

1 10A NCAC 23E .0202 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 23E .0202 WHAT RESOURCES ARE COUNTED RESERVE**

4 (a) North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security  
5 Act to provide Medicaid to all SSI recipients. ~~Resource eligibility~~ The resources that are counted for Medicaid  
6 eligibility for individuals under any aged, blind, and disabled Aged, Blind, and Disabled coverage group shall be  
7 determined based on standards and methodologies in Title XVI of the Social Security Act, which is adopted and  
8 incorporated by reference with subsequent changes or amendments and available free of charge at  
9 http://uscode.house.gov/, ~~Act~~ except as specified in Paragraphs ~~(j)(4)~~ and ~~(k)(4)~~ of this Rule. Applicants for and  
10 recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent  
11 that such resources can be made available.

12 (b) The value of resources currently available to any ~~budget unit~~ member of a budget unit, as defined in 10A NCAC  
13 23A .0102, shall be considered in determining financial eligibility. A resource shall be considered available when it  
14 is actually available and when the budget unit member has a legal interest in the resource and he or she, or someone  
15 acting in his or her behalf, can take any necessary action to make it available.

16 (c) Resources shall be excluded in determining financial eligibility when the budget unit member with having a legal  
17 interest in the resources is declared incompetent, incompetent unless:

- 18 (1) A guardian of the estate, a general guardian, guardian or an interim guardian has been ~~lawfully~~  
19 appointed in accordance with the law and is able to act on behalf of his or her ward in North Carolina  
20 and in any state ~~in which~~ where such resources are located; or  
21 (2) A durable power of attorney, valid in North Carolina and in any state ~~in which~~ where such resource  
22 is located, has been granted to a person who is authorized and able to exercise such power.

23 (d) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget  
24 unit member, but such person is unable, fails, or refuses to act within a reasonable amount of time promptly to make  
25 the resources ~~actually~~ available to meet the needs of the budget unit member, a referral shall be made to the services  
26 unit of the county department of social services for a determination of whether the guardian or attorney in fact is acting  
27 in the best interests of the member and if not, the county department of social services shall contact the clerk of court  
28 for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of  
29 court.

30 (e) When a Medicaid application is filed on behalf of an individual who:

- 31 (1) is alleged to be mentally incompetent,  
32 (2) has or may have a legal interest in a resource that affects the individual's eligibility, and  
33 (3) does not have a representative with legal authority to use or dispose of the individual's resources,  
34 the individual's representative or family member shall be instructed by the county department of  
35 social services to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the  
36 individual incompetent and appoint a guardian. If the representative or family member either fails  
37 to file such a proceeding within 30 calendar days or fails to ~~timely~~ conclude the proceeding within

1 a reasonable amount of time, proceeding, a referral shall be made to the protective services unit of  
2 the county department of social services for guardianship services. ~~If the allegation of incompetence~~  
3 ~~that has lasted, or is expected to last 30 consecutive days or more, or until the individual's death, is~~  
4 ~~supported by competent evidence, as specified in Paragraph (h) of this Rule, If an allegation of~~  
5 incompetence is supported by competent evidence as defined in Paragraph (h) of this Rule, and the  
6 incompetence has lasted, or is expected to last, at least 30 consecutive days or until the individual's  
7 death, the resources shall be excluded beginning with the date that such evidence indicates that he  
8 or she became incompetent, except as provided in Paragraphs (f) or (g) of this Rule.

9 (f) The budget unit member's resources shall be counted in determining his or her eligibility for Medicaid beginning  
10 the first day of the month following the month a guardian of the estate, general guardian, guardian or interim guardian  
11 is appointed, provided that after the appointment, property that cannot be disposed of or used except by order of the  
12 court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or  
13 G.S. 35A.

14 (g) When the court rules that the budget unit member is competent or no ruling is made because of the death or  
15 recovery from incompetence of the member, his or her resources shall be counted except for periods of time for which  
16 it can be established by ~~competent evidence~~ "competent evidence" ~~specified~~ defined in Paragraph (h) of this Rule,  
17 that the member was in fact incompetent for at least 30 consecutive days, or until his or her death. Any such showing  
18 of incompetence is subject to rebuttal by competent evidence as specified in Paragraph (h) of this Rule.

19 (h) For purposes of this Rule, ~~competent evidence~~ "competent evidence" is ~~limited to~~ defined as the written statement  
20 or testimony at a competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the  
21 physical and mental condition of the individual, that contains information on the individual's condition, the basis of  
22 that information, individual, the basis of that knowledge, the beginning date of incompetence, the reason the individual  
23 is incompetent, and, and if no longer incompetent, when the individual recovered competence.

24 (i) ~~The limitation of resources held for reserve for the budget unit shall be as follows:~~

- 25 (1) ~~for Family and Children's related categorically and medically needy cases, three thousand dollars~~  
26 ~~(\$3,000.00) per budget unit;~~  
27 (2) ~~for aged, blind, and disabled cases, two thousand dollars (\$2000.00) for a budget unit of one and~~  
28 ~~three thousand dollars (\$3000.00) for a budget unit of two.~~

29 (i)(j) ~~If the value of countable resources of the budget unit exceeds the reserve allowance for the unit as set out in the~~  
30 Medicaid State Plan, unit, the case shall be ~~ineligible;~~ ineligible unless one of the following is met:

- 31 (1) For Family and Children's medically needy related cases and aged, blind, blind or disabled cases  
32 protected by grandfathered provisions, and medically needy cases not protected by grandfathered  
33 provision, eligibility shall begin on the day countable resources are reduced to allowable limits or  
34 excess income is spent down, whichever occurs later;  
35 (2) For categorically needy aged, blind, blind or disabled cases not protected by grandfathered  
36 provisions, eligibility shall begin no earlier than the month countable resources are reduced to  
37 allowable limits as of 11:59pm on the first moment of the first last day of the previous month.

1 ~~(j)(4)~~ Resources counted in the determination of financial eligibility for categorically needy aged, ~~blind, blind~~ and  
2 disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying  
3 Individual and Qualified Disabled Working Individual cases shall be based on resource standards and methodologies  
4 in Title XVI of the Social Security Act except for the following methodologies:

- 5 (1) The value of personal effects and household goods shall be not counted.
- 6 (2) ~~The value~~ Value of tenancy in common interest in real property shall be not counted.
- 7 (3) ~~The value~~ Value of life estate interest in real property shall be not counted.
- 8 (4) ~~The value~~ Value of burial plots shall be not counted.
- 9 (5) The cash value of life insurance when the total face value of all cash value bearing life insurance  
10 policies does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

11 ~~(k)(4)~~ Resources counted in the determination of financial eligibility for medically needy aged, ~~blind, blind~~ and  
12 disabled cases ~~is~~ shall be based on resource standards and methodologies in Title XVI of the Social Security Act  
13 except for the following methodologies:

- 14 (1) The value of personal effects and household goods shall be not counted.
- 15 (2) ~~The value~~ Value of tenancy in common interest in real property shall be not counted.
- 16 (3) ~~The value~~ Value of life estate interest in real property is not counted.
- 17 (4) Individuals with resources in excess of the resource limit at 11:59pm on the last day of the previous  
18 month, the first moment of the month may become eligible during the current month at the point  
19 that resources are reduced to the allowable limit.
- 20 (5) ~~The value~~ Value of burial plots shall be not counted.
- 21 (6) The cash value of life insurance when the total face value of all cash value bearing life insurance  
22 polities does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

23 ~~(m) Resources counted in the determination of financial eligibility for categorically needy Family and Children's~~  
24 ~~related cases shall be:~~

- 25 ~~(1) Cash on hand;~~
- 26 ~~(2) The balance of savings accounts, including savings of a student saving his earnings for school~~  
27 ~~expenses;~~
- 28 ~~(3) The balance of checking accounts less the current monthly income that had been deposited to meet~~  
29 ~~the budget unit's monthly needs when reserve was verified;~~
- 30 ~~(4) The portion of lump sum payments remaining after the month of receipt;~~
- 31 ~~(5) Cash value of life insurance policies owned by the budget unit;~~
- 32 ~~(6) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;~~
- 33 ~~(7) Patient accounts in long term care facilities;~~
- 34 ~~(8) Equity in non-essential personal property limited to:~~
  - 35 ~~(A) Mobile homes not used as home;~~
  - 36 ~~(B) Boats, boat trailers and boat motors;~~
  - 37 ~~(C) Campers;~~

1 ~~(D)~~ — Farm and business equipment;

2 ~~(E)~~ — Equity in vehicles in excess of one motor vehicle per adult;

3 ~~(l)(n)~~ Resources counted in the determination of financial eligibility for medically needy Family and Children's ~~related~~  
4 cases are:

5 (1) Cash on hand;

6 (2) The balance of savings accounts, including savings of a student saving his or her earnings for school  
7 expenses;

8 (3) The balance of checking accounts, ~~accounts~~ less the current monthly income at this time, ~~that had~~  
9 ~~been~~ deposited to meet the budget unit's monthly needs when reserve was verified by the county  
10 department of social services or lump sum income from self-employment deposited to pay annual  
11 expenses;

12 (4) The ~~cash~~ Cash value of life insurance policies when the total face value of all policies that accrue  
13 cash value exceeds one thousand five hundred dollars (\$1,500.00);

14 (5) Stocks, bonds, mutual fund shares, certificates of deposit, ~~deposit~~ and other liquid assets;

15 (6) Assets held in patient ~~Patient~~ accounts in long term care facilities;

16 (7) Equity in ~~non-essential~~, non-income producing personal property limited to:

17 (A) Mobile home not used as ~~home~~, home;

18 (B) Boats, boat trailers and boat ~~motors~~, motors;

19 (C) ~~Campers~~, Campers;

20 (D) Farm and business ~~equipment~~, equipment; and

21 (E) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.

22 (m) Real property shall be excluded from countable resources for Family and Children's medically needy cases.

23 (n) One motor vehicle per adult shall be excluded for Family and Children's medically needy cases.

24 (o) For medically needy Family and Children's cases, income-producing vehicles and personal property shall be  
25 excluded from countable resources.

26 (p) For family and children's medically needy cases, the value of non-excluded motor vehicles is the Current Market  
27 Value as determined by the assessed county tax value, less encumbrances. If the client disagrees with the assigned  
28 value, he or she has the right to rebut the value by producing independent evidence of value.

29 (q) There is no resource limit for Family and Children's categorically needy cases pursuant to 42 C.F.R. 435.603.

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31 *History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-55; 108A-58; 42 U.S.C. 703; 42 U.S.C. 704; 703, 704*  
32 *42 U.S.C. 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.603; 42 C.F.R. 435.711; 42*  
33 *C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42*  
34 *C.F.R. 435.843; 42 C.F.R. 435.845; 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R.*  
35 *233.20; 45 C.F.R. 233.51; S.L. 2002-126;*  
36 *Eff. September 1, 1984;*

1                    *Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1,*  
2                    *1985;*  
3                    *Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993;*  
4                    *Temporary Amendment Eff. September 13, 1999;*  
5                    *Temporary Amendment Expired June 27, 2000;*  
6                    *Temporary Amendment Eff. September 12, 2000;*  
7                    *Amended Eff. March 19, 2001;*  
8                    *Temporary Amendment Eff. April 16, 2001;*  
9                    *Amended Eff. August 1, 2002;*  
10                   *Temporary Amendment Eff. March 1, 2003;*  
11                   *Amended Eff. August 1, 2004;*  
12                   *Transferred from 10A NCAC 21B .0310 Eff. May 1, 2012; ~~2012~~.*  
13                   *Readopted Eff. May 1, 2019.*  
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