

3. The Colorado Department of Health Care Policy and Financing or its designee shall review and approve/deny the PETI Prior Authorization Request within ten (10) working days of receipt.
4. Upon receipt of the approved Prior Authorization Request from the DHCPF or its designee, the nursing facility may adjust the patient payment by the amount authorized on the following month's Medicaid billing or on the nursing facility's next billing cycle.
5. All documentation of the incurred expenses must be available in the client's financial and medical record for audit purposes. Lack of documentation shall cause the patient payment deduction to be disallowed causing the provider to be overpaid by the Medicaid program.

#### **8.110.50 FINANCIAL ELIGIBILITY REQUIREMENTS FOR ELDERLY, BLIND AND DISABLED INDIVIDUALS**

The following regulations for financial eligibility apply to individuals who are age 65 or over or who have been determined to be disabled or blind in accordance with Social Security regulations. Staff Manual Volume 3 (9 CCR 2503-1) is not applicable to these individuals.

Treatment of income: Income is defined as anything received in cash or in kind that can be used to meet the individual's needs for food or shelter. In-kind income is not cash but is actually food or shelter or something that can be used to obtain food or shelter.

- A. Availability of income
  1. Income is available when it is actually received or when the individual has a legal interest in a sum.
  2. Income, which includes earned and unearned income, shall be calculated on a monthly basis regardless of whether it is received annually, semi-annually, quarterly or weekly.
- B. Earned income is payment in cash or in kind for services performed as an employee or from self-employment. Earned income includes the following:
  1. Wages, which include salaries, commissions, bonuses, severance pay, and any other special payments received because of employment.
  2. Net earnings from self-employment
  3. Payments for services performed in a sheltered workshop
  4. Royalties and honoraria
- C. Earned income disregards
  1. The gross amount of earned income is countable toward eligibility with the following exclusions:
    - a. \$65.00 shall be subtracted from gross earned income.
    - b. The remaining amount shall be divided in half and the resulting amount is countable income.

- c. Any other applicable exemptions in 20 C.F.R. 416.1112. No amendments or later editions are incorporated. The Director of the Office of Medical Assistance of the Colorado Department of Health Care Policy and Financing may be contacted at 1570 Grant Street, Denver, Colorado 80203, for a copy of 20 C.F.R. 416.1112; or the materials may be examined at any publications repository library.
- D. Unearned income is the gross amount received in cash or kind that is not earned from employment or self-employment. Unearned income includes the following:
  1. Pensions and other period payments, such as
    - a. Private pensions or disability benefits
    - b. Social Security benefits
    - c. Social Security Disability Income (SSDI)
    - d. Supplemental Security Income (SSI) payments
    - e. Workers' Compensation payments
    - f. Railroad retirement annuities
    - g. Unemployment insurance payments
    - h. Veterans benefits other than Aid and Attendance (A&A) and Unreimbursed Medical Expenses (UME).
  2. Alimony and support payments
  3. Interest, dividends and certain royalties on countable resources
  4. Support and maintenance in kind
  5. The following are unearned income in the month received and a countable resource the following month:
    - a. Death benefits, reduced by the cost of last illness and burial
    - b. Prizes and rewards
    - c. Gifts and inheritances
- E. Determining ownership of income
  1. If payment is made solely to one individual, the income shall be considered available income to that individual.
  2. If payment is made to more than one individual, the income shall be considered available to each individual in proportion to their interests.
  3. In case of a married couple in which there is no document establishing specific ownership interests, one-half of the income shall be considered available to each spouse.

4. Income from the Community Spouse's Resource Allowance, as defined in the spousal protection rules in this volume, is income to the community spouse.
- F. Income-producing property
1. Net rental income from an exempt home or a life estate interest in an exempt home is countable after the following allowable deductions:
    - a. Property taxes and insurance
    - b. Necessary reasonable routine maintenance expenses
    - c. Reasonable management fee for a professional property manager.
  2. Nonbusiness property that is necessary to produce good or services essential-to self support is excluded up to \$6000 for applicants who are not applying for long-term care in a nursing facility.
  3. Property used in a trade or business which is essential to self-support is excluded up to a limit of \$6000 if it produces 6% return of the excluded value. This exclusion does not apply to applicants for long term care in a nursing facility.
- G. Treatment of payments from the Department of Veterans Affairs (VA) for aid and attendance (A&A) and unreimbursed medical expenses (UME)
1. Payments for aid and attendance (A&A) and unreimbursed medical expenses (UME) shall not be considered as income or be paid as patient payment for the following:
    - a. Veteran in a medical facility that is not a state veteran's medical facility
    - b. Veteran or spouse of a veteran in a state veteran's medical facility who has a spouse or child at home
  2. Payments for aid and attendance (A&A) and unreimbursed medical expenses (UME) to a veteran or spouse of a veteran in a state veteran's medical facility shall be treated as follows:
    - a. Payments shall not be considered as income.
    - b. Payments shall be used as patient payment to the medical facility
- H. Reverse mortgages
1. In accordance with C.R.S. 11-38-110, reverse mortgages payments made to a borrower shall not be treated as income for eligibility purposes.
  2. Funds remaining the following month after the payment is made will be countable as a resource.
  3. Any payments from a reverse mortgage that are transferred to another individual without fair consideration shall be analyzed in accordance with the rules on transfers without fair consideration at 8.110.53 and may result in a penalty period of ineligibility.
- I. Treatment of income and resources for married couples

1. The income and resources of both spouses are counted in determining eligibility for either or both spouses with the following exceptions:
  - a. If spouses share the same room in an institution, the income of the individual spouse is counted in determining his or her eligibility, and each spouse is allowed the \$2000 limit for resources.
  - b. Beginning the first month following the month the couple ceases to live together, only the income of the individual spouse is counted in determining his or her eligibility
  - c. If one spouse is applying for long term care in a nursing facility or Home and Community Based Services (HCBS), refer to the rules on Treatment of Income and Resources for Institutionalized Spouses at 8.112.
  
- J. Income limits for eligibility for long-term care in a hospital, nursing facility Home and Community Based Services (HCBS), and the Program of Inclusive Care for the Elderly (PACE)
  1. For an individual who is institutionalized in a hospital or nursing facility or receiving HCBS or PACE for a period of not less than 30 days, the income limit is three times the benefit level for Supplemental Security Income (SSI).
  2. If the income exceeds three times the SSI benefit level but is below the regional average private pay rate for the nursing facility, the individual may become income eligible for long term care by establishing an income trust in accordance with the rules on income trusts at 8.110.52,B. Income trusts are not valid for establishing income eligibility for hospital care.
  3. Long term care insurance benefits are not countable as income, but are payable as part of the patient payment to the nursing facility.
  
- K. Other groups eligible for medical assistance
  1. Recipients of Supplemental Security Income (SSI) and Old Age Pension (OAP) A or B with a SISC code A or B are eligible for medical assistance, not including longterm care. For long term care eligibility in a nursing facility or Home and Community Based Services (HCBS), a separate application must be submitted to the county department of social services.

**8.110.51 FINANCIAL ELIGIBILITY REQUIREMENTS FOR INDIVIDUALS ELIGIBLE FOR THE COLORADO MEDICAID PROGRAM**

Consideration of resources: Resources are defined as cash or other assets or any real or personal property that an individual or spouse owns. The resource limit for an individual is \$2000. For a married couple, the resource limit is \$3000. If one spouse is institutionalized, refer to Treatment of Income and Resources for Institutionalized Spouses.

- A. The following resources are exempt in determining eligibility:
  1. The principal place of residence which is owned by the applicant or applicant's spouse, including the home in which the individual resides, the land on which the home is located and related out-buildings.

- a. If an individual or spouse moves out of his or her home without the intent to return, the home becomes a countable resource because it is no longer the individual's principal place of residence.
  - b. If an individual leaves his or her home to live in an institution, the home will still be considered the principal place of residence, irrespective of the individual's intent to return as long as the individual's spouse or dependent relative continues to live there. Dependent relative is defined as one who is claimed as a dependent for federal income tax purposes.
  - c. The individual's equity in the former home becomes a countable resource effective with the first day of the month following the month it is no longer his or her principal place of residence.
  - d. The home will still be considered the individual's principal place of residence and retain the exemption if all of the following conditions apply:
    - 1) The individual is institutionalized.
    - 2) The individual intends to return home whether or not in fact he or she does return home.
    - 3) The intent to return home is documented in writing.
    - 4) The intent to return home applies to the home the individual or spouse was living in prior to being institutionalized or a replacement house as long as a spouse or dependent relative continues to live there. Dependent relative is defined as one who is claimed as a dependent for federal income tax purposes.
  - e. For an institutionalized individual in a nursing facility, receiving HCBS or enrolled in the PACE program, the exemption for the principal place of residence does not apply to a residence which has been transferred to a trust or other entity, such as a partnership or corporation. If the residence is transferred back into the name of the individual's name, the exemption will be regained.
  - f. The principal place of residence, which is subject to estate recovery, becomes a countable resource upon the execution and recording of a beneficiary deed. The exemption can be regained if a revocation of the beneficiary deed is executed and recorded.
  - g. For Applications filed on or after January 1, 2006, an individual's home if:
    - 1) The individual's equity interest in the home is \$500,000 or less, or
    - 2) The individual's equity interest in the home exceeds \$500,000 and the individual's spouse, dependent child under the age of 21, or blind or disabled child resides in the home.
2. One automobile is totally excluded regardless of its value if it is used for transportation for the individual or a member of the individual's household. An automobile includes, in addition to passenger cars, other vehicles used to provide necessary transportation.
  3. Household goods are not counted as a resource to an individual (and spouse, if any) if they are:

- a. Items of personal property, found in or near the home, that are used on a regular basis; or
  - b. Items needed by the householder for maintenance, use and occupancy of the premises as a home.
  - c. Such items include but are not limited to: furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes.
4. Personal effects are not counted as a resource to an individual (and spouse, if any) if they are:
- a. Items of personal property ordinarily worn or carried by the individual; or
  - b. Articles otherwise having an intimate relation to the individual.
  - c. Such items include but are not limited to: personal jewelry including wedding and engagement rings, personal care items, prosthetic devices, and educational or recreational items such as books or musical instruments.
  - d. Items of cultural or religious significance to the individual and items required because of an individual's impairment are also not counted as a resource.
5. The cash surrender value of all life insurance policies owned by an individual and spouse, if any, is a countable resource. However, if the total face value of all life insurance policies does not exceed \$1500 on any person, the cash surrender value of those policies will be excluded.
- a. Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or other special provisions.
  - b. Cash surrender value is the amount the insurer will pay to the owner upon cancellation of the policy before the death of the insured or before maturity of the policy.
  - c. Term life insurance having no cash surrender value, and burial insurance, the proceeds of which can be used only for burial expenses, are not countable toward the resource limit.
6. The total value of burial spaces for the applicant/recipient, his/her spouse and any other members of his/her immediate family is exempt as a resource.
- a. Burial spaces are defined as burial plots, gravesites, crypts, mausoleums, urns, niches and other customary and traditional repositories for the deceased's bodily remains provided such spaces are owned by the individual or are held for his or her use. Additionally, the term includes necessary and reasonable improvements or additions to or upon such burial spaces including, but not limited to, vaults, headstones, markers, plaques, or burial containers and arrangements for opening and closing the gravesite for burial of the deceased. If any interest is earned on the value of an agreement for the purchase of a burial space, such interest is also exempt.

- b. The immediate family includes the individual's spouse, minor and adult children, stepchildren, adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons, regardless of dependency or whether they are living in the applicant/recipient's household.
7. An applicant or recipient may own burial funds through an irrevocable trust or other irrevocable arrangement which are available for burial and are held in an irrevocable burial contract, an irrevocable burial trust, or in an irrevocable trust which is specifically identified as available for burial expenses without such funds affecting the person's eligibility for assistance. "Irrevocable" means that the contract, trust, or other arrangement cannot be terminated, and that the funds cannot be used for any purpose other than the individual's burial expenses.
8. An applicant or recipient may also own up to \$1,500 in burial funds through a revocable account, trust, or other arrangement for burial expenses, without such funds affecting the person's eligibility for assistance. This exclusion only applies if the funds set aside for burial expenses are kept separate from all other resources not intended for burial of the individual or spouse's burial expenses. Interest on the burial funds are also excluded if left to accumulate in the burial fund. However, the \$1500 exemption is reduced by (a) the amount of any irrevocable burial funds such as are described in the preceding subparagraph, and (b) the face value of any life insurance policy whose cash surrender value is exempt. For a married couple, a separate \$1500 exemption applies to each spouse.

B. Countable resources include the following:

1. Cash or funds held by a financial institution in a checking or savings account, certificate of deposit or money market account;
2. Current market value of stocks, bonds, and mutual funds;
3. All funds in a joint account are presumed to be a resource of the applicant or client. If there is more than one applicant or client account holder, it is presumed that the funds in the account belong to those individuals in equal shares. To rebut this presumption, evidence must be furnished that proves that some or all of the funds in a jointly held account do not belong to him or her. To rebut the sole ownership presumption, the following procedure must be followed:
  - a. Submit statements from all of the account holders regarding:
    - 1) Who owns the funds.
    - 2) Why there is a joint account.
    - 3) Who has made deposits and withdrawals and how withdrawals have been spent.
  - a. Submit account records showing deposits, withdrawals and interest in the months for which ownership of funds is at issue.
  - b. Correct the account title and submit revised account records showing that the applicant or client is no longer an account holder or separate the funds to show they are solely owned by the individual.

4. Any real property that is subject to a recorded beneficiary deed and on which an estate recovery claim can be made.
5. For applications filed on or after January 1, 2006, an individual's home if the individual's equity interest in the home exceeds \$500,000 and the individual's spouse, dependent child under the age of 21, or blind or disabled child does not reside in the home.
6. Real property not exempt as the principal place of residence and not exempt as income producing property with a value of \$6000 or less, as described at 8.110.50.
  - a. When the applicant alleges that the sale of real property would cause undue hardship to the co-owner due to loss of housing, all of the following information must be obtained:
    - 1) The applicant or client's signed statement to that effect.
    - 2) Verification of joint ownership.
    - 3) A statement from the co-owner verifying the following:
      - a) The property is used as his principal place of residence.
      - b) The co-owner would have to move if the property were sold.
      - c) The co-owner would be unable to buy the applicant or client's interest in the property.
      - d) There is no other readily available residence because there is no other affordable housing available or no other housing with the necessary modifications for the co-owner if he is a person with disabilities.
  - b. Excess real property will not be included in countable resources as long as reasonable efforts to sell it have been unsuccessful. Reasonable efforts to sell means:
    - 1) The property is listed with a real estate agent at current market value.
    - 2) If owner listed, the property must be for sale at current market value, advertised and shown to the public.
    - 3) Any reasonable offer must be accepted and the owner has the burden of demonstrating that an offer was not reasonable.
    - 4) If an offer is received that is at least two-thirds of the current market value, the individual must present evidence to establish that the offer was unreasonable.
    - 5) Reasonable efforts to sell must continue and must be verified on a quarterly basis.
7. Personal property such as a mobile home or trailer or the like, that is not exempt as a principal place of residence or that is not income producing.



8. Personal effects acquired or held for their value or as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles.
9. The equity value of all automobiles that are in addition to one exempt vehicle. The equity value is the fair market value less any encumbrances. The fair market value is the average price an automobile of that particular year, make, model and condition will sell for on the open market to a private individual in the particular geographic area involved.
10. The cash surrender value of life insurance policies if the face value exceeds \$1500.
11. Promissory notes established before April 1, 2006
  - a. The fair market value of a promissory note, mortgage, installment contract or similar instrument is an available countable resource.
  - b. In order to determine the fair market value, the applicant shall obtain three estimates of fair market value from a private note broker, who is engaged in the business of purchasing such notes. In order to obtain the estimates and locate willing buyers, the note shall be advertised in a newspaper with state wide circulation under business or investment opportunities.
  - c. A note or similar instrument which transferred funds or assets for less than fair market value shall be considered as a transfer without fair consideration and a period of ineligibility shall be imposed.
12. Promissory notes established on or after April 1, 2006
  - a. The value of a promissory note, loan or mortgage is an available countable resource unless the note, loan or mortgage:
    - 1) Has a repayment term that is actuarially sound based on the individual's life expectancy as found in the tables in Section 8.110.56 for annuities purchased on or after February 8, 2006;
    - 2) Provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and
    - 3) Prohibits the cancellation of the balance upon the death of the lender.
  - b. The value of a promissory note, loan or mortgage which does not meet the criteria in Section 8.110.51.B.12.a. is the outstanding balance due as of the date of the individual's application for HCBS, PACE or institutional services and is subject to the transfer without fair consideration provisions in Section 8.110.53.

C. Treatment of self-funded retirement accounts

1. The following regulations apply to self-funded retirement accounts such as an Individual Retirement Account (IRA), Keogh Plan, 401(k), 403(b) and any other self-funded retirement account.
  - a. Self-funded retirement accounts in the name of the applicant are countable as a resource to the applicant.

- b. Self-funded retirement accounts in the name of the applicant's spouse who is living with the applicant are exempt in determining eligibility for the applicant, except as set forth in c. below.
      - c. Self-funded retirement accounts in the name of a community spouse who is married to an applicant who is applying for long term care in a nursing facility, HCBS or PACE, are countable as a resource to the applicant and may be included in the Community Spouse Resource Allowance (CSRA) up to the maximum amount allowable. The terms community spouse and CSRA are further defined in the regulations on Spousal Protection in this volume.
  - 2. The value of a self-funded retirement account is determined as follows:
    - a. The gross value of the account, less any taxes due, is the amount that is countable as a resource, regardless of whether any monthly income is being received from the account.
    - b. If the applicant is not able to provide the amount of taxes that are due, the value shall be determined by deducting 20% from the gross value of the account.
- D. Treatment of proceeds from disposition of resources
  - 1. The net proceeds from the sale of exempt or non-exempt resources are considered available resources.
  - 2. The net proceeds is the selling price less any valid encumbrances and costs of sale.
  - 3. After deducting any amount necessary to raise the individual's and spouse's resources to the applicable limits, the balance of the net proceeds shall be considered available resources. In lieu of terminating eligibility due to excess resources, the client may request that the proceeds be used to reimburse the medical assistance program for previous payments for medical assistance.
  - 4. The proceeds from the sale of an exempt home will be excluded to the extent they are intended to be used and are, in fact, used to purchase another home in which the individual, a spouse or dependent child resides, within three months of the date of the sale of the home.
- E. Availability of resources and income
  - 1. Resources and income shall be considered available both when actually available and when the applicant or client has a legal interest in a sum (including cash or equity value of a resource) and has the legal ability to make such sum available for support and maintenance.
  - 2. If the applicant or client demonstrates with written documentation that appropriate steps are being taken to secure the resources, medical assistance shall not be delayed or terminated. Verification of efforts to secure the resources must be provided at regular intervals as requested by the county department of social services.
  - 3. Resources will be considered available and medical assistance shall be denied or terminated if the applicant or client refuses or fails to make a reasonable effort to secure a potential resources or income.

4. Timely and adequate notice must be given regarding a proposed action to deny, reduce or terminate assistance due to failure to make reasonable efforts to secure resources or income. If upon receipt of the prior notice, the individual acts to secure the potential resource, the proposed action to deny, reduce, or terminate assistance must be withdrawn, and assistance must be approved or continued until the resource or income is, in fact, available.
5. If the resources or income has been transferred to a trust, the trust shall be submitted for review to the Colorado Department of Health Care Policy and Financing to determine the effect of the trust on eligibility in accordance with Section 8.110.52 (10 CCR 2505-10).

#### **8.110.52 Consideration of trusts in determining Medicaid eligibility**

##### **A. Trusts established before August 11, 1993:**

1. Medicaid Qualifying Trust (MQT)
  - a. In the case of a Medicaid qualifying trust, as defined in 42 U.S.C. Sec. 1396a(k), the amount of the trust property that is considered available to the applicant/recipient who established the trust (or whose spouse established the trust) is the maximum amount that the trustee(s) is permitted under the trust to distribute to the individual assuming the full exercise of discretion by the trustee(s) for the distribution of the maximum amount to the applicant/recipient. This amount of property is deemed available resources to the individual, whether or not is actually received.
  - b. 42 U.S.C. Sec. 1396a(k) was repealed in 1993 and is reprinted here exclusively for purposes of trusts established before August 11, 1993. 42 U.S.C. Sec. 1396a(k) defines a Medicaid qualifying trust as "a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual."
2. This provision does not apply to any trust or initial decrees established before April 7, 1986, solely for the benefit of a developmentally disabled individual who resides in an intermediate care facility for the developmentally disabled.
3. This provision does not apply to individuals who are receiving SSI.

##### **B. Trusts established on or after July 1, 1994:**

1. The following definitions apply to trusts established on or after July 1, 1994:
  - a. Assets include all income and resources of the individual and the individual's spouse, including all income and resources which the individual or the individual's spouse is entitled to but does not receive because of action by any of the following:
    - 1) The individual or the individual's spouse,
    - 2) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse, or

