§ 366-c. Treatment of income and resources of institutionalized persons. 1. Notwithstanding any other provision of law to the contrary, in determining the eligibility for medical assistance of a person defined as an institutionalized spouse, the income and resources of such person and the person's community spouse shall be treated as provided in this section.

2. (a) For purposes of this section an "institutionalized spouse" is a person (i) who is in a medical institution or nursing facility and expected to remain in such facility or institution for at least thirty consecutive days; or (ii) who is receiving care, services and supplies pursuant to a waiver pursuant to subsection (c) of section nineteen hundred fifteen of the federal social security act, or successor to such waiver, or is receiving care, services and supplies in a managed long-term care plan pursuant to section eleven hundred fifteen of the social security act; and (iii) who is married to a person who is not in a medical institution or nursing facility or is not receiving waiver services described in subparagraph (ii) of this paragraph; provided, however, that medical assistance shall be furnished pursuant to this paragraph only if, for so long as, and to the extent that federal financial participation is available therefor. The commissioner of health shall make any amendments to the state plan for medical assistance, or apply for any waiver or approval under the federal social security act that are necessary to carry out the provisions of this paragraph.

(b) For purposes of this section, a "community spouse" is a person who is the spouse of an "institutionalized spouse".

(c) For the purposes of this section, "spousal share" means an amount equal to one-half of the total value of the resources of the community spouse and the institutionalized spouse, as of the beginning of the first continuous period of institutionalization beginning on or after the thirtieth day of September, nineteen hundred eighty-nine, to the extent that either, or both, have an ownership interest as of the date of the continuous period of institutionalization of the institutionalized spouse.

(d) For the purposes of this section, "community spouse resource allowance" means the amount, if any, by which the greatest of the

following amounts exceeds the total value of the resources otherwise available to the community spouse:

(i) (A) prior to January first, nineteen hundred ninety-five, sixty thousand dollars, which shall be increased annually by the same percentage as the percentage increase in the federal consumer price index;

(B) on and after January first, nineteen hundred ninety-five through June thirtieth, nineteen hundred ninety-nine, seventy-four thousand eight hundred twenty dollars or such greater amount as may be required under federal law;

(ii) the lesser of sixty thousand dollars which shall be increased annually by the same percentage as the percentage increase in the federal consumer price index or the spousal share; or

(iii) the amount established for support of the community spouse pursuant to a fair hearing under this section; or

(iv) the amount transferred pursuant to court order for the support of the community spouse.

(e) For purposes of this section, "resources" do not include resources excluded in determining eligibility for benefits under title XVI of the federal social security act, as defined by the commissioner consistent with federal law.

(f) For purposes of this section, "family member" includes only a dependent or minor child, a dependent parent, or a dependent sibling of the institutionalized spouse or the community spouse, who resides with the community spouse.

(g) For purposes of this section, "community spouse monthly income allowance" is the amount by which the minimum monthly maintenance needs allowance for the community spouse exceeds the monthly income otherwise available to the community spouse unless a greater amount is established pursuant to a fair hearing under this section or pursuant to court order for the support of the community spouse.

(h) For purposes of this section, "minimum monthly maintenance needs allowance" is an amount equal to one-twelfth of the applicable percentage of the federal income official poverty line for a family of two, plus an excess shelter allowance, provided however, such amount shall not be less than one thousand five hundred dollars per month, nor exceed one thousand five hundred dollars (as adjusted in the discretion

of the commissioner for changes in the federal consumer price index for calendar years after nineteen hundred eighty-nine) per month.

(i) For purposes of this section, "family allowance for each family member" is an amount equal to the one-third times one-twelfth of the applicable percentage of the federal income official poverty line to a family of two, less the monthly income otherwise available to the family member.

(j) For purposes of this section, the "applicable percentage of the federal income official poverty line" shall be one hundred twenty-two percent as of September thirtieth, nineteen hundred eighty-nine; one hundred thirty-three percent as of July first, nineteen hundred ninety-one and one hundred fifty percent on and after July first, nineteen hundred ninety-two.

(k) For purposes of this section, the "excess shelter allowance" shall be the amount by which the community spouse's rent, mortgage, or condominium or cooperative maintenance fees, taxes and insurance, and utilities exceed thirty percent of one-twelfth of the applicable percentage of the federal income official poverty line for two persons.

3. Unless established by a preponderance of the evidence to the contrary, the following presumptions shall apply in determining the availability of income to an institutionalized spouse in determining eligibility for medical assistance.

(a) During any month in which an institutionalized spouse is in the institution or facility, no income of the community spouse shall be considered available to the institutionalized spouse except as provided in this subdivision; and

(b) Income solely in the name of the institutionalized spouse or the community spouse shall be considered available only to that spouse; and

(c) Income in the names of the institutionalized spouse and the community spouse shall be considered available one-half to each spouse; and

(d) Income in the names of the institutionalized spouse or the community spouse, or both, and also in the name of another person or persons, shall be considered available to each spouse in proportion to the spouse's interest or, if in the names of both spouses and no share is specified, one-half of the joint interest shall be considered

available to each spouse; and

(e) (i) Income from a trust shall be considered available to each spouse in accordance with the provisions of the trust instrument, or, in absence of a specific trust provision allocating income, in accordance with the provisions of paragraphs (a) through (d) of this subdivision; and

(ii) Additionally, income from a trust shall be attributed in accordance with the provisions of this title and title XIX of the federal social security act; and

(f) Income in which there is no instrument establishing ownership shall be considered to be available one-half to the institutionalized spouse and one-half to the community spouse.

* 4. In determining the amount of income to be applied toward the cost of medical care, services and supplies of the institutionalized spouse, after the institutionalized spouse has been determined eligible for medical assistance, the following items shall be deducted from the monthly income of the institutionalized spouse in the following order:

(a) a personal needs allowance;

(b) a community spouse monthly income allowance;

(c) a family allowance for each family member;

(d) any expenses incurred for medical care, services or supplies and remedial care for the institutionalized spouse;

provided, however, that, to the extent required by federal law, the terms of this subdivision shall not apply to persons who are receiving care, services and supplies pursuant to the following waivers under section 1915(c) of the federal social security act: the nursing facility transition and diversion waiver authorized pursuant to subdivision six-a of section three hundred sixty-six of this title; the traumatic brain injury waiver authorized pursuant to section twenty-seven hundred forty of the public health law, the long term home health care program waiver authorized pursuant to section three hundred sixty-seven-c of this title, and the home and community based services waiver for persons with developmental disabilities, or successor to such waiver, administered by the office for people with developmental disabilities pursuant to an agreement with the federal centers for medicare and Medicaid services.

* NB Effective until March 31, 2028

* 4. In determining the amount of income to be applied toward the cost

of medical care, services and supplies of the institutionalized spouse, after the institutionalized spouse has been determined eligible for medical assistance, the following items shall be deducted from the monthly income of the institutionalized spouse in the following order:

(a) a personal needs allowance;

(b) a community spouse monthly income allowance;

(c) a family allowance for each family member;

(d) any expenses incurred for medical care, services or supplies and remedial care for the institutionalized spouse.

* NB Effective March 31, 2028

5. The following rules apply in determining the resources of the institutionalized spouse and the community spouse in establishing eligibility for medical assistance:

(a) All resources, including resources required to be considered in determining eligibility pursuant to paragraph (c) of subdivision five of section three hundred sixty-six of this title, held by either the institutionalized spouse or the community spouse or both shall be considered available to the institutionalized spouse to the extent that the value of the resources exceeds the community spouse resource allowance.

(b) An institutionalized spouse shall not be ineligible for medical assistance by reason of excess resources determined under paragraph (a) of this subdivision, if the institutionalized spouse executes an assignment of support from the community spouse in favor of the social services district and the department, or the institutionalized spouse is unable to execute such assignment due to physical or mental impairment, or to deny assistance would create an undue hardship, as defined by the commissioner.

(c) After the month in which the institutionalized spouse has been determined eligible for medical assistance during a continuous period of institutionalization, no resource of the community spouse shall be considered available to the institutionalized spouse.

6. Notwithstanding paragraph (c) of subdivision five of section three hundred sixty-six of this title and after an institutionalized spouse is determined eligible for medical assistance, transfers of resources by

the institutionalized spouse to the community spouse shall be permitted to the extent that the transfers are solely to or for the benefit of the community spouse and do not exceed the value of the community spouse resource allowance. Such transfers must be made as soon as practicable after the determination of eligibility.

7. (a) At the beginning or after the commencement of a continuous period of institutionalization, either spouse may request an assessment of the total value of their resources or a determination of the community spouse monthly income allowance, the amount of the family allowance, or the method of computing the amount of the family allowance, or the method of computing the amount of the community spouse income allowance.

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

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

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

8. (a) If, after a determination on an application for medical assistance has been made, either spouse is dissatisfied with the

determination of the community spouse monthly allowance, the amount of monthly income otherwise available to the community spouse, the computation of the spousal share of resources, the attribution of resources or the determination of the community spouse's resource allocation, the spouse may request a fair hearing to dispute such determination. Such hearing shall be held within thirty days of the request therefor.

(b) If either spouse establishes that the community spouse needs income above the level established by the social services district as the minimum monthly maintenance needs allowance, based upon exceptional circumstances which result in significant financial distress (as defined by the commissioner in regulations), the department shall substitute an amount adequate to provide additional necessary income from the income otherwise available to the institutionalized spouse.

(c) If either spouse establishes that income generated by the community spouse resource allowance, established by the social services district, is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, the department shall establish a resource allowance for the spousal share of the institutionalized spouse adequate to provide such minimum monthly maintenance needs allowance.