

Elder Law Update

Linda M. Anderson, CELA
610.566.4700
info@AndersonElderLaw.com

ELDER LAW UPDATE

Federal & State
Big Picture Issues

DPW Policy Clarification (TR 15189-Chap.440) POST ELIGIBILITY RECEIPT OF ASSETS BY CS

- CSRA
 - Snap Shot Date Calculation
 - Completed at time of MA Application
 - Tip: Which cap is used?
- CS wins \$1,000,000 – Does this change IS MA eligibility?
- CS receipt of a resource post eligibility
 - Does not affect IS's resource eligibility
 - May affect CSMMNA though!

DPW Policy Clarification (PMN 15842440)
TRANSFER OF RESIDENT PROPERTY BY CS

- General Rules re: Medicaid Eligibility for Married MA Applicant
 - Re: Assets
 - Re: Income
- Federal Law re: Deeming of Assets Post Eligibility
- Policy Clarification Guidance
 - Re: Entire Value of Property counts as resource for IS
 - Except Amount used to purchase a new residence within 3 months
 - Re: Except up to CSRA figure
 - Re: Post Eligibility Transfer of Real Estate by CS
 - Applicable penalty period should be imposed.

DPW Policy Clarification (PMN 15777389)
ELIGIBILITY FOR HCBS IN SPEND-DOWN CATEGORY FOR MA

- How does MA applicant's income affect eligibility?
 - NH MA
 - HCBS MA
- Issue: Wouldn't it be great for MA Applicants for HCBS with "excess" income to be able to offset income with medical expenses?
- Issue: What does this PC mean?

DPW Policy Clarification (PMN 15789440)
TRANSFER OF ASSETS TO DISABLED CHILD

- General Rules
 - Re: Transfer of Assets & Penalty
 - Re: Transfer of Home to Disabled Child
 - Re: Transfer of Assets to Disabled Individual
- Policy Clarification
 - Re: Transfer of Income
 - Re: For the Sole Benefit of Child
 - Re: "Documented" as disabled per SS Standards.
 - Re: Eligibility Timing

DPW Policy Clarification (PMN 15843440)

LIFE EXPECTANCY TABLE UPDATE

- Life Expectancy Tables
 - Updated annually
 - 2011 update based on 2007 data
- See attached Tables effective July 1, 2011
- Used to Evaluate whether "Actuarially Sound"
 - Promissory notes
 - Loans
 - Mortgages
 - Annuities

DPW Operations Memorandum 11-08-02

ASSET TRANSFER LOOK-BACK PERIOD

- DRA
 - Effective Date: 2/8/2006
 - 5 year look-back period
 - As of 2/9/2011 – Now beyond 5 years
- Effective Dates prior to 2/9/11
 - Rolling Effective Date
 - Difference with HCBS vs. LTC
- Effective Dates after 2/9/11
 - 5 year look-back period
- Tip: Does DPW require a full 5 years?

DPW Policy Clarification (PMN 15572440)

2011 PRIVATE PAY RATES

- Penalty Divisor
 - Daily Divisor
 - Used to change every July
 - Now changes every January 1st
- 2011 Figures
 - \$259.76/day
 - \$7,901.03/month
- Tips:
 - \$500 per month aggregate
 - Daily rate for penalties (not monthly)

DPW Policy Clarification (PMN 15801468)
Spousal Income Figures

- Spousal Figures Updated Annually
- Spousal Income
 - MMNA - \$1,839 (7/11)
 - MMNA CAP - \$2,739 (1/11) - (1/12) \$2,841
- How to increase the MMNA
 - Excess Shelter Costs Exceeding \$552 (7/11)
 - Hardship
 - Court Order
- Recall Asset Figures
 - \$21,912 (1/11) - (1/12) \$22,728
 - \$109, 560 (1/11)- (1/12) \$113,640

**Keeping Current
on DPW Policy**

On-Line Access
Right to Know
List-Serve

CMS LETTER (SMDL #11-006)
SAME SEX PARTNERS & HARDSHIP

- Concept of Hardship
- Useful clarification re: State Plans
 - States have flexibility
 - Can benefit all Medicaid recipients regardless of sexual orientation.
- Discusses
 - Medicaid Liens
 - Transfer of Assets
 - Estate Recovery

MEDICARE

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CURRENT ISSUES: MEDICARE BENEFITS

- ❑ Traditional Medicare (aka Original Medicare)
 - Part A
 - Part B
 - Part C – N/A
 - Part D - RX Benefit
- ❑ Supplemental Policy (aka Medigap policy)
- ❑ Medicare Advantage (aka Part C)
 - Part A
 - Part B
 - Part D Rx (usually)
- ❑ No supplemental policy needed
- ❑ Different types of Part C Plans
 - Medicare HMOs
 - Medicare PPOs
 - Medicare Private Fee for Service
 - Medicare Special Needs
 - Medicare Medical Savings Account (MSA)

CURRENT ISSUES: MEDICARE BENEFITS

- ❑ Enrollment Period for Medicare Advantage **and** Medicare Prescription Drug Coverage
 - October 15th through December 7th
 - Note earlier start date and end date!
- ❑ What Can You Do?
 - Switch from Traditional Medicare to Medicare Advantage
 - Switch from Medicare Advantage to Traditional Medicare
 - Switch between Medicare Advantage plans
 - Switch between Medicare Prescription Drug plans

CURRENT ISSUES: MEDICARE BENEFITS

- ❑ Enrollment Period for Medicare Advantage
 - *Switch from Medicare Advantage to Traditional Medicare*
 - ❑ If you do switch, you have until 2/14/12 to join a Medicare Prescription Drug Plan
- ❑ You can NOT do any of these things during this enrollment:
 - Switch from Traditional Medicare to Medicare Advantage
 - Switch between Medicare Advantage plans
 - Switch between Medicare Drug plans
 - Join, switch, or drop a Medicare Medical Savings Account plan.

CURRENT ISSUES: MEDICARE BENEFITS

- ❑ Do your clients know whether they have Traditional Medicare or Medicare Advantage?
- ❑ Do your clients know that every year they must review their choices?
- ❑ Want More Help?
 - www.Medicare.gov
 - Apprise Counseling – Every County & Free!
 - PHLP - Training

CURRENT ISSUES: MEDICARE BENEFITS

- ❑ Admission to a hospital vs. Observational Status
 - 3 day stay as requirement for Medicare SNF benefit
 - Traditional Medicare vs. Medicare Advantage
- ❑ Rehab Terminated because patient has reached a "plateau"
 - Is continuing improvement required for Medicare to pay for rehabilitation?
- ❑ Want more help?
 - Center for Medicare Advocacy - Self Help Packets available on-line!

LONG-TERM CARE INSURANCE

- Non-qualified
- Qualified Policies
 - Non-Partnership Policies
 - Partnership Policies
 - CLASS**
- Issue: CLASS Status?
