

ACT 42 - Selected Provisions

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. The act of June 13, 1967 (P.L.31, No.21), known
27 as the Public Welfare Code, is amended by adding sections to
28 read:

29 **Section 441.3.** Use of Medical Expenses to Establish
30 Eligibility for Medical Assistance.--Notwithstanding any other
31 provision of law to the contrary, in determining eligibility for
32 retroactive and prospective medical assistance, only medical
33 expenses incurred on or after the first day of the third month
34 before the month of application may be deducted from countable
35 income, provided that the expenses were not previously deducted
36 in determining eligibility for medical assistance and are not
37 subject to payment by another party, including medical
38 assistance.

39 **Section 441.4.** Lifetime Limit on Allowable Income Deductions
40 for Medical Expenses When Determining Payment Toward the Cost of

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1 Long-Term Care Services.--(a) Necessary medical or remedial
2 care expenses recognized under Federal or State law but not paid
3 for by the medical assistance program are allowable income
4 deductions when determining a recipient's payment toward the
5 cost of long-term care services. An allowable income deduction
6 for unpaid medical expenses incurred prior to the authorization
7 of medical assistance eligibility and those medical expenses
8 incurred for long-term care services after medical assistance is
9 authorized shall be subject to a lifetime maximum of ten
10 thousand dollars (\$10,000), unless application of the limit
11 would result in undue hardship.

12 (b) As used in this section, the term "undue hardship" shall
13 mean that either:

14 (1) denial of medical assistance would deprive the
15 individual of medical care and endanger the individual's health
16 or life; or

17 (2) the individual or a financially dependent family member
18 would be deprived of food, shelter or the necessities of life.

19 **Section 441.5.** Penalty Period for Asset Transfer.--(a)
20 Pursuant to section 1917(c) of the Social Security Act (49 Stat.
21 620, 42 U.S.C. §1396p(c)), the department shall impose a
22 penalty of ineligibility for all ineligible days, whether for
23 full months or for a partial month's period of ineligibility, or
24 both, when an applicant, recipient or spouse of an applicant or
25 a recipient of the services set forth in subsection (b)
26 transfers assets for less than fair market value within or after
27 the look-back period as defined in section 1917(c) of the Social
28 Security Act. Transfers totaling five hundred dollars (\$500) or
29 less in a calendar month shall not be subject to the penalty.

30 (b) The ineligibility period set forth in subsection (a)

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1 shall apply to all of the following:

2 (1) Nursing facility services.

3 (2) Services equivalent to those provided in a nursing
4 facility.

5 (3) Home and community-based services furnished under a

6 waiver granted under section 1915(c) or (d) of the Social
7 Security Act (42 U.S.C. § 1396n(c) or (d)).

8 **Section 441.6.** Treatment of Life Estates, Annuities and
9 Other Contracts in Determining Medical Assistance Eligibility.--

10 (a) As a condition of eligibility for medical assistance, every
11 applicant or recipient who owns a life estate in property with
12 retained rights to revoke, amend or redesignate the remainderman
13 must exercise those rights as directed by the department. The
14 acceptance of medical assistance shall be an assignment by
15 operation of law to the department of any right to revoke, amend
16 or redesignate the remainderman of a life estate in property.

17 (b) Any provision in any annuity or other contract for the
18 payment of money owned by an applicant or recipient of medical
19 assistance, or owned by a spouse or other legally responsible
20 relative of such applicant or recipient, that has the effect of
21 limiting the right of such owner to sell, transfer, or assign
22 the right to receive payments thereunder, or restricts the right
23 to change the designated beneficiary thereunder, is void.

24 (c) In determining eligibility for medical assistance, there
25 shall be a rebuttable presumption that any annuity or contract
26 to receive money is marketable without undue hardship.

27 (d) Upon approval by the Federal Government of any required
28 state plan amendment implementing this subsection and
29 notwithstanding subsections (b) and (c), a commercial annuity or
30 contract purchased by or for an individual using that

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1 individual's assets will not be considered an available resource
2 if the annuity meets all of the following conditions:

3 (1) Is an irrevocable guaranteed annuity.

4 (2) Guarantees to pay out principal and interest in equal
5 monthly installments with no balloon payment to the individual
6 so that payments are paid out over the actuarial life expectancy
7 of the annuitant, as set forth in life expectancy tables
8 approved by the department.

9 (3) Names the department as the residual beneficiary of any
10 funds remaining due under the annuity at time of death of the
11 annuitant, not to exceed the amount of medical assistance
12 expended on the individual during his or her lifetime.

13 (4) Is issued by an insurance company licensed and approved
14 to do business in this Commonwealth.

15 (e) This section applies to all annuity, life insurance and
16 other contracts entered into on or after the effective date of
17 this section and to life estates owned by any individual who
18 applies or reapplies for medical assistance on or after the
19 effective date of this section.

20 **Section 441.7.** Income for the Community Spouse.--(a) When a
21 community spouse has income below the monthly maintenance needs
22 allowance as determined under the department's regulations and
23 Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. §
24 1396 et seq.), the institutionalized spouse may transfer
25 additional resources to the community spouse only in accordance
26 with this section.

27 (b) The institutionalized spouse may transfer income to the
28 community spouse in an amount equal to the difference between:

29 (1) The community spouse's monthly maintenance needs
30 allowance; and

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1 (2) The community spouse's income from all sources.
2 (c) Resources of the institutionalized spouse may be used to
3 purchase an annuity in accordance with this subsection. The
4 following shall apply:
5 (1) The annuity purchased may provide the community spouse
6 with monthly income equal to the difference between:
7 (i) the community spouse's monthly maintenance needs
8 allowance; and
9 (ii) the community spouse's income from all sources if the
10 community spouse survives the institutionalized spouse.
11 (2) The annuity purchased to provide income for the
12 community spouse must meet all of the following conditions:
13 (i) Be actuarially sound.
14 (ii) Be guaranteed.
15 (iii) Pay in equal monthly payments so that payments are
16 paid out over the actuarial life expectancy of the annuitant, as
17 set forth in life expectancy tables approved by the department.
18 (iv) Name the department as the contingent beneficiary in
19 the event that the community spouse predeceases the expiration
20 of the guaranteed period of the annuity, not to exceed the
21 amount of all medical assistance expended on behalf of the
22 institutionalized spouse.
23 (3) If an annuity is purchased and the community spouse's
24 income from all sources including the annuity is less than the
25 monthly maintenance needs allowance, the institutionalized
26 spouse may transfer sufficient income to bring the community
27 spouse's income up to the monthly maintenance needs allowance.
28 (d) As used in this section, the following words and phrases
29 shall have the following meanings:
30 "Community spouse" means the spouse of an institutionalized

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1 spouse.
2 "Institutionalized spouse" means an individual who is:
3 (1) in a medical institution;
4 (2) in a nursing facility or receiving services equivalent
5 to those provided in a nursing facility; or
6 (3) receiving home and community-based services in lieu of
7 nursing facility care pursuant to a waiver granted under section
8 1915(c) or (d) of the Social Security Act (49 Stat. 620, 42
9 U.S.C. §1396n(c) or (d)).
10 **Section 441.8.** Eligibility for Home and Community-based
11 Services.--As a condition of eligibility for home and community-
12 based services, an applicant shall be subject to all medical and
13 financial eligibility requirements for medical assistance
14 including:
15 (1) Medical eligibility for the payment of nursing facility
16 care or the equivalent level of care in a medical institution.
17 (2) Financial eligibility requirements under Federal and
18 State law, including the provisions of sections 1917 and 1924 of
19 the Social Security Act (49 Stat. 620, 42 U.S.C. §§1396p and
20 1396r-5).
21 (3) All other eligibility requirements for medical
22 assistance under Federal and State law.