

STATE OF NEW YORK

5940--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 24, 2023

Introduced by M. of A. KIM, DICKENS, GIBBS, McDONALD -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to increasing the amount of the savings exemption for eligibility for Medicaid and eliminating the asset test for certain individuals; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph 4 of paragraph (a) of subdivision 2 of section
2 366 of the social services law, as amended by section 43 of part C of
3 chapter 58 of the laws of 2008, is amended to read as follows:

4 (4) savings in amounts equal to [~~one hundred fifty percent of the~~
5 ~~income amount permitted under subparagraph seven of this paragraph,~~
6 ~~provided, however, that the amounts for one and two person households~~
7 ~~shall not be less than the amounts permitted to be retained by house-~~
8 ~~holds of the same size in order to qualify for benefits under the feder-~~
9 ~~al supplemental security income program]~~ three hundred thousand dollars;

10 § 1-a. Subparagraph 4 of paragraph (a) of subdivision 2 of section 366
11 of the social services law, as amended by section 3 of part AAA of chap-
12 ter 56 of the laws of 2022, is amended to read as follows:

13 (4) savings in amounts equal to [~~one hundred fifty percent of the~~
14 ~~income amount permitted under subparagraph seven of this paragraph,~~
15 ~~provided, however, that the amounts for one and two person households~~
16 ~~shall not be less than the amounts permitted to be retained by house-~~
17 ~~holds of the same size in order to qualify for benefits under the feder-~~
18 ~~al supplemental security income program]~~ three hundred thousand dollars;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD09634-03-3

1 § 2. Subparagraph 5 of paragraph (c) of subdivision 1 of section 366
2 of the social services law, as amended by chapter 583 of the laws of
3 2023, is amended to read as follows:

4 (5) A disabled individual at least sixteen years of age, but under the
5 age of sixty-five, who: would be eligible for benefits under the supple-
6 mental security income program but for earnings in excess of the allow-
7 able limit; has net available income that does not exceed two hundred
8 fifty percent of the applicable federal income official poverty line, as
9 defined and updated by the United States department of health and human
10 services, for a one-person or two-person household, as defined by the
11 commissioner in regulation; has household resources, as defined in para-
12 graph (e) of subdivision two of section three hundred sixty-six-c of
13 this title, other than retirement accounts, that do not exceed [~~one
14 hundred fifty percent of the income amount permitted under subparagraph
15 seven of paragraph (a) of subdivision two of this section, for a one-
16 person or two-person household~~] three hundred thousand dollars, as
17 defined by the commissioner in regulation; and contributes to the cost
18 of medical assistance provided pursuant to this subparagraph in accord-
19 ance with subdivision twelve of section three hundred sixty-seven-a of
20 this title; for purposes of this subparagraph, disabled means having a
21 medically determinable impairment of sufficient severity and duration to
22 qualify for benefits under section 1902(a)(10)(A)(ii)(xv) of the social
23 security act.

24 § 3. Subparagraphs 2, 3 and 4 of paragraph (a) of subdivision 2 of
25 section 366 of the social services law are REPEALED.

26 § 4. Subparagraphs 5, 6, 7, 9, 10 and 11 of paragraph (a) of subdivi-
27 sion 2 of section 366 of the social services law, subparagraph 5 as
28 amended by chapter 576 of the laws of 2007, subparagraph 6 as amended by
29 chapter 938 of the laws of 1990, subparagraph 7 as amended by section 47
30 of part C of chapter 58 of the laws of 2008, subparagraph 9 as amended
31 by chapter 110 of the laws of 1971, subparagraph 10 as added by chapter
32 705 of the laws of 1988, clauses (i) and (ii) of subparagraph 10 as
33 amended by chapter 672 of the laws of 2019, clause (iii) of subparagraph
34 10 as amended by chapter 170 of the laws of 1994 and subparagraph 11 as
35 added by chapter 576 of the laws of 2015, are renumbered subparagraphs
36 2, 3, 4, 5, 6 and 7 and clause (iii) of subparagraph 4 is amended to
37 read as follows:

38 (iii) No other income [~~or resources~~], including federal old-age,
39 survivors and disability insurance, state disability insurance or other
40 payroll deductions, whether mandatory or optional, shall be exempt and
41 all other income [~~and resources~~] shall be taken into consideration and
42 required to be applied toward the payment or partial payment of the cost
43 of medical care and services available under this title, to the extent
44 permitted by federal law.

45 § 4-a. Subparagraphs 5, 6, 7, 8, 9, 10 and 11 of paragraph (a) of
46 subdivision 2 of section 366 of the social services law, as amended by
47 section 3 of part AAA of chapter 56 of the laws of 2022, are renumbered
48 subparagraphs 2, 3, 4, 5, 6, 7 and 8 and subparagraph 5 is amended to
49 read as follows:

50 (5) No other income [~~or resources~~], including federal old-age, survi-
51 vors and disability insurance, state disability insurance or other
52 payroll deductions, whether mandatory or optional, shall be exempt and
53 all other income [~~and resources~~] shall be taken into consideration and
54 required to be applied toward the payment or partial payment of the cost
55 of medical care and services available under this title, to the extent
56 permitted by federal law.

1 § 5. Subparagraphs 2, 5 and 10 of paragraph (c) of subdivision 1 of
2 section 366 of the social services law, subparagraphs 2 and 10 as added
3 by section 1 of part D of chapter 56 of the laws of 2013 and subpara-
4 graph 5 as amended by section two of this act, are amended to read as
5 follows:

6 (2) An individual who, although not receiving public assistance or
7 care for his or her maintenance under other provisions of this chapter,
8 has income [~~and resources~~], including available support from responsible
9 relatives, that does not exceed the amounts set forth in paragraph (a)
10 of subdivision two of this section, and is (i) sixty-five years of age
11 or older, or certified blind or certified disabled or (ii) for reasons
12 other than income [~~or resources~~], is eligible for federal supplemental
13 security income benefits and/or additional state payments.

14 (5) A disabled individual at least sixteen years of age, but under the
15 age of sixty-five, who: would be eligible for benefits under the supple-
16 mental security income program but for earnings in excess of the allow-
17 able limit; has net available income that does not exceed two hundred
18 fifty percent of the applicable federal income official poverty line, as
19 defined and updated by the United States department of health and human
20 services, for a one-person or two-person household, as defined by the
21 commissioner in regulation; [~~has household resources, as defined in
22 paragraph (c) of subdivision two of section three hundred sixty-six e of
23 this title, other than retirement accounts, that do not exceed three
24 hundred thousand dollars, as defined by the commissioner in regulation,
25 and contributes to the cost of medical assistance provided pursuant to
26 this subparagraph in accordance with subdivision twelve of section three
27 hundred sixty-seven a of this title,~~] for purposes of this subparagraph,
28 disabled means having a medically determinable impairment of sufficient
29 severity and duration to qualify for benefits under section
30 1902(a)(10)(A)(ii)(xv) of the social security act.

31 (10) A resident of a home for adults operated by a social services
32 district, or a residential care center for adults or community residence
33 operated or certified by the office of mental health, and has not,
34 according to criteria promulgated by the department consistent with this
35 title, sufficient income, or in the case of a person sixty-five years of
36 age or older, certified blind, or certified disabled, sufficient income
37 [~~and resources~~], including available support from responsible relatives,
38 to meet all the costs of required medical care and services available
39 under this title.

40 § 6. Subparagraphs 1 and 2 of paragraph (b) of subdivision 2 of
41 section 366 of the social services law, subparagraph 1 as amended by
42 chapter 638 of the laws of 1993, subparagraph 1 as designated and
43 subparagraph 2 as added by chapter 170 of the laws of 1994, clause (iii)
44 of subparagraph 2 as amended by chapter 187 of the laws of 2017, clause
45 (iv) of subdivision 2 as amended by chapter 656 of the laws of 1997 and
46 as further amended by section 104 of part A of chapter 62 of the laws of
47 2011, clause (vi) of subparagraph 2 as added by chapter 435 of the laws
48 of 2018, are amended to read as follows:

49 (1) In establishing standards for determining eligibility for and
50 amount of such assistance, the department shall take into account only
51 such income [~~and resources~~], in accordance with federal requirements, as
52 [~~are~~] is available to the applicant or recipient and as would not be
53 required to be disregarded or set aside for future needs, and there
54 shall be a reasonable evaluation of any such income [~~or resources~~]. The
55 department shall not consider the availability of an option for an
56 accelerated payment of death benefits or special surrender value pursu-

1 ant to paragraph one of subsection (a) of section one thousand one
2 hundred thirteen of the insurance law, or an option to enter into a
3 viatical settlement pursuant to the provisions of article seventy-eight
4 of the insurance law, as an available resource in determining eligibil-
5 ity for an amount of such assistance, provided, however, that the
6 payment of such benefits shall be considered in determining eligibility
7 for and amount of such assistance. There shall not be taken into consid-
8 eration the financial responsibility of any individual for any applicant
9 or recipient of assistance under this title unless such applicant or
10 recipient is such individual's spouse or such individual's child who is
11 under twenty-one years of age. In determining the eligibility of a child
12 who is categorically eligible as blind or disabled, as determined under
13 regulations prescribed by the social security act for medical assist-
14 ance, the income [~~and resources~~] of parents or spouses of parents are
15 not considered available to that child if she/he does not regularly
16 share the common household even if the child returns to the common
17 household for periodic visits. In the application of standards of eligi-
18 bility with respect to income, costs incurred for medical care, whether
19 in the form of insurance premiums or otherwise, shall be taken into
20 account. Any person who is eligible for, or reasonably appears to meet
21 the criteria of eligibility for, benefits under title XVIII of the
22 federal social security act shall be required to apply for and fully
23 utilize such benefits in accordance with this chapter.

24 (2) In evaluating the income [~~and resources~~] available to an applicant
25 for or recipient of medical assistance, for purposes of determining
26 eligibility for and the amount of such assistance, the department must
27 consider assets [~~held in or~~] paid from trusts created by such applicant
28 or recipient, as determined pursuant to the regulations of the depart-
29 ment, in accordance with the provisions of this subparagraph.

30 (i) In the case of a revocable trust created by an applicant or recip-
31 ient, as determined pursuant to regulations of the department: [~~the~~
32 ~~trust corpus must be considered to be an available resource,~~] payments
33 made from the trust to or for the benefit of such applicant or recipient
34 must be considered to be available income; and any other payments from
35 the trust must be considered to be assets disposed of by such applicant
36 or recipient for purposes of paragraph (d) of subdivision five of this
37 section.

38 (ii) In the case of an irrevocable trust created by an applicant or
39 recipient, as determined pursuant to regulations of the department: any
40 portion of the trust corpus, and of the income generated by the trust
41 corpus, from which no payment can under any circumstances be made to
42 such applicant or recipient must be considered, as of the date of estab-
43 lishment of the trust, or, if later, the date on which payment to the
44 applicant or recipient is foreclosed, to be assets disposed of by such
45 applicant or recipient for purposes of paragraph (d) of subdivision five
46 of this section; [~~any portion of the trust corpus, and of the income~~
47 ~~generated by the trust corpus, from which payment could be made to or~~
48 ~~for the benefit of such applicant or recipient must be considered to be~~
49 ~~an available resource,~~] payments made from the trust to or for the bene-
50 fit of such applicant or recipient must be considered to be available
51 income; and any other payments from the trust must be considered to be
52 assets disposed of by such applicant or recipient for purposes of para-
53 graph (d) of subdivision five of this section.

54 (iii) Notwithstanding the provisions of clauses (i) and (ii) of this
55 subparagraph, in the case of an applicant or recipient who is disabled,
56 as such term is defined in section 1614(a)(3) of the federal social

1 security act, the department must not consider as available income [~~or~~
2 ~~resources~~] the [~~corpus or~~] income of the following trusts which comply
3 with the provisions of the regulations authorized by clause (iv) of this
4 subparagraph: (A) a trust containing the assets of such a disabled indi-
5 vidual which was established for the benefit of the disabled individual
6 while such individual was under sixty-five years of age by the individ-
7 ual, a parent, grandparent, legal guardian, or court of competent juris-
8 diction, if upon the death of such individual the state will receive all
9 amounts remaining in the trust up to the total value of all medical
10 assistance paid on behalf of such individual; (B) and a trust containing
11 the assets of such a disabled individual established and managed by a
12 non-profit association which maintains separate accounts for the benefit
13 of disabled individuals, but, for purposes of investment and management
14 of trust funds, pools the accounts, provided that accounts in the trust
15 fund are established solely for the benefit of individuals who are disa-
16 bled as such term is defined in section 1614(a)(3) of the federal social
17 security act by such disabled individual, a parent, grandparent, legal
18 guardian, or court of competent jurisdiction, and to the extent that
19 amounts remaining in the individual's account are not retained by the
20 trust upon the death of the individual, the state will receive all such
21 remaining amounts up to the total value of all medical assistance paid
22 on behalf of such individual. Notwithstanding any law to the contrary,
23 a not-for-profit corporation may, in furtherance of and as an adjunct to
24 its corporate purposes, act as trustee of a trust for persons with disa-
25 bilities established pursuant to this subclause, provided that a trust
26 company, as defined in subdivision seven of section one hundred-c of the
27 banking law, acts as co-trustee.

28 (iv) The department shall promulgate such regulations as may be neces-
29 sary to carry out the provisions of this subparagraph. Such regulations
30 shall include provisions for: assuring the fulfillment of fiduciary
31 obligations of the trustee with respect to the remainder interest of the
32 department or state; monitoring pooled trusts; applying this subdivision
33 to legal instruments and other devices similar to trusts, in accordance
34 with applicable federal rules and regulations; and establishing proced-
35 ures under which the application of this subdivision will be waived
36 with respect to an applicant or recipient who demonstrates that such
37 application would work an undue hardship on him or her, in accordance
38 with standards specified by the secretary of the federal department of
39 health and human services. Such regulations may require: notification of
40 the department of the creation or funding of such a trust for the bene-
41 fit of an applicant for or recipient of medical assistance; notification
42 of the department of the death of a beneficiary of such a trust who is a
43 current or former recipient of medical assistance; in the case of a
44 trust, the corpus of which exceeds one hundred thousand dollars, notifi-
45 cation of the department of transactions tending to substantially
46 deplete the trust corpus; notification of the department of any trans-
47 actions involving transfers from the trust corpus for less than fair
48 market value; the bonding of the trustee when the assets of such a trust
49 equal or exceed one million dollars, unless a court of competent juris-
50 diction waives such requirement; and the bonding of the trustee when the
51 assets of such a trust are less than one million dollars, upon order of
52 a court of competent jurisdiction. The department, together with the
53 department of financial services, shall promulgate regulations governing
54 the establishment, management and monitoring of trusts established
55 pursuant to subclause (B) of clause (iii) of this subparagraph in which
56 a not-for-profit corporation and a trust company serve as co-trustees.

1 (v) Notwithstanding any acts, omissions or failures to act of a trustee of a trust which the department or a local social services official has determined complies with the provisions of clause (iii) and the regulations authorized by clause (iv) of this subparagraph, the department must not consider the [~~corpus~~ ~~or~~] income of any such trust as available income [~~or resources~~] of the applicant or recipient who is disabled, as such term is defined in section 1614(a)(3) of the federal social security act. The department's remedy for redress of any acts, omissions or failures to act by such a trustee which acts, omissions or failures are considered by the department to be inconsistent with the terms of the trust, contrary to applicable laws and regulations of the department, or contrary to the fiduciary obligations of the trustee shall be the commencement of an action or proceeding under subdivision one of section sixty-three of the executive law to safeguard or enforce the state's remainder interest in the trust, or such other action or proceeding as may be lawful and appropriate as to assure compliance by the trustee or to safeguard and enforce the state's remainder interest in the trust.

19 (vi) The department shall provide written notice to an applicant for or recipient of medical assistance who is or reasonably appears to be eligible for medical assistance except for having income exceeding applicable income levels. The notice shall inform the applicant or recipient, in plain language, that in certain circumstances the medical assistance program does not count the income of disabled applicants and recipients if it is placed in a trust described in clause (iii) of this subparagraph. The notice shall be included with the eligibility notice provided to such applicants and recipients and shall reference where additional information may be found on the department's website. This clause shall not be construed to change any criterion for eligibility for medical assistance.

31 § 7. Paragraph (a) of subdivision 3 of section 366 of the social services law, as amended by chapter 110 of the laws of 1971, is amended to read as follows:

34 (a) Medical assistance shall be furnished to applicants in cases where, although such applicant has a responsible relative with sufficient income [~~and resources~~] to provide medical assistance as determined by the regulations of the department, the income [~~and resources~~] of the responsible relative are not available to such applicant because of the absence of such relative or the refusal or failure of such relative to provide the necessary care and assistance. In such cases, however, the furnishing of such assistance shall create an implied contract with such relative, and the cost thereof may be recovered from such relative in accordance with title six of article three of this chapter and other applicable provisions of law.

45 § 8. Paragraph h of subdivision 6 of section 366 of the social services law, as amended by section 69-b of part C of chapter 58 of the laws of 2008, is amended to read as follows:

48 h. Notwithstanding any other provision of this chapter or any other law to the contrary, for purposes of determining medical assistance eligibility for persons specified in paragraph b of this subdivision, the income [~~and resources~~] of responsible relatives shall not be deemed available for as long as the person meets the criteria specified in this subdivision.

54 § 9. Subparagraph (vii) of paragraph b of subdivision 7 of section 366 of the social services law, as amended by chapter 324 of the laws of 2004, is amended to read as follows:

1 (vii) be ineligible for medical assistance because the income [~~and~~
2 ~~resources~~] of responsible relatives are deemed available to him or her,
3 causing him or her to exceed the income [~~or resource~~] eligibility level
4 for such assistance;

5 § 10. Paragraph j of subdivision 7 of section 366 of the social
6 services law, as amended by chapter 324 of the laws of 2004, is amended
7 to read as follows:

8 j. Notwithstanding any other provision of this chapter other than
9 subdivision six of this section or any other law to the contrary, for
10 purposes of determining medical assistance eligibility for persons spec-
11 ified in paragraph b of this subdivision, the income [~~and resources~~] of
12 a responsible relative shall not be deemed available for as long as the
13 person meets the criteria specified in this subdivision.

14 § 11. Subdivision 8 of section 366 of the social services law, as
15 added by chapter 41 of the laws of 1992, is amended to read as follows:

16 8. Notwithstanding any inconsistent provision of this chapter or any
17 other law to the contrary, income [~~and resources~~] which [~~are~~] ~~is~~
18 otherwise exempt from consideration in determining a person's eligibility for
19 medical care, services and supplies available under this title, shall be
20 considered available for the payment or part payment of the costs of
21 such medical care, services and supplies as required by federal law and
22 regulations.

23 § 12. Subparagraph (vi) of paragraph b of subdivision 9 of section 366
24 of the social services law, as added by chapter 170 of the laws of 1994,
25 is amended to read as follows:

26 (vi) be eligible or, if discharged, would be eligible for medical
27 assistance, or are ineligible for medical assistance because the income
28 [~~and resources~~] of responsible relatives are or, if discharged, would be
29 deemed available to such persons causing them to exceed the income [~~or~~
30 ~~resource~~] eligibility level for such assistance;

31 § 13. Paragraph k of subdivision 9 of section 366 of the social
32 services law, as added by chapter 170 of the laws of 1994, is amended to
33 read as follows:

34 k. Notwithstanding any provision of this chapter other than subdivi-
35 sion six or seven of this section, or any other law to the contrary, for
36 purposes of determining medical assistance eligibility for persons spec-
37 ified in paragraphs b and c of this subdivision, the income [~~and~~
38 ~~resources~~] of a responsible relative shall not be deemed available for
39 as long as the person meets the criteria specified in this subdivision.

40 § 14. Paragraph (d) of subdivision 12 of section 366 of the social
41 services law, as added by section 1 of part E of chapter 58 of the laws
42 of 2006, is amended to read as follows:

43 (d) Notwithstanding any provision of this chapter or any other law to
44 the contrary, for purposes of determining medical assistance eligibility
45 for persons specified in paragraph (b) of this subdivision, the income
46 [~~and resources~~] of a legally responsible relative shall not be deemed
47 available for as long as the person meets the criteria specified in this
48 subdivision; provided, however, that such income shall continue to be
49 deemed unavailable should responsibility for the care and placement of
50 the person be returned to his or her parent or other legally responsible
51 person.

52 § 15. Paragraph (b) of subdivision 16 of section 366 of the social
53 services law, as added by section 1 of part N of chapter 57 of the laws
54 of 2023, is amended to read as follows:

55 (b) Individuals eligible for participation in such waiver shall:

1 (i) be a disabled individual, defined as having a medically determina-
2 ble impairment of sufficient severity and duration to qualify for bene-
3 fits under Titles II or XVI of the social security act;

4 (ii) be at least sixteen years of age;

5 (iii) be otherwise eligible for medical assistance benefits, but for
6 earnings [~~and/or resources~~] in excess of the allowable limit;

7 (iv) have net available income, determined in accordance with subdivi-
8 sion two of this section, that does not exceed two thousand two hundred
9 fifty percent of the applicable federal poverty line, as defined and
10 updated by the United States department of health and human services;

11 (v) [~~have resources, as defined in paragraph (c) of subdivision two of~~
12 ~~section three hundred sixty six e of this title, other than retirement~~
13 ~~accounts, that do not exceed three hundred thousand dollars,~~

14 ~~(vi)]~~ contribute to the cost of medical assistance provided pursuant
15 to this paragraph in accordance with paragraph (d) of this subdivision;
16 and

17 [~~(vii)]~~ (vi) meet such other criteria as may be established by the
18 commissioner as may be necessary to administer the provisions of this
19 subdivision in an equitable manner.

20 § 16. Paragraph (b) of subdivision 2 of section 366-a of the social
21 services law is REPEALED and paragraphs (c) and (d) of subdivision 2,
22 paragraph (d) as added by section 29 of part B of chapter 58 of the laws
23 of 2010, are relettered paragraphs (b) and (c) and paragraph (c) is
24 amended to read as follows:

25 (c) Notwithstanding the provisions of paragraph (a) of this subdivi-
26 sion, an applicant or recipient [~~whose eligibility under this title is~~
27 ~~determined without regard to the amount of his or her accumulated~~
28 ~~resources~~] may attest to the amount of interest income generated by such
29 resources if the amount of such interest income is expected to be imma-
30 terial to medical assistance eligibility, as determined by the commis-
31 sioner of health. In the event there is an inconsistency between the
32 information reported by the applicant or recipient and any information
33 obtained by the commissioner of health from other sources and such
34 inconsistency is material to medical assistance eligibility, the commis-
35 sioner of health shall request that the applicant or recipient provide
36 adequate documentation to verify his or her interest income.

37 § 17. Paragraph (a) of subdivision 8 of section 366-a of the social
38 services law, as amended by section 7 of part B of chapter 58 of the
39 laws of 2010, is amended to read as follows:

40 (a) Notwithstanding subdivisions two and five of this section, infor-
41 mation concerning income [~~and resources~~] of applicants for and recipi-
42 ents of medical assistance may be verified by matching client informa-
43 tion with information contained in the wage reporting system established
44 by section one hundred seventy-one-a of the tax law and in similar
45 systems operating in other geographically contiguous states, by means of
46 an income verification performed pursuant to a memorandum of understand-
47 ing with the department of taxation and finance pursuant to subdivision
48 four of section one hundred seventy-one-b of the tax law, and, to the
49 extent required by federal law, with information contained in the non-
50 wage income file maintained by the United States internal revenue
51 service, in the beneficiary data exchange maintained by the United
52 States department of health and human services, and in the unemployment
53 insurance benefits file. Such matching shall provide for procedures
54 which document significant inconsistent results of matching activities.
55 Nothing in this section shall be construed to prohibit activities the
56 department reasonably believes necessary to conform with federal

1 requirements under section one thousand one hundred thirty-seven of the
2 social security act.

3 § 18. Subdivision 1 of section 366-c of the social services law, as
4 added by chapter 558 of the laws of 1989, is amended to read as follows:

5 1. Notwithstanding any other provision of law to the contrary, in
6 determining the eligibility for medical assistance of a person defined
7 as an institutionalized spouse, the income [~~and resources~~] of such
8 person and the person's community spouse shall be treated as provided in
9 this section.

10 § 19. Paragraphs (c), (d) and (e) of subdivision 2 of section 366-c of
11 the social services law are REPEALED and paragraphs (f), (g), (h), (i),
12 (j) and (k) of subdivision 2 are relettered paragraphs (c), (d), (e),
13 (f), (g) and (h).

14 § 20. Subdivisions 5 and 6 of section 366-c of the social services law
15 are REPEALED and subdivisions 7 and 8, as added by chapter 558 of the
16 laws of 1989, are renumbered subdivisions 5 and 6 and amended to read as
17 follows:

18 5. (a) At the beginning or after the commencement of a continuous
19 period of institutionalization, either spouse may request [~~an assessment~~
20 ~~of the total value of their resources or~~] a determination of the commu-
21 nity spouse monthly income allowance, the amount of the family allow-
22 ance, or the method of computing the amount of the family allowance, or
23 the method of computing the amount of the community spouse income allow-
24 ance.

25 (b) [~~(i) Upon receipt of a request pursuant to paragraph (a) of this~~
26 ~~subdivision together with all relevant documentation of the resources of~~
27 ~~both spouses, the social services district shall assess and document the~~
28 ~~total value of the spouses' resources and provide each spouse with a~~
29 ~~copy of the assessment and the documentation upon which it was based. If~~
30 ~~the request is not part of an application for medical assistance bene-~~
31 ~~fits, the social services district may charge a fee for the assessment~~
32 ~~which is related to the cost of preparing and copying the assessment and~~
33 ~~documentation which fee may not exceed twenty five dollars.~~

34 ~~(ii)]~~ The social services district shall [~~also~~] notify each requesting
35 spouse of the community spouse monthly income allowance, of the amount,
36 if any, of the family allowances, and of the method of computing the
37 amount of the community spouse monthly income allowance.

38 (c) The social services district shall also provide to the spouse a
39 notice of the right to a fair hearing at the time of provision of the
40 information requested under paragraph (a) of this subdivision or after a
41 determination of eligibility for medical assistance. Such notice shall
42 be in the form prescribed or approved by the commissioner and include a
43 statement advising the spouse of the right to a fair hearing under this
44 section.

45 6. (a) If, after a determination on an application for medical assist-
46 ance has been made, either spouse is dissatisfied with the determination
47 of the community spouse monthly allowance[~~7~~] ~~or~~ the amount of monthly
48 income otherwise available to the community spouse[~~7, the computation of~~
49 ~~the spousal share of resources, the attribution of resources or the~~
50 ~~determination of the community spouse's resource allocation], the spouse
51 may request a fair hearing to dispute such determination. Such hearing
52 shall be held within thirty days of the request therefor.~~

53 (b) If either spouse establishes that the community spouse needs
54 income above the level established by the social services district as
55 the minimum monthly maintenance needs allowance, based upon exceptional
56 circumstances which result in significant financial distress (as defined

1 by the commissioner in regulations), the department shall substitute an
2 amount adequate to provide additional necessary income from the income
3 otherwise available to the institutionalized spouse.

4 ~~[(c) If either spouse establishes that income generated by the commu-~~
5 ~~nity spouse resource allowance, established by the social services~~
6 ~~district, is inadequate to raise the community spouse's income to the~~
7 ~~minimum monthly maintenance needs allowance, the department shall estab-~~
8 ~~lish a resource allowance for the spousal share of the institutionalized~~
9 ~~spouse adequate to provide such minimum monthly maintenance needs allow-~~
10 ~~ance.]~~

11 § 21. The commissioner of health shall, expeditiously and as neces-
12 sary, submit any state plan amendment or waiver requests necessary to
13 maintain federal financial participation under this act.

14 § 22. This act shall take effect immediately; provided however, that
15 sections one and two of this act shall take effect January 1, 2025;
16 provided, further, however, that sections three, four, five, six, seven,
17 eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen,
18 seventeen, eighteen, nineteen and twenty of this act shall take effect
19 January 1, 2026; provided, further, however, that if section 3 of part
20 AAA of chapter 56 of the laws of 2022 shall not have taken effect on or
21 before such dates then sections one-a and four-a of this act shall take
22 effect on the same date and in the same manner as such section of such
23 part of such chapter of the laws of 2022, takes effect; provided,
24 further, however, that the amendments to subdivision 6 of section 366 of
25 the social services law made by section eight of this act shall not
26 affect the repeal of such subdivision and shall be deemed repealed ther-
27ewith; provided, further, however, that if section 1 of part N of chap-
28ter 57 of the laws of 2023 shall not have taken effect on or before such
29date then section fifteen of this act shall take effect on the same date
30and in the same manner as such section of such part of such chapter of
31the laws of 2023, takes effect; provided, further, however, that the
32effectiveness of sections one through twenty of this act shall be
33subject to federal financial participation; provided, further, however,
34that the commissioner of health shall notify the legislative bill draft-
35ing commission upon the occurrence of federal financial participation in
36order that the commission may maintain an accurate and timely effective
37data base of the official text of the laws of the state of New York in
38furtherance of effectuating the provisions of section 44 of the legisla-
39tive law and section 70-b of the public officers law. Effective imme-
40diately, the addition, amendment and/or repeal of any rule or regulation
41necessary for the implementation of this act on its effective date are
42authorized to be made and completed on or before such effective date.