

---

# 42 U.S. Code § 1396r-5

---

## Treatment of income and resources for certain institutionalized spouses

---

### **(a) Special treatment for institutionalized spouses**

#### **(1) Supersedes other provisions**

In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1)), the provisions of this section supersede any other provision of this subchapter (including sections 1396a(a)(17) and 1396a(f) of this title) which is inconsistent with them.

#### **(2) No comparable treatment required**

Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph (10) or (17) of section 1396a(a) of this title, require such treatment for other individuals.

#### **(3) Does not affect certain determinations**

Except as this section specifically provides, this section does not apply to—

- (A) the determination of what constitutes income or resources, or
- (B) the methodology and standards for determining and evaluating income and resources.

#### **(4) Application in certain States and territories**

##### **(A) Application in States operating under demonstration projects**

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

##### **(B) No application in commonwealths and territories**

This section shall only apply to a State that is one of the 50 States or the District of Columbia.

#### **(5) Application to individuals receiving services under PACE programs**

This section applies to individuals receiving institutional or noninstitutional services under a PACE demonstration waiver program (as defined in section 1396u-4(a)(7) of this title) or under a PACE program under section 1396u-4 or 1395eee of this title.

### **(b) Rules for treatment of income**

#### **(1) Separate treatment of income**

During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.

#### **(2) Attribution of income**

In determining the income of an institutionalized spouse or community spouse for purposes of the post-

---

eligibility income determination described in subsection (d), except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

**(A) Non-trust property**

Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

- (i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;
- (ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and
- (iii) if payment of income is made in the names of the institutionalized spouse or the community 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 with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

**(B) Trust property**

In the case of a trust—

- (i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this subchapter (including sections 1396a(a)(17) and 1396p(d) of this title), and
- (ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—
  - (I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;
  - (II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and
  - (III) if payment of income is made to the institutionalized spouse or the community 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 with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

**(C) Property with no instrument**

In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

**(D) Rebutting ownership**

The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

This document is only available to subscribers. Please [log in](#) or [purchase access](#).

[Purchase Login](#)