

# Chapter 4

## Medicaid

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### **SYNOPSIS**

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The purpose of this chapter is to highlight important information about Medicaid. The information is provided for general educational purposes. This is an important topic that is also subject to much potential change. As such, all numbers and qualification criteria must be verified with a professional or other appropriate advisor.

### **4-1. Medicaid**

Medicaid is jointly funded by the federal government and individual states. It is a medical assistance program for low-income recipients of public benefit programs. Medicaid provides more complete coverage than Medicare, without significant payments from the beneficiaries. Only low-income persons with limited resources who are elderly, blind, disabled, or are low-income families can receive Medicaid. Eligibility guidelines, services, and rates can vary by state, and it is therefore important to seek guidance from an elder law attorney in the state where you intend to file for Medicaid. Elder law is the legal practice of counseling and representing the elderly, the disabled, their families, and their advocates about healthcare and long-term care planning, public benefits, surrogate decision-making, legal capacity, and the disposition and administration of estates.

#### **Who Receives Medicaid?**

Medicaid was created as an add-on health benefit to two welfare programs: Supplemental Security Income (SSI) and Aid to Families with Dependent Children (AFDC). AFDC was replaced by the Temporary Assistance for Needy Families (TANF) program. Recipients of either SSI or TANF, or those who would qualify for AFDC if it still existed, are eligible for Medicaid, as are Old Age Pension (OAP) recipients who are disabled or more than 64 years of age. People who would continue to receive those benefits except for earned income or cost-of-living increases often continue to receive Medicaid. Women with breast or cervical cancer may also qualify if they lack health insurance.

The eligibility rules for elderly or disabled people generally use the SSI income and resource rules. Total resources (bank accounts, property, etc.) may not exceed \$2,000 for an individual, or \$3,000 for a married couple. Some property does not count as a resource, like your residence, your car, some funeral items or plans, wedding jewelry, and life insurance with a cash value of \$1,500 or less. For long-term care (see section 4-2, below), the income cap is three times the SSI payment standard for one, or \$2,742 per month for 2023. For additional income and resource rules for couples, see “Spousal Protection” in section 4-2, below.

There are many additional eligibility rules, including citizenship requirements, special requirements for long-term care, and severe transfer restrictions (see “Estate Planning” in section 4-2, below).

### **What Services Are Covered?**

In Colorado, Medicaid covers most necessary services, including hospital, nursing home, physician, prescriptions, medical supplies and equipment, skilled home care (nurse or certified nursing assistant required), and assistance with transportation. In addition, non-skilled or personal in-home services are provided by Home and Community Based Services (HCBS) programs for specific groups such as the elderly and people with developmental disabilities, mental illnesses, AIDS, or other chronic disabilities.

While there is a co-payment for some services (\$.50 to \$10 or more in Colorado), Medicaid generally pays the entire charge approved by the Medicaid program. Additionally, most nursing home residents must pay all but \$95.97 per month of their income toward their care. Medicaid is the payor of last resort, so other insurance, including Medicare, must pay first.

Visit [www.healthfirstcolorado.com](http://www.healthfirstcolorado.com) for a list of covered services.

### **How to Apply for Medicaid**

Apply for Medicaid at your county Department of Social or Human Services. You can also apply online at <https://coloradopeak.secure.force.com>. If you are receiving SSI, bring your SSI award letter. If you are eligible for SSI but are not receiving it, first go to your local Social Security office to apply for SSI because once you are eligible for SSI, you are also eligible for Medicaid and will have to provide less information as part of the Medicaid application process. You can apply for OAP and Medicaid at the county Department of Social Services at the same time. Nursing home residents apply in the county in which the nursing home is located.

You will need to be able to verify income, resources, age, and disability, if any. You should bring the following documents with you:

- ▶ Proof of all income, including investment income, if any;
- ▶ Bank and investment account statements;
- ▶ Copies of title or other proof of ownership of any real estate or other assets;
- ▶ Copies of life insurance policies;
- ▶ Burial plan, if you have one;
- ▶ Proof of age, such as a birth certificate;
- ▶ Information about any additional health insurance coverage; and
- ▶ Medicare and Social Security cards.

While you may be asked to come back for another appointment with any documentation that is lacking, you have a right to sign the first page of the application when you first come in. This serves as your application date. If you cannot travel to the office, an agent under power of attorney can apply on your behalf.

Nursing home residents should tell the nursing home staff that they are applying for Medicaid. The law prohibits a nursing facility from requiring a third-party guarantee of payment.

## **4-2. Long-Term Care**

Nursing home and Home and Community Based Services (HCBS) are available only when there is a medical need for nursing home-level care. HCBS may be available to help a recipient stay in his or her home, but only when the cost to the program is less than the cost of a nursing home. Twenty-four-hour care is not available in the home, since it would cost more than nursing home care.

### **Program of All Inclusive Care for the Elderly (PACE)**

Another option available to older adults is known as the Program of All Inclusive Care for the Elderly (PACE). This program provides comprehensive health care and supportive services for people 65 years and older. In the Denver metro area, the PACE contract is currently managed by InnovAge ([www.innovage.com](http://www.innovage.com) or (844) 704-9613). In Colorado Springs, the PACE contract is managed by Rocky Mountain PACE ([www.rmhcare.org](http://www.rmhcare.org) or (719) 314-2327); in Pueblo, it is managed by InnovAge ([www.innovage.com](http://www.innovage.com) or (719) 738-8491); in Delta and Montrose, it is managed by Senior CommUnity Care ([www.seniorcommunitycare.org](http://www.seniorcommunitycare.org) or (970) 835-8500 in Delta and (970) 252-0522 in Montrose). For more information, contact your local PACE provider or your county Department of Social Services.

### **Estate Planning**

Even with the higher income cap, many people who have income too high to qualify for Medicaid long-term care are still unable to pay for nursing home care (since nursing homes charge more than \$2,742 per month). In those cases, a trust — sometimes known as an “income trust” or “Miller trust” — may set aside enough income to make an individual eligible. Other forms of estate planning may preserve some assets. However, transfers to create eligibility can result in severe penalties, particularly if made within five years before applying for Medicaid. Because of the possible penalties, any financial planning should be done by an attorney with Medicaid expertise.

### **Spousal Protection**

The “Spousal Protection rule” allows a spouse who remains at home to avoid poverty by keeping between \$2,288.75 and \$3,715.50 of the couple’s monthly income, while the institutionalized spouse receives Medicaid. The community spouse can own exempt property as described above under general Medicaid eligibility rules and up to \$148,620 in non-exempt resources, such as investment, retirement, and bank accounts. The spousal protection rules are indexed to the Consumer Price Index and change yearly.

## **Estate Recovery**

Under a program known as the Colorado Estate Recovery Program, the state can recover Medicaid expenditures from the recipient's estate after he or she dies. The estate recovery program applies to people who were 55 years of age or older when they received such assistance, as well as to all institutionalized individuals. The program permits the state to file a claim against an individual Medicaid recipient's estate, including a lien on the home. After the person dies, the state can enforce the lien and recover the expenses paid by Medicaid from the proceeds of the sale of the property. No action is taken against the property while the Medicaid recipient is still living.

The home may be protected from recovery if a surviving spouse or dependent child is still living there. Additional exceptions apply to the estate recovery. It is important to consult with an attorney knowledgeable about Medicaid eligibility concerning these provisions, since they are complex and subject to change.

## **Look-Back Period**

Transfers made on or after February 8, 2006, without fair consideration are subject to a five-year look-back period. If a transfer without fair consideration occurred within in the lookback period, the Medicaid applicant will incur a so-called period of ineligibility. This makes the application process more difficult and could result in more applicants being denied for lack of documentation, given that they will need to produce five years' worth of records.

## **Penalty Period Start Date**

The start of the period of ineligibility for a transfer of assets is the first day of the month of the transfer or "the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care." So, what does this mean? First, the penalty period does not begin until the individual moves to the nursing home or requires a level of care that is equal to nursing home care. Second, the penalty period does not begin until the person would be eligible for Medicaid, meaning until he or she has spent down to \$2,000 (or a different asset limit in some states).

## **4-3. Medicaid Payment for Medicare Premiums, Deductibles, and Co-Payments**

People whose income makes them ineligible for Medicaid may still qualify for one of three Medicaid programs that pay Medicare-related costs.

A Qualified Medicare Beneficiary (QMB) receives payment by Medicaid of all Medicare premiums, deductibles, and co-pays. The QMB income maximum is \$1,235 for a single person, and \$1,663 for a married couple. The resource limit for a single person is \$10,590 and \$16,630 for a married couple.

Similarly, a Specified Low-Income Medicare Beneficiary (SLMB) receives only payment of Medicare premiums. The SLMB income maximum is \$1,478 for a single person or \$1,992 for a married couple.

Finally, a similar program called QI-1 can provide assistance with Medicaid premiums with an income of up to \$1,660 for a single person and \$2,239 for a married couple, but any

assistance is subject to the availability of state funding. The resource limit for a single person is \$10,590 and \$16,630 for a married couple.

Note that some earned income may be excluded for all three of these income caps, and that the income caps change annually as poverty figures are changed.

#### **4-4. Resources**

For more information about Medicaid, contact an appropriate professional, call your local Area Agency on Aging, visit the State of Colorado's website at [www.healthfirstcolorado.com](http://www.healthfirstcolorado.com), or visit your local county department of social services office.

See a list of county departments of social services in section 5-6, "Resources."

