

LONG-TERM CARE PLANNING
FOR AGING CLIENTS

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QUICK REFERENCE NUMBERS
AS OF JULY 2017
COLA .3%

MEDICAL ASSISTANCE

Average cost of Nursing Home Care in PA	\$ 9,792.65/month 321.95/day
Resident Personal Needs Allowance	\$ 45.00
Income Limit Waiver Program	\$ 2,205.00
Resource Limit - income over \$2,205.00 per month	\$ 2,400.00
Resource Limit - income under \$2,205.00 per month	\$ 8,000.00
Minimum Community Spouse Resource Allowance	\$ 24,180.00
Maximum Community Spouse Resource Allowance	\$119,220.00
Minimum Monthly Maintenance Needs Allowance	\$ 2,030.00
Maximum Monthly Maintenance Needs Allowance	\$ 3,022.50
Shelter Standard	\$ 609.00
Utility Monthly Allowance Including Heat	\$ 570.00
Utility Monthly Allowance n/Including Heat	\$ 296.00
Utility Monthly Allowance – Phone only	\$ 33.00
Home Maintenance Allowance	\$ 757.10
Home Equity Limit	\$560,000.00

MEDICARE

Medicare SNF Co-Payment	\$ 164.50
Medicare Part B Premium	\$ 109.00

SUPPLEMENTAL SECURITY INCOME

	<u>SSI Income</u>	<u>State Supplement</u>	<u>SSI Resources</u>
Individual	\$ 735.00	\$22.10	\$2,000.00
Couple	\$1,133.30	\$33.30	\$3,000.00

PLANNING FOR INCAPACITY

I. Financial Decision Making

A. Financial Power of Attorney (20 Pa. C.S.A. § 5601 et seq.)

1. Purpose

To ensure that the client's values are respected and intentions and financial goals will be met by the person of the client's choosing a time when the client is unable to make his or her own financial and legal decisions.

2. Definitions

Principal – the individual who is granting the power of attorney to another.

Agent – a person designated by a Principal in a Power of Attorney to act on behalf of that Principal.

Good Faith– honesty in fact.

Durable Power of Attorney– a Power of Attorney conferring authority in writing to an agent that is exercisable notwithstanding the Principal's subsequent disability or incapacity.

“Springing” Power of Attorney– a Power of Attorney may provide that the Agent's authority does not become operative until a specified time or contingency has occurred, including the disability or incapacity of the Principal.

3. Legal Capacity (see DeHaas Estate, 1 Fiduc. Rep. 3rd 225 (O.C. Chester 2011) and Robinson, Incapacitated Person, 28 Fiduc. Rev. 2nd 65 (O.C. Montg. 2008))

Client must have adequate legal capacity at time of signing. Capacity is presumed, but the Pennsylvania Power of Attorney statute does not provide a definition of capacity. PA case law seems to support a more lenient, general understanding standard.

Does the Principal understand the nature of the authority?

Does the Principal understand the assets subject to the power?

Does the Principal understand the Notice provisions?

4. Execution Requirements

The Power of Attorney must be dated, and signed by the Principal by signature or mark. It may be executed by another person at the specific direction of the Principal if the Principal is unable to sign.

The Principal's signature or mark or the signature of another signing on behalf of the Principal must be notarized and witnessed by two (2) adult individuals (18 years of age or older).

Notary Public – the Agent may not serve as Notary or the person acknowledging the signature.

Witnesses – the following individuals may not serve as witnesses:

The person signing the Power of Attorney on behalf of the Principal;

The Agent appointed under the Power of Attorney;

The Notary Public; or

The person authorized by law to take acknowledgements.

Notice Page – The Notice page must appear at the beginning of the Power of Attorney document in capital letters. The Notice must be signed by the Principal.

Agent's Acknowledgement Page - The Agent designated under the Power of Attorney will not have the authority to act on the Agent's behalf unless the Agent executes an acknowledgement, which acknowledgement is affixed to the Power of Attorney document. *[see Appendix C for new Agent's Acknowledgement page]*

The execution, Notice, and acknowledgement requirements do not apply to the following powers:

A power contained in an instrument used in a commercial transaction which authorizes an agency relationship.

A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a loan or other credit transaction.

A power exclusively granted to facilitate transfer of stock, bonds and other assets.

A power contained in the governing document for a corporation, partnership or limited liability company or other legal entity by which a director, partner or member authorizes others to do other things on behalf of the entity or a proxy or other delegation to exercise voting rights or management rights with respect to a legal entity.

A warrant of attorney conferring authority to confess judgment.

A power given to a dealer as defined by the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act, when using the power in conjunction with a sale, purchase or transfer of a vehicle as authorized by 75 Pa.C.S. § 1119 (relating to application for certificate of title by agent).

A power created on a form prescribed by a Commonwealth agency, political subdivision or an authority or instrumentality of the Commonwealth or a political subdivision.

A power of attorney that provides for health or mental health care decision making only.

5. Agent's Duties

Agent's Mandatory Duties - An Agent appointed under a Power of Attorney must act as follows:

In accordance with the Principal's reasonable expectations to the extent known by the Agent, and if not known, then in the Principal's best interest;

In good faith

Only within the scope of the authority granted to the Agent under the Power of Attorney.

Agent's Waivable Duties— unless otherwise provided in the Power of Attorney, an Agent shall have the following duties:

Act loyally for the Principal's benefit.

Keep the Agent's funds separate from the Principal's funds unless:

The funds were not kept separate as of the date of the execution of this Power of Attorney; or

The funds are comingled after the date of the execution of the Power of Attorney and the Principal's spouse is the Agent.

Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the Principal's best interest.

Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances.

Keep a record of all receipts, disbursements and transactions made on the Principal's behalf. The Agent shall not be required to disclose such receipts, disbursements, and transactions unless ordered by a court, or requested by the Principal or a fiduciary acting on the Principal's behalf, a government agency having authority to protect the welfare of the Principal, or the Principal's personal representative or successor in interest after the Principal's death.

Cooperate with any person who has authority to make health care decisions for the Principal to carry out my reasonable expectations to the extent actually known by my Agent and, otherwise, act in the Principal's best interest.

Attempt to preserve the Principal's estate plan, to the extent actually known by the Agent, if preserving the Principal's estate plan is consistent with the Principal's best interest based on all relevant factors, including:

The value and nature of the Principal's property.

the Principal's foreseeable obligations and need for maintenance.

Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes.

Eligibility for a benefit, program, or assistance under a statute or regulation.

6. Non-Liability of Agent– the statute provides certain protections from liability for the Agent under the following circumstances:

To a beneficiary of the Principal's estate plan for failure to preserve the plan if the Agent acted in good faith.

An Agent that acts with care, competence, and diligence for the best interest of the Principal shall not be liable solely because the Agent

also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the Principal. If an Agent is selected by the Principal because of special skills or expertise possessed by the Agent or in reliance on the Agent's representation that the Agent has special skills or expertise, the special skills or expertise must be considered in determining whether the Agent has acted with care, competence, and diligence under the circumstances.

Absent a breach of duty to the Principal, an Agent shall not be liable if the value of the Principal's property declines.

An Agent that exercises authority to delegate to another person the authority granted by the Principal or that engages another person on behalf of the Principal shall not be liable for an act, error of judgment, or default of that person if the Agent exercises care, competence, and diligence in selecting and monitoring the person.

7. Specific Grant of Authority

Generally, the following powers must be specifically authorized in the Power of Attorney for the Agent to have such authority:

To create, amend, revoke, or terminate an inter vivos trust unless the trust is created for the Principal's benefit or additions to an existing trust are made for the Principal's benefit pursuant to 20 Pa. C.S.A. §§ 5602 (2) and (3). The Agent may pursuant to 20 Pa. C.S.A §5602 (7) withdraw and receive income and principle of a trust.

To make a gift. Furthermore, unless the Power of Attorney otherwise provides, the power "to make a gift" is interpreted as the power to make limited gifts pursuant to 20 Pa. C.S.A. § 5603 (a.1), which provides that limited gifting limits the Agent to gifts under the Federal Gift Tax annual exclusion and which are determined to be consistent with the Principal's objectives, or in the Principal's best interest if actual objectives are unknown.

To create or change rights of survivorship.

To create or change a beneficiary designation on an insurance policy, annuity, or retirement plan (see also 20 Pa. C.S.A §5603(p) and (q).

To delegate authority granted under the power of attorney.

To waive the Principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.

To exercise fiduciary powers that the Principal has authority to delegate.

To disclaim property, including a power of appointment.

8. Further Limitation on Grant of Authority - As relates to the specific grant of authority to make a gift or change survivorship or beneficiary designations, or disclaim property, an Agent may not create in the Agent an interest in the Principal's property unless the Agent is an ancestor, spouse, or descendant of the Principal or unless the Power of Attorney otherwise provides.

Similar or overlapping subjects - the broadest authority controls.

Agent's authority over property includes after-acquired property and property is located out-of-state.

An Agent's act on behalf of the Principal has the same effect and inures to the benefit of and binds the Principal and the Principal's successors in interest as if the Principal had performed the act.

9. General Grant of Authority - Subject to the above, the Power of Attorney may grant the Agent with authority to do all acts that a Principal is authorized to perform, and, in such case, the Agent shall be authorized to exercise all of the powers that may be incorporated by reference pursuant to 20 Pa. C.S.A. § 5602(a), as defined in 20 Pa. C.S.A. §5603.
10. Appointment of Agent and Successor Agent – The Power of Attorney may name any number of Agents who may act jointly or independently and may provide for any number of successor Agents.
11. Copy of Power of Attorney - An originally executed Power of Attorney may be filed with the clerk of the Orphan's Court or recorded with the Recorder of Deeds. A certified copy may be issued upon request and shall have the same validity and effect as the original. Except for the purpose of filing or recording the Power of Attorney, a photocopy or electronically transmitted copy of an originally executed Power of Attorney has the same effect as the original.
12. Revocation

Death of the Principal revokes the Power of Attorney. However, the agency is not terminated until the Agent has actual knowledge of the death of the

Principal. As such, actions taken by the Agent may be binding even after the death of the Principal.

If the Power of Attorney is not durable, the disability or incapacity of the Principal will revoke the Power of Attorney but not until the Agent has knowledge of the disability or incapacity.

Filing a complaint in divorce will revoke a spouse's agency, unless the Power of Attorney indicates that the agency was intended to survive divorce.

Agent's Affidavit - An Agent's affidavit verifying that the Agent does not have actual knowledge of the termination or revocation of the Power of Attorney is conclusive proof that the Power of Attorney has not been terminated or revoked.

13. Third Party Immunity

A third party who accepts a Power of Attorney in good faith is not liable if any of the required signatures are not genuine.

A third party who accepts a Power of Attorney in good faith, and without actual knowledge that the Power of Attorney and/or Agent's authority is void, invalid, or terminated and that the Agent is exceeding or improperly exercising the Agent's authority, shall not be liable for relying on the Power of Attorney.

The third party may request any of the following before accepting the Power of Attorney:

The Agent's certification, under penalty of perjury, of any factual matter concerning the Principal, Agent, or Power of Attorney or an affidavit that the Power of Attorney has not terminated or been revoked.

An English translation of a foreign language Power of Attorney.

An attorney's opinion that the Agent is acting within the scope of the authority granted by the Power of Attorney if the third party provides in writing or other record the reason for the request.

An employer is immune if the employee would be immune.

14. Third Party Liability

A third party who fails to either make a request under §§ 5606 and 5608 above or accept the Power of Attorney may be liable for any pecuniary harm of the Principal related to the refusal. A Court may order the acceptance of the Power of Attorney.

The third party must make the request within seven (7) business days from presentation of the Power of Attorney to the Third Party. The third party must then accept the Power of Attorney within five (5) business days of receipt of the Agent's certification or affidavit, translation, or attorney's opinion.

The third party may not require a different form of the Power of Attorney.

15. Compensation and Reimbursement - Unless otherwise specified in the Power of Attorney, the Agent is entitled to reasonable compensation and reimbursement for expenses.

16. Out of State Power of Attorney - An out of state Power of Attorney will be valid in Pennsylvania provided that the Power of Attorney complied with the laws of the out of state jurisdiction or the requirements for a military Power of Attorney.

PLANNING FOR LONG TERM CARE NEEDS

I. What is Long Term Care and Where is it Provided?

According to author Thomas Day, "long term care refers to a broad range of supportive medical, personal, and social services needed by people who are unable to meet their basic needs for an extended period of time."

Long term care may be provided in a number of settings.

A. Nursing Home

Nursing homes provide the highest level of care to individuals in need of total care or hands-on assistance with their activities of daily living (ADLs). Nursing homes are capable of providing skilled as well as intermediate levels of care to their residents.

B. Assisted Living (personal care homes and assisted living facilities)

Individuals who can no longer reside safely at home, but who do not yet require a nursing-home-level of care, may reside in assisted living or personal care homes.

These individuals will typically receive prepared meals, reminders to take their medication, housekeeping services, and some assistance with their ADLs.

C. Home Health and Community Based Services

In some instances, even though an individual may be in need of a nursing home or assisted living level-of-care, he or she may decide to remain home with help from family members and programs such as adult day care, caregiver respite, home health assistance, PA Department of Aging Options and Waiver programs, and the LIFE program, etc.

II. Paying for Long Term Care

A. Average Cost of Nursing Home Care in Pennsylvania

The average cost of nursing home care in Pennsylvania is \$9,792.65 per month or \$321.95 per day. This amount could be more or less depending on the individual nursing facility and ancillary expenses.

B. Four (4) Ways to Pay for Nursing Home Care

1. Medicare (42 USC 1395d)

One method of paying for long-term care is Medicare. Medicare is a government entitlement program that becomes available to individuals at age 65 years or twenty-four (24) months after a five (5) month waiting period after a Social Security determination of disability. Medicare, however, is very limited in what it will cover and then coverage is limited to a short period of time.

Traditional Medicare will only cover 100 days of a nursing home placement per spell of illness and only so long as the individual medically qualifies for benefits. The first 20 days are covered in full and only a portion of the nursing home costs are covered in days 21 through 100, requiring a co-payment.

In order to medically qualify for Medicare benefits for nursing home coverage, the individual must have first had a three-day hospital stay within 30 days of the nursing home placement. Moreover, the individual must require a skilled service, such as physical therapy or wound care.

Medicare will only cover costs associated with a placement in a skilled nursing facility, not an assisted living facility.

2. Private Pay

An individual could pay privately for nursing home care by utilizing his/her own funds to pay for the monthly nursing home costs until the individual's estate is depleted. However, the estate could be depleted in a relatively short period of time if the individual chooses to pay privately for nursing home care and ignore planning opportunities that could allow the individual to preserve all or a portion of the estate for loved ones.

For example, if the individual owns \$100,000 in non-exempt resources upon entering a nursing home for a long-term stay, at an average cost of \$9,792.65/month, the entire estate would be depleted in about 10 months.

3. Long-Term Care Insurance

Long-term care insurance is yet another way in which an individual could pay for the cost of long-term nursing care. It should be noted that most long-term care insurance policies will cover not only the cost of a nursing facility and assisted living facility, but also home health and community based services allowing an individual to remain at home despite the need for long-term care. The amount of long-term care insurance that the individual should purchase will depend on the size of the estate and his/her individual goals concerning long-term care.

Because long-term care insurance can be very complicated and at times cost prohibitive, the individual must understand the Medical Assistance rules and determine in advance how much long-term care insurance coverage will be needed based on his/her assets, income, and objectives. The elder law practitioner does not usually sell long term care insurance policies, but can be instrumental in helping the client understand what coverage is appropriate for that particular client based on the client's goals, family circumstances, assets, and income.

The key components to a long term care insurance policy are the daily benefit rate, lifetime maximum, exclusion period, interest increase rider, and coverage.

5. Medical Assistance (Medicaid)

Finally, Medical Assistance is a public benefit, one purpose of which is to assist people in need to pay their long-term care expenses incurred at home or in a nursing home. At the time the Medicaid program began funding long term care services, only institutions, such as nursing homes, were eligible to receive payments through the Medicaid program. Over time, this has changed and Medicaid dollars are now also being used to help care for

individuals in their own homes under the various Medicaid Waiver programs.

Currently, in excess of 1.7 million Pennsylvania residents receive benefits through the Medicaid program. Approximately one third of all Medicaid dollars spent in the Commonwealth are used to provide long term care services to individuals who reside in nursing homes.

III. Medical Assistance (see, 42 U.S.C §§ 1396a – 1396v; 42 C.F.R §§ 430 – 456; 55 Pa. Code Chapters 106 – 275)

Medical Assistance, also known as Medicaid, is a combined federal and state program designed to cover the costs of health care services for the needy. Eligibility for Medical Assistance is based on very strict financial guidelines. For eligible individuals, Medical Assistance may cover the cost of nursing home care and certain home and community based services under the Medicaid Waiver programs. Medical Assistance does not currently pay for care in assisted living facilities or personal care homes.

In Pennsylvania, the Medical Assistance program is administered on a state-wide level by the Department of Public Welfare, and locally by the Department's County Assistance Offices.

A. Resource Eligibility

In order to determine eligibility for Medical Assistance, applicants are required to disclose their financial resources to the County Assistance Office. The resources are categorized as either "Exempt" or "Non-Exempt".

1. Exempt Resources

The ownership of exempt resources will not prevent an applicant from qualifying for Medical Assistance benefits.

a. Primary Residence (55 Pa. Code § 178.62)

Real property used as the primary residence is exempt so long as the applicant expresses intent to return to the home, regardless of whether it is realistic to do so. If the applicant is widowed or single, the equity value that is greater than \$560,000 will **not** be considered exempt. This cap on home equity does not apply to married applicants.

Caveat: Although the residence is exempt during lifetime, it may be subject to Medical Assistance Estate Recovery upon the owner's death.

b. Burial Plots (55 Pa. Code § 178.71)

The burial plots of the applicant and his or her immediate family are exempt

c. Burial Accounts (55 Pa. Code §§ 178.73 & 178.72)

i. Revocable - A revocable burial reserve valued at \$1,500 or less is exempt.

ii. Irrevocable – An irrevocable burial reserve, in a reasonable amount, is exempt. The amount determined to be reasonable for an irrevocable burial account will vary depending on the county.

d. One motor vehicle (55 Pa. Code § 178.67)

One motor vehicle, regardless of its value, is exempt.

e. Household goods and personal effects (55 Pa. Code § 178.66)

f. Certain Life Insurance (55 Pa. Code §§ 178.69 & 178.70)

i. Term and group policies – Term and group life insurance policies are typically exempt because they accumulate no cash value.

ii. Whole life – Cash value life insurance owned by the applicant, up to a maximum face value of \$1,500 for each insured is exempt. If the total face value exceeds \$1,500, only the first \$1,000 of cash surrender value is considered exempt.

g. Property Essential to Self-Support (55 Pa. Code § 178.64)

Real or personal property used in a trade or business, which is essential to self-support is exempt, regardless of its value.

h. IRA or qualified retirement plan of Community Spouse

The pension fund, IRA, 401K, 403B, and other deferred compensation plans owned by the applicant's spouse (community spouse) are exempt.

i. Medicaid Compliant Annuities

Certain irrevocable immediate annuities owned by the applicant or the community spouse may be considered exempt, provided that they meet criteria established by the Deficit Reduction Act (DRA) as set forth in the Department of Human Services' (DHS) annuity Operations Memorandum.

i. DRA Annuity Requirements (42 U.S.C. 1396p)

- (1) The annuity must be irrevocable and non-assignable.
- (2) It must be actuarially sound.
- (3) It must make equal installment payments with no deferral or balloon payment.
- (4) It must name DHS as remainder beneficiary for at least the total amount of Medical Assistance paid on behalf of the applicant.
 - (a) If applicant has no spouse or minor or disabled child, then DHS must be named as beneficiary in the 1st position
 - (b) If applicant has a spouse or minor or disabled child, then DHS is named as beneficiary in the 2nd position.

2. Non-Exempt Resources (55 Pa. Code § 178.2)

Non-exempt resources must be reduced to the appropriate level before an applicant will qualify for Medical Assistance benefits. If the applicant's fixed monthly income is less than \$2,205, he or she is entitled to retain \$8,000 in Non-Exempt resources. If the applicant's monthly income exceeds \$2,205 he or she may retain only \$2,400 in Non-Exempt resources.

Non-Exempt resources include, but are not limited to:

- a. Cash on hand.
- b. Bank and credit union accounts, including vacation and Christmas clubs, checking and savings accounts, savings certificates of deposit (CDs), money market funds, and patient accounts established and handled by a nursing care facility.
- c. Stocks, bonds, mutual funds.

- d. Trust accounts to the extent that they are legally available to the client.
- e. Individual Retirement Accounts (IRAs), 401Ks, 403Bs, Keogh funds owned by the applicant.
- f. Most types of annuities.
- g. Lump sum payments such as, but not limited to, tax or rent rebates, insurance benefits, and inheritances.
- h. Additional motor vehicles, boats, ATVs, Snowmobiles, etc.
- i. Additional real estate.
- j. Any property owned by a Revocable Living Trust (RLT)

3. Resource Calculation

The amount of resources that an individual will be required to spend on care, without further planning, before Medical Assistance will be available to the individual is determined as follows:

$$\frac{\text{Total Non-Exempt Assets} - \text{Assets individual May Retain } (\$2,400 \text{ or } \$8,000 \text{ depending on income})}{\text{Spend Down Amount}}$$

B. Treatment of Income (see, 55 Pa. Code § 181.542(d))

Once the individual qualifies for Medical Assistance benefits, he/she is required to pay a portion of his/her income to the nursing home to supplement the cost of care. The nursing home resident is permitted to retain \$45.00/month from his/her income for personal needs, may use his/her income to supplement the monthly income of a community spouse (if applicable), is permitted to continue to pay for his/her Medicare and supplemental insurance premiums and, if the individual's nursing home stay is to be short-term, may retain an additional sum from his/her monthly income to cover the costs of maintaining the home. Please note that in order to qualify for the Home Maintenance Allowance, the nursing home resident's physician must certify that the nursing home placement will be six (6) months or less. All income remaining is referred to as the Resident Pay Liability and must be paid over to the nursing home once the individual is approved for Medical Assistance benefits.

The amount of income that an individual will be required to spend on care once qualifying for Medical Assistance benefits is determined as follows:

Total Gross Income
Personal Needs Allowance (Currently \$45.00 month)
Health Insurance Premium
Monthly Maintenance Needs Allowance (if applicable)
 - *Home Maintenance Allowance (if applicable)*
Resident Pay liability

C. Spousal Impoverishment Rules (42 U.S.C § 1396r-5; 55 Pa. Code § 178.121 et seq.)

The standards for determining Medicaid eligibility for married applicants are found in the spousal impoverishment” provisions of the Medicare Catastrophic Coverage Act of 1988 (MCCA). The MCCA established minimum income and asset allowances for the community spouse.

1. Community Spouse Resource Allowance (55 Pa. Code § 178.124)

The protected share of non-exempt resources the Community Spouse is permitted to retain is known as the Community Spouse Resource Allowance (CSRA). In order to calculate the CSRA, a married applicant must report to the CAO all non-exempt resources, whether owned jointly by the couple or individually as of the date of nursing home admission.

The community spouse’s CSRA is generally equal to one half (1/2) of all non-exempt resources owned by the couple on the date of nursing facility admission, subject to certain exceptions.

- a. \$119,220 is the maximum CSRA, regardless of total resources.
- b. \$24,180 is the minimum CSRA.

Non-Exempt resources in excess of the combination of the CSRA and the institutionalized spouse’s limit will render the institutional spouse ineligible for Medicaid benefits. These assets must be spent on the institutionalized spouse’s care or otherwise disposed of before Medicaid benefits will be awarded

Examples of Spousal Share Calculations:

Example 1: On the date the institutionalized spouse is admitted to the nursing facility, the couple has \$100,000 in non-exempt resources. The institutionalized spouse’s income consists of Social Security and a pension totaling \$1,200 per month. The community spouse’s CSRA is calculated to be \$50,000, or one half (1/2) of the couple’s non-exempt resources. In addition, the institutionalized spouse is permitted to retain \$8,000 in countable resources. The institutionalized spouse will qualify for Medicaid benefits when the Couple’s total assets have been reduced to \$58,000

(\$50,000 CSRA + \$8,000 allowance). The couple's excess non-exempt resource amount is \$42,000.

Example 2: On the date the institutional spouse was first admitted to the nursing facility, the couple had \$500,000 in non-exempt resources. The institutionalized spouse has a fixed monthly income \$2,750. In this situation, the community spouse is entitled to keep the maximum CSRA of \$119,220 and the institutionalized spouse is permitted to retain \$2,400 in non-exempt resources. The institutionalized spouse will not qualify for Medicaid benefits until the couple's combined assets have been reduced to \$121,620 (\$119,220 CSRA + \$2,400 allowance). This couple is over-resourced by \$378,380.

Example 3: This couple has a total of \$35,000 in non-exempt resources as of the date the institutionalized spouse was determined to be medically qualified for the PDA 60 + Waiver Program. The institutionalized spouse has a fixed monthly income of \$975. In this case, the community spouse will be entitled to keep \$24,180 of the non-exempt resources (minimum CSRA) and the institutionalized spouse may retain \$8,000 for a total of \$32,180. This couple is over-resourced by \$2,820.

2. Community Spouse Monthly Maintenance Needs Allowance (55 Pa. Code § 181.452(d))

The general rule under MCCA is that marital income is attributed to the individual whose name appears on the check.

- a. The community spouse is entitled to keep all of his or her individual income.
2. Most of the institutional spouse's income must be used to pay toward the cost of his or her care.
3. Minimum Monthly Maintenance Needs Allowance - All community spouses are entitled to a base amount of income known as the Minimum Monthly Maintenance Needs Allowance (MinMMNA).
 - a. The current MinMMNA is \$2,030 per month.
 - b. The current MaxMMNA is \$3,022.50 per month. In order to determine if the community spouse is entitled to an increased MMNA based on shelter expenses, add 1) the community spouse's expenses for rent or mortgage payment, taxes and insurance and 2) the standard allowance for utilities (or the actual utility expenses). From this number, subtract an amount equal to 30% of 150% of the federal poverty level for a family of two. The sum is equal to the

amount of excess shelter allowance. If the sum is zero or less, no excess shelter allowance will be authorized. In order to increase his or her MinMMNA, the community spouse is also permitted to seek judicial court ordered support under 42 U.S.C. § 1396r-5(d)(2)(B) or by requesting an administrative fair hearing pursuant to 42 U.S.C. § 1396r-5(d)(5) and 55 Pa. Code § 181.452(d)(2)(ix) so that he or she can show exceptional circumstances resulting in significant financial duress.

- c. If the community spouse's income is insufficient to meet his or her minimum needs, some (or all) of the institutionalized spouse's income may be diverted to the community spouse.
- d. If the community spouse's income is still insufficient to meet his or her needs after all of the institutionalized spouse's income is diverted to the community spouse, then the community spouse may be entitled to preserve assets in excess of his or her CSRA. The additional protected share amount is the amount that would be needed to purchase a commercial annuity that would generate the shortfall between the MMNA and the couple's income. Note that an annuity does not actually need to be purchased, but the County Assistance Office will require three (3) annuity quotes and the least value will be used to determine the additional protected share.

D. Transfer Penalty Rules (42 U.S.C. § 1396p; 55 Pa. Code § 178.104)

- 1. Any transfer of assets valued at \$500 or more in a one calendar month period for less than fair consideration will result in a period of ineligibility for Medical Assistance purposes. The period of ineligibility created by such a transfer is determined by a three-step process.

- a. Look-Back period

At the time a Medical Assistance application is filed, the applicant must disclose all uncompensated transfers of assets made by the applicant and/or the applicant's spouse during the look-back period (reporting period). The look back period on asset transfers is 60 months from the date the applicant otherwise qualifies for Medical Assistance benefits.

- b. Resulting Ineligibility Period

The uncompensated transfer of assets by an applicant and/or the applicant's spouse made during the applicable look-back period will result in an ineligibility period for Medical Assistance benefits.

Calculation of Ineligibility Period – The ineligibility period is calculated by dividing the total dollar value of the uncompensated transfer by the average nursing home daily private pay rate of \$321.95. This calculation will determine how many *days* of Medical Assistance ineligibility will result from the transfer. The ineligibility period may also be calculated by dividing the total value of the uncompensated transfer by the average monthly cost of nursing home care in the Commonwealth, which is currently \$9,792.65. This calculation will provide the number of *months* the applicant is ineligible for Medical Assistance due to asset transfers.

c. Ineligibility Start Date

The ineligibility period for uncompensated transfers for Medical Assistance will not begin until:

- i. The date on which the applicant is medically eligible for long term care services and
- ii. the applicant otherwise financially qualifies for Medical Assistance benefits.

2. Exempt Transfers (55 Pa. Code § 178.104)

Certain transfers for less than fair consideration are exempt from the transfer penalty period rules discussed above. Therefore, a transfer that falls within the following exceptions will not result in a period of ineligibility for Medical Assistance benefits for nursing home care:

a. Primary Residence

A transfer of the primary residence to any of the following individual's will be considered an exempt transfer:

- i. The individual's spouse;
- ii. The individual's child who is under age 21 years or blind or disabled;
- iii. The individual's sibling who has an equity interest in the residence and resided in the residence for at least one year immediately prior to the individual's nursing home placement; and
- iv. The individual's child who resided with the individual in the residence for at least two years immediately prior to the

individual's nursing home placement and but for the care provided to the individual by the child, the individual would have required placement sooner.

b. Assets other than the primary residence

The transfer of assets other than the primary residence to any of the following will not result in a period of ineligibility under the transfer penalty rules:

- i. The individual's spouse or another for the sole benefit of the spouse (either by the nursing home resident or by the spouse of the nursing home resident);
- ii. The individual's child who is under age 21 years or blind or disabled or to a trust with pay-back provisions for the benefit of the blind or disabled child;
- iii. To a special needs trust with pay-back provisions for the benefit of an individual under the age of 65 years who is disabled.

3. Family Caregiver (HCFA 64 § 3258.1)

While family members can legitimately be paid for care they provide to an individual, it is presumed that services provided for free at the time were intended to be provided without compensation. Therefore, a transfer to compensate a family member for past care services will be considered a transfer without consideration. This presumption can be rebutted with tangible evidence.