**Financial Qualification Rules**

An applicant/recipient is resource-eligible for MA if his or her total resources that are counted in determining resource eligibility do not exceed the MA resource limit for the appropriate MA program.

The general rule is that all of the applicant’s resources are counted in determining resources el­igibility for MA, unless specifically excluded. However, resources that are not excluded must be reviewed to determine if they are actually available. Only those resources that are actually available or can be made available are considered resources when determining MA eligibility.

Thus, in determining resource eligibility for MA, resources may be categorized in one of three categories: (1) available, (2) exempt (excluded), or (3) unavailable. Much of “Medicaid planning” involves making otherwise available resources exempt or otherwise unavailable.

Resources that are not otherwise exempt or unavailable are considered available for the pur­poses of the MA eligibility determination. This includes resources in which the applicant has only a partial ownership interest.

To qualify for benefits, an applicant may not have available resources in excess of $2,000, $2,400, or $8,000, depending upon the applicable Medicaid eligibility pathway. The largest re­source limit of $8,000 applies for those applicants who have monthly income of less than 300 percent of the federal (SSI) benefit rate for an individual. 34

For 2012, the federal benefit rate for an individual is $698 per month, which means that individuals with $2094 per month or less in income can qualify for the $8,000 resource limit.

**Available Resources Medicaid Payment for Long-Term Care**

**Examples of available resources (unless otherwise excluded or unavailable) include:**

In general, all resources of the applicant and the applicant’s spouse are considered available, subject to certain exclusions.

Resources include cash and any other liquid or non-liquid assets, and any real or personal property that an individual owns and could convert to cash.

**Excluded resources** may nevertheless be subject to the Medical Assistance Estate Recovery Act.

An individual is entitled to retain certain resources that are considered exempt or excluded for purposes of MA eligibility. These assets include the following:

*Burial Expenses.* Prepaid burial accounts for the applicant and the applicant’s spouse are ex­cluded, as are irrevocable funeral accounts.

Cemetery plots are also excluded.

*Motor Vehicles.* One motor vehicle is excluded, regardless of value. Other motor vehicles are counted at their equity value.

*Life Insurance.* Life insurance policies having no cash surrender value, such as term insur­ance, are excluded; policies having a face value of $1,500 or less are also excluded, regardless of cash value; if the total face value of all policies exceeds $1,500, the total cash surrender value above $1,000 is included.

*Primary Residence.* Prior to the Deficit Reduction Act of 2005 (DRA), Medicaid disregarded the full value of an applicant’s primary residence, as long as the homeowner evidenced the in­tent to return home.

The DRA makes a fundamental change in this treatment.

DRA section 6014. real property other than the applicant’s principal place of residence  investment accounts, such as bank accounts, stocks, bonds, mutual funds, and certificates of deposit  IRAs, Keogh accounts, or other pension and retirement plans  motor vehicles, boats, and other vehicles  cash surrender value of life insurance policies in excess of certain limits  elective share rights of a surviving spouse  all other real or personal property that the applicant has or can make available for partial or total support, including equitable interests and partial interests

**Exempt or Excluded Resources**. If a community spouse predeceases and disinherits an MA recipient institutionalized spouse, DPW will take the position that an election against the will must be made by the MA recipient. This can result in termination of benefits due to either the receipt of the elective share, which causes the recipient to have excess resources, or to the recipient’s failure to elect against the will, which is considered a penalty-inducing transfer without consideration.

*Personal Effects and Household Furnishings.* Items of tangible personal property customarily found in the home and used in connection with the maintenance, use, and occupancy of the home are excluded. Personal effects, such as clothing or jewelry, are also excluded.

A nursing home applicant with home equity under the disqualification threshold, who has no qualified relative residing in the home, must state his or her intention to return to the residence for the property to be excluded. If the applicant does not intend to return to the residence, it will be excluded for six months while the applicant makes a good-faith effort to sell it.

Subject to the equity limitation, a home not occupied by a spouse or a dependent relative is nev­ertheless exempt if the property was used as the institutionalized person’s principal place of res­idence before institutionalization and the institutionalized applicant (or representative) states the intent to return to the home. Proceeds from the sale of an excluded residence are also ex­cluded if the applicant intends to purchase another excluded residence within three months.

The residence includes all of the surrounding contiguous land, and any buildings on that land. The actual home shelter can be real or personal property, fixed or mobile, and located on land or water. There is no acreage limitation.

As a result, the disqualification threshold in Pennsylvania is $525,000 (this may change, check on the date relevant). This means that in 2012 Medicaid will not pay for LTC services for some individuals whose equity interest in their home exceeds $525,000. This provision applies to both institutional care and waiver pro­grams. However, the limitation does not apply if the applicant has a spouse, a child under age 21, or a child who is blind or disabled who lawfully resides in the home. The limitation is also to be waived in the case of a demonstrated hardship.

**Operations Memorandum, Medicaid: Disqualification for Payment of Long Term Care Services for Individuals with Sub­stantial Home Equity.**

Under the DRA, substantial home equity may, in some circumstances, make the homeowner in­eligible for Medicaid benefits for nursing facility and other long-term care services. The DRA initially set an equity interest of $500,000 as the threshold for disqualification. The law also specified that beginning in 2011 the threshold would be adjusted for inflation based on the per­centage increase in the Consumer Price Index for All Urban Consumers (CPI-U).

*Trusts.* Trusts containing assets of disabled individuals that are established in accordance with statutory special needs trust rules may be excluded.

Bank accounts, certificates of de­posit, or other similar accounts with an “in trust for” designation are treated as revocable trusts and fully available.

*Property Used in Trade or Business.* Property used in a trade or business that is essential to the self-support of an applicant, an applicant’s spouse, or dependents is excluded, regardless of value.

*Nonbusiness Property Essential to Self-Support.* Property used exclusively to produce items for home consumption and tools, equipment, uniforms, and similar items required by the appli­cant’s employer are excluded.

**Medicaid Payment for Long-Term Care**

*Community Spouse Resource Allowance.* Assets can be set aside for the community spouse to avoid spousal impoverishment.

Certain assets are not included in the MA eligibility determination because they are considered “unavailable.” These assets may include:

Nonresident Real Estate with Multiple Owners.

Until recently, DPW had presumed that jointly held real estate was unavailable where the other joint tenant, other than the spouse of the applicant, refused to sell. However, DPW has now begun to take a different approach. It now may require that if the joint owner(s) refuse(s) to allow the property to be disposed of, the property will be ex­cluded only if the applicant or community spouse files a “petition to partition” in the appropriate court. The petition to partition requests the court to order a sale of their share of the property. If the applicant/applicant spouse provides verification that they are pursuing this potential re­source, the property will initially be treated as an excluded resource for the MA LTC eligibility determination. This means that MA LTC can be authorized if all other conditions of eligibility are met. The value of the applicant/recipient’s share will remain an excluded resource for up to six months, provided the applicant/recipient or spouse is making a good-faith effort to liquidate the interest in the property. If an applicant or spouse fails to pursue the potential resource, the value of the interest may be treated as available.

The equity value of a secondary resident property or nonresident property owned jointly with the *community spouse* is counted as an available resource.

Personal Property with Multiple Owners.

A joint brokerage account has been held to be subject to the Multiple-Party Accounts Act, *Deutsch, Larrimore & Farnish, P.C. v. Johnson*, 848 A.2d 137 (Pa. 2004).If an applicant/recipient is a joint owner of liquid re­sources, such as but not limited to, a checking or savings account, each owner is considered to own a share proportional to his or her net contribution to the resource. If there is no evidence of net contributions, each owner is presumed to own an equal share. The applicant’s/recipient’s share is considered available.

*Pension Accounts of Community Spouse.* Pension funds, such as IRAs and 401(k)s owned by a community spouse of the applicant are excluded in Pennsylvania.

Nonresident Real Property Pending Sale.

Nonresident real property that is not exempt and that can be converted to cash is considered unavailable for a period of six months as long as the ap­plicant is making a bona fide effort to sell the property.

Recipients of Medicaid LTC services in nursing homes are expected to use their income to pay a share of the cost of their care. Medicaid then pays the difference between the recipient’s share of cost and the Medicaid payment rate. The Medicaid recipient’s cost-sharing amount is commonly referred to as the “patient pay liability” or “co-pay,” and is calculated in accordance with 55 Pa.Code § 181.452.

Basic Medicaid income eligibility standards are typically tied to percentages of federal stan­dards such as the federal poverty level and federal benefit rate for SSI. The applicable standard for income eligibility for MA is dependent on the eligibility pathway. For basic SSI-related cate­gories, the standard is the current federal benefit rate 6160

This federal rate is adjusted annually. In January 2012, the federal benefit rate for an individual was $698 per month for an individual.plus the state SSI supplement.

Pennsylvania provides an additional cash benefit for SSI recipients. Further information is available on the Social Security website at http://www.ssa.gov/pubs/11150.html.

In addition to meeting the other Medicaid qualification requirements, an applicant’s countable income must meet the MA program’s applicable income standard. An applicant must be both income-eligible and resource-eligible to be financially qualified for Medicaid LTC benefits.

**A number of deductions are permitted before the nursing home resident’s income is applied to the cost of nursing facility care:**

Other potential deductions include limited guardianship fees.and a home maintenance allow­ance if the resident is likely to return home within a six-month period from the date of institu­tionalization.

Income eligibility is seldom a significant issue for nursing home residents since they are permitted to deduct medical expenses, including the nursing facility costs, from income to reach the eligibility level. However, income eligibility standards frequently prevent otherwise eligible individuals from receiving for Medicaid-financed home care under the Aging Waiver Program. The Aging Waiver Program rules effectively bar applicants who have gross incomes of more than 300 percent of the federal benefit rate.

(1) a personal needs allowance ($45 a month in 2012); (2) an amount for medical and remedial expenses (including health insurance premiums) incurred by the resident; (3) an allowance to the community spouse sufficient to raise the community spouse income to the monthly maintenance needs allowance, 62 if required; and (4) a family monthly income allowance, if there are other family members living in the household.

From that pooled total, Medicaid subtracts the amount that could be retained by the Medicaid applicant, if unmarried, plus the protected share allowance of the community spouse. Any re­maining available assets must be depleted before the institutionalized spouse will qualify for Medicaid. The couple may deplete these excess assets by spending them down on the cost of care or on other personal needs, or by engaging in Medicaid financial planning techniques to pre­serve an even greater share of the marital assets. Notably, Pennsylvania case law allows this “spend down” to be achieved through the purchase of a DRA-compliant annuity by the commu­nity spouse. 67

Since 1989, the spousal deeming rules have been governed by provisions of the Medicare Cata­strophic Coverage Act of 1988 (MCCA). 68 The MCCA allows the non-Medicaid community spouse to protect his or her income along with amounts of the couple’s otherwise available re­sources. These spousal impoverishment provisions are intended to limit the potential for impov­erishment of the noninstitutionalized community spouse. 69 The MCCA spousal impoverishment provisions apply when one spouse is institutionalized—that is, enters a nursing facility and is expected to remain there for at least 30 days, or qualifies for Medicaid-funded LTC in the home under the Aging Waiver or LIFE program.

Under the MCCA, no *income* of the community spouse is deemed available to the institutional­ized spouse, and a certain amount of the community spouse’s *assets* are protected under the community spouse resource allowance or CSRA. Before assisting a married couple with Medic­aid eligibility planning, the lawyer must be familiar with the spousal impoverishment provi­sions of the federal statute (42 U.S.C. § 1396r-5) and the Pennsylvania Code (55 Pa.Code chap­ters 178 and 181). Those with excess assets should also be familiar with the rules regarding the use of DRA-compliant annuities to protect additional resources, as further discussed below in section

Special financial eligibility rules apply when an applicant for Medicaid LTC services is married. In determining Medicaid eligibility, the resources of an applicant’s spouse are initially “deemed” to be available to the applicant. This means that all of a married couple’s countable assets are first added together, regardless of whose name appears on the title.

**DRA ANNUITIES**

A Medicaid Compliant Annuity is a powerful tool that helps elder law attorneys achieve a better solution for clients facing a costly nursing home stay. This innovative product achieves accelerated Medicaid eligibility, asset preservation, and peace of mind. A Medicaid Compliant Annuity is a single premium immediate annuity (SPIA) with restrictions that met the strict federal Medicaid rules found in the Deficit Reduction Act of 2005 (DRA):

**The DRA requires that if an annuity is "Medicaid Compliant", it must:**

* Be Irrevocable.
* Be Non-Assignable.
* Be Actuarially Sound.
* Provide Equal, Monthly Payments.
* Name The State Medicaid Agency As Beneficiary.
* Properly structured, this annuity functions as a spend-down tool that eliminates excess countable assets, allowing the nursing home resident to become eligible for Medicaid benefits. Its purchase does not create a transfer penalty and is not considered an asset. Instead, an MCA turns cash assets into an irrevocable income stream.

**A Medicaid Compliant Annuity is right if:**

* The client is residing in a nursing home and is not expected to return home.
* Is not expected to pass in the near future.
* Has exhausted all Medicare and long-term care insurance benefits and has been asked to self-pay.
* Has excess countable assets.

According to the Pennsylvania Bulletin, Document Number 07-353, entitled Provisions of the Deficit Reduction Act of 2005 on Medicaid Eligibility for Long-Term Care Services:

1. The purchase of an annuity by an applicant or applicant’s spouse on or after February 8, 2006, that does not meet all of the following requirements, will be treated as a transfer of assets for less than FMV:

a. The annuity must be irrevocable and non-assignable.
b. The annuity must be actuarially sound.
c. The annuity must provide for payments in equal amounts, with no deferral and no balloon payments made.
d. The annuity must name the Department as the remainder beneficiary in the first position for at least the total amount of medical assistance paid by the Department on behalf of the recipient.

The annuity must name the Department as beneficiary in the second position when there is a community spouse, minor child, or blind or permanently and totally disabled child for at least the total amount of Medical Assistance paid by the Department on behalf of the recipient and must name the Department in the first position if the CS or a representative of a minor child, or a representative of a permanently and totally disabled child disposes of any remainder for less than FMV.

A non-qualified annuity that meets the requirements above and provides the CS with a monthly income that, when combined with all other available income to the CS, is equal to or less than the Community Spouse Monthly Maintenance Needs Allowance, shall be treated as income. If the combined available income exceeds the Community Spouse Monthly Maintenance Needs Allowance, the annuity shall be treated as an available resource.

A qualified annuity owned by a community spouse is not considered an available resource.