TennCare 101

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Your Options in the Medicaid – TennCare Planning Practice Area

- Crisis Planning Practice
- Proactive Planning Practice
- Both
- Neither

(Any of these practice areas will require a thorough knowledge of TennCare)

TennCare 101
What We Will Cover

- briefly look at the technical requirements for eligibility and where those rules are found;
- spend most of our time with the financial requirements for eligibility and where those rules are found; and
- apply some examples to practice using the principles.

TennCare 101
The Big Picture

- TennCare is based on federal law with a Tennessee twist
- Tennessee interprets and administers the federal law within federal boundaries
- It is best to know the federal law first, then see how Tennessee interprets it.
- Be aware that TennCare is operating under a waiver from the Centers for Medicare and Medicaid Services (CMS).

TennCare 101
The LAW, Rules, and Policy

PRIMARY FEDERAL LAW:

- 42 USC 1396p
- 42 USC 1396r-5

TennCare 101
The LAW, Rules, and Policy

42 USC 1396p

- 1396p(a)–(b)– Estate Recovery provisions and exceptions
- 1396p(c)– Asset transfers and calculating the penalty period
- 1396p(c)(f) – Annuity provisions

TennCare 101
The LAW, Rules, and Policy

42 USC 1396p

- 1396p(c)(2) – Exceptions to the transfer penalty
- 1396p(d) – Treatment of trusts
- 1396p(f) – Home equity limits
- 1396p(g) - Definitions

TennCare 101
The LAW, Rules, and Policy

42 USC 1396r-5

- Treatment of income and resources for certain institutionalized spouses

TennCare 101
The LAW, Rules, and Policy

- **Rules of Tennessee Department of Finance and Administration Bureau of TennCare**:

http://share.tn.gov/sos/rules/1200/1200-13/1200-13.htm

1200-13-01 TennCare LTC Programs

1200-13-13 TennCare Medicaid

1200-13-14 TennCare Standard

1200-13-19 Appeals and Hearings

1200-13-20 TennCare Technical and Financial Eligibility

TennCare 101
The LAW, Rules, and Policy

TN Division of Health Care Finance & Administration HCFA Eligibility Policy Consolidated Eligibility Policy:

https://www.tn.gov/assets/entities/tenncare/attachments/HCFAEligibilityPolicyConsolidated.pdf

AGED, BLIND AND DISABLED (Financial Eligibility Requirements)

AGED, BLIND AND DISABLED (Categories of Eligibility)

AGED, BLIND AND DISABLED (Institutional Medicaid)

AGED, BLIND AND DISABLED (Choices)

GENERAL ADMINISTRATIVE PROCEDURES AND COMPLIANCE

TennCare 101
Additional Resources

- CMS website – www.cms.hhs.gov

- *Contains the State Medicaid Manual*

- *Function of the State Medicaid Manual (SMM).—This manual makes available to all State Medicaid agencies, in a form suitable for ready reference, informational and procedural material needed by the States to administer the Medicaid program. It is an official medium by which the Health Care Financing Administration (HCFA) issues mandatory, advisory, and optional Medicaid policies and procedures to the Medicaid State agencies.*

TennCare 101
Additional Resources

- HCFA Transmittal 64
  - *Incorporated into the State Medicaid Manual*
    - also available as a stand alone document
  - Issued by HCFA in 1994, now codified at 42 USC 1396. Set rules on how transfer penalties would be calculated, required annuities to be actuarially sound and established a life expectancy table.

TennCare 101
Important Terms to Know

DRA ‘05

- The **Deficit Reduction Act** - passed by Congress in February 2006 which made sweeping changes to the federal Medicaid eligibility rules and has been adopted by all states except California
- **Institutionalized Spouse (IS)** is the spouse who is in the nursing home and for whom Medicaid benefits are sought
- **Community Spouse (CS)** is the spouse who remains at home and who will not receive Medicaid benefits

TennCare 101
Important Terms to Know

- Federal term – (MMMNA)
  Minimum Monthly Maintenance Needs Allowance
- TennCare term – (SMA) [1200-13-20-.08(5)(l)]
  Standard Maintenance Amount
- The MMMNA or SMA is $2,003 in 2016
- This may be increased up to the (Fed term) Maximum Monthly Maintenance Needs Allowance based on a showing of need to a $2,981 (TN term) Maximum Maintenance Needs Amount (MMNA) in 2016
- This is income that can come from the TennCare spouse and given to the community spouse

TennCare 101
Important Terms to Know

- **Community Spouse Resource Allowance** (Fed CSRA) or in TennCare terms – **Community Spouse Resource Maintenance Allowance** (TN CSRMA) **1200-13-20-.08(5)(m)2**.
- The minimum and maximum amount $23,844 and $119,220 in 2016 of resources a community spouse is allowed to keep when the institutionalized spouse applies for TennCare
- The total countable assets of the family are divided by 2, and the community spouse needs to have at least the minimum but not over the maximum

TennCare 101
Important Terms to Know

Resource Assessment

- In determining eligibility for a married institutionalized applicant, a calculated amount of the couple’s assets is allocated to the community spouse in order to be used for their own needs. TN **1200-13-20-.08(5)(m)1**.

TennCare 101
Important Terms to Know

Snapshot Date

- The date used by TennCare to take a snapshot of the couple's finances (resource assessment) to determine TennCare eligibility
- Under federal law and Tennessee, the snapshot date is the first day the Medicaid applicant is admitted to a health care facility for at least 30 continuous days and then applies for TennCare (Hospitalization can be added to nursing home/rehab) or enrollment in a Home and Community Based Services (HCBS) waiver program

TennCare 101
Important Terms to Know

Personal Needs Allowance

- The amount of income that a TennCare recipient is allowed to keep each month to be used for recipient's personal needs with the amount depending upon whether the TennCare recipient is in nursing facility or the community

TN **1200-13-20-.08(5)(l)1.**

TennCare 101
Important Terms to Know

Income Cap State

- A state, like Tennessee, which imposes a limit on a Medicaid applicant's income of 300% of SSI Federal Benefit Rate for an individual ($2,199 in 2016) TN **1200-13-20-.08(5)(e)**

Miller Trust

- An irrevocable, income only trust which holds the excess income of a TennCare applicant (income over the allowable cap). The excess income each month must be spent on the applicant's care. Any excess fund left in the trust account at the recipient's death get paid back to the State.
  TN **1200-13-20-.06(5)(m)1**

TennCare 101
Important Terms to Know

OBRA ’93

- The Omnibus Reconciliation Act of 1993 – it changed the way trusts for Medicaid purposes are treated, and set the lookback period at 36 months for gifts, 60 months for trust transfers

TennCare 101
Important Terms to Know

SSI - Supplemental Security Income

- A cash payment to persons with very low income and assets (formerly called welfare)
- Persons who receive SSI automatically receive TennCare

TennCare 101
Important Terms to Know

SSDI - Social Security Disability Income

- Income awarded to persons determined to be disabled according to the Social Security Administration
- Is not income or asset-based
- Persons who receive SSDI are eligible for Medicare (not Medicaid/TennCare)
- An SSDI person would have to apply for TennCare

TennCare 101
Important Terms to Know

CMS (f/k/a HCFA)

- The Centers for Medicare and Medicaid Services, formerly known as the Health Care Financing Administration. This agency oversees the federal Medicaid program. Most well-known rule issued by HCFA is known as Transmittal 64.

TennCare 101
Important Terms to Know

Estate Recovery

- The right of the state to file a lien against the Medicaid recipient's estate following the death of the Medicaid recipient to recover monies paid out by the state for the recipient's care. TN **1200-13-01-.08(4)**

Fair hearing

- A court proceeding conducted by the State when an applicant is denied Medicaid benefits. The applicant has the right to request a fair hearing up to 90 days following a denial of benefits

TennCare 101
One last comment before Eligibility

- This presentation discusses the nursing home TennCare but there are other programs in TennCare.
- TennCare has a waiver program that focuses on Choices 1 (primarily nursing home) and Choices 2 (a limited program of community based care with assisted living and in home care).

TennCare 101
Basic Eligibility - Technical

- A U.S. Citizen
- Qualified Alien
- Over 65, or
  disabled and in need of long term care
- A resident of Tennessee

TN **1200-13-20-.04**

TennCare 101
Basic Eligibility - Medical

- Meet all of the medical requirements for **TennCare** in TN **1200-13-01**
- This requires a nursing facility level of care acuity scale as presented in the Tenn. Comp. R. & Regs.

(TBA Elder Law Section has some good CLE programs on the medical requirement or if desired we might have a TennCare 102 on the medical eligibility and PAE as well as LOC)

TennCare 101
Basic Eligibility - Financial

- Must **meet income and asset limits** set by Tennessee
- **Income** is capped this year 2016 at $2,199 and may go up next year
- **Countable assets** for a single person are approximately $2,000, and for the community spouse between $23,844 and $119,220

TN **1200-13-20-.06 & .08**

TennCare 101
Treatment of Income

- Income is defined at 42 USC 1382a and TN **1200-13-20-.06(3)**
  - Includes earned income (i.e. wages or self employment income) and
  - Unearned income (all other income)
    - Examples: support, maintenance, annuity payments, retirement income, pension, disability insurance payments, social security income, social security disability income

TennCare 101
Income

- Income is attributed to the person **whose name is "on the check"**

- If two names are on the check, income will be allocated equally

TennCare 101
Income

- Documenting and Verifying Income
  - Social Security income – use annual benefits statement
  - Wages – pay stub
  - Pension – 1099 or pay stub
  - IRA – quarterly statement showing withdrawal amount
  - Must show gross income amounts

(**24 CFR 435.940 delineates the basis and scope of verifying information in Medicaid Programs**)

TennCare 101
Income Cap State

- Tennessee is a state which imposes a limit on a Medicaid applicant’s income
- Income cap for 2016 - $2,199/month in gross income
- Income over the cap must go into a Miller Trust

TennCare 101
Income Cap State

- Miller Trust (a/k/a/ Qualified Income Trust) **1200-13-20-.06(3)(g)**
  - An irrevocable, income only trust which holds the excess income of a Medicaid applicant (income over the allowable income cap). The excess income must be spent on the applicant's care. Any funds left in the trust account at the applicant/recipient's death get paid back to the State.

TennCare 101
Miller Trust

- Deposit must be made into the trust account every month to maintain Medicaid eligibility
- Minimum to deposit – the difference between gross income and the income cap (recipient may choose to deposit all income)
- Any money left in the trust at the Medicaid recipient's death goes to the State (up to amount paid out for recipient's care)

TennCare 101
Miller Trust – An Example

- Client’s gross income totals $2,599/month
- Monthly excess = $400
- At least $400 must be deposited into the irrevocable Miller trust account each month

TennCare 101
Miller Trust – Drafting Concerns

- Does Medicaid applicant have capacity to sign?
- Is there a power of attorney that specifically authorizes the agent to sign?
- Trustee – responsible for setting up the bank account and funding the trust every month

TennCare 101
Miller Trust

- No separate tax ID number is needed. Income reported under the grantor's social security number.

TennCare 101

Treatment of Income – Married Persons

- 42 USC 1396r-5 plus TennCare Techincal & Financial Eligibility Rule **1200-13-20-.08(5)(l)** & (m) as well as HCFA Policy Manual Number 125.015 & 125.020 for Spousal Impoverishment provisions
- The purpose of these rules is to ensure that the spouse who stays at home does not become impoverished.
- More time is spent on this than single applicants

TennCare 101
Background on Spousal Planning Rules

Minimum Monthly Maintenance Needs Allowance [MMMNA] or in Tennessee the Community Spouse Income Maintenance Allowance [CSIMA]

The minimum amount of income a community spouse is entitled. (In Tennessee the community spouse can keep all of their own income. The minimum and maximum refers to amount from IS.)

– In Tennessee the amount for the community spouse varies between the minimum (called the Standard Maintenance Amount [SMA]) and the maximum (called the Maximum Maintenance Needs Allowance [MMNA]).

– 2016 MMMNA or CSIMA figures between $2003 - $2981

TennCare 101
CSIMA – How Does It Work?

- Joe and Amy are married. Joe is about to enter a nursing home.
- Joe has income of $2,500. Amy's income is $1,000.
- TennCare rules say Amy is entitled to the minimum MMMNA or SMA ($2,003). Amy is short $1,003. (If Amy can show excess shelter and utility expenses, she can receive more of Joe's income up to $2,981, the MMNA.)
- The state will "divert" $1,003 of Joe's income to Amy which leaves $1,497 of Joe's income to be paid to the nursing home. (later we'll see Joe can keep $50 for PNA and deduct health insurance leaving less for nursing home)

TennCare 101
Increasing the MMNA or CSIMA

1. The MMMNA or CSIMA may be increased further by Fair Hearing or Court Order.

2. But a difficult standard – a well spouse must establish "exceptional circumstances exist resulting in significant financial duress".

The community spouse must take income from the institutional spouse before increasing the assets of the CSRMA.

TennCare 101
Increasing the MMNA or CSIMA

Petition Contents - Clearly list reasons to justify an increase. For example:

1. Monthly Expenses - Current monthly expenses exceed the Maximum MMMNA.

2. Penalty for Working Spouse - If a spouse is working, point out that the income allocation from NH spouse is reduced dollar-for-dollar by well spouse’s employment income. Unless the Court enters an order of income support for well spouse, Medicaid rules penalize that spouse for working.

3. Low Assets - Spouse has very few countable assets to fall back on.

TennCare 101
Increasing the MMNA or CSIMA

Where and When to file the Petition

1. Where

    - State Court (Family Court)

2. When

    - Before filing a Medicaid application

TennCare 101
Countable Resources

- Those “assets” which are attributed to an individual who is applying for Medicaid and/or the community spouse of the individual.

- Defined at 42 USC 1936p(g) and TN **1200-13-20-.06(3)(c)**

TennCare 101
Countable Resources

- all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action--
- (A) by the individual or such individual's spouse,
- (B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse, or
- (C) by any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse.

TennCare 101
Examples of Countable Resources

- Checking accounts
- Investment accounts
- CDs
- Cash (yes, even that which is under the pillow!)
- Real property (other than the home)
- Boats, RVs

TennCare 101
Titles of Countable Resources

- If jointly titled, the presumption is usually that the assets belong in whole to the Medicaid / TennCare applicant.
- Example: Mom owns a $50,000 CD with her 2 sons. Unless the sons can show through proper documentation that it is actually their CD, then Medicaid / TennCare will count the entire amount as mom's countable asset.

TennCare 101
Countable Resources

- What about IRAs?
  - There is nothing in the federal rules which protects them, but some states do not count them if the applicant (or spouse) receives either monthly payments from the IRA (the RMD in monthly installments) or other qualified fund.
  - TennCare looks to see if the IRA is in payout Status. See: TN Rules **1200-13-20-.06(3)(c)33**.

TennCare 101
Assets which are excluded

- 42 USC 1382b or TN Rule **1200-13-20-.06(3)(c)13**.
  - (a)(1)Home
    - Tennessee has a minimum $500,000, adjusted for inflation, limit on equity for a single IS
    - Must intend to return home to be excluded
  - (a)(2)(a) One automobile (if CS allow any value)
  - (a)(2)(a) Household goods and personal effects
  - (a)(2)(b) Prepaid burial and/or service for Medicaid applicant, spouse, or any other immediate family member

TennCare 101
Exclusions

- (a)(3) other property which is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion, including tools and machinery used in a business
  - Has been interpreted to mean “income producing property” or producing net annual income to the individual of at least 6 percent of the property’s equity value. If the individual’s equity value is greater than $6,000, the amount that exceeds $6,000 is countable.

TN Rule **1200-13-20-.06(3)(c)15**.

TennCare 101
Exclusions

- If the total face value of all life insurance policies on any person is $1,500 or less, then the cash value of such policies is not counted

TN Rule **1200-13-20-.06(3)(c)19**.

TennCare 101
Countable Assistance

- Real and personal property, which is not exempt under another resource provision, is exempt as a resource if the individual enters into a Conditional Assistance agreement with the State. The individual must make a bona fide effort to sell the property at its current market value, and repay the State for medical expenses covered by HCFA during the period of conditional assistance.

TN Rule **1200-13-20-.06(3)(d)**

TennCare 101
Example of Countable Resources

- Mary, who is not married, has the following assets:
  - 2008 BMW worth $55,000
  - Home worth $325,000
  - Checking account with a balance of $7,000
  - CD worth $25,000
- What would Mary's countable resources be if she needed to qualify for Medicaid?

TennCare 101
Example of Countable Resources

– 2008 BMW worth $55,000
(One vehicle is excluded regardless of its value **if** it is used for transportation of the individual **or** a member of his or her household. TN Rule **1200-13-20-.06(3)(c)40**.)

– Home worth $325,000 (Exempt)

– Checking account with a balance of $7,000 (Countable)

– CD worth $25,000 (Countable)

– Total assets for Medicaid purposes = $32,000 or $87,000

TennCare 101
Example of Countable Resources

Will, who is married, has the following assets:

– Home with a fair market value of $575,000 and a mortgage of $100,000

– A car worth $8,000

– A motorhome worth $22,000

– An IRA with a balance of $90,000

– A savings account with $40,000 (titled jointly with his son)

– Life insurance policy - death benefit of $75,000 and current cash value of $20,000

TennCare 101
Example of Countable Resources

– Home – Exempt
– Car – Exempt
– Motorhome worth $22,000 – Counted
– An IRA with a balance of $90,000 – Counted unless in payout status. (Funds in a 401(k) retirement account are countable when the individual is no longer job-attached because the funds are accessible after employment terminates.) TN Rule **1200-13-20-.06(3)(c)33**.
– A savings account with $40,000 – Counted
– Life insurance policy - death benefit of $75,000 and current cash value of $20,000 – Counted
– Total countable resources = $82,000 or $172,000 if the IRA is not in payout status

TennCare 101
Calculating the CSRMA

- Sue and Dave are married.
- Dave has the following assets in his name:
  - Mutual fund account worth $35,000
- Sue has the following assets in her name:
  - Savings account with $25,000
  - Car worth $9,000
- Together they have the following:
  - Checking account with $10,000
  - Investment account with $75,000

TennCare 101
Calculating the CSRMA

- Total countable resources for Dave & Sue
  - Everything but the car ($145,000)
  - What if Dave had a car?

TennCare 101
Calculating the CSRMA

- Take their total assets ($145,000)
- Divide by 2 = $72,500

- The CSRMA is $72,500 and they must spend down $70,500 before one of them can qualify for Medicaid. This allows $2,000 for the institutional spouse.

TennCare 101
Calculating the CSRMA

- What if their total assets were $260,000?
- Take their total assets ($260,000)
- Divide by 2 = ($130,000)
- The CSRMA is $119,220; the IS can have up to $2,000
- They must spend down $138,780 before one of them can qualify for Medicaid.

TennCare 101
Gifting Rules

- 42 USC 1396p(c) and TN Rule **1200-13-20-.08(5)(i)**
- Gift is a transfer of assets for less than fair market value (uncompensated transfer)
- A gift made during the lookback period results in a penalty period.

TennCare 101
Gifting Rules

- Lookback Period
  - For TN and all states who have adopted the DRA ‘05:

    60 months for all transfers
- Only gifts which occur during the lookback period are counted (and reported to Medicaid).

TennCare 101
Gifting Rules

Only gifts which occur during the lookback period are counted (and reported to Medicaid)

- Jack gives his grandson $20,000 on January 1, 2014. He enters a nursing home on February 5, 2016. Does he have to report the gift?
- If Jack lived in Tennessee, which had adopted DRA '05 at the time of the gift on January 1, 2014, when would the lookback period end?

TennCare 101
Gifting Rules

- Answer: yes
- Answer: The lookback period ends after February 1, 2019
- The “lookback” period is really not an accurate term because here we are actually looking ahead to see when the time period for reporting the gift passes.

TennCare 101
The Penalty Period

- The Penalty Period is the number of months a Medicaid applicant is ineligible for Medicaid because of an uncompensated transfer (gift) made during the lookback period.

TN **1200-13-20-.08(5)(j)**

TennCare 101
Calculating the Penalty Period

Total amount gifted

Divided by

Penalty Divisor amount for Tennessee
($5,472 in 2016)

=

Penalty period
(Cannot round off the penalty period)

TennCare 101
Calculating the Penalty Period

- Joe gifted $21,888 to his grandson on January 1, 2014. He entered the nursing home 2 years later.
- He lives in a state where the penalty divisor amount = $5,472.
- What will the penalty period be?

TennCare 101
Calculating the Penalty Period

- $21,888/$5,472 = 4 months
- Had Joe gifted $20,000 instead of $21,888 and all the other facts were the same, the penalty period would be 3.65 months
- When does the penalty period start for Joe?

TennCare 101
When does the penalty period start?

- 42 USC 1396p(c)(D)
- **Pre-DRA**: the penalty starts on the date the transfer was made.
  - In Joe's example, if he lived in a state before implementing DRA '05, the penalty would have started in the month of January, 2014, for a period of 4 months.

TennCare 101
When does the penalty period start?

- 42 USC 1396p(c)(D) & TN **1200-13-20-.08(5)(j)3**.
- **Post-DRA**: the penalty starts when the applicant is “otherwise eligible” for Medicaid but for the penalty period
  - – Financially eligible
  - – Medically eligible

TennCare 101
42 USC 1396p(d)(D)

- (ii) In the case of a transfer of asset made on or after the date of the enactment of the Deficit Reduction Act of 2005, the date specified in this subparagraph is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.

TennCare 101

Calculating the penalty period post-DRA

- Joe gifts $21,888 to his grandson on January 1, 2014: Joe is in Tennessee which adopted DRA '05, and on January 15, 2016, Joe has a stroke and enters a nursing home.
- Joe is unmarried and has $50,000 in his checking and savings account on January 15, 2016.
- When does the penalty period start for Joe?

TennCare 101
Calculating the penalty period post-DRA

- **Question 1**: Did the gift occur during the lookback period?
- If **yes**, then go to Question 2. If no, then the gift does not get reported to Medicaid/TennCare.
- **Question 2**: Is Joe medically eligible?
  – Already in a nursing home, so yes.

TennCare 101
Calculating the penalty period post-DRA

- **Question 3**: Is Joe financially eligible?
  - What is the individual resource limit? $2,000
  - **Is Joe under that limit**?
  - **If no**, then the penalty will not begin until his assets are under the individual resource limit.
  - **If** yes, file the Medicaid/TennCare application, get the denial, wait out the penalty period.

TennCare 101
Calculating the penalty period post-DRA

- Joe's penalty period will run for 4 months beginning from the date of application.
- If Joe had made any other gifts prior to application and during the lookback period, those gifts would have been added to the $21,888 and a penalty calculated on the entire amount.

TennCare 101
Exempt Transfers

- 42 USC 1396p(c)(2) & TN **1200-13-20-.08(5)(i)**
- **Uncompensated transfers which do not trigger a penalty period**
- Transfer of the home (c)(2)(A) or TN 1200-13-20-.08(5)(i)
- Transfer of other assets (c)(2)(A) or TN 1200-13-20-.08(5)(ii-iii)

TennCare 101
Exempt Transfers

- The **home** may be **transferred to**:
  - **Spouse**
  - **A child under 21 or a child who is blind or permanently disabled**

TennCare 101
Home May Be Transferred To:

- The home may be transferred to:
  - A **sibling who has an equity interest and who lived there for a year prior to institutionalization**
  - **Child who resided in the home and provided care to the applicant for the prior 2 years – as a result of the care, applicant did not have to enter into a nursing home** (Caregiver exception)

TennCare 101
Don't Get Confused. . . .

- **Purchase of a life estate in someone else's home is not an exempt transfer unless**:
  - **Purchaser resides in the home for a period of 1 year after the purchase**
- 42 USC 1396p(c)(J) or TN **1200-13-20-.08(5)(h)4**.

TennCare 101
Exempt Transfers

- All **other assets** may be transferred:
  - To the spouse or a third party for the sole benefit of the spouse; (use sole benefit trust if transfer to 3rd party)
  - From the spouse to a third party for the sole benefit of the spouse;

TennCare 101
Exempt Transfers

- **To a disabled child, or to a trust established solely for the benefit of a disabled child** (use a sole benefit trust); or
- To a trust solely for the benefit of a disabled person under age 65 (use sole benefit trust).

TennCare 101
Annuities

- 42 USC 1396p(c)(F)-(G); TN **1200-13-20-.06(3)(c)1**; and **1200-13-20-.06(3)(h)**
  - The purchase of an annuity will be considered a disposal of assets for less than FMV **unless**:
    - State named as first beneficiary (if there is a spouse or disabled child, then state is 2nd)
    - State only gets up to the amount paid out on behalf of Medicaid recipient

TennCare 101
Annuities

- The purchase of an annuity by a Medicaid applicant will be considered a transfer of assets **unless**:
  - Irrevocable and non-assignable
  - Actuarially sound
  - Equal payments with no balloon payment; or

TennCare 101
Annuities – Not Counted as resource if:

- **Purchased with proceeds from a retirement account or an annuity within an IRA**

  (**All interests in an annuity must be disclosed**.)

  (Annuities purchased prior to DRA ‘05 are evaluated under the prior rules.)

TennCare 101
Treatment of Trusts

42 USC 1396p(d)

This section was unchanged by DRA ‘05.

Revocable trusts: All assets titled in the name of the trust will be considered assets for Medicaid purposes.

TennCare 101
Treatment of Trusts

- **Irrevocable Trusts**:
  - Corpus will be counted if:
- There are any circumstances under which payment of principal could be made
- If income is payable, then counted

TennCare 101
Treatment of Trusts

- **Irrevocable Trusts**
  - Transfers to an irrevocable trust are uncompensated transfers and a penalty will be imposed if transferred within the look back period.

TennCare 101
Treatment of Trusts

42 USC 1396p(d)(4) &

TN **1200-13-20-.08(5)(i)1.(ii)(IV)**

- **Exempt Trusts** (no transfer penalty, not counted as a resource)
  - (A) Self-Settled Special Needs Trust

TennCare 101
Exempt Trusts

- **(d)(4)(A) Self-Settled SNT**
  - Established for the benefit of a disabled person under age 65
  - Set up by a parent, grandparent, legal guardian or court
  - Using the disabled person’s money
  - Must contain a payback provision

TennCare 101
Exempt Trusts

- **Self-Settled SNT payback provision**
  - The State is entitled to all amounts remaining in the trust at the disabled person's death, up to the amount of medical assistance paid on behalf of the disabled person.
  - This provision MUST be in the trust to make it exempt for Medicaid purposes.

TennCare 101
Exempt Trusts

(d)(4)(B) Income Only Trust (i.e. Miller Trust)

- Trust made up entirely of grantor's income
- Payback provision

TennCare 101
Exempt Trusts

(d)(4)(C) – Pooled Trusts

- Contains the assets of a disabled person
- Established and managed by non-profit association
- Separate accounts, but non-profit can pool all funds
- Payback provision
- Often used for persons over 65, except in some states

TennCare 101
Putting It All Together

- **Bob, age 82, is not married**. Currently in the hospital after falling and breaking his hip
- His adult son comes to see you because Bob can no longer live alone and will require nursing home care
- His son is concerned about how they will pay for Bob's nursing home care

TennCare 101
Putting It All Together

Bob's assets:

- Condo - $200,000
- Checking account with son $8,000
- Investment account $95,000
- 2007 Honda Accord $7,000

TennCare 101
Putting It All Together

Bob's income:

- Social Security $1225
- Pension $500
- Be sure to document everything that is reported as income and assets! (There may be interest from checking account with son or investment account)

TennCare 101
Putting It All Together

- Bob's total countable resources:
  - $103,000
- Bob's total income:
  - $1775 (but is this the gross amount?)

TennCare 101
Putting It All Together

- Bob’s son reports that Bob cashed in one CD - three months ago and gave the proceeds to the son.

- CD was worth $30,000

TennCare 101
Analyzing the Transfer

- **Did Bob receive anything of value in return?**
- **Did the gift occur during the lookback period?**
- **Was it an exempt transfer?**
- **How long is the penalty period?**
- **When does the penalty period begin?**

TennCare 101
Analyzing the Transfer

- Penalty period = 5.48 months
- The penalty period will not begin until Bob is "otherwise eligible"

TennCare 101
Putting It All Together

- **Lynn and Rob are married**. Rob comes to see you because Lynn, age 85, has advanced dementia and he can no longer keep her at home.
- Rob wants to know whether Lynn can qualify for Medicaid.

TennCare 101
Putting It All Together

Lynn and Rob's assets:

- Home worth $890,000 (no mortgage)
- Joint checking $15,000
- Joint investment account $230,000 (held in their revocable trust)
- 2011 Lexus $30,000

TennCare 101
Putting It All Together

Lynn's income

- Social Security $1,100

Rob's income

- Social Security $1,300
- Retirement income $ 600

TennCare 101
Putting It All Together

- Lynn and Rob live in Tennessee which adopted DRA ‘05 in February, 2006.
- State penalty divisor is $5,472
- Rob is entitled to the minimum MMMNA or Standard Maintenance Amount SMA ($2,003)
- His Maximum Maintenance Needs Allowance (MMNA) is $2,981
- CSRMA – total assets divided in half

TennCare 101
Total Countable Resources

Checking account plus

Investment account equals

- $245,000
- Why doesn’t the home count?

TennCare 101
What is Robert's CSRMA

- Calculating the CSRMA:
- $245,000 divided by 2 = $122,500
- What is Rob's CSRMA?
- What are their excess resources?

TennCare 101
Calculating the CSRMA

- What is Rob’s CSRMA?
  - $119,220
- What are their excess resources?
  - $134,780 (including the individual resource allowance Lynn can keep in her own name)

TennCare 101
Calculating the CSIMA

- What would the CSIMA be for Rob?
- His total monthly income is $1900
- He is entitled to at least the minimum Standard Maintenance Amount (SMA) ($2003) up to the maximum amount of income MMNA ($2,981) with documentation to support extra home expenses
- Where does he get the difference? From Lynn's income after deducting her PNA of $50 and her health insurance

TennCare 101
Prior Transfers

- Lynn and Rob help support their adult child, Mary, who is disabled.
- They gave her $100,000 to help her purchase a home.

TennCare 101
Evaluating the Transfers

- **Did Lynn and Rob receive anything of value in return?**
- **Did the gift occur during the lookback period?**
- **Was it an exempt transfer?**
- **How long is the penalty period?**
- **When does the penalty period begin?**

TennCare 101
Putting It All Together

- The transfer is exempt, so no transfer penalty.
- Lynn and Rob have excess resources to either spend or protect before Lynn can qualify for Medicaid/TennCare.
- Lynn must also meet the medical test for Medicaid/TennCare.

TennCare 101

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