

# The Year In Review

## Legislative, Regulatory and Policy Update

PBI Estate and Elder Law Symposium, February 2019

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# Community Health Choices

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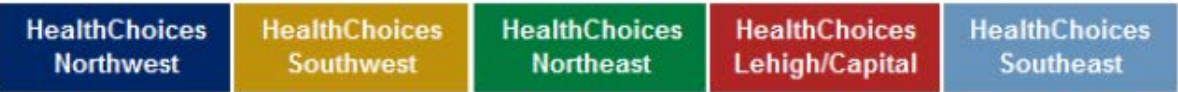
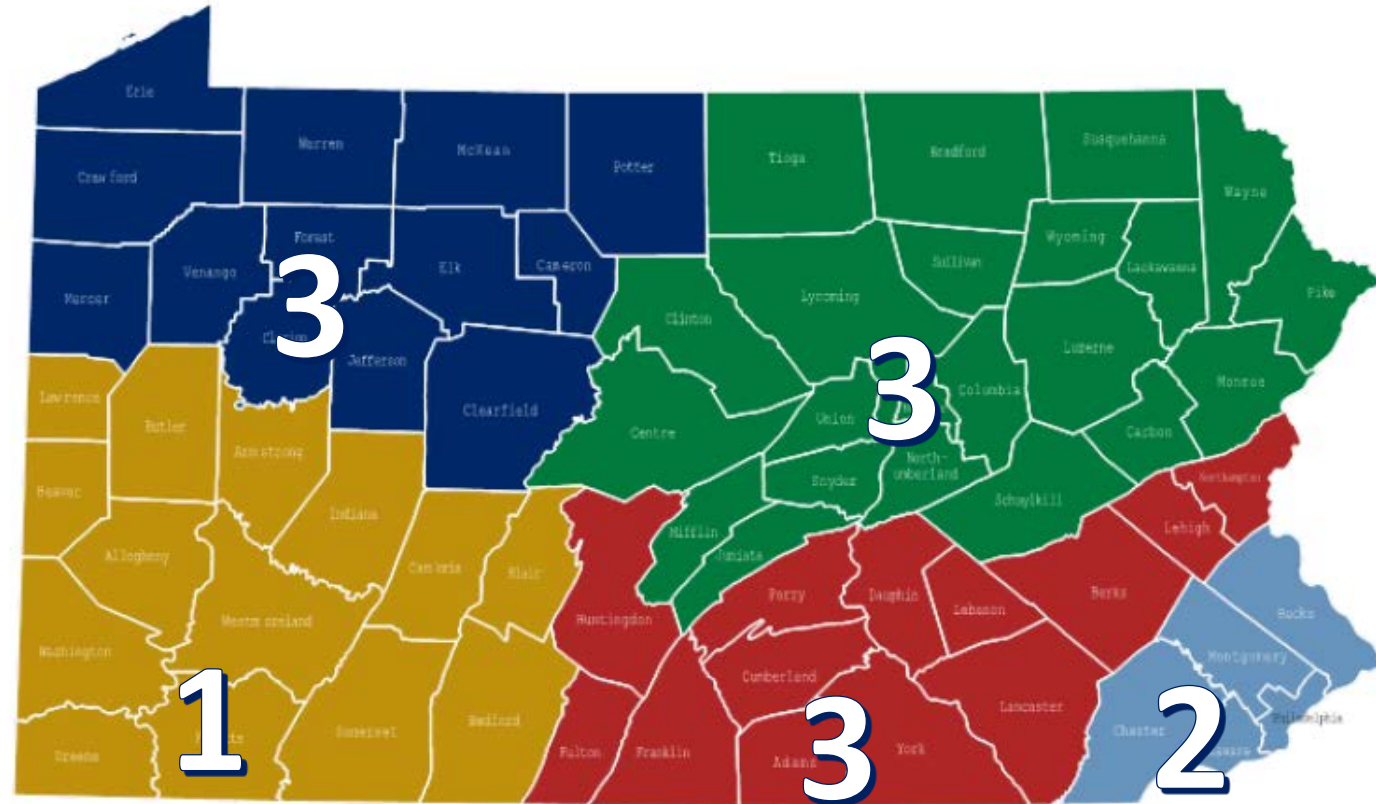
IMPLEMENTATION

**Phase - Date**

**1** January 2018

**2** January 2019

**3** January 2020



# CHC Phased Roll-out

# Managed Care Organizations

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1. AmeriHealth Caritas
2. PA Health and Wellness (Centene)
3. UPMC for You



# CHC Target Populations

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## Enrollment into CHC is mandatory for:

- **Most consumers dually eligible for Medicare and Medicaid**
- **People receiving services through OLTL Waivers:**
  - Aging
  - Attendant Care
  - COMMCARE
  - Independence
  - OBRA (most but not all)
- **Medicaid beneficiaries in nursing homes**
  - Except for residents in state-operated nursing facilities, including state veterans' homes

# Populations Not Included in CHC

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- **Consumers under age 21**
- **Consumers in Intellectual Disability Waivers** - Consolidated Waiver and Person/Family Directed Supports
- **Consumers in Developmental Disability Waivers** - Adult Autism or Adult Community Autism Program
- **LIFE program will continue.** Individuals 55 & older can choose between LIFE and CHC
- **Medicare coverage choices will not change**



# Duals in Nursing Homes in CHC

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## Current Nursing Home system:

- NH responsible for providing or arranging all care
- NH bills the patient the patient pay amount
- Consumer must be in NH that accepts Medicaid and Medicaid pays the nursing home

## Nursing Home system under CHC:

- NH responsible for providing or arranging all care
- NH bills the patient the patient pay amount
- Consumer in NH that is in network with CHC plan\* and CHC plan pays the nursing home

\* Exception for those in a NH when CHC starts in region



# Steps to Apply for Aging Waiver

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- Call Maximus, the Independent Enrollment Broker (IEB) to start application.
  - If applicant has MA, waiver app starts now
  - If not, can file app on Compass or IEB can mail PA600 to applicant to complete and return
- CAO begins review for regular MA as soon as Compass/PA600 received.
  - May request financial verification at this point with 30 - 45 day deadline





# Physician Verification and Level of Care Determination

IEB sends PC form to doctor

AND

AAA does home visit to  
perform Level of Care  
Determination

IEB then sends 1768 to CAO,  
which prompts CAO to start  
determining LTC eligibility

IEB sends denial notice if NFI

# CAO and IEB Visit

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CAO determines financial eligibility for LTC

Sends request for financial verification if not already done



AND



IEB performs visit to determine program eligibility (won't be needed with CHC), choose providers, including service coordinator



THEN



162 issued.

The background of the slide features a faded, semi-transparent image of the United States flag and a military helmet. The flag's stars and stripes are visible, and the helmet is positioned in the lower right quadrant. The overall tone is light and patriotic.

# Veterans Benefits

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# New VA Pension Benefit Rule

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- Published September 18, 2018**
- Effective October 18, 2018**
- Significantly affect VA Pension, A&A and other needs based programs**

# Net Worth Changes

## 38 C.F.R. §§ 3.274 and 3.275

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- Now equal to the CSRA maximum amount – currently \$126,420
  - Includes all income and resources
  - Home excluded – with reasonable lot area (2 acres)
  - Personal effects excluded
  - Deduction for UME – capped at annual income amount
  - List of statutory exclusions for income/assets – 38 C.F.R. §3.279
  - Adding joint owner no longer decreases account value

# Deductible Medical Expenses

## 38 C.F.R. § 3.278

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Medical expenses are an offset to income provided they exceed 5% of Maximum Base Pension Rate (MAPR)

- ❖ New rule includes a long list of unreimbursed medical expenses that can be deducted from countable income.



# 36 Month Look-Back Period

## 38 C.F.R. §3.276

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- Applies to transfers of “covered assets on/after 10-18-18
- Only amount of assets transferred that exceed the net worth limit are subject to penalty
- Includes transfer to trust or annuity
- Penalty based on MAPR for aid and attendance for a married veteran
  - Currently \$2230
  - Penalty starts month after transfer is made
  - Penalty period is rounded down
  - 5 year cap on penalty
- Multiple transfers within the 36-month look-back will be tolled to the last transfer date. See § 3.276(e)(2)

# Exceptions to Transfer Penalty

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- 1. Result of fraud or unfair business practice**
- 2. Transfer to trust for benefit of child disabled before age 18 and incapable of self-support provided there are no circumstances under which the veteran, veteran's spouse or surviving spouse can benefit**
- 3. Transfer of assets not exceeding the net worth limit**
- 4. May make full or partial cure of gift – if made prior to filing application or within 60 days of notice of penalty**



# Annuities Under the New Rule

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- §3.276 (a)(5)(ii)(a) annuity means a financial instrument that provides income over a defined period of time for an initial payment of principal.
- Immediate annuity that is purchased or annuitized after the effective date and that cannot be liquidated is subject to transfer penalty
- Only purchase amount over the net worth limit is subject to penalty

# Trusts Under the New Rule

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- ❑ §3.276 (a)(5)(ii)(B) Trust means a legal instrument by which an individual (the grantor) transfers property to an individual or an entity (the trustee), who manages the property according to the terms of the trust, whether for the grantor's own benefit or for the benefit of another individual.
- ❑ Transfers to annuities or trusts over which a claimant retains control and the ability to liquidate are transfers for fair market value and not subject to a penalty period.
- ❑ Transfers to irrevocable trust on or after 10/18/18 result in penalty period
- ❑ Grantor and non-grantor trusts in VA pension planning

# VA Planning Strategies Under the New Rule

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- ❑ Transfers outright or in trust
  - ❑ Exempt assets (home, cars) – no penalty
  - ❑ Wait out ineligibility period
  - ❑ Half-a-loaf planning
- ❑ Spend down
- ❑ Family Caregiver Contracts



# New SSA POMS

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# POMS Sections That Were Changed

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- SI 01120.200 Information on trusts, including those established before January 1, 2000, third party trusts, and trusts not subject to Section 1613(e) of the Social Security Act.
- SI 01120.201 Trusts est. w/ assets of individual after 1/1/2000
- SI 01120.202 Development and documentation of trusts established on or after 1/1/2000
- SI 01120.203 Exceptions to counting trusts established on or after 1/1/2000

# Updates to Reflect Law Changes

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- **ABLE accounts – SI 01120.200C1c; SI 01120.201Ic; SI 01120.201Ih**
- **Assignability of U.S. Military Survivor Benefit to a first party SNT - SI 01120.200G1d**
- **Special Needs Fairness Act, now allowing an individual on his/her own, or through a power of attorney, to establish a first party SNT – SI 01120.203B&C**

***Note that the application of these rules will be effective as of the date of the enacted legislation.***

# Updates to SSA Policy

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**Sole benefit rule – SI 01120.201F**

**90 day amendment period – SI 01120.200K**

**Family caregivers – SI 01120.201F**

**Third party travel expenses – SI 01120.201F3b**



**Note that policy changes presented in this update are effective April 30, 2018.**

# Additional Clarifications

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- **Powers of Attorney (SI 01120.203B.9.)**
- **Disability (SI 01120.203B.4.)**
- **Court-established Trusts (SI 01120.203B.8.)**
- **Notices must identify what part of the trust is a problem and what POMS section applies (SI 01120.202A.1.g.)**



# Description of the trust review process. SI 01120.200L.

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- **Claims Specialist (CS) - first review. Is the trust a resource. Does the trust beneficiary have the legal authority to revoke or terminate the trust, and then use the funds to meet his or her own food or shelter needs, or can the beneficiary direct the use of trust principal for her support and maintenance under the terms of the trust. SI 01120.200D1a; SI 01120.200D2.**
- **Trust is then sent to Regional Trust Review Team for review/communication w/ CS.**
- **If a request for reconsideration is submitted, case goes to the Regional Trust Lead**
- **RTLs are responsible for all pooled trust reviews and maintenance of the pooled trust precedents; reevaluations and appeals. SI 01120.200L3.**



# New Guardianship Rules and Forms

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## Guardianship

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-  [G-01 - Important Notice: Citation with Notice \(Pa. O.C. Rule 14.5\) EFFECTIVE UNTIL MAY 31, 2019](#)
  -  [G-02 - Report of Guardian of the Estate - EFFECTIVE JULY 1, 2018](#)
  -  [G-03 - Report of Guardian of the Person - EFFECTIVE JULY 1, 2018](#)
  -  [G-04 - Guardian's Inventory for a Minor - EFFECTIVE JULY 1, 2018](#)
  -  [G-05 - Guardians's Inventory for an Incapacitated Person - EFFECTIVE JULY 1, 2018](#)
  -  [OC 03 - Guardianship of Incapacitated Person: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 Eff 09 01 16](#)
  -  [OC 04 - Guardianship of Minor: Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 2.4 Eff 09 01 16](#)
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## Guardianship (effective June 1, 2019)

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-  [G-01 - Citation with Notice](#)
  -  [G-06 - Expert Report](#)
  -  [G-07 - Notice of Filing](#)
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# Tax Reform

The image shows two young boys, one with light hair and one with dark curly hair, both wearing glasses and dark suits. They are sitting at a dark desk cluttered with stacks of papers, a calculator, and a rolled-up document. The boy on the left is writing in a notebook, while the boy on the right is looking at a document. The scene is set against a plain, light-colored background. A large, bold, black text 'Tax Reform' is overlaid on the left side of the image. A 'gettyimages' watermark is visible on the right side of the image.

gettyimages®  
RichVintage

# Medical Expense Deduction

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- Section 213 of IRC
- 7.5% floor for tax years prior to 2013; 10% for AMT purposes
- ACA increased to 10%
- Grandfathered those 65 and over at 7.5% through 2016 tax year
  - Must have reached 65 prior to close of taxable year
  - Married; either spouse reaches 65
- Was set to expire in 2017
- Now set at 7.5% for all taxpayers for two years; including AMT
- Retroactive to 2017; tax years beginning after 12/31/16
- 2019 - back to 10% for everyone

# Medical Expense Deduction

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- Cash basis; only expenses paid this year are deductible; not incurred
- Credit card is year charged
- Expenses of spouse or dependent
- Itemized deduction, so meaningless if take standard deduction
- This means medical expenses over 7.5% of AGI, along with other deductions must exceed 12K or 24K if married

# Tax Reform and Qualified Disability Trusts

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- IRC §642(b)(2)(C) creates QDTs
  - Trust must be “described” in 42 USC 1396p(c)(2)(B)(iv), and
  - All beneficiaries must be disabled per Comm’r of SSA
  - Trust gets a *deduction* of the personal exemption amount
- What happens under Tax Reform Act?
  - Personal exemptions eliminated (§11041 of Act – “suspended” until 2025)
  - *But* new §642(b)(2)(C)(iii):

“(I) IN GENERAL.—In the case of any taxable year in which the exemption amount under section 151(d) is zero, clause (i) shall be applied by substituting ‘\$4,150’ for ‘the exemption amount under section 151(d)’” (subsec II adds inflation adjustment)

# Tax Reform and Minor's d4A Trusts

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- IRC §1(g) imposes “kiddie tax” on net unearned income of certain minors
- New law through 2025:
  - Zero tax rate up to \$2,600
  - Tax due: 37% of income over \$12,500 (LT cap gains at 20%+3.8%)
  - Low-income parents might pay well less than 37%/23.8%, so effect could be substantial tax increase
  - Applies to minor's d4A trust
- Kiddie tax applies whether or not the child is claimed as a dependent



# Tax Reform and ABLE Accounts

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- Contribution limit temporarily increased for contributions by designated beneficiary
- Annual contribution limit increased to \$15K
- ABLE to Work Act
  - Additional contributions by DB are permitted up to the lesser of
    - Federal poverty line for a one person household; currently \$12, 060
    - DB's compensation (section 219(f)(1)) for the year
  - Effective tax years beginning 2018
  - Does not apply to tax years after 12/31/25
  - No contribution is made for the taxable year to:
    - A defined contribution plan, annuity contract, or eligible deferred compensation plan

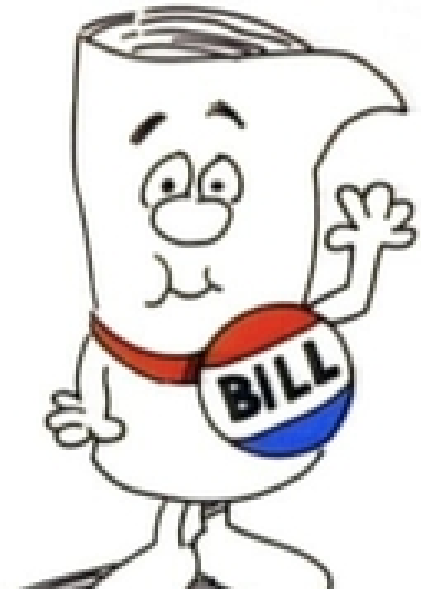
# Tax Reform and ABLE Accounts

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- Rollover from 529 account now permitted
- ABLE Financial Planning Act
- Applies to distributions after 12/31/17 and before 01/01/26
- Rollover amount counts towards \$15K annual limit. Any excess is includable in gross income of distributee pursuant to 529(c)(3)(A)
- No penalty or tax is triggered for transfers from 529 to 529A
- 529 account must be owned by DB of ABLE account of member of DB family.

# PA Bills

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# Legislation Signed by Governor in October 2018

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**HB 1886 – Act 114:** Requires Clerks of the Orphans' Court to transmit to the Court of Common Pleas at least once per quarter a list of guardians who are delinquent in filing required annual reports.

**HB 1885 – Act 113:** Register may direct the personal representative to post additional security.

**HB 270 – Act 87:** Increases PACENET income limit to \$27,500 for single person and \$35,500 for married couple.

# Legislation Signed by Governor in October 2018

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**HB 1233 – Act 106:** Mental Health Procedures Act amendments providing for assisted outpatient treatment implementation and involuntary emergency examination and treatment by physician

**SB 180 – Act 90:** Anatomical gifts

# Bills to Watch

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**Guardianship**

**Older Adult Protective Services**

**POLST**

**Digital Assets**

**HCBS Presumptive Eligibility**

**VA Income Exclusion**

**POAs – HB 535**

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