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**Medicaid**  
**for the Elderly in Colorado**  
**By Paul Mitchell**

1. What is the difference between Medicaid and Medicare?  
Medicaid is a joint federal-state program of medical assistance to eligible needy persons. Medicare is *health insurance* for persons age 65 & older and for some disabled persons.
2. When is a person eligible for Medicaid?  
Usually, for the elderly, the recipient must be age 65 or older, a U.S. citizen (or a resident) and financially needy.
3. Will Medicaid pay for the cost of nursing home care?  
Yes, for a recipient who qualifies under the program.
4. What are the eligibility criteria for an elderly person?  
The recipient must have been institutionalized for thirty (30) days or more, require nursing home placement as ordered by the physician and meet the income and asset tests for Medicaid.
5. What is the income test for a recipient?  
The recipient may not receive gross income of more than \$5,995 per month (2008) for the Denver Metro Area. (This amount goes up slightly each year and is different in other regions of Colorado.) If an applicant's gross income exceeds \$1,911\* but is less than the maximum, then the applicant's income must be funneled through an income or "Miller" trust.  
\*increases annually.
6. How is income counted to determine eligibility?  
Federal law uses a "Name-on-the-Check" rule. All income paid solely to the applicant is counted and joint income is divided equally between the applicant and his or her spouse. The spouse's income is not counted!
7. What are the asset rules for Medicaid recipients?  
The Department of Human Services determines that recipient's assets are either exempt (not countable) or countable. In brief, the recipient may keep only \$2,000 of countable assets as a resource allowance for the eligible Medicaid recipient.
8. What assets are not countable?  
The home is the most significant asset that is exempt. Other items that the Department does not count are one motor vehicle,

jewelry and personal property not exceeding \$2,000 in value, a life insurance policy or policies with cash value if the face value(s) are \$1,500 or less, an *irrevocable* burial plan of any value, a *revocable* burial fund of up to \$1,500 and a burial plot. (Please note that the value allowed for a revocable burial fund will be reduced by the value of the irrevocable burial plan and the face value of life insurance whose cash value is exempt.) Commercial annuities that meet the strict tests for Medicaid rules are not counted as assets but the monthly cash flow from them is included in income.

9. If I am an elderly person and must enter a nursing home and have more than \$2,000 in countable assets, when will I be eligible for Medicaid to pay for my nursing home expense?

If you are a single person and meet the income and other criteria for Medicaid, you must use up or "spend down" your assets until you retain only \$2,000 in countable assets. Married persons may retain more assets.

10. What are the rights of the Community Spouse?

The spouse of the Medicaid recipient in a nursing home, the Community Spouse, is entitled to a minimum amount of assets and income each month from the Community Spouse's sources of income. The Medicaid program will allow payment, if the need is sufficient, of a supplemental income from the recipient's or Institutionalized Spouse's income to the CS.

11. What allowances are available to the Community Spouse?

The rules permit a Community Spouse to retain up to \$104,400 (2008) of assets that the couple own jointly or separately: the Community Spouse Resource Allowance, "CSRA." Congress increases the CSRA slightly each year. The Community Spouse is also entitled to a Minimum Monthly Maintenance Needs Allowance (MMMNA) that includes a basic allowance (eff 7/1/07) of \$1,711/mo but can be increased to a total of \$2,610/mo under limited circumstances if the recipient qualifies for the maximum "excess shelter allowance" and other adjustments.

12. How is the Community Spouse paid the

The monthly income allowance is determined from the income and expense information available from the Medicaid

MMMNA?

application. For example, a husband is in the nursing home and qualifies for Medicaid. His income is \$1,369 per month; his wife's income is \$457 per month and she does not qualify for the excess shelter allowance. The Department would compute her monthly income allowance as follows:

MMMNA: basic allowance	\$1,711
Plus Excess Shelter Allowance	-0-
Total MMMNA	\$1,711
Less her income/mo.	- <u>457</u>
Income allowed to Wife	\$ 1,254
The husband's income	\$1,369
Personal Needs Allowance	<u>- 50</u>
A husband's net income	\$1,319
Less payment/mo. to wife	- <u>1,254</u>
Balance paid to nursing home	\$ 65

In this example, the husband pays \$1,254 to his wife from his income while he is in nursing home.

13. What if the nursing home spouse's income is not enough to raise his or her spouse's income to the spouse's income allowance?

The spouse may claim hardship and apply for additional assets to be allocated to the spouse. The extra resources would generate sufficient income to raise the spouse's total income to the Minimum Monthly Maintenance Needs Allowance.

Qualifying commercial annuities may also be purchased by the Community Spouse to increase the income of the CS and to reduce countable assets.

Because the regulations in this area are complex, consult an elder law attorney.

14. Can I transfer assets to my children to qualify for Medicaid? You may transfer assets, but beware! After the transfer of assets, you can be ineligible for Medicaid for a period of up to sixty (60) months! The donor of a gift will be ineligible for one month for every \$5,546\* given away. A gift by one spouse is equally counted against the other. Transfers between spouses, however, are not counted. Penalties for transfers made after February 8, 2006 do not start until the day a person applies for Medicaid and is otherwise eligible. \*Increases annually.
15. Will I risk making myself ineligible for Medicaid if I purchase an annuity? Yes. For *qualifying* immediate annuities, no disqualifying transfer results. Beware! Colorado regulations govern this subject. You must follow the regulations carefully to preserve Medicaid eligibility after the purchase of the an annuity. Deferred annuities are counted as assets. If the purchaser is the owner, the funds in the annuity are an asset and no transfer has occurred. Consult an "elder lawyer" before purchasing an annuity.
16. What if the Medicaid applicant's income each month is more than the maximum permitted by Colorado and Federal law? Applicants in the Denver Metropolitan area with more than \$1,911 per month and less than \$5,995 per month, the "Gap," may qualify by using a special income trust permitted by law.
17. Will the State seek reimbursement for payments made to the nursing home for the cost of the recipient's care? Yes. Colorado has an estate recovery program, and it is entitled to reimbursement for expenditures made for the benefit of a Medicaid recipient at the death of recipient from the recipient's estate. If the recipient is survived by a spouse, however, no recovery is permitted at the death of the recipient and the recovery cannot be postponed until the death of the surviving spouse. A child who qualifies as a "caretaker child" and who receives the home from deceased Medicaid recipient may also take the home free from the State's claim. (Exceptions apply to certain other categories of individuals.)
18. How is the Medicaid claim satisfied? The State files a claim against the estate of the deceased recipient. Since only property that the deceased recipient owned in his or her sole name is in the estate, joint tenancy assets, real estate in which the deceased reserved a life interest,

annuities and life insurance paid to persons other than the deceased's estate and other "nonprobate" transfers are not available to satisfy the claim.

19. Is it worth consulting an attorney when considering Medicaid?

Yes, if the attorney can give competent advice regarding the Medicaid process. Most attorneys who practice in the fields of estate planning and probate do not know or understand the impact of the Medicaid process on preserving their clients' assets and providing adequate support for the spouse at home. "Elder Law" attorneys, however, can give advice that is accurate and that can preserve the Medicaid applicant's assets. The attorney, however, should be consulted *before* the client applies for Medicaid.

20. A note about Paul Mitchell

The National Elder Law Foundation has certified Mr. Mitchell as an Elder Law Attorney. Few attorneys have obtained their certification in this emerging area of specialization. An applicant must pass a national examination, provide evidence of depth and breadth of experience in the area and have satisfied the peer review requirements in order to obtain this certification. Colorado does not certify specialists in any field. The American Bar Association has approved the elder law certification.

**Please note: The laws and regulations affecting this area of administrative law change frequently. Please be sure to verify that the information set forth in this document is currently accurate. Revised April 8, 2008. This handout is meant only for educational purposes and should not be viewed as legal advice. Issues discussed have been simplified and abbreviated. Many exceptions to the rules have been omitted. The reader should consult with an elder law attorney concerning the issues raised in this handout.**