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## MEDICAID ELIGIBILITY FOR LONG TERM CARE

### I. What Is Medicaid?

- A. Medicaid is a federal-state needs-based program providing medical services and assistance for qualified individuals. Fifty percent of the funding comes from the federal government and fifty percent of the funding is provided by the state government.
- B. Contrast Medicaid with Medicare
  - 1. Medicaid is a needs-based program providing health care and long term care based on financial and medical need.
  - 2. Medicare is a public health **insurance** program based on Social Security insured status and eligibility for Social Security benefits.

### II. Eligibility Requirements

- A. Eligibility for Medicaid for nursing home care is based on three eligibility requirements: categorical, income and resource.
- B. Categorical requirements: An applicant must have medical conditions requiring institutionalization, and have been in fact admitted to a nursing home or a hospital or a combination of both for at least 30 consecutive days (unless applying for HCBS-Medicaid/assisted living, under which there is no time requirement).
- C. Income requirements: An applicant's income cannot exceed \$2,199 per month in 2016. If more than \$2,199, but less than the average regional cost of care figure (\$7,781.00 in 2016 for Weld and Larimer Counties), the applicant can still be "income-eligible" through use of a so-called "Miller Trust." (More on Miller Trusts and the so-called "Utah Gap", below).
- D. Resource requirements: An applicant cannot have countable resources of over \$2,000. (If married and one spouse lives in the community, the amount is \$119,220.00 + \$2,000).

### **III. Treatment of Income**

- A. When an applicant has income greater than the Medicaid cap (\$2,199 in 2016) yet less than the monthly cost of a nursing home (\$7,781.00 in Weld and Larimer Counties in 2016); the applicant falls into the "Utah Gap."
- B. If a person is in the Utah Gap, an income trust or a "Miller Trust" must be established. The Medicaid recipient's income is placed in the trust each month. \$79.57 of this income is paid from the trust to the individual as his or her "Personal Needs Allowance." The remainder is paid from the trust to the nursing home. The trustee must account for this process to the Department of Social Services.

### **IV. Treatment of Resources**

- A. Resources fall into two categories: Exempt and non-exempt.
- B. Exempt resources are assets which are not counted in determining the \$2,000 resource limit for Medicaid eligibility purposes.
- C. Examples of exempt resources include:
  - 1. The home, up to \$552,000.00 in value, including contiguous property.
  - 2. One motor vehicle, regardless of its value, if married or if it is used for medical purposes, is handicapped-equipped or is used for employment, as verified by a physician.
  - 3. Personal property so long as it is part of the applicant's immediate property for "creature comforts". If married, all personal property is exempt.
  - 4. An irrevocable funeral and burial or cremation plan.
  - 5. Wedding and engagement rings.
  - 6. Necessary medical equipment.
  - 7. Life insurance with a face value of \$1,500 or less.
- D. Non-exempt resources are counted toward the \$2,000 resource limit.

- E. Examples of non-exempt resources include cash, CDs, money market funds, IRAs, stocks, bonds, cash surrender values of life insurance with a face value in excess of \$1,500, second homes and cars, etc.

## **V. Spousal Impoverishment**

- A. In the past, when one spouse entered a nursing home (the "institutionalized spouse"), virtually all of his or her income was used to pay the nursing home expense. The spouse who remained at home (the "community spouse") still faced the same expenses the couple had together, but with significant reduction in income, thereby rendering that spouse impoverished. Additionally, the couple was forced to use their resources to pay for the nursing home care, which diminished the assets available for use by the spouse at home.
- B. There are two parts to the spousal impoverishment provisions of the law: income and resources.
- C. Income Provisions
  - 1. The community spouse is guaranteed a minimum monthly income, called the "Minimum Monthly Maintenance Needs Allowance." This amount is currently \$1,967.00 per month, and is adjusted annually on July 1. If the community spouse's income falls below this level, that portion of the institutionalized spouse's income necessary to bring the community spouse to the guaranteed level is contributed to the community spouse.
  - 2. The Minimum Monthly Maintenance Needs Allowance can be increased if it can be shown that the community spouse's shelter expenses (mortgage, rent, utilities) exceed 30% of the Minimum Monthly Maintenance Needs Allowance, or if exceptional circumstances exist that would create severe financial distress for the community spouse without an increase in the contribution from the institutionalized spouse. The maximum amount that can be available for the community spouse is \$2,981 in 2016. This figure is adjusted annually on January 1.
- D. Resource Provisions
  - 1. The community spouse is permitted to keep up to \$119,220 in 2016 of the spouses' countable resources. This is called the "Community Spouse Resource Allowance."
  - 2. The community spouse does not have to use any of the funds set aside as the Community Spouse Resource Allowance for the care of the

institutionalized spouse. The balance of the couple's countable resources are set aside to the institutionalized spouse. The institutionalized spouse must first spend them down to \$2,000 before he or she is resource eligible for Medicaid.

3. The Community Spouse Resource Allowance can be increased under certain circumstances.

## VI. Spend Down

- A. When a Medicaid applicant has more than \$2,000 in countable resources, he or she must spend down to \$2,000.
- B. Spend down can be accomplished in several ways.
  1. Use the countable resources to pay for the nursing home care, i.e., pay privately to the nursing home until the countable resource amount for the institutionalized spouse is below the \$2000 limit.
  2. Pay off legitimate debts.
  3. Convert countable resources to exempt resources. For example, excess resources could be spent on repairs and improvements to the principal residence, a newer car, personal property, prepaid burial and funeral plans, non-covered medical equipment, etc. In addition, for married couples, excess resources may, in some cases, be used to purchase an annuity, which pays income for the life of the community spouse.

## VII. Transfers of Assets - Caution!!!! Changes have occurred due to the passage of the Deficit Recovery Act 2005

- A. Frequently, individuals who have excess resources to qualify for Medicaid attempt to become eligible by giving away their property. If a voluntary transfer is made, for less than fair market value and for the purpose of securing Medicaid eligibility, the applicant may incur an eligibility penalty, meaning that he or she will not be eligible for Medicaid benefits for a certain number of months depending on the value of the property transferred. The penalty is calculated by dividing the value of the asset transferred by the average monthly cost of nursing home care in the state, which in 2016 is \$7,563.00. The answer to the equation is the number of months' penalty. **Beware, however,** that the penalty doesn't begin to run unless the applicant is "otherwise eligible" for Medicaid, i.e. is sick and poor **and** applies for Medicaid. Unlike the previous law, the penalty doesn't begin to run from the date the transfer was made, but on the date of eligibility (due to the filing of the Medicaid application) except for the penalty.

- B. Review of the Lookback Transition since the passage of the DRA 2005.
- C. With proper planning, single individuals can usually save up to 50% of their assets through a gifting plan.

**VIII. Estate Recovery Program -Nothing in life is free.**

- A. In order to recoup Medicaid payments made, Colorado law permits the state to place a lien against the real estate of a Medicaid recipient and/or to file a claim in the probate estate of a deceased Medicaid recipient.
- B. There are techniques for avoiding estate recovery, such as joint tenancy, life estates and interspousal transfers. However, be cautious in changing title to property as a transfer penalty can result.

**NOTE: THIS DOCUMENT IS A SUMMARY AND IS FOR INFORMATIONAL PURPOSES ONLY. BECAUSE LAWS MAY CHANGE AND THE RESULTS MAY VARY BASED ON PARTICULAR FACTS AND CIRCUMSTANCES, CONTACT AN EXPERIENCED ELDER LAW ATTORNEY PRIOR TO ACTING ON ANY SUCH INFORMATION.**