.);
 - (vii) Upward bound;
 - (viii) Gear up (gaining early awareness and readiness for undergraduate programs);
 - (ix) State educational assistance programs funded by the leveraging educational assistance program;

- (x) Work-study programs;
- (m) Home energy assistance payments or allowances;
- (n) Contributions, matching funds, or interest in an individual development accounts (IDAs), either demonstration project or TANF-funded;
- (o) Veterans affairs payments made to or on behalf of:
 - (i) Certain Vietnam veterans' natural children regardless of age or marital status, for any disability resulting from spina bifida suffered by such children;
 - (ii) Certain Korea service veterans' natural children regardless of their age or marital status, for any disability resulting from spina bifida suffered by such children;
 - (iii) Women Vietnam veterans natural children regardless of their age or marital status, for certain birth defects;
- (p) Funds and interest held in an achieving a better life experience (ABLE) account under the Achieving A Better Life Experience Act of 2014 (Pub. L. 113-295) (as in effect on October 1, 2016):
 - (i) A contribution to an ABLE account by another individual is neither income nor a resource to the individual with the ABLE account. If the individual who made the contribution later requests medicaid for long term care services, the contribution shall be evaluated in accordance with rule 5160:1-6-06 of the Administrative Code.
 - (ii) A distribution from an ABLE account that is retained after the month of receipt is neither income nor a resource to the individual in any month when spent on a qualified disability expense (QDE).
 - (iii) A QDE is any expense related to the blindness or disability of the individual and made for the benefit of the individual. QDEs include but are not limited to:
 - (a) Education
 - (b) Housing
 - (c) Transportation

- (e) Real or personal property considered essential to the means of self-support as described in rule 5160:1-3-05.19 of the Administrative Code;
- (f) Certain burial funds and contracts as described in rule 5160:1-3-05.6 of the Administrative Code;
- (g) Value of a burial space as described in rule 5160:1-3-05.7 of the Administrative Code;
- (h) Cash or in-kind replacement received from any source for purposes of replacing or repairing an excluded resource which is lost, damaged, or stolen. Any interest earned on such cash payments, is not income. The total amount of cash (including interest earned) or the value of the in-kind replacement is excluded as a resource for a period of nine months from the date of receipt.
 - (i) If the exclusion time expires and the individual has not used all of the cash, any remaining cash (as well as interest earned on such cash) is a countable resource effective the first day of the following month in which the time period expires.
 - (ii) The exclusion time may be extended for good cause for a reasonable period not to exceed an additional nine months (a total of eighteen months from the date the cash is received).
 - (iii) Good cause may be found if circumstances beyond the individual's control:
 - (a) Prevent repair or replacement of the lost, damaged, or stolen property, or
 - (b) Keep the individual from contracting for such repair or replacement.
 - (iv) Any cash and interest retained become a resource the first day of the month following the month in which the eighteen-month period ends.
 - (v) Temporary housing received by an individual whose home was destroyed or damaged is also excluded for a period of nine months beginning with the month the temporary housing is first provided. For purposes of this rule, temporary housing includes the value of support and maintenance. When a home is damaged or destroyed and temporary housing is furnished to an individual who owned the

home, any form of in-kind support and maintenance is not counted as income;

- (i) Funds held in plans for achieving a self-support (PASS) account in accordance with section 1613(a)(4) of the Social Security Act (as in effect on October 1, 2016);
- (j) Federal tax refunds and advance tax credits received on or after January 1, 2010 are excluded for twelve months beginning the month following the month of receipt in accordance with section 1613(a)(11) of the Social Security Act (as in effect on October 1, 2016);
- (k) Past-due benefits and other underpayments that exceed six times the monthly SSI payment deposited into a dedicated financial institution account and any accrued interest or other earnings on such an account are excluded as income and resources as defined in rule 5160:1-3-05.4 of the Administrative Code;
- (l) Unspent payments received from a fund established by a state to aid victims of crime are excluded for nine months beginning after the month of receipt in accordance with section 1613(a)(9) of the Social Security Act (as in effect on October 1, 2016). Interest earned on any unspent payment is a countable resource;
- (m) Relocation assistance in accordance with section 1613(a)(10) of the Social Security Act (as in effect on October 1, 2016);
 - (i) Payments under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 in accordance with 42 U.S.C. 4636 (as in effect on October 1, 2016) provided to individuals displaced by projects in the acquisition of real property are excluded with no time limits.
 - (ii) Unspent relocation assistance payments from a state or local government are excluded for nine months.
 - (iii) Interest earned on unspent relocation assistance is a countable resource.
- (n) Grants, scholarships, fellowships, and gifts used or intended to be used to pay the cost of tuition, fees or other necessary educational expenses, in accordance with section 1613(A)(15) of the Social Security Act (as in effect on October 1, 2016) are excluded for nine months;

- (o) Filipino veteran equity compensation fund payment in accordance with section 1002 of the American Recovery and Reinvestment Act of 2009 (as in effect on October 1, 2016). Interest earned on the payment is a countable resource;
- (p) Value of food or assistance provided under federal food and nutrition programs;
- (q) Unspent portion of retroactive SSI and retirement, survivors, and disability insurance (RSDI) payments are excluded for nine months following the month of receipt in accordance with section 1613(a)(7) of the Social Security Act (as in effect on October 1, 2016);
- (r) Payments provided for flood mitigation activities under section 1324 of the National Flood Insurance Act of 1968 (Pub. L. 109-64) (as in effect on October 1, 2016);
- (s) Unspent assistance received under the Disaster Relief and Energy Assistance Act (as in effect on October 1, 2016) and assistance provided under any federal statute because of a presidentially-declared disaster in accordance with section 1613(a)(6) of the Social Security Act (as in effect on October 1, 2016);
- (t) The value of federal housing assistance in accordance with section 1613(a)(8) of the Social Security Act (as in effect on October 1, 2016) provided by:
 - (i) The office of housing and urban development (HUD); or
 - (ii) The U.S. department of agriculture's rural housing service (RHS), formally known as the farmers home administration (FHA);
- (u) Gifts to children with life-threatening conditions in accordance with section 1613(a)(13) of the Social Security Act (as in effect on October 1, 2016) from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, within the following limitations:
 - (i) In-kind gifts not converted to cash;
 - (ii) The first two thousand dollars of any cash gifts within a calendar year.
 - (iii) Interest or dividends earned on any gift is a countable resource.

- (v) Unspent restitution payments for misused benefits for beneficiaries of RSDI, special benefits for certain world war II veterans, and SSI are excluded for nine months following the month of receipt in accordance with section 1613(a)(14) of the Social Security Act (as in effect on October 1, 2016). Payments are made to the beneficiary or the beneficiary's representative payee in the amount equal to the benefits misused in the following situations:
 - (i) The misuse resulted from the social security administration's (SSA) negligent failure to investigate or monitor a representative payee; or
 - (ii) An organization or individual payee misused the benefits, without regard to whether SSA was negligent;
 - (w) A state annuity paid by a state, to an individual and/or the individual's spouse, on the basis of the state's determination that the individual is a veteran and is blind, disabled, or aged in accordance with section 1613(a)(16) of the Social Security Act (as in effect on October 1, 2016).
- (C) Payments or benefits listed in this rule that have been commingled with countable resources must be identifiable in order to be excluded as a resource.
- (D) Administrative agency responsibilities. The administrative agency shall:
- (1) Evaluate interest received on excluded resources in accordance with rule 5160:1-3-05.9 of the Administrative Code.
 - (2) Consider any resource purchased with funds listed in this rule as not automatically excluded and subject to medicaid resource requirements.

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CERTIFIED ELECTRONICALLY

Certification

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