MEDICAID PLANNING BASICS

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WHAT IS MEDICAID?

- Means-tested entitlement program
- Jointly funded with federal and state funds
- Known as "Medical Assistance" in Pennsylvania
- Managed at the federal level by the United States Department of Health and Human Services through the Centers for Medicare and Medicaid Services ("CMS")
- Managed at the state level by the Department of Human Services ("DHS") through the local County Assistance Offices ("CAO")

MA FOR LONG-TERM CARE ELIGIBILITY REQUIREMENTS

- Applicant must satisfy three (3) tests:
  - Medical/Functional
  - Income
  - Resources

LEVELS OF CARE & MEDICAL ELIGIBILITY

- Personal Care Homes and Assisted Living Facilities vs. Skilled Nursing Facilities
- Level of Care Determination must indicate Applicant is Nursing Facility Clinically Eligible (“NFCE”)
  - Applicant requires care beyond the level of room and board, such as skilled nursing or rehabilitation or healthcare regularly provided by medical and technical personnel

FINANCIAL ELIGIBILITY

- If Applicant's gross monthly income is:
  - Less than 300% of the Federal Benefit Rate (currently $2,349 per month), then the Applicant can retain $8,000 and may qualify for the MA Waiver.
  - Greater than 300% of the Federal Benefit Rate (currently $2,349 per month), then the Applicant can retain $2,400 and cannot qualify for the MA Waiver.

EXEMPT RESOURCES

a) Primary residence (subject to equity limit of $595,000)
b) One vehicle
c) Household goods, personal effects
d) Property essential to self-support
e) Life insurance with total face value < $1,500
f) Term life insurance
g) Irrevocable burial reserve; Burial plots/markers
h) Qualified retirement accounts of Community Spouse
i) Community Spouse Resource allowance (CSRA)

AVAILABLE/COUNTABLE RESOURCES

a) Cash on hand and in the bank
b) Mutual funds, CDs, stocks and bonds
c) Applicant's qualified retirement accounts
d) Real property other than the primary residence
e) Any vehicles beyond the one exempt vehicle
f) Annuity cash value (unless DRA-compliant)
g) Life insurance cash value (subject to small exemptions)
h) Trust assets to the extent the trustee could legally distribute the same to Applicant or Applicant's spouse

MARRIED COUPLES

- Institutionalized Spouse ("IS") – The spouse who is either in a skilled nursing facility or is at home through the Aging Waiver or LIFE program (i.e., must be NFCE)

- Community Spouse ("CS") – The spouse who resides in the "community", whether at home or in a personal care home

RESOURCE ASSESSMENT

- The Resource Assessment is a "snapshot" of the couple's total countable assets as of the date of the IS's admission to the skilled nursing facility (or the date of assessment for Waiver)

- CS keeps a protected share known as the Community Spouse Resource Allowance ("CSRA"), which is one-half of the couple's total countable assets on the snapshot date, subject to a minimum of $25,716 and a maximum of $128,580

- IS keeps the Resource Allowance of either $2,400 or $8,000, depending on income

INCOME CONSIDERATIONS

- Income of Institutionalized Spouse:
  - Income is paid to the facility, less
    - the amount of health insurance premiums
    - a $45 monthly personal needs allowance
    - the spousal allowance for the CS, if any
- Income of Community Spouse:
  - Income is not available for care of IS
  - May receive spousal allowance from CS if income is low enough

MONTHLY MAINTENANCE NEEDS ALLOWANCE ("MMNA")

- MMNA is an income allowance for the CS that is calculated based on shelter expenses and standard allowances
  - Minimum MMNA is $2,114
  - Maximum MMNA is $3,161
- Where the actual gross monthly income of the CS is <u>less than</u> the calculated MMNA, the CS can keep a portion of IS income to make up the shortfall.
- Where income of IS is insufficient to cover the shortfall, resources in addition to the CSRA can be retained to generate the income needed to cover the shortfall.

TRANSFERS SUBJECT TO PENALTY

- If an applicant <u>or spouse</u> has transferred resources for less than fair consideration during the five-year look back period preceding application, a penalty period of ineligibility for MA benefits will be imposed, subject to certain exceptions

- Fair consideration is compensation in cash or in kind which is approximately equal to the fair market value of the transferred property

PERIOD OF INELIGIBILITY

- The penalty period is calculated by dividing the aggregate value of the gifts by the penalty divisor, which represents the average cost of nursing facility care in Pennsylvania.
- Penalty Divisor = $10,733/month
- Penalty period does not begin to run until Applicant is "otherwise eligible"(i.e., the Applicant has met both the medical and financial tests and would be eligible for MA but for the transfer of resources)

ESTATE RECOVERY

- DHS will seek reimbursement from the estate of the MA recipient for MA benefits paid while 55 or older
- Limited to the probate estate in PA (other states have expanded estate recovery to include additional assets)
- Personal Representative is personally liable if property is distributed without satisfying the claim
- Personal Representative must request a Statement of Claim from DHS, and DHS must provide it within 45 days of receipt
- DHS may waive its claim in cases of undue hardship

TRUST PLANNING

- Any plan to transfer assets to a trust in the MA context requires careful consideration of at least three issues:
  - whether the resulting trust will be considered an available resource to the MA applicant;
  - whether the act of funding of the trust will be penalized as an uncompensated transfer (5 year lookback); and
  - the tax consequences associated with the trust's funding and continued operation.

CRISIS PLANNING

- Applicant can accelerate MA qualification by:
  - Converting countable assets into exempt property or services for the benefit of the IS or CS
  - Transfer countable assets for less than fair consideration (e.g., gifting)
  - DRA-Annuity planning

COMMON SPEND DOWN ITEMS

a) Personal effects
b) Pre-existing medical expenses
c) Irrevocable burial reserves
d) New vehicle
e) Home repairs
f) Pay down debts
g) DRA-compliant single premium immediate annuity

EXEMPT TRANSFERS GENERALLY

- Transfers to or for the sole benefit of applicant's spouse
- Transfers to or for the sole benefit of applicant's child who is blind, disabled or under 21 years of age
- Transfers to a trust established solely for a person under 65 years of age who is disabled
- Transfers with intent to dispose of the property at fair market value
- Transferred exclusively for purposes other than MA qualification
- Transfers where a penalty would cause undue hardship
- Transfers totaling $500 or less in any calendar month
- Transfers of property where the property has been returned to the applicant (i.e., the penalty is cured by return of the gifted property)

DRA-COMPLIANT ANNUITY

- A DRA-compliant annuity converts countable resources into an income stream
- Married Applicants: a DRA-compliant annuity is helpful where the CS has limited income or high expenses
- Single Applicants: a DRA-compliant annuity is helpful in paying through a penalty period of ineligibility
- Requirements:
  a) Irrevocable, non-assignable and non-transferrable
  b) Actuarially sound based on SSA life expectancy tables
  c) Immediate annuity with equal monthly payments and no deferral or balloon payment
  d) Name DHS as primary beneficiary up to the value of MA benefits paid out to the IS

ESTATE PLANNING

Estate Recovery in Pennsylvania is currently limited to the *probate* estate of the individual who received MA benefits

- Resources might be transferred to a spouse or disabled child, for example. Once transferred, those resources will not be a part of the applicant's probate estate and will be outside the scope of Estate Recovery
- Beneficiary designations should be reviewed and updated as needed
- Reciprocal Wills may no longer make sense