ALTCS PLANNING FOR MARRIED COUPLES

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Who is this for?

- Married adults
- One spouse has been diagnosed with a condition for which ongoing, custodial care is likely
  - Distinguished from asset protection planning for the possible need for care
- The couple is not indigent, but can’t afford $60,000 - $120,000/year for one spouse’s care, while also preserving assets for the other’s retirement
- Ideally, the spouse who needs care has capacity to participate in the planning, or has a responsible agent
  - Otherwise, a Conservatorship or Single Transaction Authority may be needed

A note about Medicare

- Medicare coverage for custodial care (at home or residential) is limited
- Individual must have been admitted to the hospital for at least 3 days
- Skilled Care or Inpatient Rehab must be "medically necessary, " and is limited to no more than 100 days per benefit period
- Duration of therapy at home may be longer, based on medical need, but does not include assistance with activities of daily living (ADLs).

Arizona Long Term Care (ALTCS)

- The AHCCCS (Medicaid in Arizona) Program that provides assistance with long-term, custodial care
- Must be US Citizen or Legal Resident, residing in AZ
- Medical Requirement:
  - Over 65 and/or disabled (as defined by SSA), ***due to a Medical (not behavioral) condition*** with reduced cognitive function or unable to perform at least 2 ADLs
  - Disabled before age 19, based on specific DDD criteria
- If approved, the cost of approved care, at home or in a facility, less the share of cost paid by the Customer, is paid directly to the provider

ALTCS Financial Eligibility Requirements

- The AHCCCS Medical Assistance Eligibility Policy Manual - https://azahcccs.gov/resources/guidesmanualspolicies/eligibilitypolicy/eligibilitypolicymanual/ is the 'the bible' but constantly updated, without notice

Medical Assistance Eligibility Policy Manual

Need help? Call 855-HEA-PLUS (855-432-7587).
Visit Health-e-Arizona Plus for more information and to manage your benefits online.

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- Legal Authority
  - 42 USC § 1396
  - A.R.S. § § 36-2931 – 2960

Income Eligibility(MA Chapter 6)

- Maximum Allowable Income is 3x the Federal Poverty Rate (currently$2,523/month *gross)*
  - Spouse's income is not counted ("name on the check")
  - Money from the sale of a resource is not considered income
  - Distributions from a trust, or income received by a trust, may be counted
- Customer's income between that amount and the Private Pay Rate ("PPR" which is currently $8,029.46 in Maricopa County) can be sheltered in an Income-only Trust (MA 803C)
- The portion of the customer's income necessary to assure that the community spouse has monthly income of at least $2,178 (up to $3,435) for specified health insurance and/or household expenses) can be retained in the household before Share of Cost is calculated

Resources (MA Chapter 7)

- Defined as “items of real or personal property, including cash (but *not* income received in the current month) which may be used to meet the customer’s need for food or shelter.”
  - Value = fair market value less liens, mortgages or other debts (HELOC or title loan)
- Resources that are not counted
  - Primary Residence (net equity value up to $636,000), unless in a Trust (even if revocable)
  - Personal and household goods
  - One vehicle used by, or for the benefit of the applicant
  - Some Income-producing Property
    - Construction and/or Farm Equipment
    - A portion of the value of income-producing real property
  - Irrevocable prepaid burial/cremation arrangements
  - Principal in “Single Payer Revocable Annuity”
  - Principal value of Trusts, if applicant has no control over the principal *(transfer penalty may apply)*

Maximum Resource Limits

- $2,000 for the customer (single or married)
- Community Spouse of Married Customer can retain a minimum of $27,480, or half the couple's countable resources, up to a maximum of $137,400.
  - Must be legally married
  - Customer must meet medical criteria for ALTCS
  - Spouse must be living in the community (not in a medical institution)
    - If both spouses are medically eligible but intend to receive care at home or non-medical facility, each can be the other's community spouse

Community Spouse Resource Budgeting (MA 707)

- The Community Spouse can protect a certain amount of the couple's combined resources, known as the Community Spouse Resource Deduction (CSRD)

- To determine the CSRD amount, a Community Spouse Resource Assessment (CSRA) is conducted for the month in which the customer's first continuous period of institutionalization (FCPI) began.
  - If a customer has been in the hospital, followed by a SNF, Inpatient Rehab, residential facility or the receipt of paid, formal care at home, the FCPI date is the first date of hospitalization
  - If the customer has been at home or a community-based setting not preceded by hospitalization, ALTCS will conduct a Medical Assessment ("Pre-Admission Screening" or PAS)

Calculating the CSRD

- Document the value of the couple’s countable resources for the FCPI month
- The Community Spouse Resource Assessment (CSRA) is conducted for the FCPI month
- Divide the CSRA amount by 2:
  - The applicant’s share must be spent down to no more than $2,000.00
  - If the maximum allowable amount ($137,400) is less than the spouse’s share, the maximum CSRD is allowed
  - If the spouse’s share is less than the maximum, the spouse’s share is allowed.
  - If the spouse’s share is less than the minimum ($27,480), the minimum CSRD is allowed

Application for Benefits

- Once the CSRD is determined, the customer can apply for benefits as soon as the couple has spent down to that level.
- Once total assets do not exceed the Customer's share + the Spouse's share, the couple has 12 months in which to transfer the Customer's countable resources to the Spouse
  - No exception for IRAs or other accounts with liquidation or transfer penalties
- A married customer whose resources exceed the resource limit may still be eligible in case of Undue Hardship if:
  - Customer meets all other ALTCS requirements
  - Customer is unable to get needed medical care without ALTCS
  - The property is legally unavailable without the signature of the community spouse, who refuses to make the property available, and
  - There is a break in marital ties

Spending down

- “Organic” spending on the customer’s care and the couple’s day-to-day needs
- Use cash and other countable resources to buy or increase the value of exempt resources
  - Home remodeling and repairs
  - Pay off mortgage or HELOC (remember the home equity maximum)
  - New vehicle
  - Burial resources
- Transfer home property from a Trust, where it is counted (MA 705K(1), to the customer and/or spouse, where it is not
- Purchase a Life Estate in a family member’s home (Exempt home property includes an interest in the title or the right to use property without title)

Spending down with Annuities (MA705(B)

- The amount that a customer would receive from the insurance company, after any penalties, is counted as a resource
- An irrevocable (cannot be cashed in) annuity that converts a resource to an income stream ("immediate") is not counted as a resource (often called a SPIA)
  - The annuitant can be the customer or the spouse
  - Can be purchased "inside" an IRA
  - Payments must be equal, and are considered income to the annuitant
  - Payout must be no longer than the annuitant's actuarial lifespan, but can be shorter
  - Must name ALTCS as the 1st beneficiary of any amount remaining upon the annuitant's death to offset cost of care
- Because only the Customer's resources need to be disclosed at time of renewal, annuity payments can re-accumulate in the spouse's name (MA707)

The Transfer of Resources (MA 901)

- Generally, transfers to achieve eligibility, either to another person or an irrevocable trust, without receiving full compensation for the value in return trigger a penalty period
- In addition to gifting, transfers include (MA 902):
  - Actions that cause income or resources not to be received (e.g. disclaiming an inheritance)
  - Transferring the right to receive income (e.g. assigning a benefit)
  - Making a loan not supported by a promissory note that can be sold
  - Adding a joint owner to a home property or other asset
  - Transferring real property and retaining a life estate, without adequate compensation for the transferred interest
  - The withdrawal of funds from a financial account by a joint owner, without proof that those funds belonged to the co-owner (potential hardship exception in the case of fraud against an incapacitated applicant – MA 907)

Exceptions to the Transfer Policy (MA 903)

- Transfers to the customer's spouse
- Transfers to the customer's child or stepchild (or a trust for his or her benefit if established before beneficiary turned 65), if recipient is blind or disabled per SSA
- Transfer of home property only, to customer's child or stepchild under age 21
- Transfers of home property only to child or stepchild who has lived in the home for at least 2 years and provided care serves that enabled the customer to remain at home
- Transfers of customer's equity interest in the home property to a sibling of the customer who has an interest and has lived there for at least a year
- Purchases of qualified annuities
- Creation of 1st Party Special Needs Trust (customer must be under age 65)

Transfer Penalty (MA 905)

- The uncompensated value of a non-exempt transfer results in a penalty period, during which the customer will not receive long-term care services (but remains eligible for AHCCCS)
- The value of the transfer is divided by the PPR to calculate the number of months, with any fractional remainder multiplied by 30 to calculate the number of days
  - EXAMPLE: Non-exempt transfer of $100,000 ÷ $8,029.46 = 12.45. 30 x .45 = 13.5. Penalty period is 12 months and 14 days
- The penalty period for transfers made before the application starts on the date the customer would otherwise be eligible
- No maximum duration; for large transfers, waiting 5 years may be better option

Transfers as a strategy

- If both spouses are applying for benefits, the penalty period is divided equally between them (so is concluded in half the time)
- If one spouse is under a penalty period and the other spouse then applies, the remaining penalty period is divided between them
  - NOTE: If both spouses are eligible for ALTCS but one spouse dies, that penalty period is added to the penalty period for the living spouse
- Benefitting from the high denominator
  - Example: Client transfers $100,000 to trustworthy child, so penalty period is 12 and a half months
  - If the "out of pocket" cost for care each month is $3,000.00, the child spends $39,800 on parents' care, with $60,200 remaining at the end of the penalty period.

Special Needs Trusts (MA803)

- First Party Special Needs Trust Must meet the specific requirements of 42 U.S.C § 1396 (d)(4)(A) and A.R.S. §36-2934.01
  - Grantor/Beneficiary must have been determined to be disabled by SSA
  - Must be funded with Grantor's own funds, and created by specified parties (parent, grandparent, Legal Guardian or Court)
  - First remainder beneficiary must be the Medicaid provider, which is entitled to reimbursement for the capitated payments made on behalf of the beneficiary.
- No transfer penalty if funded before Grantor reaches age 65
- Must be administered according to Social Security regulations to assure that principal is not counted as a resource and distributions are not considered income.

Estate Recovery (MA 1900)

- Federal law requires AHCCCS to file a claim against the customer's estate to recover the cost it incurred to provide benefits after the beneficiary's 55th birthday
- Applies to property owned by the customer at the time of death,and subject to an Affidavit of Small Estate Transfer or Probate
- Applies to a home owned solely by the customer; owned jointly *without* right of survivorship (after spouse's death) or owned JT/WROS with prior-deceased spouse
- Does not apply to property that passes by non-probate transfer, through right of survivorship or by beneficiary deed
- Different from TEFRA lien (MA 1902), which AHCCCS can file against the property of a Customer permanently institutionalized in a skilled nursing home, acute hospital or mental health hospital

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COVID-19 Public Health Emergency

- Instituted by HHS on 1/27/2020, and renewed in 90-day increments through 4/14/2022, with 1 more extension expected
- In exchange for accepting additional funds for Medicaid due to the emergency, states cannot discontinue anyone’s Medicaid benefits for at least 60 days after the end date.
- As a result, anyone enrolled in ALTCS on 3/18/2020 who received additional countable resources after that date has until after the PHE expires and they are asked to re-certify their eligibility to spend down those funds

Questions???

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