

Make the Expanded Spousal Impoverishment Protection Permanent

Married seniors and adults with disabilities overwhelmingly want to live at home and age in place. Increasingly, federal and state Medicaid rules have prioritized home and community-based services (HCBS) which allow people to stay in their homes and in their communities. Congress recently helped these efforts by expanding a Medicaid eligibility rule, known as the spousal impoverishment protection, to individuals eligible for HCBS. The protection makes it possible for an individual who needs a nursing home level of care to qualify for Medicaid while allowing their spouse to retain a modest amount of income and resources. However, the expansion of the spousal impoverishment protection is set to expire on December 31, 2023 unless Congress acts.

The Spousal Impoverishment Protection

Since 1988, the federal Medicaid program has required states to adopt a modified eligibility rule for spouses when one spouse needs institutional long-term care.¹ This rule allows the so-called “institutional spouse” to qualify for Medicaid as a household of one, while allowing the “community spouse” to keep income and assets so they will not become impoverished. Given that Medicaid pays for institutional long-term care for 6 out of every 10 nursing home residents, **the spousal impoverishment protection has helped ensure that community spouses can continue to pay for rent, food, and medication while their spouse receives their needed care in a facility.**²

However, the law as originally written created a perverse incentive, a senior or a younger person with a disability who could successfully live at home if they received HCBS couldn’t use the spousal impoverishment protection to qualify for Medicaid. Instead, they would have to make a draconian choice—forego needed home and community based care so they could continue to live with their spouse or leave home and move into a nursing facility so they could qualify for Medicaid.

In 2010, Congress remedied this problem by requiring states to expand the definition of “institutional spouse” to include all people who needed a nursing home level of care, but could receive that care in their home.³

This expansion, which began on January 1, 2014 and is scheduled to sunset on December 31, 2023, accomplishes three goals:

- First, it **allows married couples to continue to live together** without endangering the health, well-being or financial security of the family.
- Second, it ensures people with disabilities, including seniors, have a **meaningful choice to age in place and to stay in their community.**
- Finally, it **removes the incentive for individuals who need Medicaid to receive long-term services and supports to choose more expensive institutional long-term care**, because they can now receive the needed services in their home.

Effects of Ending the Expanded Spousal Impoverishment Protection

Real people have benefitted from this protection. Here are two stories from California:⁴

Mr. and Mrs. Hernandez have been married for 53 years. Mr. Hernandez has survived three strokes and needs in-home care to live safely at home. Mrs. Hernandez has cancer and also needs home and community-based services. They had an unaffordable monthly Medi-Cal share of cost, which prevented them from accessing needed Medicaid services, including HCBS through California's In-Home Supportive Services program. However, once the county welfare department re-determined their eligibility based on the expanded spousal impoverishment protection, they qualified for free Medicaid. This means they can both access the home care they need, age in dignity at home, and afford to pay for their rent and food. If the spousal impoverishment program ends, they will have an unaffordable share of cost again and lose Medicaid coverage.

Mr. Levin is a married 56 year old man. He suffered a severe stroke and his life changed overnight. He is legally blind and can only say 10 words. He will never work again. Prior to the implementation of the spousal impoverishment rules, he was ineligible for Medicaid because he was over the asset limit. Implementation of the expanded spousal impoverishment protection means that he now qualifies for free Medicaid and can receive In-Home Supportive Services. His wife was unable to leave his side because his needs were so severe. However, now that he has Medicaid and in-home care, his wife enrolled in nursing school and has almost completed her nursing degree. If the spousal impoverishment program ends, he will lose his Medicaid.

Congress Should Make the Expanded Spousal Impoverishment Protection Permanent

If Congress doesn't act, the expanded spousal impoverishment protection will expire on December 31, 2023. This means that individuals who qualified under the expanded protection may lose access to Medicaid and to their HCBS and may be left with no choice but to move into institutional long-term care, away from their spouses. **Letting the spousal impoverishment protection expire will hurt families and force more people out of their homes and their communities.** We urge Congress to make the expanded spousal impoverishment protection permanent so seniors and people with disabilities can age in place and with dignity.

1 Medicaid Catastrophic Coverage Act, 102 Stat. 754, 42 U.S.C. § 1396r-5(b)(1).

2 Kaiser Family Foundation, "Medicaid's Role in Nursing Home Care" at <https://www.kff.org/infographic/medicaids-role-in-nursing-home-care/>.

3 Pub. L. No. 111-148, § 2404.

4 The names of the beneficiaries have been changed to protect their privacy.