MEDICAID
QUALIFICATION AND PLANNING

(Colorado Resident)
[dated material - 2013]

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WHAT IS MEDICAID?

When our health has deteriorated to the point that we need special health care, some of us may qualify for MEDICAID. This is a government welfare program to pay medical, assisted living and nursing home costs. MEDICAID is different from MEDICARE. MEDICARE is a limited insurance program, regardless of income or assets. When MEDICARE benefits run out, we need to do one of three things to pay for continuing medical costs:

1. Pay out of our own pocket;

2. Pay with the help of PRIVATE insurance (such as health or long-term care insurance);

3. Qualify for MEDICAID so that the government pays the additional medical costs.

WHAT ARE THE FINANCIAL QUALIFICATIONS FOR MEDICAID?

There are two financial tests – Income and Assets:

1. <u>INCOME</u> of no more than $2,130.00 per month (such as social security, interest, dividends, retirement accounts [IRA, 401(k), etc], and annuities). This amount changes every year – ie goes up very slowly. The income belonging exclusively to the stay-at-home spouse is NOT counted no matter how much it may be, except for any annuity income as described below;

AND

2. ASSETS of less than $2,000.00 (including personal property, checking accounts, savings, retirement funds, investments, non-residential property). Does not change from year to year;

  a. But for married couples, for the one who is going to stay at home, he or she must have less than $115,920.00 (this changes every year), plus the $2,000 of the institutionalized spouse, in total assets between them;

  NOTES:

  1) If you are married, the assets of BOTH spouses are counted (unless exempt as explained below) even for the assets of the spouse who is not going to the nursing home;
  2) Prenuptial agreements are disregarded, and inheritances to the stay-at-home spouse are counted. Thus, even though there may be separate marital property, MEDICAID includes all of it.

ARE ANY ASSETS EXEMPT FROM THE LIMITS?

YES!

The following assets are exempt from the $2,000.00 maximum, AND from the $115,920 described above for married couples:

1. The equity in your home up to a maximum of $536,000 in equity. It must be in your name (or with your spouse). If a spouse can live at home, then there is NO maximum. Do not make your children owners of your home (even joint tenancy), lest your home may lose its exempt status or you lose your qualification for MEDICAID. It is exempt even if you are living in a nursing home, no matter how ill you may be. Your home is not exempt if ownership is in your Trust. You can rent out your home, but the rental income will be subject to the Income Test.

  NOTES:

  1) You can own your own home even if you must live in an assisted living facility and can qualify for Medicaid. Because of the income limits and that rent is income, it is expected that a family member who will eventually inherit the home will pay all of the home's expenses (real estate taxes, insurance, repairs and upkeep), even though they are not paying you any rent);
  2) You should sign a form stating your intention to return to your home, even

if you are very ill and could not really live there again

2. One personal car;

3. Personal property located in your home and in the assisted living facility. If married, ALL personal property owned by husband and wife is exempt;

4. Wedding and engagement rings of any value;

5. Medical equipment of any value;

6. Life insurance if face amount (what paid on death) is not more than $1,500, even if cash surrender value is greater. Or, if face amount is greater than $1,500, then cash surrender value is counted as part of the $2,000 limit. However, TERM life insurance is exempt no matter the amount of coverage – because there is no cash surrender value for TERM life insurance;

> **NOTE:** Do not buy term life insurance during five-year "look-back" period, since the premiums paid (such as a single-premium paid up policy) will be considered disqualification for a period of time

7. Prepaid funeral and burial plans, and burial plot, which cannot be cancelled or refunded.

IS ANY OF THE PATIENT'S <u>INCOME</u> EXEMPT FROM THE LIMITS?

NO! BUT INCOME OF STAY-AT-HOME SPOUSE IS EXEMPT.

1. However, if a person's monthly income is more than $2,130 but less than the average monthly cost for nursing home care, qualification may still be possible. This average care cost is different depending on location. For example, in the Denver Metro area it is $7,518.00 per month. Check with Social Services to see what it is in the area where you live) The examples used here are for a Denver resident.

2. The income that is greater than $2,130, but less than $7,518, is called the "Income Gap". An INCOME GAP TRUST can be set up to collect this extra income and pay it to the nursing home so that the person still qualifies for MEDICAID to cover the cost shortage for nursing home care. This trust can be set up with the help of the county Social Services at the time application is made for MEDICAID. All income in the trust eventually goes for the care of the patient. When the patient dies, any money in the INCOME GAP TRUST is paid to the State. Thus, this income can neither be paid to, nor saved for, family members. The INCOME GAP TRUST is a way to qualify for MEDICAID, not to save money for the family.

3. And, if total income for the person going into nursing home is greater than the average monthly costs for nursing care, then the person CANNOT qualify for Medicaid even if using an INCOME GAP TRUST. Note: we do NOT include the other spouse's income for this purpose. Thus, if the person in nursing home collects more than $7,518 per month in income, then he or she cannot qualify for MEDICAID, even if the actual costs of nursing home is more than $7.518.

4. All of the income of the stay-at-home spouse is exempt (it would not disqualify the patient from Medicaid no matter how much income the stay-at-home spouse collected – even if collecting more than $7,518 per month).

5. However, if the stay-at-home spouse has income that is too low (under $$1,898 per month), then income from the nursing home spouse can be given to the stay-at-home spouse so that the stay-at-home spouse has at least $1,898 per month to live on.

WHAT ABOUT GIFTS I MADE BEFORE I APPLY FOR MEDICAID?

When an application for MEDICAID is made (normally at the time MEDICARE has expired or when your money to pay nursing home costs has run out), you will be asked if you gave away any assets in the past **FIVE** years (this is called the "look-back period"). Selling of assets during this "look-back period" for the full price is not a problem. Normal gifts for birthdays and holidays are also not considered. A gift of money, giving away real estate, or selling something for less than it is worth, is considered and can <u>cause a delay in qualifying</u> for Medicaid.

If you <u>gave away</u> something of value within the five year "look-back period", then you are DISQUALIFIED from collecting MEDICAID for a period of time (not forever). This period of time is figured by taking the amount of the gift (say it was $70,230 made on January 1, 2010), then dividing it by the average Colorado cost of nursing home care (in 2013 it is $7,023.00). This will equal the number of months from the DATE YOU ARE OTHERWISE QUALIFIED FOR MEDICAID that you cannot be on MEDICAID. In our example, a person would be disqualified for <u>10 months</u> from the date they apply, and would otherwise qualify, for Medicaid. Until that period of time has expired, they would have to pay for the nursing home care themselves EVEN THOUGH they do not have the money to pay for Medicaid (since they are then qualified for Medicaid – they have no money to pay nursing home). This is a very, very harsh situation if there is no family or there are no friends to pay for care until the "disqualification period" has expired.

If a person has a trust (such as a revocable or living trust) from which gifts were made, the "look-back period" is also FIVE years. Additionally, assets in a Trust at the time of application for Medicaid are counted (not exempt) even if the Trust owns a home which would be exempt if owned personally by the patient. So, if you want Medicaid, do not have your home in a trust when you apply.

Before you apply for MEDICAID, you must transfer ownership of your home back from the trust to you, and cancel any beneficiary deeds you have already signed.

IS IT LEGAL TO CONVERT "COUNTABLE" ASSETS TO "EXEMPT" ASSETS SO I CAN QUALIFY FOR MEDICAID?

YES!

For example, you may more than $2,000 in savings which might disqualify you – that is, put you over the $2,000.00 Asset limit. But if you did not have the savings, you could qualify for MEDICAID. For example, say you have $10,000 in savings. You can keep the $2,000, but the extra $8,000 can be spent on certain things:

1. You could spend the $8,000 on your home - which is exempt. If you have a home mortgage, you could pay it off or reduce the amount owed; or improve your home by remodeling, adding a room, or making improvements to help you live there as long as possible. In this way, you can make non-exempt assets into exempt assets so that you can qualify for MEDICAID when you need it. (Note: keep in mind that if you are not married, and your home is worth more than $536,000.00, the excess over this amount is NOT exempt. If you are married, and one spouse is living at home, then there is no limit to the exemption.)

2. You can also buy a more expensive home, but you must live in it for a while before going to a nursing home. If you live on acreage, several lots, or a ranch, the entire area is considered your home – and therefore exempt.

3. Buy a more expensive car to replace your car. A second car is not exempt;

4. Buy some personal property for the nursing home room in which you may live - new TV, radio, comfortable chairs, recliners, decorations, etc. For the stay-at-home spouse, you can buy new personal property for the home, such as new furnishings, and other things that will make life more comfortable.

5. Buy any needed medical equipment instead of renting it.

6. Prepay funeral and burial plans. If the payment is irrevocable (cannot get a refund), then any amount can be spent. If you can get a refund, then limit is $1,500.

7. Pay off any bills and debts.

8. Annuity. IF MARRIED, you can buy a single premium annuity (where the annuity is fully paid at the time of purchase) for the stay-at-home spouse. However, if the income generated by the annuity, plus other income of the stay-at-home spouse, is greater than $2.130, then there may be a period of time of MEDICAID disqualification. Benefit of annuity is that the annuity income to stay-at-home spouse continues even after death of nursing home spouse. Detriment of annuity is that the annuity income will reduce the income that could be transferred from the nursing home spouse to the stay-at-home spouse (thus, you cannot use both sources of income to maximum levels). If the final payment on the annuity is a "balloon" payment available to your family, then it is NOT exempt. A balloon payment is exempt if it is payable to the state (in this case the state must be a remainder beneficiary if the annuity payments are not fully paid out by the time of the death of both spouses and any minor children).

NOTE ON KEEPING YOUR HOME

1. If you qualify in all other ways, you can keep you home even though you are in an assisted living facility;
2. Question is how to pay the expenses of the home (real estate taxes, homeowner's insurance, utilities, repairs, and maintenance). If you rent it out, the rental income will cause you to be above the income limits (disqualified from MEDICAID), and all income has to go to the State anyway (not used to pay home expenses);
3. The State will allow family members (who may inherit your home upon your passing) to pay the expenses – whether or not they are living in the home;
4. Someone not in the family may live in the home, if not pay rent, and if they directly pay the expenses, not to you.

WHAT CAN I DO NOW TO QUALIFY LATER ON?

Here are some suggestions:

1. If you probably will not need nursing-home care for at least five years, but will likely need it after that:

a. Actively convert non-exempt assets into exempt assets as described above.
b. After you have converted as much of your assets to exempt assets as possible, figure out if you still have assets that you must give away in order to qualify.
c. If you have any excess assets, then give them away and then wait five years before applying for MEDICAID;
d. After the gifts are made, be careful not to collect any new assets that will disqualify you;
e. You must be willing to "go broke" and hope you do not need nursing home care for five years;
f. You may want to keep enough savings to pay of nursing home care in case you need care before the five years has expired – see explanation below.

2. If you need nursing-home care very soon:

The goal here is to enable you to pay for nursing home care out of your own funds until you can qualify for MEDICAID. So, BEFORE you apply for MEDICAID:

a. Convert as much as possible into exempt assets (home, etc).

b. Then calculate how much you have in excess assets.

c. Then figure out your monthly income that could be used for nursing home care.

d. You can then pay for nursing home care with your excess assets along with your monthly income, until your excess assets are gone. Then you can qualify for MEDICAID. For example, if you have $100,000.00 in excess assets (after you converted as much as possible to exempt assets) and $1,388.00 a month income from Social Security, then based on nursing home care of $6,623.00 a month, it will take 20 months to use up the $100,000 and your Social Security income (the $100,000 plus $1,388.00 monthly Social Security income will pay nursing home for 20 months). Then, after this 20 months of private pay in a nursing home, you could qualify for MEDICAID to take over payments. All of these numbers are estimates – but they help give an idea of how it works.

e. It is important to also check out the ACTUAL costs of nursing home care where you might want to go. The actual costs may be more than $6,623.00 per month. Because you are saving enough to pay for your own care, you will want to see what those costs will be. Depending on your health, you may want to save more, or less, to pay your own nursing home costs until you can qualify for MEDICAID.

f. A problem is that it is very difficult to figure out how much to keep in order to pay nursing home care - actual costs will not be known until we know specifically what kind of care will be needed and for how long before the disqualification period is up. We must consider your present health situation, and your comfort or discomfort level in giving away assets.

WHAT PROBLEMS MAY COME UP IF I GIVE AWAY ASSETS?

1. We do not know if we will have to live in a nursing home (also called assisted living facility), or for how long. Hopefully, our health will stay good enough to avoid moving to a nursing home, until we pass away. If health is deteriorating, then perhaps planning for Medicaid is wise.

2. You will lose whatever financial independence you had. Keep in mind that a person qualifies for MEDICAID because they do not have sufficient finances, and they need to be on welfare. Many people simply do not want to lose their financial independence before they need Medicaid;

3. Although the gifts are not income to whomever receives the gifts, there could be income tax if the asset is sold. For example, if you have corporate stock that is worth more than what you paid for it, if you give it away, the recipient of your gift has the same cost basis as you. Then, if they sell the stock, they have to pay capital gains income tax on the gain over your cost basis. However, if you did not make a gift, such that the stock is transferred at death (inherited), then the cost basis is "stepped up" to the date of death value - thus avoiding the tax on the gain. This problem is also true for real estate given away that has increased in value since the time you purchased it. These matters should be reviewed by your accountant/CPA before you decide what to do;

4. If you believe your family will take care of paying the bills if you give them the money/assets now, be VERY CAREFUL before you make this decision. Things do not always turn out the way we expect – "Murphy's Law" if anything can go wrong, it will. Whoever gets your gifts may have their own problems in keeping the assets: divorce, creditors, unpaid taxes, bankruptcy, incapacity from accidents, or death. It may not be realistic to give away the assets with the expectation that these people will continue to help you out if you need the money back. This could be a special problem if you need nursing home care earlier than you expected, or the ACTUAL nursing care costs are more than expected, and now you do not have enough money to pay for your own care - and the persons to whom you gave the money may not, or cannot, help pay your expenses.

5. If you give away assets without paying off your own mortgage, bills, and debts, then your creditors could come after you and those to whom you gave the assets.

A NOTE ABOUT TRUSTS

1. Having a trust does NOT help qualify for MEDICAID. If you have control over the trust and its assets, then it will be considered as your own assets (subject to the $2,000 asset limit).
2. If you set up an irrevocable trust within five years of applying for MEDICAID, even though you do not have any control, then the assets will disqualify you. If you set up an irrevocable trust more than five years before you apply for MEDICAID, then the trust will NOT disqualify you – it is just like giving away your assets more than five years before you apply for MEDICAID.
3. If you set up an irrevocable trust more than five years before applying for MEDICAID, you may still qualify for MEDICAID. However, be very careful if the assets can be used for your benefit, or if you have ANY control over the trust, otherwise this kind of trust could disqualify you, and prevent you to use the trust assets for your care. Because the State is paying for MEDICAID and never has enough money to take care of everyone, you should be aware that the State will make many restrictions on people getting MEDICAID who have enough money to pay for their own care, and not be on the State's MEDICAID welfare program.

WHAT PAPERS SHOULD I HAVE NOW?

1. Whether or not you make a plan to qualify for MEDICAID, you should have the following documents prepared with the help of a knowledgeable lawyer:

a. Will;
b. Health Care Power of Attorney;
c. General (Financial) Power of Attorney;
d. Living Will (Declaration as to Medical and Surgical Treatment;
e. Memorandum Disposition of Personal Property;
f. HIPAA Authorization and Release.

Having these papers will help keep costs down, or completely avoid, court proceedings during incapacity (such as conservatorship or guardianship). It is a good idea that you give a copy of these papers to your personal representative and/or agent. You or your lawyer can hold the originals;

2. Your lawyer can also help you to have the correct ownership of your assets, depending on your goals. For example, joint tenancy may or may not be a good idea; or a "pay on death" designation might be appropriate (or not); or the beneficiary designations on your retirement accounts and life insurance should be corrected;

3. If you want to plan to qualify for MEDICAID, you may need to sign deeds for real estate; bills of sale; change of ownership forms for company stock; lease agreements for home; new bank account forms; income qualifying (Miller) trusts; annuities; and others. Only after carefully reviewing your personal goals, your family dynamics, your income, and your assets and debts, can your lawyer and tax advisor determine what may be best for your future.

MESSAGE: This Information Sheet is intended to provide general information only. It is not intended to cover all of the legal issues that arise in each situation. It is suggested that none of the documents described above should be signed without first talking to an attorney who is knowledgeable about such matters. This material is dated and the enclosed information may change because of new laws, regulations, or other impacts.

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