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State supplementary payment as specified in the Federal agreement will be made.

(3) If countable income exceeds the amount of the Federal benefit rate, the State supplementary benefit will be reduced by the amount of such excess. In the case of an eligible individual living with an ineligible spouse with income (the deeming methodology of §416.1163 applies), the State supplementary payment rate from which the excess income will be deducted is the higher of the State supplementary rates for an eligible couple or an eligible individual, except that an eligible individual's payment amount may not exceed the amount he or she would have received if he or she were not subject to the deeming provisions (see §416.1163(e)(2)). For purposes of determining the State supplementary couple rate, the ineligible spouse is considered to be in the same category as the eligible individual.

(4) No State supplementary payment will be made where countable income is equal to or exceeds the sum of the Federal benefit rate and the State supplementary payment rate.

(c) *Effect of additional income exclusions on payment amounts.* A State has the option of excluding amounts of earned and unearned income in addition to the amounts it is required to exclude under paragraph (a) of this section in determining a person's eligibility for State supplementary payments. Such additional income exclusions affect the amount of the State supplementary payments as follows:

(1) Countable income (as determined under the Federal eligibility rules) will first be deducted from the Federal benefit rate applicable to an eligible individual or eligible couple.

(2) Such countable income is then reduced by the amount of the additional income exclusion specified by the State.

(3) If the remaining countable income is equal to or less than the amount of the Federal benefit rate, the full amount of the State supplementary payment will be made.

(4) If the remaining countable income exceeds the amount of the Federal benefit rate, the State supplementary pay-

ment will be reduced by the amount of such excess.

(Secs. 1102, 1614(f), 1616(a), 1631, Social Security Act, as amended, 49 Stat. 647, as amended, 86 Stat. 1473, 1474(a), and 1475 (42 U.S.C. 1302, 1382c(f), 1382e(a), 1383))

[40 FR 7640, Feb. 21, 1975, as amended at 43 FR 39570, Sept. 6, 1978; 53 FR 25151, July 5, 1988]

§416.2030 **Optional supplementation: Variations in payments.**

(a) *Payment level.* The level of State supplementary payments may vary for each category the State elects to include in its federally administered supplement. These categorical variations of payment levels must be specified in the agreement between the Commissioner and the State. If any State has in effect for July 1974 an agreement which provides for variations in addition to those specified in this section, the State may, at its option, continue such variations but only for periods ending before July 1, 1976.

(1) *Geographical variations.* A State may elect to include two different geographical variations. A third may be elected if adequate justification, e.g., substantial differences in living costs, can be demonstrated. All such variations must be readily identifiable by county or ZIP code or other readily identifiable factor.

(2) *Living arrangements.* In addition, a State may elect up to six variations in recognition of the different needs which result from various living arrangements. If a State elects six payment level variations based on differences in living arrangements, one of these six variations must apply only to individuals in Medicaid facilities, that is, facilities receiving title XIX payments with respect to such persons for the cost of their care (see §416.211(b)(1)). In any event, States are limited to one payment level variation for residents of Medicaid facilities. Types of other living arrangements for which payment variations may be allowed include arrangements such as:

- (i) Living alone;
- (ii) Living with an ineligible spouse;
- (iii) Personal care facility; or,
- (iv) Domiciliary or congregate care facility.

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(b) *Relationship to actual cost differences.* Under the agreement, variations in State supplementary payment levels will be permitted for each living arrangement the State elects. These differences must be based on rational distinctions between both the types of living arrangements and the costs of those arrangements.

(c) *Effective month of State supplementary payment category.* The State supplementary payment category which applies in the current month will be used to determine the State payment level in that month. This rule applies even if the countable income in a prior month is used to determine the amount of State supplementary payment.

[40 FR 7640, Feb. 21, 1975, as amended at 50 FR 48579, Nov. 26, 1985; 56 FR 41455, Aug. 21, 1991; 62 FR 38455, July 18, 1997]

§ 416.2035 **Optional supplementation: Additional State options.**

(a) *Residency requirement.* A State or political subdivision may impose, as a condition of eligibility, a residency requirement which excludes from eligibility for State supplementary payment any individual who has resided in such State (or political subdivision thereof) for less than a minimum period prescribed by the State. Any such residency requirement will be specified in the agreement.

(b) *Lien and relative responsibility.* A State which elects Federal administration of its supplementary payments may place a lien upon property of an individual as a consequence of the receipt of such payments or may require that a relative of the individual contribute to a reasonable extent to the support of the individual, providing it is stated in the agreement that:

(1) The Commissioner has determined that the specific State laws and their enforcement are consistent with the supplemental security income program purpose of providing unencumbered cash payments to recipients; and

(2) The Federal Government is not involved in the administration of such laws and will not vary the State supplementary payment amount it makes to comply with such laws; and

(3) Neither the basic Federal benefit nor any part of the State supple-

mentary payment financed by Federal funds will be subject to the liens or encumbrances of such laws.

[40 FR 7640, Feb. 21, 1975, as amended at 62 FR 38455, July 18, 1997]

§ 416.2040 **Limitations on eligibility.**

Notwithstanding any other provision of this subpart, the eligibility of an individual (or couple) for optional State supplementary payments administered by the Federal Government in accordance with this subpart shall be limited as follows:

(a) *Inmate of public institution.* A person who is a resident in a public institution for a month, is ineligible for a Federal benefit for that month under the provision of § 416.211(a), and does not meet the requirements for any of the exceptions in § 416.211 (b), (c), or (d), or § 416.212, also shall be ineligible for a federally administered State supplementary payment for that month.

(b) *Ineligible persons.* No person who is ineligible for a Federal benefit for any month under sections 1611(e)(1)(A), (2), (3), or (f) of the Act (failure to file; refuses treatment for drug addiction or alcoholism; outside the United States) or other reasons (other than the amount of income) shall be eligible for such State supplementation for such month.

(c) *Recipient eligible for benefits under § 416.212.* A recipient who is institutionalized and is eligible for either benefit payable under § 416.212 for a month or months may also receive federally administered State supplementation for that month. Additionally, a recipient who would be eligible for benefits under § 416.212 but for countable income which reduces his or her Federal SSI benefit to zero, may still be eligible to receive federally administered State supplementation.

[40 FR 7640, Feb. 21, 1975, as amended at 56 FR 41455, Aug. 21, 1991; 61 FR 10280, Mar. 13, 1996; 68 FR 40124, July 7, 2003]

§ 416.2045 **Overpayments and underpayments; federally administered supplementation.**

(a) *Overpayments.* Upon determination that an overpayment has been made, adjustments will be made against future federally administered State supplementary payments for