

Medicaid and Estate Recovery: Avoiding Family Impoverishment

Presented by:

- Andrew A. Coates, Esquire, Coates and Coates, P.C.
- Anthony L. Marone, Esquire, McAndrews Law Offices, P.C.

1

Medical Assistance: Overview

- ▶ The Department of Human Services or (DHS) is a Commonwealth agency, not a Federal agency.
- ▶ DHS does not administer Federal benefits such as Veterans' benefits or Social Security.
- ▶ Medical Assistance (MA) is a joint Federal and State program providing needs based benefits to qualified individuals.

2

MA Overview: Medical Qualification

- ▶ Eligibility –medical and financial criteria.
- ▶ “Aged, blind or disabled.”
- ▶ Disabled means an individual who is unable to engage in **substantial gainful activity** because of a medical or physical condition which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.– 42 U.S.C. §1382c(a)(3)

3

MA Overview: Medical Assistance Long-Term Care (MA-LTC)

- ▶ MA-LTC is a needs based benefit paying for nursing facility level of care to qualified individuals.
- ▶ MA is the **Payer of last resort**. 55 Pa.Code 178.6.
- ▶ MA-LTC includes nursing facility services and Home and Community Based Services (HCBS Waiver or Waiver).

4

Program Limits: MA-LTC

- ▶ Resource eligibility begins on the day after the applicant's resources are reduced below the program limits.
- ▶ If gross monthly income is at or below \$2,313.00, then the Resource Allowance is \$8,000.00.
- ▶ If gross monthly income exceeds \$2,313.00, the Resource Allowance is \$2,400.00.

5

Resources

- ▶ Resources greater than the program limits are called "excess resources" and must be spent down.
- ▶ Resources that are not counted for eligibility based on DHS's Regulations are called "excluded resources".
- ▶ The applicant is not required to spend down excluded resources to qualify for Medical Assistance.

6

Excluded Resources

- ▶ Term Life Insurance.
- ▶ One vehicle.
- ▶ Applicant's real property used as principal place of residence if applicant states, in writing, that he or she has an intent to return or the residence of the community spouse.
- ▶ Qualified retirement plan of community spouse.
- ▶ Irrevocable burial account.

7

Spend-Down and Penalties

- ▶ The process of divesting an individual of his or her resources so the individual would qualify for MA-LTC is called **Spend-Down**.
- ▶ All transfers must be for Fair Market Value ("FMV").
- ▶ DHS will object to/penalize Transfers not for FMV.

8

Qualification: Planning for the Single Individual

Hypothetical #1: Client is a single person with \$100,000.00 in the bank and a house. What can you do to qualify for MA-LTC?

- ▶ Pay bills.
- ▶ Pay off debts such as credit cards, mortgage, auto loan.
- ▶ Purchases for FMV. Purchase excluded items.
- ▶ Improvements/repairs to the home.
- ▶ Caregiver contract.
- ▶ Reverse half-a-loaf gifting?

Qualification: Planning for Retroactive Eligibility

- ▶ Do you need retroactive eligibility?
- ▶ “The earliest possible date for retroactive MA benefits to begin is the first day of the third month preceding the month of application.” 55 Pa.Code § 181.12(a).
- ▶ Pay the Nursing Facility, medical bills, etc.
- ▶ Attorney Fees.
- ▶ Burial Plot.
- ▶ Burial reserve. An irrevocable burial reserve is subject to a limit in each county.

Qualification: Married Couples

Hypothetical #2: Client is a married person with \$100,000.00 in the bank and a house. What can you do to qualify for MA-LTC?

- ▶ The individual applying for nursing facility services or Home and Community Based Services “HCBS” is referred to as the Institutionalized Spouse or “IS”.
- ▶ The Community Spouse or “CS” is the individual who is married to the IS and resides in the community.

11

Qualification: Married Couples, the CSRA

- ▶ DHS examines the couple’s resources upon the date of institutionalization. This is called the “snapshot”. This determines the couple’s resources for eligibility purposes.
- ▶ A CS is entitled to protect a certain amount of resources and income.
- ▶ The amount of resources protected for the CS is referred to as the Community Spouse Resource Allowance, or “CSRA”.

12

Qualification: Married Couples, the CSRA, cont'd.

- ▶ Generally, one-half of the couple's combined total resources is not counted for eligibility, subject to federal minimum and maximum amounts. For 2019, the current federal maximum amount is \$126,420.00. The minimum amount is \$25,284.00.
- ▶ For income, the CS can keep a Monthly Maintenance Needs Allowance or "MMNA". The purpose of the MMNA is to provide the CS with funds to meet his or her reasonable monthly living expenses.

13

Qualification: Married Couples, the MMNA

- ▶ All income of the CS is protected.
- ▶ To prevent impoverishment, an amount of income from IS's income may be allocated to the CS.
- ▶ If the IS's income is not sufficient, the CS may protect additional resources to fund the MMNA.
- ▶ Currently, maximum MMNA is \$3,160.50/month. Currently, minimum MMNA is \$2,058.00/month.

14

Qualification: Planning for the Community Spouse

- ▶ You can fully fund the CSRA and spend-down the IS's portion for FMV. The "one-half" for the IS can be spent for the CS's benefit.
- ▶ Examples: purchase two burial reserves, pay off the car loans and credit cards, purchase excluded items.
- ▶ Make sure the CSRA is fully funded.

15

Qualification: Planning for the Community Spouse, cont'd

- ▶ Excluded resources are not part of the CSRA.
- ▶ Identify the needs of the CS. For example, will income be an issue if the IS passes away?
- ▶ What if the CS is in a Personal Care Home: do you get an increased MMNA?
- ▶ Caregiver contract for the CS?
- ▶ Spousal annuity.

16

Qualification: Making Excluded Transfers

Hypothetical #3: Client is a married person with a disabled son and has \$100,000.00 in the bank and a house. What can you do to qualify for MA-LTC?

- ▶ Transfer excess resources outright or into a “sole-benefit” trust for the disabled son.
- ▶ If the disabled person is not a child, you can transfer to a sole-benefit trust as long as the disabled person is under age 65.
- ▶ Transfer the residence to a “caregiver child.”

17

Estate Recovery: 55 Pa. Code § 258.1 et. seq.

- ▶ Applies to the probate estates of individuals who received MA for nursing facility services, HCBS services, or related hospital and prescription drug services.
- ▶ Applies to individuals age 55 and over at the time they received those services.

18

Planning for Estate Recovery

- ▶ Transfer the residence to the CS.
- ▶ The IS's bank account should be jointly owned.
- ▶ Check the beneficiary designations of life insurance, the CS's retirement plans, etc.
- ▶ CS's updated estate plan – disinherit the IS.

19

General Information

- ▶ See attached materials – 2019 MA-LTC Eligibility Fact Sheet, 2019 Burial Reserve County Limits
- ▶ DHS attorneys are a resource for questions about excluded resources, spend-down, pre-payments, and transfers.

20

Contact Information

- ▶ **ANDREW A. COATES, ESQ.**
- ▶ The Law Office of Coates & Coates, P.C.
2739 Limekiln Pike
Glenside, PA 19038
- ▶ (215) 576-6007
- ▶ (215) 572-9660 (fax)
- ▶ andrew@coates-coates.com

21

Contact Information

- ▶ **Anthony L. Marone, Esq.**
- ▶ McAndrews Law Offices, P.C.
30 Cassatt Avenue
Berwyn, PA 19312
- ▶ (610) 648-9300
- ▶ (610) 648-0433 (fax)
- ▶ amarone@mcandrewslaw.com

22

Contact OGC – Philadelphia Legal

Mark J. Newell, Esq.
Lesley Oakes, Esq.
Office of General Counsel
Department of Human Services
801 Market Street, Suite 6092
Philadelphia, PA 19107
#(215) 560-2192 (T)

23

Contact OGC – Harrisburg Legal

Addie Abelson, Esq.
Office of General Counsel
Department of Human Services
Health and Welfare Bldg., 3rd Floor
Harrisburg, PA 17120
#(717) 783-2800 (T)

24