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**OVERVIEW OF HEALTH BENEFITS FOR SOCIAL
SECURITY DISABILITY AND SSI DISABILITY RECIPIENTS**

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I. SOCIAL SECURITY AND MEDICARE

Social Security is a federally administered "quasi insurance" program which pays a cash benefit to workers with a sufficient work history who retire or are disabled, and to their survivors and dependents.¹

Medicare is available to Social Security retirees and recipients of Social Security disability benefits as well as Railroad Retirement disability and retirement benefits, and federal employees who retire after 1983.² Workers who opt to retire early do not qualify for Medicare until they reach age 65. Recipients of Social Security dependent and survivor's benefits do not qualify for Medicare.

Except for end stage renal disease (kidney failure) and amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease) patients, Social Security disability beneficiaries must wait 24 months before Medicare begins. The 24 month waiting period starts with the first month in which the Social Security disability recipient is entitled to a benefit. The Social Security Act imposes a five month waiting period before Social Security disability benefits can be paid.

The five month waiting period can start as early as 17 months before the application date provided that the applicant was disabled on that date. This means that a client who was disabled 17 months before applying for disability is entitled to a retroactive check for $17 - 5 = 12$ months of benefits and would have only another 12 months to go on their 24 month Medicare waiting period. On the

¹ 42 U.S.C. § 401 et seq.; 20 C.F.R. §§ 404 et seq.

² 42 U.S.C. § 1395 et seq.; 42 C.F.R. §§ 405 et seq.; Eakin and Lipschutz, *ABCD's of Medicare for Low-Income Beneficiaries*, Clearinghouse Review, March-April 2009

other hand, an individual who applies immediately after becoming disabled has to wait 5 months before Social Security disability benefits can be paid (during which time they may be eligible for SSI and Medicaid, see below), and has to wait a full 24 months for Medicare.

Medicare is divided into Parts A, B, C, and D. Part A covers inpatient hospital costs, limited skilled nursing facility, home health care, and hospice care. Part B covers physicians care and a wide range of outpatient services and is available for a monthly premium. Part C, generally referred to as "Medicare Advantage", allows Medicare recipients to receive their services through HMOs or other private plan, sometimes in exchange for enhanced benefits. Part D is the Medicare prescription drug program.

Medicare coverage is subject to co-payments and deductibles. Medicare recipients whose incomes are low, but not low enough to qualify for Medicaid, may be eligible for the Medicare Savings Program (MSP). This program uses *Medicaid* funds to pay some or all of the beneficiary's *Medicare* premiums, co-payments or deductibles. MSP does not entitle the recipient to services not otherwise covered by Medicare.

Medicare is administered at the federal level by the Center for Medicare Services (CMS). Private insurance companies contract with CMS to administer benefits. Enrollment is handled by local Security Security Administration district offices.

Medicare coverage does not cover long-term nursing home care. Options for filling the gaps in medical coverage include purchasing a [Medigap](#)

insurance policy, agreeing to receive Medicare through an HMO (Medicare Part C), purchasing long-term care insurance, and qualifying for Medicaid.

II. SSI AND MEDICAID

Supplemental Security Income (SSI) is a federal program that provides a cash benefit to disabled persons and to persons age 65 and older who have limited income and non-excluded resources of less than \$2,000.³

Medicaid provides health coverage to SSI recipients beginning with the first month of SSI eligibility.⁴ This means that many disabled persons qualify for SSI and Medicaid during the five month Social Security disability waiting period. However, if first Social Security disability check exceeds the SSI standard of need, they are stranded without Medicaid or Medicare until the end of the 24 month Medicare waiting period.

Medicaid is funded with a combination of state and federal funds. Colorado's Medicaid program is administered by the Colorado Department of Health Care Policy and Financing, which in turn contracts with the county human services departments and private agencies to provide day-to-day administration of most aspects of the program. Medicaid recipients must use available Medicare and private insurance coverage before using Medicaid.

III. COMBINATIONS OF SOCIAL SECURITY, EARNINGS AND SSI

Many disabled persons receive a combination of Social Security, earnings and SSI. In these cases, the amount of the SSI benefit is calculated using the

³ 42 U.S.C. § 1381 et seq.; 20 C.F.R. § 416 et seq.

⁴ 42 U.S.C. § 1396(a)(10)(A)(k).

"20/65/1/2" rule.⁵ Application of the rule to the SSI calculation of a disabled individual, whose earnings record entitled him to a \$100 per month Social Security disability benefit, and who was earning \$150 per month, would be as follows.

First, the individual would be allowed a \$20 "unearned income disregard" leaving him with \$80 of countable unearned income.

Second, the individual's countable earned income would be calculated by subtracting \$65 from the \$150 per month in earnings (he would be allowed to deduct an additional \$20 of unearned income if the unearned income disregard had not already been used up) and by dividing the remainder in half. Thus he would have $(\$150 - \$65) \div 2 = \$43$ in countable earned income.

The individual's total countable income, unearned and earned, would be $\$80 + \$43 = \$123$. The SSI program would make up the difference between this total and the 2009 SSI standard of need, \$674. His monthly SSI benefit would be $\$674 - \$123 = \$551$.

The most an individual can earn and still receive \$1 of SSI is called the "break even point". For disabled persons with families, the calculation requires consideration of income "deemed" from family members, and the standard of need applicable to couples.

⁵ 20 C.F.R. § 416.1100 et seq.

IV. OTHER GROUPS THAT QUALIFY FOR MEDICAID

A. Nursing home and HCBS patients

The Colorado Medicaid program raises the income limit for persons in need of extended hospital or long-term care to three times the SSI limit. This is referred to as the "300 percent" program. Long-term care⁶ includes nursing home care and the Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD) program. HCBS-EBD is one of a series of programs which provide an alternative to institutionalization to other groups, including Developmentally Disabled persons (HCBS-DD), Persons Living with AIDS (HCBS-PLWA), People with Brain Injury (HCBS-BI), and the Mentally Ill (HCBS-MI).

Eligibility for Medicaid coverage of long-term care has become a significant part of elder law practice. Considerations include: (1) establishing specialized trusts to qualify persons whose income is more than the 300 percent limit, but insufficient to afford private pay rates; (2) the "spousal protection" rules, which set aside a share of a long-term care patient=s income and resources for a non-institutionalized spouse; (3) "transfer penalties" that limit the circumstances in which resources can be given away without disqualifying the donor from Medicaid long-term care coverage; (4) the Access regulation, that requires Medicaid recipients to obtain resources in which they have a legal interest; and (5) "Medicaid liens" that the state places on the home of institutionalized and other persons to recoup Medicaid costs upon the individual=s death.

⁶ 10 C.C.R. 2505-10, § 8.400 et seq.

B. Pickle People

Congress has provided Medicaid for several groups of persons who do not qualify for SSI because increases in their Social Security benefits put them over the SSI income limit.

The largest group is the "Pickle people," named after the late Representative Pickle from Texas. In general, the Pickle Amendment continues or reinstates Medicaid for persons who once were eligible for both Social Security and SSI, and who would still have SSI "but for" Social Security cost-of-living increases.⁷ This includes two main groups.

First, individuals who have a large Social Security benefit and only a very small SSI benefit often lose their SSI if the annual cost of living increase in their Social Security benefit overruns the annual increase in SSI. The Pickle Amendment provides continuing Medicaid eligibility for these individuals.

Second, the Pickle Amendment covers the surprisingly large number of individuals who received SSI disability while their Social Security benefit level was being calculated, and then lost SSI when the Social Security disability benefit turned out to be higher than the SSI income limit. At some point, often many years later, the SSI standard of need exceeds the amount of the recipient's first Social Security check, the check that made them ineligible for SSI. At that point, "but for" the Social Security cost of living increase, the individual would be eligible for SSI and the Pickle Amendment would restore their Medicaid.

⁷ 42 U.S.C. § 1396a(note); 42 C.F.R. § 435.135.

C. Disabled Adult Children

Disabled Adult Children (DACs) are persons who were disabled before age 22, and whose parent or parents retire, become disabled, or die. A DAC is be entitled to a Social Security benefit based on his or her parent's earnings record. A DAC who loses SSI disability benefits solely because the Social Security benefits on his or her parent=s earnings record exceeds the SSI limit is entitled to continuing Medicaid.⁸

D. The Family and Children Programs

Medicaid was originally designed as a health benefit for low-income families and children receiving cash assistance through the Aid to Families with Dependent Children (AFDC) program. In 1996 federal legislation replaced AFDC with Temporary Assistance to Needy Families (TANF). This change has been implemented in Colorado through "Colorado Works," a program that provides up to five years of cash assistance to poor families who are participating in a vocational program.⁹

To qualify for Colorado Works, a household must include a minor dependent child, have less than \$2,000 in non-excluded resources, and sign an Individual Responsibility Contract (IRC) - the plan for becoming self-sufficient. The amount of the benefit depends on the family size and the number of caretakers. The household must be involved in approved work activity after 24 months and benefits only last 60 months, except in cases of hardship such as disability or domestic violence.

⁸ 42 U.S.C. § 1383c(c).

⁹ C.R.S. §§ 26-2-111(3) and 26-2-704 et seq.

TANF families are eligible for Medicaid. Persons who do not qualify for TANF but meet the July 16, 1996 AFDC eligibility criteria also qualify for Medicaid. Persons who lose TANF because of earnings may qualify for up to 12 months of "transitional Medicaid."

The "Baby Care/Kids Care" program provides Medicaid to indigent children and pregnant women who do not qualify for Medicaid either through TANF or by meeting the old AFDC criteria.

E. The Colorado Breast and Cervical Cancer Program

Colorado's Medicaid provides coverage to many women under 65: (1) who have been diagnosed with breast or cervical cancer by an approved provider; (2) whose income is less than 250% of poverty (there are no resource limits); and (3) who have no insurance.¹⁰

F. Old Age Pension

Old Age Pension (OAP) is a state funded retirement program for low-income Coloradans aged 60 and over, regardless of disability.¹¹ The term OAP AA refers to recipients age 65 or older. The term OAP AB refers to recipients ages 60 through 64, a group which includes some disabled persons.

OAP predates SSI, but is calculated in a similar fashion. OAP recipients must have limited resources, up to \$2,000 for an individual. As with SSI, OAP makes up the difference between the recipient's countable income and the OAP standard of need, \$699 per month in 2009.

¹⁰ 10 C.C.R. 2505-10, § 8.715 et seq.

¹¹ 9 C.C.R. 2503-1, § 3.300 et seq.

Home Care Allowance (HCA) is a state funded home care program that helps pay for assistance with daily household activities such as shopping, cooking, eating, transportation, bathing and cleaning. For most persons 60 and over, HCA is part of the OAP grant. The state agency or contractor determines an amount to be spent on home care and adds that amount to the OAP standard of need.

Persons who qualify for OAP, or who receive HCA as part of their OAP, also qualify for Medicaid.

V. MEDICARE AND MEDICAID FOR DISABLED WORKERS

A. Medicare and the Social Security Disability Work Rules

Social Security disability recipients who return to work do not lose their Medicare eligibility until after they have used up a nine month "trial work period" (TWP) months and a 36 month "reentitlement period" (the reentitlement period is also called the "extended period of eligibility" or EPE).¹²

TWP months are any months, not necessarily consecutive, in which either: (1) earnings from employment are more than a set minimum, \$670 per month in 2008; or (2) the number of self-employment hours are more than 80. During TWP months the recipient is entitled to a full Social Security benefit no matter how much they earn.

Once the recipient accumulates nine TWP months in any 60 month period, he or she enters into a three year period called the "reentitlement period" or "extended period of eligibility" (EPE). During the EPE, the recipient is eligible for

¹² 42 U.S.C. § 422(c); 20 C.F.R. § 404.1592 et seq.

Social Security only in months in which his or her earnings do not rise to the level of "substantial gainful activity" (SGA). With exceptions, earnings of \$980 per month are generally considered SGA in year 2009.

If the recipient earns SGA after the end of the EPE, Social Security disability benefits are terminated and can only be restarted by filing a new application and reestablishing disability. However, Medicare may be continued pursuant to one of several programs for persons who lose Social Security disability benefits because of work.

B. The SSI Disability Work Rules and the 1619b Program

Disabled SSI recipients are encouraged to work and recipients whose earnings are too high to retain SSI, but who still cannot afford needed medical care, are often able to retain Medicaid through a provision in the Social Security Act referred to as the "1619(b)" program.¹³

C. PASS Plans

SSI and Medicaid are available to disabled persons who put income into a Plan for Achieving Self Support (PASS).¹⁴ These plans allow disabled persons, usually Social Security disability recipients, to set aside some of their income or resources to be used for a vocational objective such as tuition or business equipment. If a PASS is approved by the Social Security Administration, the income or resources set aside will not be counted in calculating SSI eligibility. In many cases this allows the recipient to qualify for SSI and Medicaid.

¹³ 20 C.F.R. § 416.264 et seq.

¹⁴ 20 C.F.R. § 416.1180 et seq.

VI. SOURCES OF HEALTH CARE OTHER THAN MEDICARE AND MEDICAID

A. The Colorado Indigent Care Program (CICP)

Coloradans who do not qualify for Medicare or Medicaid may qualify for the Colorado Indigent Care Program (CICP), also known as the Colorado Resident Discount program and the Medically Indigent program.¹⁵ This program provides services on a sliding scale depending on the patient's resources and income. Services are provided by hospitals and clinics that contract with the state to participate in the program. CICP funds are limited and providers are required to prioritize services. Many expensive services, such as organ transplants, may not be available except in a life threatening emergency.

B. The Child Health Plan Plus (CHP+)

The Children=s Health Care Plan Plus (CHP+) program provides medical coverage to uninsured children whose family income is too high to qualify for Medicaid, but under the current CHP+ guidelines.¹⁶ CHP+ is administered by the State.

C. Veterans= Benefits

The Veterans= programs provide cash and health benefits to qualifying veterans and their dependants.¹⁷ Cash benefits include a Acompensation@ benefit for veterans with service connected disabilities, and an SSI like

¹⁵ C.R.S. § 25.5-3-101 et seq.; 10 C.C.R. 2505-10, § 8.900 et seq.

¹⁶ C.R.S. § 25.5-8-108 et seq.

¹⁷ 38 U.S.C. § 101 et seq.

A pension benefit for disabled veterans whose impairments are not service connected. Both programs are often more generous than the benefits available through Social Security or SSI.

D. Community Mental Health

Approximately half of low-income Coloradans requiring mental health services do not have Medicaid coverage and rely instead on state funded Community Mental Health Centers and Clinics for services sometimes locally funded.¹⁸ Non-Medicaid patients may be subject to sliding scale fees.

E. Pharmaceutical Manufacturers' Programs

Many pharmaceutical manufacturers offer free medications to low-income patients who have no insurance and do not qualify for public health programs.

F. Cover Colorado, previously the Colorado Uninsurable Health Insurance Plan

Cover Colorado is a state program which offers medical insurance to uninsured Colorado residents who cannot purchase private health insurance because of preexisting medical conditions.¹⁹ Expenses related to preexisting conditions are not covered for the first six months, although some or all of the six months period may be waived if the patient previously was insured or covered by Medicaid.

¹⁸ C.R.S. § 27-1-201 et seq.

¹⁹ C.R.S. § 10-8-501 et seq.

G. The Public Employees' Retirement Association (PERA)

The Public Employees' Retirement Association (PERA) provides retirement, disability and survivors benefits to employees of the State of Colorado. PERA includes both a cash benefit and health care.²⁰

PERA cash benefits are generally higher than those provided by the Social Security program. Social Security benefits are generally reduced by two-thirds of the amount of the PERA benefit. Failure to make the offset when PERA benefits begin is a common cause of Social Security overpayments.

²⁰ C.R.S. § 24-51-101 et seq.