

TRANSMITTAL LETTER FOR MANUAL RELEASES

STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BENEFICIARY SERVICES ADMINISTRATION
DIVISION OF ELIGIBILITY SERVICES
201 WEST PRESTON STREET
BALTIMORE, MARYLAND 21201

410-767-1463

1-800-492-5231 extension 1463

MANUAL: Medical Assistance

EFFECTIVE DATE: January 1, 2006

RELEASE NO: MR-128

ISSUED: December 2005

APPLICABILITY: Consideration of entrance fees for Continuing Care Retirement Communities (CCRCs) as a resource

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COMMENTS

Chapter 8

The introductory pages of Chapter 8 Resources are replaced, in order to provide more complete and up-to-date information, consistent with federal requirements, for consideration of resources for Medical Assistance eligibility determinations. Relevant terms and concepts are explained. Resources are defined, the differences between liquid and non-liquid resources are explained, and the distinction between countable and excludable resources is explained. The general requirements for consideration of resources are presented. Responsibilities of the applicant/recipient (A/R) (and any designated

representative) and the eligibility case worker are detailed. Clarification is given that resources are evaluated for their countable value as of the 1st moment of the 1st day of the month, and that money may not be considered as a resource if it is considered as income for the same period under consideration. Explanation is provided to clarify when a resource is considered “available” and therefore countable for Medical Assistance eligibility determinations. The concepts used for determining the countable value of a resource are explained—the owner’s ownership interest and the current equity value.

Policy Alert 08-2 Entrance Fees for Continuing Care Retirement Communities – Policies and Procedures for Consideration as Resources

For Medical Assistance applications or requests for spousal resource assessments filed before January 1, 2006, the policies on page 800-25 of the Medical Assistance Eligibility Manual are used for the resource consideration of entrance fees for Continuing Care Retirement Communities (CCRCs). *The entrance fees are considered as a resource in accordance with the policies and procedures in Chapter 8 for home property.*

For Medical Assistance applications or requests for spousal resource assessments filed on or after January 1, 2006, the policies and procedures in Policy Alert 08-2 are used for consideration of CCRC entrance fees as a resource. Policy Alert 08-2 defines under what circumstances all or part of a CCRC entrance fee is considered available to the owner and is countable as a resource. Also described are the circumstances under which all or part of a CCRC entrance fee is not considered as available to the assistance unit and is excluded as a resource.

The Policy Alert presents the procedures to be used for determining whether a CCRC entrance fee is countable, or excludable as a resource, for Medical Assistance applications or requests for spousal resource assessments filed on or after January 1, 2006. The Local Department of Social Services (LDSS) completes the top half of the certification form (DES 801) for the applicant/recipient (A/R). The A/R presents the certification form to the CCRC. The CCRC completes and signs the form, attaches relevant verifications, and sends the information back to the LDSS. The LDSS determines whether all or part of the entrance fee is countable and informs in writing the A/R and CCRC. If the LDSS determined that all or part of the entrance fee is countable and the A/R disagrees, the A/R is allowed 15 working days to rebut that determination. To rebut the determination, the A/R provides information and verifications to the LDSS, who forwards the information to BSA. BSA requests additional information and verifications from the CCRC if necessary. When the information and verifications are received, BSA reviews the initial LDSS decision and issues its findings in writing to the A/R, CCRC, and eligibility case worker. The eligibility case worker enters on CARES as “OC” (other countable asset) whatever amount of the entrance fee is determined by BSA as available and countable as a resource. The worker fully narrates in CARES.

COMAR 10.09.24

- COMAR 10.09.24.08-3 “Resource Consideration of Entrance Fees for Continuing Care Retirement Communities” is effective January 1, 2006.
- Definitions of “entrance fees” and “continuing care retirement community (CCRC)” are added to COMAR 10.09.24.02.

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Policy Alert 08-2: Entrance Fees for Continuing Care Retirement Communities

DES 801 Certification of Availability Continuing Care Retirement Community Entrance Fee

I. PURPOSE

The purpose of this chapter is to describe how resource eligibility is determined for an applicant or recipient (A/R) for the Medical Assistance (MA or Medicaid) program. This chapter presents the policies and procedures for considering the available liquid and non-liquid resources of assistance unit (AU) members and for determining resource eligibility of AU members requesting retroactive and/or current Medical Assistance coverage. It describes the various types of resources that are countable or excludable for the resource eligibility determination.

II. CONSIDERATION OF RESOURCES – GENERAL POLICIES AND PROCEDURES

Terms and Concepts Related to Resources

Resource Definition:

Resources are defined as accumulated, available personal wealth for which an individual:

- Has an ownership interest;
- Has the legal right, authority, or power to sell, transfer, or liquidate the resource or the individual's ownership interest in the resource; and
- May convert to cash or currency for the individual's or household's support and maintenance.

Resources include cash, personal property, real property, and other liquid and non-liquid items. "Resource" is a term that is also used in the context of evaluating disposals and trust funds. Refer to those sections of this chapter for the meaning of the term in such contexts.

Types of Resources

There are two basic types of resources: liquid and non-liquid.

(1) **Liquid resources** are cash, bank accounts, and other financial instruments that can be easily and quickly (e.g., within 20 working days) converted to cash or other currency. Examples of liquid resources include cash on hand, financial institution accounts

(checking, saving, savings certificates, money market accounts, certificates of deposit), stocks, bonds, mutual fund shares, accumulated dividends for a countable resource, cash value of life insurance policies, trusts, and annuities. Liquid resources other than cash are evaluated according to the individual's equity in the resources.

(2) **Non-liquid resources** are real, personal, or business property or other items which are not cash and cannot be easily and quickly (e.g., within 20 working days) converted to cash or other currency. Real property means property that is fixed or immobile, such as land and buildings. Personal or business property includes items for personal, household, self-employment, or recreational use such as household goods and furnishings, furniture, equipment, machinery, tools, motor vehicles, livestock, and farm animals. Other examples of non-liquid resources include mortgages, promissory notes, and other formal, written loan agreements for which the AU member is the lender. Non-liquid resources are evaluated according to their equity value, except as otherwise specified in this chapter for the type of resource.

Certain types of resources are **excludable**, which means they are not counted or considered when determining financial eligibility. These exclusions are subtracted from the AU's total resources. The remaining resources are the **countable resources**. Some resource exclusions are specific to Aged, Blind, or Disabled (ABD) coverage groups, some are specific to Families and Children (FAC) coverage groups, and most are used for both categories. The various resource exclusions are discussed in detail in this chapter and in the associated Policy Alerts.

General Requirements for Consideration of Resources

Responsibilities of the A/R

The A/R or the A/R's designated representative is required to:

1. Report to the eligibility case worker:

- The identity, type, and current value of all resources in which each AU member or member's spouse has an ownership interest;
 - The amount of any debts or other encumbrances against each resource; and
 - Any changes in resources within 10 business days of the change.
2. Provide to the eligibility case worker as requested:
- Sufficient documentation and verification of each resource;
 - An explanation, with appropriate verification, to reconcile any inconsistency identified by the eligibility case worker in reported resources; and
 - An accounting and reasonable documentation of previously held resources, consisting of convincing testimony or other evidence, to verify whether the:
 - Resources are no longer available; and
 - Disposal of previously held resources within 36 months before the application month (60 months for a trust) requires a penalty period, if the A/R is applying for long-term care or waiver eligibility.

Responsibilities of the Eligibility Case Worker

For the resource eligibility determination, the eligibility case worker:

1. Considers all of the resources reported by the A/R or representative, or otherwise discovered by the eligibility case worker, for AU members or a member's spouse;
2. Determines for each resource owned by AU members or a member's spouse:
 - a. Whether the resource is countable as being available to the owner and not a type of excludable resource; and/or
 - b. The resource's current equity value or cash value and the AU member's or spouse's ownership interest in that value;
3. Compares the AU's total countable resources to the appropriate resource standard for the coverage group and household size; and

4. Promptly notifies the A/R of the eligibility determination and the amount of any excess resources.

General Principles for Consideration of Resources

If resources are a factor of eligibility for the AU's coverage group, resource eligibility exists when the AU's total countable resources are within the applicable resource standard for the coverage group and household size. Resources are considered based on their value as of the 1st moment of the 1st day of the period under consideration.

- If the AU's total countable resources are within the applicable standard as of that moment, the AU is resource-eligible for Medical Assistance for the entire month.
- If the AU's total countable resources exceed the applicable standard as of that moment, the AU is ineligible for Medical Assistance for the entire month. Then, the AU remains ineligible until the total countable resources are within the resource standard as of the 1st moment of the 1st day of a subsequent month.
- For a determination of current eligibility, resources of the A/R and other AU members are considered as they existed on the 1st moment of the 1st day of the current period under consideration.
- If retroactive eligibility is requested to cover services received during the three-month period before the month of application, resource eligibility is determined as of the 1st moment of the 1st day of each retroactive month.

If the value of the AU's total countable resources changes after the 1st moment of a month, the change is considered as of the 1st moment of the next month and does not affect eligibility during the month of the change.

- The value of the AU's total countable resources may increase because a countable resource gains value, a new household member is added to the AU, the AU acquires an additional resource or replaces an excludable resource with a countable resource, etc.
- The value of the AU's total countable resources may decrease because a countable resource loses value, a member dies or moves out of the household, the AU disposes of a resource or replaces a countable resource with an excludable resource, etc.

Resources are only **countable** if they are **available** to the **owner**. A resource is **available** if there is no legal impediment to the sale, transfer, or liquidation of the resource—i.e., if the owner has the legal right, authority, or power to dispose of the resource or his or her ownership interest in the resource.

- Even when withdrawal carries a financial penalty or has implications for other purposes (e.g., increased taxes, reduced profits, or estate planning), these consequences are not considered impediments to withdrawal or reasons for a resource to be considered as unavailable.
- The total amount that may be withdrawn, sold, transferred, or liquidated is the amount considered available to the owner.

Excluded Resources

If a property right cannot be sold, transferred, or liquidated, the property is not considered available as resource and so is **excluded**. Resources are excluded from consideration if they are **unavailable** to the AU, such as:

- Resources that the owner does not have the legal authority to sell, transfer, or liquidate under any circumstances, regardless of penalty;
- Jointly-owned resources if there is an impediment because of a co-owner's refusal to sell, transfer, or liquidate the resource, which prevents the transaction; or
- Non-liquid resources against which a lien has been placed as the result of a business loan, if the AU is prohibited from selling the resource by the security or lien agreement with the lien holder or creditor.

Encumbrances

“Encumbrance” means a lien, mortgage, or other legal claim against a property, usually resulting from a debt owed by the property owner, that affects or limits an owner's absolute and unqualified title to property. An encumbrance prevents the property from being transferred or sold until the debt is satisfied.

Consideration Periods

Income that accumulates and is retained beyond the month of receipt is considered a

resource in all subsequent months, unless it is counted as income for the same period under consideration. An amount is considered as either income or a resource, not as both, for the same period under consideration (i.e., the three-month retroactive period before the application month or the period of at most six months used for determining current eligibility).

- If money is received as income during the current period under consideration, it is considered as income.
- If money was received as income during a previous period and is retained into the current period under consideration, it is considered as a resource, according to the policies for the form that it now takes (e.g., earned income deposited in a countable checking account or in an excludable burial fund).
- If a lump-sum benefit or payment is prorated and counted as income for the period under consideration, it may not be considered as a resource for the same period (e.g., lottery winnings deposited in checking account).
- Income to which a person is entitled but does not receive and which is allowed to accumulate may be considered as a resource in the months subsequent to the month when the individual was entitled to receive the money (e.g., stock dividends).

Money that is retained or accumulated from excluded or disregarded income (see Chapter 7 of this Manual) is also excluded from consideration as a resource, unless:

- There are specific policies in this chapter for counting this money; or
- The money is commingled with countable funds and cannot be separately identified.

Consideration of Motor Vehicles as a Resource

Effective January 1, 2001, motor vehicles are no longer counted as a resource.

- Families and Children (FAC) coverage groups follow Food Stamps and Temporary Cash Assistance (TCA) rules to exclude all vehicles.
- Aged, Blind, or Disabled (ABD) coverage groups only exclude the types of vehicles used for daily living and employment needs—e.g., automobiles, service utility vehicles, trucks, and motorcycles. For ABD groups, “luxury” or recreational types of vehicles are still counted as an “other liquid asset”—e.g., a collection of antique

vehicles, boats and their trailers, recreational vehicles, campers, and airplanes. Since CARES is programmed to exclude all vehicles for all programs, enter in CARES the countable vehicles for an ABD AU with a code of "CO" (liquid asset countable for cash and/or MA). Narrate in CARES.

Determination of a Resource's Value and the Ownership Interest

An available resource is evaluated in two ways: (1) value and (2) ownership interest. The countable value of a resource is the owner's share (ownership interest) of the resource's current equity value or cash value. The various types of resources have different methods of valuation and different forms of ownership. When evaluating real property, for instance, the eligibility case worker must determine the person's current equity interest in the property, and understand the forms of ownership peculiar to real property. Each type of liquid resource (e.g., savings and checking accounts, life insurance, trusts) has unique considerations for ownership and valuation.

The following concepts are used for determining the value of a resource:

- "Equity interest" means an owner's share of the equity value of a resource.
- "Equity value" means the fair market value of a resource. The equity value includes the amount of any tax withholding or other deductions associated with liquidation or sale of the resource. However, the equity value does not include the amount of any legal debt or other encumbrances on the resource or the cost of a penalty for early withdrawal.
- "Fair market value (FMV)" means the price for which a property or other resource can reasonably be expected to sell on the open market in the relevant geographic area at the present time. The sales price for comparable resources in the same geographic area may be used as a resource's fair market value. The highest bid received for a property that is sold at auction is considered the property's fair market value. However, the auction must be publicly advertised within a reasonable geographic area for a reasonable length of time, conducted by

a professional auctioneer, and made fully accessible to the public.

- “Owner” means an individual who has an ownership interest in a resource.
- “Ownership interest” means the portion of a resource that belongs to the owner.

The following concepts are used for determining ownership interest:

- “Joint ownership” means that an account or other resource has two or more individuals named as owners, and that any of the owners may withdraw the funds or may sell, transfer, or liquidate the resource. When two or more persons are named as co-owners of a resource, a joint interest exists. There are three types of joint interest:

1. Joint Tenancy

- Each owner has an undivided, pro-rata share.
- Each owner may transfer his/her interest.
- Created by such words as “joint tenancy with rights of survivorship”.
- When one owner dies, his/her interest passes automatically to the surviving owner.

2. Tenancy in Common

- Each owner has an undivided, pro-rata share.
- Each owner may transfer his/her interest.
- Created by no specific words - the only necessity is for two or more names as owners.
- When one owner dies, his/her interest becomes part of his/her estate.

3. Tenancy by the Entireties

- Each owner has an undivided, one-half share.
- Only the entire interest may be transferred to a third party.
- Created by no specific words - the only necessity is for a husband and wife to be named as owners. It lasts only so long as the co-owners are married.

POLICY ALERT 08-2

Policies and Procedures for Consideration of Continuing Care Retirement Communities Entrance Fees as Resources Effective January 1, 2006

- For applications or requests for spousal resource assessments received before January 1, 2006, the policies on page 800-25 in Chapter 8 of the Medical Assistance Eligibility Manual are used for consideration of entrance fees for a Continuing Care Retirement Community (CCRC).
- For applications or requests for spousal resource assessments received on or after January 1, 2006, the policies and procedures specified in this Policy Alert and at COMAR 10.09.24.08-3 are used for consideration of CCRC entrance fees as a resource. (See the COMAR regulations in the Appendix of this Manual.)

A. What is a “Continuing Care Retirement Community”?

A **Continuing Care Retirement Community**, or a “**CCRC**” is a housing community that provides different levels of care based on what each resident requires over time. This is sometimes called "life care" and can range from independent living in an apartment to assisted living to full-time care in a nursing home. To be a CCRC, an entity must obtain a certificate of registration from the Maryland Department of Aging.

B. What is an “Entrance Fee”?

- An “Entrance Fee” is money paid to a CCRC by a resident as a lump sum or in installments.
- The “Entrance Fee” is paid in conjunction with a written agreement that governs the use, treatment, and refund of the money.
- The “Entrance Fee” assures a resident of continuing care in the CCRC for a term of more than 1 year, or for life.

C. What is a "Resource"?

A "resource" is defined by the Social Security Administration as "cash and any other personal property, as well as any real property, that an individual (or spouse, if any): owns; has the right, authority, or power to convert to cash (if not already cash); and is not legally restricted from using for his/her support and maintenance."

D. When is a CCRC entrance fee countable as a resource?

➤ For Medical Assistance applications or requests for spousal resource assessments received on or after January 1, 2006, all or part of the entrance fee shall be considered available to the resident, and therefore counted as a resource, **IF** the CCRC provides written verification (to the Department's satisfaction) that all of the following criteria are met:

- 1) The applicant or recipient (A/R) is eligible for a full refund of any amount remaining in the entrance fee, after subtracting any payments or transfers made by the individual, when the individual dies or terminates the continuing care agreement and leaves the CCRC;
- 2) The entrance fee does not confer on the individual a real property interest in the CCRC (because if it did, the entrance fee would be considered as excludable home property);
- 3) The A/R has the ability to obtain funds from the entrance fee, without moving from the CCRC facility, to pay the CCRC or another entity for support and maintenance if the individual's income and other resources are insufficient to pay for the support and maintenance;
- 4) If the A/R has a child who is blind or disabled, the A/R has the ability to transfer unconditionally all or part of the entrance fee to that child; and
- 5) If the A/R is institutionalized and married to a community spouse, the entrance fee, if it is considered a countable resource, shall be included in the assessment for the attribution of spousal resources and the CCRC shall permit transfer unconditionally of all or part of the entrance fee to the sole ownership of the community spouse in accordance with the law.

E. When is a CCRC entrance fee excludable as a resource?

- For Medical Assistance applications or requests for spousal resource assessments received on or after January 1, 2006, the entrance fee may not be considered as a countable resource, and so is excluded from consideration, if:
- 1) All of the requirements listed in Section D, above, are not met;
 - 2) The CCRC imposes limitations, conditions, penalties, or otherwise restricts the individual's right to reside in the CCRC facility when the individual uses funds from the entrance fee to make payments or transfers in accordance with the law; or
 - 3) The A/R successfully rebuts (as determined by the Department) the CCRC's written verification that the money is available.

PROCEDURES

1. If a CCRC entrance fee is reported as a resource when an individual requests a spousal resource assessment or when a Medical Assistance application is filed, the eligibility case worker completes the top half of the certification form (DES 801) and gives the form to the applicant or recipient.
2. The CCRC completes and signs the form and attaches verifications to support any claim that all or part of the entrance fee is available to the resident as meeting all of the conditions in D. above. The CCRC submits the package for review to the LDSS at the address that appears on the top half of the certification form.
3. The LDSS determines whether all or part of the CCRC entrance fee is countable as a resource. The LDSS provides its decision in writing to the A/R and CCRC.
 - If the LDSS determines that all or part of the entrance fee is countable as a resource, the A/R is given 15 working days from the notice date to rebut the determination.
 - If the A/R does not rebut the decision within 15 working days, the eligibility case worker takes the necessary action for consideration of the entrance fee.
 - If the LDSS determines that none of the entrance fee is available to the resident, the eligibility case worker narrates in CARES and does not enter the entrance fee on CARES as a countable resource.

4. If the A/R decides to rebut the LDSS decision within 15 working days:

- The A/R provides additional information and verifications to the LDSS, who forwards all documentation to:

DHMH Beneficiary Services Administration

ATTN: CCRC

201 West Preston Street, Room L-9

Baltimore, Maryland 21201

- BSA asks the CCRC to provide, within 10 working days from the notice date, additional documentation and evidence that support the basis for the CCRC's earlier written verification of the entrance fee's availability;
- The CCRC provides additional information and verifications to BSA within 10 working days from the notice date;
- BSA reviews the LDSS' previous decision and determines whether all or part of the CCRC entrance fee is countable as a resource; and
- BSA provides its decision in writing to the A/R, CCRC, and eligibility case worker.

5. The eligibility case worker takes the following actions based on DHMH's decision:

- If the case worker receives DHMH's approval to count a specified total amount of the entrance fee as a resource for the spousal resource assessment or Medical Assistance eligibility determination, the case worker enters the countable amount on CARES. For eligibility determinations, the entrance fee is entered on the AST1 screen as "OC" (other countable assets).
- Otherwise, the entrance fee is not entered on CARES and is not considered as a countable resource.
- The case worker fully narrates in CARES.

Questions regarding this issuance should be directed to the DHMH Division of Eligibility Services at 410-767-1463 or 1-800-492-5231 extension 1463.

**Maryland Medical Assistance
Certification of Availability
Continuing Care Retirement Community (CCRC) Entrance Fee**

Section I: To be Completed by the Local Department of Social Services:

Applicant Name: _____	SSN: _____	DOB: _____
Address: _____		Telephone: _____
Date of Spousal Resource Assessment: _____	Date of Application: _____	
Eligibility Case Worker: _____	Telephone: _____	
LDSS Address: _____		
CCRC Name: _____		Telephone: _____
Address: _____		
Amount of Entrance Fee Reported by the Applicant: \$ _____		

Section II: To be Completed by the CCRC:

- The resident's entrance fee does not meet the Medical Assistance requirements below to be considered available as a resource to the resident.
- The resident's entrance fee does meet all of the Medical Assistance requirements below and should be considered available as a resource to the resident. Available amount: \$ _____

Check all that apply. Attach evidence to support each certification.

- The resident is eligible for a full refund (e.g., not only the net amount after subtracting the costs for refurbishing the unit for the next resident) of any amount remaining in the entrance fee, after subtracting any payments or transfers made by the resident, when the resident dies or terminates the continuing care agreement and leaves the CCRC.
- The entrance fee does not confer on the resident a real property interest in the CCRC.
- The resident has the ability to obtain funds from the entrance fee, without moving from the CCRC facility, to pay the CCRC or another entity for support, maintenance, and medical services if the individual's income and other resources are insufficient to pay for the needed services and items.
- If the resident has a child who is blind or disabled, the resident has the ability to transfer unconditionally all or part of the entrance fee to that child.
- If the resident is married to a community spouse and is either institutionalized or enrolled in a waiver, the CCRC permits the unconditional transfer to the community spouse's name of the amount of the CCRC entrance fee identified by the eligibility case worker for transfer during the 90-day protected period after the eligibility determination.

CCRC Representative: _____ Signature: _____ Date: _____

Return Form and Attachments to LDSS office at address listed above.

DEFINITIONS

(11) “Categorically needy” means aged, blind, or disabled persons, or families and children, who are otherwise eligible for Medical Assistance and who meet the financial eligibility requirements for FIP, SSI, or Optional State Supplement.

(12) “Child” means an unmarried person younger than 21 years old.

(13) “Chronic hospital” means an institution that falls within the jurisdiction of Health-General Article, §19-307(a)(1), Annotated Code of Maryland, and is licensed pursuant to COMAR 10.07.01.

(14) “Comprehensive care facility” means a nursing facility licensed as a comprehensive care facility pursuant to COMAR 10.07.02.

(14-1) “Continuing care retirement community (CCRC)” means an entity that obtains certificate of registration issued by the Maryland Department of Aging in accordance with COMAR 32.02.01 and pursuant to its authority under Article 70B, Annotated Code of Maryland.

(15) “Corrective Managed Care Program” means the program administered by the Division of Utilization and Eligibility Review of the Medical Care Compliance Administration which limits recipients who have abused or misused Medical Assistance benefits to access most covered services through a single primary medical provider and a single pharmacy.

(16) “Department” means the Department of Health and Mental Hygiene, the single State agency designated to administer the Medical Assistance Program.

(17) “Department of Human Resources” means the department of State government which administers the FIP program.

(18) “Determination” means a decision regarding an applicant’s eligibility for Medical Assistance.

(19) “Disabled” means the inability to perform any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(20) “Eligibility technician” means an employee of the local department of social services responsible for determining eligibility of applicants and recipients.

(20-1) “Emergency services” means services provided by a licensed medical practitioner after the onset of a medical condition manifesting itself by symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected by a prudent layperson, possessing an average knowledge of health and medicine, to result in:

DEFINITIONS

- (a) Placing health in jeopardy;
- (b) Serious impairment to bodily functions;
- (c) Serious dysfunction of any bodily organ or part; or
- (d) Development or continuance of severe pain.

(20-2) "Entrance fee" means a sum of money or other consideration, other than a surcharge that:

(a) Is paid by a resident to a CCRC initially or in deferred payments, pursuant to a written continuing care agreement between the CCRC and the resident, which governs the use, treatment, and refund of the entrance fee;

(b) Assures a resident of continuing care in the CCRC facility for a term of more than 1 year or for life; and

(c) Is at least three times the weighted average of the monthly cost of the periodic fees charged to independent living and assisted living units.

(21) "Extended care facility" means a nursing facility licensed as an extended care facility pursuant to COMAR 10.07.02.

(21-1) "Family Investment Program (FIP)" means a category of public assistance mandated under Title IV-A of the Social Security Act, 42 U.S.C. §601 et seq.

(22) "Hospital" means an institution which falls within the jurisdiction of Health-General Article, §19-307(a)(1), Annotated Code of Maryland, and is licensed pursuant to COMAR 10.07.01, or is licensed according to applicable standards established by the state in which the hospital is located.

(23) Income.

(a) "Income" means any property or service received by a person in cash or in-kind which can be applied directly, or by sale or conversion, to meet basic needs for food, shelter, and medical expenses.

(b) "Earned income" means payment received by a person in cash or in-kind as a result of employment, including self-employment. Earned income consists of wages, salaries, commissions, tips, and profit from self-employment.

.08-3 Resource Consideration of Entrance Fees for Continuing Care Retirement Communities.

A. Treatment of Entrance Fees before January 1, 2006.

For Medical Assistance applications or requests for spousal resource assessments filed before January 1, 2006, the entrance fee shall be considered in accordance with the policies for exclusion of home property in this chapter.

B. Treatment of Entrance Fees On or After January 1, 2006.

(1) For Medical Assistance applications or requests for spousal resource assessments filed on or after January 1, 2006, an entrance fee shall be considered available to the owner as a countable resource if the CCRC provides written verification, based on CCRC practice or policy, which satisfies the Department that all of the following criteria are met:

(a) The applicant or recipient or a designated beneficiary is eligible for a full refund of any amount remaining in the entrance fee, after subtracting any payments or transfers made by the individual in accordance with §B(1)(c) – (e) of this regulation, when the individual:

(i) Dies; or

(ii) Terminates the continuing care agreement and leaves the CCRC facility;

(b) The entrance fee does not confer on the applicant or recipient a real property interest in the CCRC facility, in which case the entrance fee would be considered as excludable home property;

(c) The applicant or recipient has the ability to obtain funds from the entrance fee, without moving from the CCRC facility, to pay the CCRC or another entity for support and maintenance if the individual's income and other resources are insufficient to pay for the support and maintenance;

(d) If the Medical Assistance applicant or recipient has a son or daughter who is blind or disabled as defined under this chapter, the applicant or recipient has the ability to transfer unconditionally all or part of the entrance fee to the individual's blind or disabled son or daughter; and

(e) If the Medical Assistance applicant or recipient is institutionalized and married to a community spouse, the:

(i) CCRC's entrance fee, if it is considered a countable resource in accordance with the requirements in §B of this regulation, shall be included in the assessment for the attribution of spousal resources, in accordance with Regulation .10-1 of this chapter; and

(ii) CCRC shall permit the recipient to transfer unconditionally all or

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part of the entrance fee to the sole ownership of the community spouse according to the amount that is needed, after totaling other resources owned singly or jointly by the couple, for the community spouse resource allowance to total the protected amount calculated by the Department, in accordance with Regulation .10-1 of this chapter.

(2) The Department shall grant the applicant or recipient the opportunity to rebut the CCRC's written verification that all of the conditions in §B of this regulation are met for consideration of the entrance fee as a countable resource.

(3) If the applicant or recipient submits a rebuttal to the Department, the Department shall request additional documentation and evidence from the CCRC that support the basis for the CCRC's written verification of the availability of the entrance fee.

(4) The entrance fee may not be considered as a countable resource for determining the applicant's or recipient's Medical Assistance eligibility if the:

(a) Requirements in §B(1) of this regulation are not met;

(b) CCRC imposes limitations, conditions, penalties, or otherwise restricts the individual's right to reside in the CCRC facility when the individual uses funds from the entrance fee to make payments or transfers in accordance with §B(1)(c) – (e) of this regulation; or

(c) Applicant or recipient successfully rebuts, as determined by the Department in accordance with §B(2) of this regulation, the CCRC's written verification that all of the conditions in §B(1) of this regulation are met.