

A BASIC OVERVIEW

MEDICAID AND LONG-TERM CARE BENEFITS IN PENNSYLVANIA

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ELIGIBILITY

I. Non Financial

- A. U.S. Citizen or qualified alien and a PA resident (no length of time required, therefore someone in nursing home in PA with intent to stay becomes a PA resident for MA purposes).
- B. Nursing Facility Clinically Eligible (NFCE) – Applies to nursing home & in-home waiver benefits. Care person needs rises to level of at least intermediate nursing facility level of care.

NOTE: Institutional Spouse – individual in medical institution (nursing home) or needing NFCE at home and likely to need it for at least 30 days.

Community Spouse – spouse/institutionalized spouse (even if separated).

II. Financial (Assets include income + resources)

A. Income

- 1. Single – less than \$2,523.00/mo. to qualify for MA waiver in-home benefits or greater resource allowance.
 - Greater than \$2,523.00/mo. but not sufficient to meet cost of nursing home, then applicant qualifies for nursing home benefits but not Medicaid waiver in-home program.
 - All income except \$45/mo. goes toward cost of care in nursing home. In waiver, applicant keeps income for household expenses.
- 2. Married couple – income of community spouse is not “deemed” to the institutionalized spouse. From income standpoint, community spouse does not contribute toward care of institutionalized spouse.

If income of community spouse is below a certain level, community spouse may keep some of the income of institutionalized spouse. In 2021, the range is \$2,177.50 to \$3,435.00 per month. The range community spouse receives depends on shelter expenses. Community spouse can also ask for additional amount due to "extraordinary needs" such as community spouse's pharmacy bills but caseworker cannot give this. Community spouse obtains by an appeal (Administrative hearing or Court Order through Court of Common Pleas).

EXAMPLE:

- Community spouse receives \$500/month social security. The allowance is \$2,177.50/month. Institutionalized spouse receives \$2,500/month social security and pension. Community spouse would keep her social security plus \$1,677.50/month of institutionalized spouse's income. Balance of institutionalized spouse's income goes for care except \$45/month. Institutionalized spouse's income pays for his own Medicare Part B and Medical insurance premiums.
- Suppose all the facts in 1 are the same, but community spouse pays Medicare premium of \$170.10/month plus supplemental health insurance of \$200/month. She may ask for fair hearing to say these insurance premiums impose extraordinary hardship on her. ALJ may award her the additional \$370.50/month of her husband's income.

B. Resources

1. Non-Countable Resources

- a) A primary residence if spouse, dependent relative or blind or disabled child lives there or "intent to return home" [BUT may be subject to estate recovery].

NOTE: If home equity exceeds \$636,000, then excess is available resource unless spouse, child under 21 or disabled child residing in home.

- b) Household goods and personal effects.
- c) 1 motor vehicle.
- d) \$2,400 or \$8,000 if income below \$2,523/month.
- e) Property used in trade or business essential to self support.
- f) Non business property essential to self-support such as property used to produce items for home consumption or tools required by employer.

- g) Life insurance with no cash value or if face value less than \$1,500; if face over \$1,500, then \$1,000 of cash value excluded.
- h) Irrevocable Burial Reserve – “reasonable amount”.
- i) Burial spaces.

For Married Couples Only:

- a) Community Spouse Qualified Retirement/IRA
- b) Community Spouse Resource Allowance (CSRA)

2. Countable Resources

Everything else. NB – joint bank accounts or financial instruments joint with kids or others are presumed to belong to MA Applicants (if you can prove contribution by other owner, then will split account according to percentage of contributions).

- 3. Calculating the CSRA – take all countable resources of either spouse at time applicant enters nursing home (or found NFCE for waiver). Take one-half of the total value. (Minimum is \$27,480 and maximum is \$137,400 in 2022. The one-half or maximum of \$137,400 equals CSRA. But if income of institutionalized spouse is insufficient to bring community spouse income to MMNA, then community spouse may be able to keep some additional assets over the one-half (1/2) allowance.

EXAMPLE:

- Institutionalized spouse has IRA of \$50,000 – Community Spouse has IRA of \$100,000. They have joint savings of \$100,000 + home. The countable assets = Institutionalized spouse IRA of \$50,000 + joint savings of \$100,000 or total of \$150,000. Community spouse CSRA \$75,000 plus keeps own IRA + home.
- If joint savings were \$300,000, then countable assets would equal \$400,000. CSRA would be \$137,400 as one-half (1/2) is greater than the maximum.

III. Uncompensated Transfers/Gifts/Transfer for less than FMV

- 1. Look Back 5 years (and change in start date of penalty as explained below).
- 2. Transfers which create no negative effect:
 - a) Between husband and wife

- b) Transfer of home to:
 - 1. Child under 21, blind or disabled
 - 2. Caregiver child – lives with parents & provides care for 2 years or more prior to parent being institutionalized
 - 3. Sibling with equity interest & lived in home 1 year or more
- c) Transfer of any assets to or for blind or disabled child or to Trust solely for blind or disabled child
- d) Transfer to Trust solely for disabled person
- e) Transfer for value
- f) Transfer for reasons other than to qualify (burden of proof on Applicant)
- 3. Effect of a transfer within 5 years for less than FMV which is not exempt:
 - a) Found ineligible for period of time
 - b) $\text{Penalty period} = \text{value of gift} \div \$482.50 \text{ (daily penalty divisor)} = \text{\# of days ineligible}$
 - c) From **date otherwise eligible and needing nursing home level of care**

EXAMPLE:

- If \$80,000 is given away on October 1, 2021 and the nursing home resident pays for next year privately and applies for MA on October 1, 2022, he will be ineligible for an additional 166 days. \$80,000 divided by \$482.50 equals 166 days. Therefore, the nursing home resident would not be eligible for MA long term care benefits until mid - April, 2023.

IV. Annuities

DHS treats the purchase of an annuity as the disposal of an asset for less than fair market value unless:

- 1. The State is named as a remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant or spouse, or,

2. The State is named in a second position after the community spouse or minor or disabled child and the State becomes first if the spouse or child transfers any remainder interest for less than full market value.

As to assets transfers, “assets” include an annuity unless the annuity is:

1. Irrevocable and non-assignable.
2. Actuarially sound (based upon publications of the office of the Social Security Administration’s Chief Actuary). These life expectancy tables can be found on the Social Security Administration website: www.ssa.gov; and,
3. Provides for payments in equal amounts during the annuity term, with no deferral and no balloon payments, or,
4. Is an annuity purchased within a qualified plan such as an IRA or 401(k). (Section 6012(G)). While this provision appears to exempt any annuity purchased within such a plan from the actuarial soundness, non-assignability and uniform payment requirements, the Operations Memorandum issued by DHS includes the general provisions of other annuities to qualified plan annuities.

DHS requires that a medical assistance applicant or recipient upon recertification, shall disclose any interest that the individual or community spouse has in an annuity whether or not the annuity is irrevocable. An application or recertification form is to include a statement that the state, after the Act’s effective date, be named as a remainder beneficiary under such an annuity because of medical assistance being provided.

APPLYING FOR MEDICAID FUNDED HOME CARE – THE PROCESS AND WHERE TO APPLY

Please see flow chart attached for steps in process.

COMMUNITY HEALTH CHOICES

During the application process, you should be provided with information about Community Health Choices (“CHC”), the Medicaid program in the Commonwealth of Pennsylvania devoted in part to the senior community. You will be asked to choose a Managed Care Organization (“MCO”) in which to enroll once you are found eligible for Medicaid. The MCO selected will be responsible to coordinate your care once you are eligible, however, the MCO does not replace your traditional Medicare or Medicare Advantage Plan coverage. Instead, the MCO is a complement to such plans. **Please do not cancel your Medicare or Medicare Advantage Coverage.** If you do not choose an MCO, you will be auto-assigned to an MCO with

the option to change in the future. Because all of these MCOs are insurers, your area Agency on Aging is unable to offer any assistance or guidance in the selection of the MCO. Currently, there are currently three MCOs in the CHC program. Be sure the medical providers or doctors you want to have treating you are approved, or involved, with the MCO you choose. The three MCOs are:

- Keystone First
- PA Health & Wellness
- UPMC Community Health Choices

ESTATE RECOVERY:

62 Pa C.S.A 1412; 55 Pa. Code 258.1 et seq. as amended November 5, 2001 (effective February 1, 2002).

- WHO - deceased Medicaid recipient 55 or older at time benefits received who received long term care or community based care after August 15, 1994. (Liability on personal representative only extends where decedent received benefits within 5 years of death.)
- WHAT PROPERTY IS SUBJECT - Probate Asset (including assets payable to estate under 20 Pa C.S.Sec.3101.)
- WARNING: Can be extended to non-probate assets by Governor.
- RESPONSIBILITY - Personal liability falls on personal representative of estate to notify DHS, determine extent of claim if decedent received MA within 5 years of death. And to repay DHS/Medicaid from Estate probate assets.
- HOW - Personal Representative (after appointment) requests claim by sending a letter to:

DHS Third Liability section
P O Box 8486
Harrisburg, PA 17105-8486
(Best to send the letter certified)

Or by online request.

- WARNING: Letter must contain decedents name, address, phone number, date of birth, date of death, social security number, personal representative name, address and phone number and written estimate of gross value of estate (see Sec.258.4).
- TIME - DHS has 45 days from the time of receipt to submit its claim. But only if every element of required notice is met.
- PRIORITY of DHS CLAIM - (Class 3(b) for benefits 6 months before death, Class 5.1 for others)
- WAIVER OF RECOVERY/POSTPONE RECOVERY - Request for Waiver due to hardship - See Section 258.10.

Can request DHS to postpone recovery, however, in most cases much better to ask DHS for hardship waiver of Estate recovery claim and can do so if:

1. Asset was residence of decedent and;
 - a) Caregiver living in residence with no alternative residence (does not have to be relative) and;
 - b) Caregiver has continuously resided in residence of decedent for at least 2 years immediately preceding decedents receipt of nursing facility services, or, for at least 2 years during period of Medicaid waiver benefits being provided and;
 - c) Has provided care or support to the decedent for at least 2 years before decedent went into the institution or during receipt of waiver benefits.
2. Income producing asset if spouse, child, parent, sibling or grandchild meet both of the following:
 - a) Asset generates primary source of income for household.
 - b) Gross family income would be less than 200% of Federal Poverty Guideline without use of asset.
3. Income providing asset used in trust or business such as family farm, family business or rental property. (Excluding cash, stocks, bonds or other marketable financial instruments.)
4. Where third party pays to maintain residence, that party can recover an amount equal to the necessary and reasonable expenses to maintain decedents home while decedent in nursing home or receiving waiver benefits.
5. Gross amount of probate estate is less than \$2,400. Be careful as the amount may include funds received from refunds from funeral director or shared bank accounts paid out under 20 Pa. C.S. 3101 and personal needs account from nursing home.

Request for waiver of recovery are submitted to estate recovery program.

NOTE: There are also rules regarding unadministered estate - payment of attorney fee and administration fee to do so - 1,000 or 6% of estate whichever is greater. See 258.11.

SOURCES OF LAW:

42 USC §1396, et seq.
42 CFR §431, et seq.
62 PS §441.1, et seq.
55 PA Code §100-275 and §1101-1251
Nursing Home Handbook used by CAO

OPS Memos – found at DHS website