

## State Medicaid Manual Section 3, Eligibility

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### 3810 (Cont.) GENERAL FINANCIAL ELIGIBILITY REQUIREMENTS AND OPTIONS 01-01

7. American Indians and Alaska Natives.--The Federal government has a unique trust responsibility for American Indian (AI) Tribes and Alaska Native (AN) Villages and their members. Section 1917(b)(3) of the Social Security Act gives the Secretary authority to establish standards for hardship. This includes exemptions from estate recovery for certain assets and resources.

a. American Indians and Alaska Natives: Income, Resources and Property Exempt from Medicaid Estate Recovery.--The following AI/AN income, resources, and property are exempt from Medicaid estate recovery:

1. Certain AI/AN income and resources (such as interests in and income derived from Tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;

2. Ownership interest in trust or non-trust property, including real property and improvements:

a. Located on a reservation (any federally recognized Indian Tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established by Alaska Native Claims Settlement Act and Indian allotments) or near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or

b. For any federally -recognized Tribe not described in (a), located within the most recent boundaries of a prior Federal reservation.

c. Protection of non-trust property described in (a) and (b) is limited to circumstances when it passes from an Indian (as defined in section 4 of the Indian Health Care Improvement Act) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a Tribe and non-Indians, such as spouses and step-children, that their culture would nevertheless protect as family members; to a Tribe or Tribal organization; and/or to one or more Indians;

3. Income left as a remainder in an estate derived from property protected in 2 above, that was either collected by an Indian, or by a Tribe or Tribal organization and distributed to Indian(s), as long as the individual can clearly trace it as coming from the protected property.

4. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of Federally-protected rights, and income either collected by an Indian, or by a Tribe or Tribal organization and distributed to Indian(s) derived from these sources as long as the individual can clearly trace it as coming from protected sources; and

5. Ownership interests in or usage rights to items not covered by 1-4 above that have unique religious, spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom.

b. American Indians and Alaska Natives Income, Resources and Property Not Exempt from Medicaid Estate Recovery.--You may recover the following income, resources and property from the estates of American Indians and Alaska Natives:

1. Ownership interests in assets and property, both real and personal, that are not described in 7.a, items 1-5 above.

2. Any income and assets left as a remainder in an estate that do not derive from protected property or sources in 7.a, items 1-5.