

Colorado Senior Law Handbook

2023 Edition

**A Colorado Legal Information and
Reference Guide for Aging Adults**

Lisa T. C. Blattner, Esq.
Managing Editor

**A joint project of the Elder Law and Trust and Estate Sections
of the Colorado Bar Association**

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Colorado Senior Law Handbook

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Publisher's Note

The *Colorado Senior Law Handbook* is designed to provide aging adults and their caregivers and families with useful information on myriad subjects pertinent to their legal concerns. It is compiled due to the gracious donation of time and intellect by our volunteer authors. We would like to thank all of the authors for their generous contributions of time and their willingness to share their expertise with Colorado's older adults. We especially thank Lisa Blattner, our managing editor, for her dedication to this project. We would also like to thank John Fielder, who donated the use of his beautiful image that adorns the front cover of this Handbook.

Much of the information in the *Colorado Senior Law Handbook* is based on current laws and practices in Colorado, as well as policies and programs of the federal government. **The information provided in the *Senior Law Handbook* is not intended to replace the advice and services of an attorney.** We urge you to contact an elder law and/or probate attorney for advice relating to the particulars of your situation.

Individual chapters are available for free download at <http://seniorlawhandbook.org>. Information about Senior Law Day can also be found at www.cobar.org/seniorlawday. Several counties in Colorado offer Senior Law Day on different days during the year, with a variety of programming and formats. You can verify current information regarding Senior Law Day events at www.cobar.org/seniorlawday. If you have attended Senior Law Day, or you have comments or suggestions regarding the *Colorado Senior Law Handbook*, please visit www.cobar.org/seniorlawday to give us your feedback. We welcome all comments, and continuously strive to keep the *Colorado Senior Law Handbook* a helpful and informative resource for Colorado adults.

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If you have questions, comments, or suggestions regarding the *Colorado Senior Law Handbook*, please submit them in writing to Lisa Travis Fischer (lfischer@cobar.org).

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Senior Law Day Information

Individual chapters of this handbook are available for free download at <http://seniorlawhandbook.org/>.

Information about Senior Law Day events is available at <https://www.cobar.org/seniorlawday>.

Cover Photograph Information

Dolores River Autumn by John Fielder. In January 2023, John Fielder donated his life's work of Colorado photography to the state's primary repository, History Colorado. Starting in summer, 2023, much of John's photography will be available to the general public for personal and commercial use for a small fee. John Fielder has worked tirelessly to promote the protection of Colorado's ranches, open space, and wildlands during his 40-year career as a nature photographer and publisher. His photography has influenced people and legislation and has earned him recognition, including: the 1993 Sierra Club Ansel Adams Award, in 2011 the Aldo Leopold Foundation's first Achievement Award ever given to an individual, and in 2017 Colorado Mountain College presented him an Honorary Degree in Sustainability Studies. Fifty-one books have been published depicting his Colorado photography. Information about John and his work can be found at johnfielder.com.

The *Colorado Senior Law Handbook — 2023 Edition* and any attached or referenced pages have been written or compiled for general information purposes only. The information contained in the *Colorado Senior Law Handbook* is not intended to be, nor is it, legal advice. *The Colorado Senior Law Handbook* material does not intend to create, nor does it create, an attorney-client relationship. Legal advice of any nature should be sought from legal counsel.

Editor's Note

The *Colorado Senior Law Handbook* was produced this year by the Colorado Bar Association's Civic and Community Affairs Committee of the Elder Law Section and the Trust and Estate Section, and in conjunction with CLE Colorado, Inc. Our mission with the *Handbook* is to help our Colorado aging population and their families better understand the laws that affect their daily lives. Today's society is complex, and we are hopeful that this *Handbook* provides some plain language insights into society's relationship with our older adults. That said, laws and programs change, and can apply differently to people depending on their individual circumstances. The *Handbook* is only intended to be an initial information source. The list of the agencies and other resources at the end of each chapter, and throughout the book, can be used for more specific and up-to-date information.

Although the *Handbook* has been greatly expanded over the years, its chapters are necessarily brief, considering the variety of subjects covered, and the *Handbook* is not intended to completely discuss any topic. Therefore, it cannot, and is not intended to, replace the advice and services of an attorney, professional, or agency.

In connection with the *Handbook*, numerous organizations around the state hold annual Senior Law Day events that offer information for caregivers, aging adults, and their families in the areas of Probate, Elder Law, Healthcare, Long Term Care Insurance, and many more. While these events are not produced by the CBA or CLE Colorado, Inc. they are a collaborative effort with local organizations with the same mission - to provide accessible legal information to local communities. You can find information about the different Senior Law Days across the state at www.cobar.org/seniorlawday. Check the website, or with your local county Bar Association and/or Senior Center for events happening near you.

In addition to our tremendous gratitude to our volunteer authors for all their time and energy, the Civic and Community Affairs Committee would like to thank the CBA Internet and Technology Department for their assistance in maintaining the internet presence of the *Handbook*, which can be found at www.coloradoseniorlawhandbook.org.

Most importantly, the Committee wishes to acknowledge the support by and contributions of CLE Colorado, Inc., the nonprofit legal education branch of the CBA. Each spring, CLE's Publication Department produces this handbook that you are now holding. The Committee could not undertake this project without the support of CLE Colorado, Inc. and the CBA.

Lastly, we want to extend a special thanks to the many volunteers across the state who so graciously donate their time to assist at Senior Law Day events, as well as the wonderful CBA and CLE staff who contribute their time. It would not be possible without all of us working together.

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February 2023

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The 2023 *Senior Law Handbook* does not attempt to capture or present information that may be related to Covid-19 or its impacts. It is clearly an extremely serious public health concern for which federal, state, and local responses are still being developed as the risks, attributes, and societal impacts of the disease remain not well-known. Due to the static and unchanging nature of paper publications, the decision was made to not attempt to incorporate current best practices, or what may be temporary changes to governmental programs related to Covid-19 as they may change as more information and research becomes available.

Nonetheless, it does appear that many or most of the individuals that this book is designed to assist remain among the most vulnerable to this novel coronavirus. So, stay informed through your doctors and other healthcare professionals, as well as federal, state, and local public health officials as to their recommended best practices. Stay safe.

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Ms. Blackwell graduated from the University of Oklahoma in 1982 with a B.A. in psychology and received her Juris Doctorate from the University of Oklahoma College of Law in 1985. She practiced law in Oklahoma and Colorado in the areas of bankruptcy; civil litigation; wills, trusts, and probate; family law; contracts; and business formation. Ms. Blackwell is a member of the Colorado and El Paso County bar associations and a member of the Elder Law and Trust & Estate sections of the Colorado Bar Association. She also belongs to the Colorado Planned Giving Roundtable, The Colorado Women’s Bar Association, and the Estate Planning Counsel of South Denver. She has presented at conferences and hosted webinars on estate planning, empowering women in estate and financial planning, gift-planning operations, and fundraising.

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Mr. Kirtland is a member of the El Paso County, Colorado, and American bar associations. He is past chair of the El Paso County Bar Association Probate Section; co-chair of the Colorado Bar Association Elder Law Section; a member of the Colorado Bar Association Trust and Estate and Alternative Dispute Resolution sections; and active with the American Bar Association Senior Lawyers Division, where he is a former Council member and is chair of the Senior Lawyer's Division Ethics Committee; a member of the sections on Alternative Dispute Resolution and Real Property, Trust and Estate Law, and past chair of the Elder Law Group. Mr. Kirtland is a member of the Ethics Committee of the El Paso County Medical Society and a member of the Colorado Bar Association Ethics Committee. He is past vice-president and a member of the board of directors of the National Elder Law Foundation.

Mr. Kirtland is a past chair of the Judicial Performance Commission for the Fourth Judicial District of Colorado. He belongs to the Alabama State Bar (where he is a Registered Mediator), the American Inns of Court in Colorado Springs, the National Academy of Elder Law Attorneys, the National Elder Law Foundation, the Air Force Association, and the Military Officers Association of America. Mr. Kirtland is one of only eight Certified Elder Law Attorneys in Colorado.

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Chapter 2 – Medicare

Chapter 3 – Health Insurance Beyond Medicare

Chapter 5 – Government Programs and Financial Assistance

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Ms. Lawonn is a Certified Aging in Place Specialist (C.A.P.S.) and received this designation from the National Association of Home Builders in 2014. She conducts home assessments to determine such issues as environmental safety and need for modification; advises clients, their families, and their care managers in establishing an Aging in Place plan; and works collaboratively with building contractors and architects to successfully make recommended modifications for existing or new home construction.

Ms. Lawonn obtained her J.D. from the University of Denver College of Law and was a member of the University of Denver Law Review. She received a B.S. (cum laude) in physical therapy from the University of North Dakota School of Medicine. Ms. Lawonn is a past member of the Colorado Bar Association (CBA) Elder Law Section, the Elder Law Section Executive Council, the CBA Trust and Estate and Alternative Dispute Resolution sections, the Denver Bar

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Ms. Liska is a member of the Trust and Estate and Elder Law sections of the Colorado Bar Association and the Trust and Estate section of the Larimer County Bar Association. Ms. Liska was a member of the 2019 Colorado Bar Association Leadership Training (COBALT) and participated in the Sessions planning committee for the 2020 COBALT program. She has served on the board of directors for the Larimer County Bar Association and Canyon Concert Ballet.

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Law Handbook, has been quoted in *Time Magazine* and *Bloomberg Business News*, has written articles for *The Colorado Lawyer*, *The Denver Post*, and *Rocky Mountain News*, and was Contributing Editor of the *Colorado Will and Estate Planner* for Bradford Publishing.

In law practice for over 30 years, Mr. Masters holds a B.A. from the University of Colorado and a J.D. from Washburn University School of Law. He is an adjunct faculty member of the Paralegal Department of Arapahoe Community College, and has lectured for the Washburn University School of Law, the University of Denver College of Law, the University of Colorado School of Law, and Regis University. A lecturer and program planner, Mr. Masters was honored with the Doyle Award of Excellence in 2007 by CBA-CLE for his contributions to continuing legal education programs and publications. Since 2009, Mr. Masters has been recognized in *5280* and *ColoradoBiz* magazines for “Five Star” client satisfaction among Colorado estate planning attorneys, and has been recognized in those magazines as a “Colorado Superlawyer” since 2011. Mr. Masters is a Fellow of the Colorado Bar Foundation, member of the national board of directors of the Society of Financial Service Professionals, member of the Southeast Denver Estate Planning Council, and a member of the CBA Tax Section. He holds the Accredited Estate Planner designation from the National Association of Estate Planners & Councils, and an AV (highest) peer rating from Martindale-Hubbell.

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Chapter 19 – Estate Planning for Unmarried Couples

Colleen Scarola is the founder of the law firm of Scarola Law, LLC. She received a B.A. in political science and English from Illinois State University in 2003. She was awarded a J.D. from UIC Law (formerly The John Marshall Law School) in Chicago, Illinois. Ms. Scarola's practice

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As well as being active in the legal community, Ms. Brown Shaffer is active in her local community and currently serves as a member of the St. Mary's Hospital Foundation Board. She also served as past president of the Colorado Mesa University Foundation Board and past co-chair of the Estate Planning Council at St. Mary's Hospital Foundation. In addition, Ms. Brown Shaffer frequently gives presentations and seminars throughout Colorado on topics involving trust and estate planning, estate administration, and elder law.

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Michael L. Shea is a retired attorney who still has a few veteran clients. He has represented veterans and their spouses with initial veterans' benefits with the Department of Veterans Affairs and with appeals of the denial of those benefits before the Board of Veterans' Appeals. He is a past member of the Colorado Bar Association and has served on the Business Law Committee and on

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Mr. Shea is a 1980 graduate of the University of Denver College of law and worked in the private sector and with the State of Colorado prior to retiring in 2010. He started his own law firm representing Veterans in 2010.

Mr. Shea is a 28-year veteran of the USMC and the Colorado Army National Guard with combat deployments in Vietnam and Iraq. His two tours of duty in Iraq, where he saw the emotional and physical toll that deployments have on veterans and their families, caused him to start his law firm to represent those soldiers, sailors, and Marines.

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Chapter 1 – Social Security Benefits
Chapter 29 – Family Discussions, Decisions, and Dispute Resolution

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Ms. Zapor holds several degrees, including a B.A. in communications and history and an M.A. in education. Ms. Zapor earned her J.D. from the University of Denver College of Law. Ms. Zapor has appeared on “Good Morning America,” Court TV, MSNBC, and “Larry King Live,” and has been quoted in *The Washington Post*, *The New York Times*, *The Rocky Mountain News*, and *The Denver Post*.

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and engineering from the Colorado School of Mines. In 2001, Kris received her J.D. from the University of Denver College of Law.

Kris is a recent past chair of the Colorado Bar Association Elder Law Section and actively serves on the Elder Law Section's Executive Council. Kris is also a member of the Trust and Estate section and a Colorado Bar Foundation fellow. Along with other members of the Elder Law and Trust and Estate sections, Kris regularly reviews and evaluates proposed legislation affecting elder law and probate practitioners and their clients. She had testified before the Colorado General Assembly regarding various new bills, and has contributed to the drafting of significant amendments to improve proposed legislation that became law. Kris has presented on a number of topics of interest to elder law and probate practitioners for the Colorado Bar Association and the Elder Law Section's annual retreat. Kris also speaks on educational topics of interest to seniors and their families through various community outreach programs.

Chapter 1

Social Security Benefits

Rose Mary Zapor, Esq.
Lakewood Legal Center

SYNOPSIS

- 1-1. Retirement Benefits
 - 1-2. Disability Benefits
 - 1-3. Supplemental Security Income Benefits
 - 1-4. Statewide Social Security Offices
 - 1-5. Other Resources for Social Security Information and Assistance
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1-1. Retirement Benefits

When you work and pay Social Security taxes, you earn Social Security credits. Most people earn the maximum of four credits per year.

The number of credits you need to get retirement benefits depends on your date of birth. If you were born in 1929 or later, you need 40 credits (10 years of work). People born before 1929 need fewer than 40 credits (39 credits if born in 1928; 38 credits if born in 1927; etc.).

If you stop working before you have enough credits to qualify for benefits, your credits will remain on your Social Security record. If you return to work later on, you can add more credits so that you qualify. No retirement benefits can be paid until you have the required number of credits.

If you are like most people, you will earn many more credits than you need to qualify for Social Security. These extra credits do not increase your Social Security benefit. However, the income you earn while working will increase your benefit, as you will learn in the next section.

Your benefit amount is based on your earnings averaged over most of your working career. Higher lifetime earnings result in higher benefits. If you have some years of no earnings or low earnings, your benefit amount may be lower than if you had worked steadily.

Your benefit amount also is affected by your age at the time you start receiving benefits. If you start your retirement benefits at age 62 (the earliest possible retirement age), your benefit will be lower than if you waited until a later age. The maximum benefit amount for 2023 is \$4,555; however, very few people reach that benefit because the beneficiary would have to earn the maximum salary for 35 years to qualify.

In order to determine what your benefit will be at your full retirement age, or early or delayed retirement, set up an online account at www.ssa.gov for My Social Security. Then you can retrieve your entire salary history and review for any mistakes. Once you have the history in your hands, you can use the calculator found on the social security website to determine your projected benefits. You can also use this site to see your annual social security statement, get a replacement card, change your address, and many other activities without having to wait on the national help line.

You should review your record every year to determine if your income has been correctly reported. Due to identity theft, clerical mistakes, and misreporting by employers, your record may reflect incorrect income, which will affect your eventual benefits.

Full Retirement Age

The usual retirement age for people retiring now is age 65. Social Security calls this “full retirement age,” and the benefit amount that is payable is considered the full retirement benefit.

Because of longer life expectancies, the full retirement age will be increased in gradual steps until it reaches age 67. This change started in the year 2003 and affects people born in 1938 and later.

Age to Receive Full Social Security Benefits	
<i>Year of Birth</i>	<i>Full Retirement Age</i>
1937 or earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 or later	67

Early Retirement

You can start your Social Security benefits as early as age 62, but the benefit amount you receive is reduced permanently. It will not go up when you reach your full retirement age.

The reduction is based on the number of months you will receive checks before you reach full retirement age. If your full retirement age is 65, the reduction for starting your Social Security at age 62 is about 20 percent; at age 63, it is about 13½ percent; and at age 64, it is about 6⅔ percent.

If your full retirement age is older than 65 (that is, you were born after 1937), you still will be able to take your retirement benefits at age 62, but the reduction in your benefit amount will be greater than it is for people retiring at their full retirement age.

As a general rule, early retirement will give you about the same total Social Security benefits over your lifetime, but in smaller amounts to take into account the longer period you will receive them.

Some people stop working before they reach age 62. In that case, it is important to remember that during years with no earnings, you miss the opportunity to increase your benefit amount by replacing lower earnings years with higher earnings years.

Delayed Retirement

Not everyone retires at full retirement age. You may decide to continue working full time beyond that time. In that case, you can increase your Social Security benefit in two ways.

Each additional year you work adds another year of earnings to your Social Security record. Higher lifetime earnings may result in higher benefits when you retire.

In addition, your benefit will be increased by a certain percentage if you delay retirement. These increases will be added in automatically from the time you reach your full retirement age until you start taking your benefits, or you reach age 70. The percentage varies depending on your year of birth. See the chart below for the increase that will apply to you.

If you plan to start your retirement benefits after age 62, it is a good idea to contact Social Security in advance to see which month is best to claim benefits. In some cases, your choice of a retirement month could mean additional benefits for you and your family.

It may be to your advantage to have your Social Security benefits start in January, even if you do not plan to retire until later in the year. Depending on your earnings and your benefit amount, it may be possible for you to start collecting benefits even though you continue to work. Under current rules, many people can receive the most benefits possible with an application that is effective in January.

If you are not working, or your annual earnings are under the Social Security earnings limits, or you plan to start collecting your Social Security when you turn 62, you should apply for benefits three months before the date you want your benefits to start.

Increases for Delayed Retirement	
<i>Year of Birth</i>	<i>Yearly Rate of Increase</i>
1917-1924	3.0%
1925-1926	3.5%
1927-1928	4.0%
1929-1930	4.5%

1931-1932	5.0%
1933-1934	5.5%
1935-1936	6.0%
1937-1938	6.5%
1939-1940	7.0%
1941-1942	7.5%
1943 or later	8.0%

Important Point: If you decide to delay your retirement, **be sure to sign up for Medicare at age 65.** In some circumstances, medical insurance costs more if you delay applying for it. Other information about Medicare is in Chapter 2.

When Should You Receive Your Benefits?

There is no easy answer to this question. Every family is different and every case is different. The questions you should ask are:

- 1) *How's your health, and your family's health history?*

If you have a reasonable expectation of living decades past retirement, postponing benefits to get a bigger payment could prove important to your long-term financial stability. But if you turn 62 in poor health, or have a genetic predisposition to certain illnesses, you may decide it makes more sense for you and your family to get what you can, while you can.

- 2) *How long do you expect to be steadily employed?*

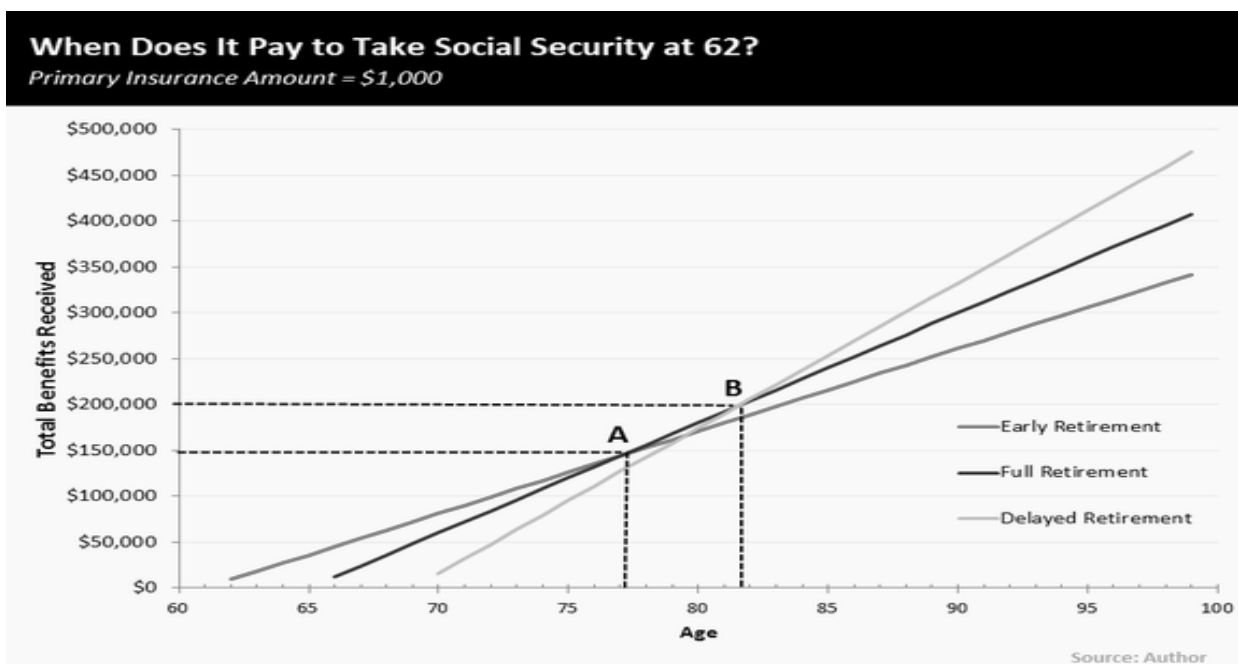
Many older workers are being nudged into early retirement as companies downsize, and they wind up spending their last working years at the lower end of the salary scale. If you find yourself scraping to cover expenses, filing for Social Security at age 62 and taking lower benefits may be what you need to make ends meet.

Continuing to work does not reduce your benefits once you reach full retirement age. Before then, you are subject to earnings limits that could trigger withholding from your Social Security payments (and from those of your spouse and children if they are collecting benefits on your work record).

- 3) *From full retirement age until 70, you can earn delayed retirement credits.*

These boost your eventual benefit by two-thirds of 1 percent for each month of delay — and increase survivor benefits for your spouse, if you die first.

The chart below may help you determine when you should take your Social Security benefits. The earlier you take your benefits, the longer it takes to receive as much as you would if you were to delay. For instance, if you take your benefits at 62, your lifetime benefit would be less than if you waited for your full retirement age of 67 when you reach 77 years old. If you wait to take your benefits at age 70, your lifetime benefits will be greater than early acceptance at 78 years old, and more than your full benefit when you reach 82. This could result in an additional \$100,000 over your lifetime if you live into your 90s.



From the Motley Fool – www.fool.com

Retirement Benefits for Widow(er)s

Widow(er)s can begin receiving benefits at age 60 or age 50 if disabled. If you are receiving widow(er)s (including divorced widow(er)s) benefits, you can switch to your own retirement benefits as early as age 62, assuming you are eligible, and your retirement rate is higher than your widow(er)'s rate. In many cases, a widow(er) can begin receiving one benefit at a reduced rate and then switch to the other benefit at an unreduced rate at full retirement age. The rules vary depending on the situation, so you should talk to a Social Security representative about the options available to you.

Family Benefits

If you are receiving retirement benefits, some members of your family also can receive benefits. Those who can include:

- ▶ Your wife or husband age 62 or older;
- ▶ Your wife or husband under age 62, if she or he is taking care of your child who is under age 16 or disabled;
- ▶ Your former wife or husband age 62 or older;
- ▶ Children up to age 18;
- ▶ Children age 18 to 19, if they are full-time students through grade 12; and
- ▶ Children over age 18, if they are disabled.

Spouse's Benefits

A spouse receives one-half of the retired worker's full benefit unless the spouse begins collecting benefits before age 65. In that case, the amount of the spouse's benefit is permanently

reduced by a percentage based on the number of months before she or he reaches 65. However, if your spouse is taking care of a child who is under age 16 or disabled and receiving Social Security benefits, your spouse gets full benefits, regardless of age.

If you are eligible for both your own retirement benefits and for benefits as a spouse, Social Security always pays your own benefit first. If your benefit as a spouse is higher than your retirement benefit, you will receive a combination of benefits equaling the higher spouse benefit.

The earliest a widow or widower can start receiving Social Security survivors benefits based on age is age 60. At age 60, you will get 71.5 percent of the monthly benefit because you will be getting benefits for an additional 72 months. At age 62, you will get 81 percent of the monthly benefit because you will be getting benefits for an additional 48 months.

Maximum Family Benefits

If you have children eligible for Social Security, each will receive up to one-half of your full benefit. But there is a limit to the amount of money that can be paid to a family. If the total benefits due your spouse and children exceed this limit, their benefits will be reduced proportionately. Your benefit will not be affected.

Benefits for a Divorced Spouse

A divorced spouse can get benefits on a former husband's or wife's Social Security record if the marriage lasted at least 10 years. The divorced spouse must be 62 or older and unmarried. If the spouse has been divorced at least two years, he or she can get benefits, even if the worker is not retired. However, the worker must have enough credits to qualify for benefits and must be age 62 or older. The amount of benefits a divorced spouse gets has no effect on the amount of benefits a current spouse can get.

If You Work and Receive Social Security at the Same Time

You can continue to work and still receive retirement benefits. Your earnings in (or after) the month you reach your full retirement age will not affect your Social Security benefits. However, your benefits will be reduced if your earnings exceed certain limits for the months before you reach your full retirement age: age 65 for persons born before 1938 and gradually increasing to age 67 for persons born in 1960 or later.

If you are under full retirement age, \$1 in benefits will be deducted for each \$2 in earnings you have above the annual limit. In the year you reach your full retirement age, your benefits will be reduced \$1 for every \$3 you earn over a different annual limit until the month you reach full retirement age. For 2023, the annual limit is \$21,240. Then you can work without any reduction in the amount of your monthly benefits, no matter how much you earn. These limits increase each year as average wages increase.

If other family members receive benefits on your Social Security record, the total family benefits will be affected by your earnings. This means Social Security will offset not only your benefits, but those payable to your family as well. If a family member works, however, the family member's earnings affect only his or her benefits.

If you and your spouse were born before 1954, you may be able to apply for benefits on your spouse's record while you continue to accumulate benefits on your own record. The restricted application is available to you only when the following requirements have been met: (1)

you must reach full retirement age to file the restricted application; (2) you have not filed for your own retirement benefit before; and (3) your spouse has filed for his/her own retirement benefit. An ex-spouse can use this strategy as well provided he or she was married to the former spouse (must be age 62 and older) for at least 10 years and has not remarried.

Special Monthly Rule

A special rule applies to your earnings for one year, usually your first year of retirement. Under this rule, you can receive a full Social Security check for any month you are “retired,” regardless of your yearly earnings. Your earnings must be under a monthly limit. If you are self-employed, the services you perform in your business are taken into consideration as well.

Ticket to Work

If you receive Social Security Disability Insurance (SSDI), Social Security has a work incentive called the Trial Work Period (TWP), which allows you to test your ability to work for at least nine months and still receive benefits. As long as you report your work activity and continue to meet Social Security’s disability requirements, you’ll continue to receive your benefits payments regardless of how much money you make. The TWP continues until you accumulate 9 TWP service months (not necessarily consecutive) within a rolling 60-month period.

Your Benefits May Be Taxable

About 20 percent of people who get Social Security have to pay taxes on their benefits. This provision affects only people who have substantial income in addition to their Social Security.

At the end of each year, you will receive in the mail a Social Security Benefit Statement showing the amount of benefits you received. You can use this statement when you are completing your federal income tax return to find out if any of your benefits are subject to tax.

Pensions from Work Not Covered by Social Security

If you get a pension from work where you paid Social Security taxes, it will not affect your Social Security benefits. However, if you get a pension from work that was not covered by Social Security — for example, the federal civil service, some state or local government employment, or work in a foreign country — your Social Security benefit may be lowered or offset.

Leaving the United States

If you are a United States citizen, you can travel or live in most foreign countries without affecting your eligibility for Social Security benefits. However, there are a few countries — Cambodia, Cuba, North Korea, Vietnam, and many of the former Soviet republics (except Estonia, Latvia, Lithuania, and Russia) — where Social Security cannot send Social Security checks.

If you work outside the United States, different rules apply in determining if you can get your benefit checks.

Most people who are neither U.S. residents nor U.S. citizens will have 25.5 percent of their benefits withheld for federal income tax.

1-2. Disability Benefits

Social Security Disability Insurance Benefits (SSDIB), formerly known as Social Security Disability Income (SSDI), is a federal entitlement program in which eligibility does not depend upon financial need. SSDIB is an income benefit from Social Security available to blind or disabled persons under age 65 who have earned a sufficient number of qualifying quarters of work.

Disability is determined according to the criteria in § 1382c(a)(3) of the Social Security Act. To be considered “disabled,” you must have a diagnosed medical condition (including mental illness) that is expected to last at least 12 months or to result in death. Further, you must be unable to engage in substantially gainful activity due to your medical condition. Generally, you are deemed to be engaging in substantially gainful activity if you are able to earn at least \$1,470 per month (\$2,460 if you are blind).

The number of work quarters needed to qualify for SSDIB benefits depends upon your age when you become disabled. If you are age 31 or older, you will need at least 20 qualifying quarters within the 10-year period immediately before your application for SSDIB. If you are under age 24, you will need only six qualifying quarters; if you are between the ages of 24 and 31, you will need enough qualifying quarters to account for having worked half of the time between age 21 and your age at the onset of your disability.

SSDIB does not pay for medical care. However, after you have maintained SSDIB eligibility for at least 24 consecutive months from your date of the onset of disability, you will automatically become eligible for Medicare. If you are disabled with amyotrophic lateral sclerosis (ALS), you do not have to wait 24 months to become eligible for Medicare.

If you are an SSDIB recipient who wishes to return to the work force, you may earn in excess of \$1,050 per month during a nine-month trial period without losing benefits. If you are self-employed, you can either earn in excess of \$1,050 per month or work in excess of 80 hours per week. After that, you can continue to be eligible for SSDIB while working for an additional 36 months as long as your earnings are not considered “substantial”, that is you are earning less than \$1,470 per month. If you are also entitled to Medicare benefits, those Medicare benefits can continue for up to 8½ years after you return to work.

Children may also receive SSDIB benefits, but only from a disabled, retired, or deceased parent who was eligible for Social Security benefits. Sometimes benefits are also available to the spouse or divorced spouse of an insured disabled person.

SSDIB Offset

If you are a disabled worker under age 65 and you receive workers’ compensation benefits for lost wages (indemnity), it is possible that your indemnity payments could cause your SSDIB benefits to be reduced if your combined SSDIB and workers’ compensation indemnity benefits total more than 80 percent of your “average current earnings.” Social Security will determine your average current earnings and the amount of your SSDIB offset, if any. This reduction stops when you reach age 65 and your disability benefits are replaced by Social Security retirement benefits.

1-3. Supplemental Security Income Benefits

Supplemental Security Income (SSI) is a financial needs-based public benefit program, which provides income to the elderly, blind, or disabled. SSI is federally funded and governed

solely by federal law. SSI does not pay for medical care. However, in Colorado, if you are eligible for SSI, you will also be eligible to have medical benefits through the Medicaid program. An individual applying for SSI must meet strict income and resource tests to qualify.

The monthly income limits for SSI are identical to the maximum federal SSI benefit: \$914 per month for an individual and \$1,371 for a married couple. Generally, any asset that is spent or disposed of by the individual in the same calendar month as it is received is considered "income." Income under SSI regulations consists of both earned and unearned income.

Earned income consists of your wages, as well as net earnings from self-employment. Unearned income consists of your income from other sources, including support and maintenance furnished in cash or in kind; payments from an annuity, workers' compensation, old-age pension, survivors and disability insurance, and unemployment benefits; payments occasioned by the death of another (which would include payments from an inheritance, life insurance policy, or wrongful death action); support and alimony payments; and earnings of and additions to a non-exempt trust of which you are a beneficiary.

Income (and resources) can also be "deemed" under SSI regulations. That is, if you are living at home with your ineligible spouse or child, you will be deemed to have access to a portion of the spouse's or child's income. Generally, an individual under age 18 living with his or her family will also be deemed to have access to a portion of his or her ineligible parents' incomes. However, for individuals who do not live in the same home as their families, the income of a spouse, child, or parent is not deemed available. For individuals who have resident alien status and are eligible for SSI, the income and resources of a sponsor are deemed to the individual, regardless of whether they live in the same household.

SSI exempts the first \$20 per month of your unearned income, the first \$65 of your earned income, and one-half of your monthly earned income over \$65. In Colorado, you may also receive a state benefit in addition to the federal SSI benefit. These state payments are also exempt, as are certain other types of income. These income exemptions are often referred to as the "income disregards."

Generally, to qualify for SSI you must have nonexempt income below \$914. Earned and unearned income from sources other than SSI, after deducting the income disregards, will offset your SSI benefit on a dollar-for-dollar basis. An offset for other income that reduces your SSI benefit to \$0 will make you ineligible.

There are also restrictions on resources. Resources are assets consisting of cash or other liquid assets that (1) could be converted to cash and (2) are not spent or disposed of in the month received. Certain exempt resources, including your house, one car, your personal property, household goods, a burial space, or a pre-paid burial plan are not counted. Nonexempt resources are restricted to a total of no more than \$2,000 for individuals and \$3,000 for married couples.

Transfers Without Fair Consideration (Gifts)

Individuals often consider making gifts of their excess resources to reduce those resources to eligibility levels. To prevent the abuse of this strategy, federal laws impose penalty periods for certain transfers without fair consideration during the "look-back period" of 60 months preceding the filing of the SSI application. During a resulting penalty period, the individual may not qualify for SSI.

To calculate the penalty period for any transfers of resources, the total uncompensated value of all transfers made during the look-back period is divided by the maximum SSI benefit plus any corresponding state payment. Under Medicaid law, the penalty period is calculated by

dividing the uncompensated value of the transfer by the average monthly cost of nursing home care for an individual in the state in which the individual lives. The maximum penalty period is 36 months.

While transfers of resources are generally penalized under SSI law, certain transfers of resources are exempt and will *not* incur a penalty period. These exempt transfers are essentially the same as those for Medicaid long-term care and Home and Community Based Services (HCBS) benefits.

1-4. Statewide Social Security Offices

Be aware that these offices may be closed due to Covid-19. Most of the Administration employees both locally and nationally are working from home. During the pandemic, the Social Security Administration has laid off approximately one-half of its employees.

Social Security Offices

General information: (800) 772-1213

For updates: www.ssa.gov

<p>Alamosa Office 602 Del Sol Dr., Ste. 1-A Alamosa, CO 81101 (888) 475-0297</p>	<p>Ft. Collins Office 301 S. Howes St., 4th Floor Ft. Collins, CO 80521 (866) 336-7385</p>	<p>Littleton Office 8000 Southpark Ln. Littleton, CO 80120 (800) 772-1213</p>
<p>Aurora Office 14280 E. Jewell Ave., # 250 Aurora, CO 80012 (800) 772-1213</p>	<p>Glenwood Springs Office 120 Midland Ave., Ste. 140 Glenwood Springs, CO 81601 (866) 220-7898</p>	<p>Louisville Office 480 W. Dahlia St. Louisville, CO 81401 (800) 772-1213</p>
<p>Cañon City Office 115 N. 10th St. Cañon City, CO 81212 (866) 272-5728</p>	<p>Grand Junction Office 825 N. Crest Dr. Grand Junction, CO 81506 (866) 931-7120</p>	<p>Montrose Office 1805 Pavilion Dr. Montrose, CO 81401 (866) 758-1317</p>
<p>Colorado Springs Office 2306 E. Pikes Peak Ave. Colorado Springs, CO 80909 (888) 880-0688</p>	<p>Greeley Office 5400 W. 11th St., Ste. A Greeley, CO 80634 (877) 405-9195</p>	<p>Pueblo Office 3769 Parker Blvd. Pueblo, CO 81008 (888) 737-1761</p>
<p>Denver Office 1500 Champa St., 2nd Fl. Denver, CO 80202 (800) 772-1213</p>	<p>La Junta Office 1314 E. 3rd St. La Junta, CO 81050 (888) 221-0429</p>	<p>Trinidad Office 111 Waverly Ave. Trinidad, CO 81082 (866) 755-5009</p>
<p>Durango Office 103 Sheppard Dr., Ste. 120 Durango, CO 81303 (888) 472-6115</p>	<p>Lakewood Office 13151 W. Alameda Pkwy. Lakewood, CO 80228 (800) 772-1213</p>	

1-5. Other Resources for Social Security Information and Assistance

Social Security Administration

This is the official social security website. It has many videos, brochures, calculators, and other materials regarding all aspects of social security.

www.ssa.gov

The National Organization of Social Security Claimants' Representatives

The National Organization of Social Security Claimants' Representatives provides information for the public as well as a referral service for attorneys and representatives.

www.nosscr.org

AARP

AARP has a large section that provides additional information regarding social security benefits, frequently asked questions, and up-to-date information regarding changes in laws and regulations at the national level.

www.aarp.org/retirement/social-security

The Motley Fool

The Motley Fool site began as a tool for investors and has grown into a resource on all topics regarding financial matters, including Social Security. They have videos on YouTube that discuss when you should take your social security benefits as well as what to expect on Social Security.

www.fool.com

Your Congressional Representatives

Your Senators and Representatives all have staff that do nothing but assist with Social Security matters. They also listen to your concerns and suggestions regarding Social Security.

Senator Michael Bennett

Senator John Hickenlooper

Rep. Diana DeGette – 1st District – Denver

Rep. Joe Neguse – 2nd District – Boulder/Ft. Collins/Granby/Breckenridge/Vail

Rep. Loren Boebert – 3rd District – Western Slope/Telluride/Cortez/Alamosa/Pueblo

Rep. Ken Buck – 4th District – Eastern Plains/Greeley/Sterling/Limon/Trinidad

Rep. Doug Lamborn – 5th District – El Paso/Fremont/Teller/Park/Chaffee

Rep. Jason Crow – 6th District – Aurora/Centennial/Adams County

Rep. Brittany Petterson – 7th District – Jefferson/Adams

Rep. Yadira Caraveo – 8th District – Adams/Larimer/Weld

Chapter 2

Medicare

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Medical-Legal Advocates, LLC

SYNOPSIS

- 2-1. Medicare
 - 2-2. Medicare Benefits Covered
 - 2-3. Appeal Rights
 - 2-4. Resources
 - Exhibit 2A. Who Pays What Under Part D in 2023
 - Exhibit 2B. 2023 Part D Standard Plan Cost-Sharing
 - Exhibit 2C. Hospice and Part D Prescription Medications
-

This chapter will clarify important information you need to know about Medicare. It also will answer your questions about eligibility requirements and enrollment processes. This chapter outlines the services that Medicare Part A, Part B, and Part C cover, and provides a discussion of the prescription drug program covered under Part D, which became effective in 2006. Medicare payment policies, payment methods, and appeal processes are explained, and the advantages and disadvantages of each are discussed.

2-1. Medicare

Medicare is a three-part federal health insurance program managed by the Social Security Administration. It helps pay hospital and medical costs for people who are 65 years or older, and for some people with disabilities who are under 65. Overall, Medicare is not a “means tested” program. This means that your eligibility for Medicare benefits (except for Medicare Parts B and D) does not depend upon the amount of your income or your resources. The monthly premium structure changed in 2007 for Medicare Part B benefits, and in 2011 for Medicare Part D. These premiums are now determined by your income (means determination). Medicare Part D has an income-related monthly adjustment amount that is paid to Medicare.

Medicare Hospital Insurance is called Medicare Part A. It usually covers medically necessary stays in the hospital. It also may cover skilled nursing care and rehabilitation in a nursing facility or health care in your home after you leave the hospital. It is very important to note that Medicare Part A does *not* cover doctors’ and ambulance services. Medicare Part B covers these services (see below).

Medicare Medical Insurance is called Medicare Part B. In order to get Part B coverage, you must choose it and pay a monthly premium. Medicare Part B reimburses at the rate of 80 percent of the reasonable charge for medically necessary covered services.

Medicare Part B covers doctors' services, ambulance and outpatient services, preventive services, and medical supplies. It also covers home health services prescribed by your physician even if you have not been hospitalized. It must be *medically necessary* based on such criteria as a change in your functional status — for example, due to a fall or illness.

The premium structure for Part B changed in 2007, and income is now considered. This is the income-related monthly adjustment amount. The monthly premium ranges from \$164.90 to \$560.50 for new enrollees. The monthly premium is significantly higher based on a lower income if a married beneficiary has an income greater than \$97,000 and files a separate tax return, rather than a joint return. Current Medicare Part B beneficiaries are notified by Social Security of their premiums for 2023. Most beneficiaries will pay a \$164.90 premium.

The Social Security Administration (SSA) automatically determines your Medicare Part B premium, based on tax returns filed with the Internal Revenue Service, usually two years prior to the determination of the premium or on the most recent federal tax return provided. You will receive a notice from the SSA each fall outlining your next year's Medicare Part B premium and containing instructions on how to appeal the premium amount. If you have had a significant change in income (especially a decrease in income) due to such major life-changing events as marriage, divorce, the death of your spouse, retirement, or loss of retirement income, you should provide the SSA with updated tax information and challenge the premium amount.

Medicare Part C is also called Medicare Advantage. It requires eligible participants to elect this coverage and assign their Medicare Part A and Part B benefits to a private company approved by Medicare. Technically, Medicare Advantage plans must cover the same medically necessary services and benefits that are covered under original Medicare Parts A and B. However, the criteria for determination of "medical necessity" and eligibility for services, such as for rehabilitation and therapy services, may differ. These plans also may provide additional benefits that are excluded under Medicare Parts A and B, such as wellness programs (for example, Silver Sneakers) and vision and dental care.

You either can elect to have original Medicare Parts A and B or you can elect to enroll in a Part C plan (health maintenance organization (HMO), preferred provider organization (PPO), or private fee-for-service plan (PFFS)). If you are in a Medicare Advantage (Medicare Part C) plan and you want to change back to a Medicare fee-for-service plan, **you can disenroll between January 1 and March 31 of each year** (Medicare Advantage Open Enrollment Period).

Medicare Part D, which covers the prescription drug program, began in January 2006, and is intended to cover prescription drugs as a result of the Medicare Prescription Drug Improvement and Modernization Act of 2003. **The annual open enrollment period for Medicare Part D is from October 15 to December 7.** This is also the period in which you can change your plan enrollment. (See CMS Tipsheet No. 11219, page 4, "Understanding Medicare Advantage & Medicare Drug Plan Enrollment Periods" (revised Jan. 2023; published in English and Spanish).)

MEDICARE PART B AND PART D PREMIUMS

Tax Return Income Individual)	Joint Tax Return Income (Married Couples)	Tax Return Income (Married Filing Separately)	2023 Monthly Part B Premiums (each person)	2023 Monthly Part D Premiums (each person)
Up to \$97,000	Up to \$194,000	Up to \$97,000	\$164.90 (Standard premium)	Plan premium
Over \$97,000 to \$123,000	Over \$194,000 to \$246,000		\$230.80 (Standard premium plus \$65.90)	Plan premium plus \$12.20
Over \$123,000 to \$153,000	Over \$246,000 to \$306,000		\$329.70 (Standard premium plus \$164.80)	Plan premium plus \$31.50
Over \$153,000 to \$183,000	Over \$306,000 to \$366,000		\$428.60 (Standard premium plus \$263.70)	Plan premium plus \$50.70
Over \$183,000 to less than \$500,000	Over \$366,000 to less than \$750,000	Over \$97,000 to less than \$403,000	\$527.50 (Standard premium plus \$362.60)	Plan premium plus \$70.00
\$500,000 or greater	\$750,000 or greater	\$403,000 or greater	\$560.50 (Standard premium plus \$395.60)	Plan premium plus \$76.40

Medicare Eligibility

You are eligible for Medicare if:

- ▶ You are age 65 or older and qualify for Social Security or Railroad Retirement benefits, even if you are not actually receiving them;
- ▶ You are a former federal employee who retired either “during or after 1983,” or “on or after [specific date], 1983” or after January 1, 1983;
- ▶ You are disabled and have met the Social Security or Railroad Retirement disability requirements for 24 months or two years;
- ▶ You have end-stage kidney (renal) disease and have been treated with dialysis for three months (generally, you become eligible for Medicare benefits on the first day of the third month of dialysis treatment); or
- ▶ You have Lou Gehrig’s disease (ALS). You become eligible for Medicare benefits as soon as you are determined to be eligible for Social Security Disability Income (SSDI) benefits, without the requirement of the 24-month waiting period.

If you are age 65 or older but not eligible under the above requirements, you may still choose to enroll in the Medicare program. You must live in the United States and have been a citizen or legal alien for at least five years. If you choose to enroll, you must pay monthly premiums that are generally higher than those charged to eligible beneficiaries. The 2023 Medicare Part A monthly premium for voluntary enrollees is \$506 per month if you have paid into Social Security for 29 or fewer quarters, and \$278 per month if you have paid into Social Security for 30 to 39 quarters.

How to Enroll

People who elect and receive Social Security retirement benefits before they are 65 will be enrolled automatically in Medicare at age 65. People who have been receiving Social Security Disability benefits for 24 months also will be enrolled automatically in Medicare. These people will receive a Medicare card in the mail from the Social Security Administration three months before their 65th birthday (or on the 24th month of disability), along with a notice informing them of their Medicare Part A enrollment and that they automatically will be enrolled in Medicare Part B unless they refuse this coverage. If you are in one of these categories and do not receive your notice and card, contact the Social Security Administration.

If you have not chosen early retirement, you should apply for Medicare three or fewer months before your 65th birthday or up to three months after your birthday month, even if you plan to continue working. This seven-month period is the initial enrollment period. As the age of eligibility for full Social Security benefits is increasing, many people may need to enroll in Medicare at age 65 without also registering for Social Security benefits. If you do not apply at this time, you may miss your opportunity to timely enroll in Medicare Parts A and B, as you can only sign up between January 1 and March 31 of each year, with coverage beginning on July 1. This is known as the general enrollment period.

Also, there is a 10 percent penalty added to the premium for each full 12-month period an individual is late in enrolling for Medicare Part B, unless you qualify for the “Special Enrollment Period” (such as if you have group health plan insurance coverage based upon the current employment of you or a family member). So, it is very important that you enroll as soon as you are eligible, unless you are still covered by your own or your spouse’s employee health plan. Then, you can enroll for Part B at any time or during the eight-month period beginning when the employment or group health plan coverage ends, whichever first occurs.

Your monthly Medicare Part B premiums are deducted from your Social Security check. If you are not yet receiving Social Security, you will be billed for these premiums.

2-2. Medicare Benefits Covered

Benefits Covered Under Part A

Hospital Services

Hospital services (considered reasonable and medically necessary by Medicare) are covered for a hospitalization in an acute care hospital, an inpatient rehabilitation facility (IRF), or a long-term acute care hospital (LTAC). These services can include:

- ▶ Semi-private room and board, including special care units;
- ▶ General nursing services (not private duty nursing);

- ▶ Inpatient prescription drugs;
- ▶ Supplies;
- ▶ Use of equipment normally furnished by the hospital;
- ▶ Operating and recovery room costs;
- ▶ Blood transfusions after the first three pints;
- ▶ Diagnostic, therapeutic, or rehabilitative services and items the hospital normally furnishes; and
- ▶ Inpatient mental health care in a psychiatric hospital (lifetime maximum benefit of 190 days, subject to daily coinsurance of \$0 for days 1-60, \$400 for days 61-90, and \$800 for day 91 and beyond). You are responsible for all costs beyond the lifetime limit of 190 days. (See “Medicare Mental Health” at www.cms.gov/files/document/medicare-mental-health.pdf.)

Skilled Nursing Facility (SNF) Services

These include:

- ▶ Skilled nursing care;
- ▶ Semi-private room and board;
- ▶ Physical, occupational, and speech therapy;
- ▶ Medical social services;
- ▶ Inpatient prescription drugs; and
- ▶ Use of durable medical equipment such as wheelchairs, walkers, and special beds.

Note: Reimbursement for SNF rehabilitation significantly changed effective October 1, 2019, with the Patient-Driven Payment Model (PDPM). What this means is a Medicare beneficiary’s rehabilitation benefit has been decreased drastically.

A skilled nursing facility also may furnish intermediate and custodial care, which is not a covered benefit. Medicare only pays if you receive skilled nursing or therapy services or both and pays only under specific circumstances.

Hospice Services

Hospice care is concerned with maintaining a person’s quality of life as she or he approaches death. Hospice is appropriate for people with a terminal illness who have a life expectancy of six months or less if the disease process runs its normal course. Beneficiaries or their designees must sign a written hospice election form with the hospice organization of their choice, choosing hospice care over regular Medicare Part A covered benefits for the terminal illness. **This election can be cancelled at any time.** When in hospice care, you can continue receiving Medicare-covered services for medical conditions not related to your terminal illness.

The Medicare Part A hospice benefit *does not* include payment for room and board at a skilled nursing facility or hospice facility. However, if the beneficiary also has Medicaid benefits, Medicaid generally will cover this cost of room and board. Hospice benefits include:

- ▶ Physician services;
- ▶ Skilled nursing care;

- ▶ Physical, occupational, and speech therapy for purposes of symptom control or to enable the beneficiary to maintain functional skills;
- ▶ Durable medical equipment (DME) such as hospital bed and wheelchair rental;
- ▶ Pain-relieving medication and all other medications (*Note:* Medicare Part D changes some of these reimbursements) (See Exhibit 2C, “Hospice and Part D Prescription Medications”);
- ▶ Medical social services;
- ▶ Home health aide and homemaker services;
- ▶ Medical supplies and appliances;
- ▶ Spiritual, grief, and loss counseling; and
- ▶ Short-term inpatient care not for treatment of the terminal disease, but for management of symptoms and pain.

Benefits Covered by Part A and Part B

Home Health Care Services

Medicare benefits covered by Part A and Part B pay for home health care ordered by your physician and provided by a certified Medicare home health care agency of your choosing. This benefit is limited to “reasonable” and “medically necessary” intermittent care. The beneficiary may choose any Medicare-certified home health care agency, and there is no cost to the beneficiary for these home health care services.

Note: Reimbursement for home health services significantly changed effective January 1, 2020, with the Patient-Driven Groupings Model (PDGM). It changes the unit of home health care payment from a 60-day to a 30-day episode, eliminates payment based upon the number of therapy visits, and relies heavily on clinical characteristics and medical diagnoses to place Medicare beneficiaries into payment categories.

Overall, it may significantly decrease the number and availability of home health visits a beneficiary receives. Refer to the Center for Medicare Advocacy article, “Potential Impacts of New Medicare Payment Models on Skilled Nursing Facility and Home Health Care,” at www.medicareadvocacy.org/potential-impacts-of-new-medicare-payment-models-on-skilled-nursing-facility-and-home-health-care/.

Covered home health care services include:

- ▶ Skilled nursing care;
- ▶ Physical, occupational, and speech therapy;
- ▶ Limited services of a home health aide to assist the beneficiary with his or her activities of daily living (ADLs) such as bathing;
- ▶ Medical social services;
- ▶ Medical supplies; and
- ▶ Equipment provided by the agency.

Medicare Benefits Covered by Part B

After the yearly deductible of \$226 is met, Part B covers 80 percent of the Medicare-approved amount of the following medically necessary services and items:

- ▶ One-time “Welcome to Medicare” physical exam during the first 12 months of enrollment in Part B;
- ▶ Annual “wellness” visit, including a health risk assessment to:
 - Establish and update beneficiary’s medical history;
 - Create lists of current medical providers and medications;
 - Conduct routine measurements such as blood pressure, blood sugar, height, weight, and body mass index (BMI);
 - Assess cognitive status; and
 - Establish a 5- to 10-year schedule for preventive services and screenings.
- ▶ Physicians’ services;
- ▶ Ambulance services;
- ▶ Home health services prescribed by a doctor if you have not been hospitalized or met the required three-day hospitalization to trigger Medicare Part A benefits;
- ▶ Outpatient physical, occupational, and speech therapy. The maximum yearly benefit for 2023 was changed to \$2,230 for occupational therapy skilled services, and \$2,230 for physical and speech therapy combined. When \$2,230 is reached, a special code (KX Modifier) must be added to a beneficiary’s therapy claim. Therapy claims exceeding \$3,000 for physical therapy and speech therapy services, and \$3,000 for occupational therapy services, may be subject to a medical review process to determine if therapy services are “medically necessary”;
- ▶ Rental or purchase of durable medical equipment (DME) such as walkers, wheelchairs, and all-in-one commode chairs;
- ▶ Prosthetic and orthotic devices and medically necessary shoes such as for diabetics;
- ▶ Services in an emergency room, outpatient clinic, or ambulatory surgery center;
- ▶ Some hospital outpatient services and supplies (such as diagnostic x-ray tests, CT scans, EKGs, MRIs, and radium and radioactive isotope therapy);
- ▶ Opioid use disorder (OUD) treatment at opioid treatment programs (OTP) (effective Jan. 1, 2020);
- ▶ Expansion of telehealth benefits provided to treat behavioral health conditions, including substance use disorders (effective Jan. 1, 2020);
- ▶ Effective January 1, 2011, due to the Affordable Care Act (Health Care Reform of 2010), these preventive services and tests are provided free of charge to the beneficiary at specified intervals: vaccinations (flu, pneumonia, and hepatitis B shots, but NOT the shingles vaccine); mammograms; Pap smears; HIV testing; and screening tests for abdominal aortic aneurysm, bone density, cardiovascular health, colorectal cancer, diabetes, and prostate cancer;
- ▶ Screening and/or counseling to address alcohol misuse, depression, sexually transmitted infections, and obesity;

- ▶ Smoking cessation counseling, as ordered by your physician, for up to eight face-to-face visits. You must be diagnosed with a smoking-related illness or using medication that may be affected by tobacco to claim this benefit;
- ▶ Diabetes education and some supplies;
- ▶ Surgical dressings, splints, and casts;
- ▶ Limited chiropractic care;
- ▶ A percentage of the cost of oxygen and equipment;
- ▶ Kidney dialysis services and supplies;
- ▶ Kidney disease education services;
- ▶ Medical nutritional therapy services for diabetic and kidney disease patients;
- ▶ Blood transfusions;
- ▶ Laboratory services;
- ▶ Cardiac rehabilitation programs;
- ▶ Pulmonary rehabilitation programs; and
- ▶ Outpatient mental health care — you pay 20 percent of the Medicare-approved amount, depending on the type of facility providing services. You also may have to pay an additional copayment or coinsurance amount to the hospital.

Services and Supplies NOT Covered by Medicare Parts A or B

Although Medicare has broad coverage, it does not pay for many services and supplies. These non-covered services include:

- ▶ Acupuncture;
- ▶ Custodial care in a skilled nursing facility or at home;
- ▶ Services not “reasonable” or “medically necessary” as defined by Medicare;
- ▶ Room and board costs for a person on hospice who resides at a skilled nursing facility or hospice facility (see the “Hospice Services” section, above);
- ▶ Services the patient has no legal duty to pay for;
- ▶ Services paid by a governmental agency;
- ▶ Personal comfort items;
- ▶ Routine check-ups other than the “Welcome to Medicare” one-time physical examination done within the first 12 months of enrolling in Part B;
- ▶ Homemaker services;
- ▶ Hearing aids/examinations (Medicare does cover some hearing tests);
- ▶ Eyeglasses/routine eye examinations;
- ▶ Most chiropractic services;
- ▶ Cosmetic surgery;
- ▶ Dental care;
- ▶ Optional private hospital rooms;

- ▶ Orthopedic shoes; and
- ▶ Health care while traveling outside the United States.

Medicare Benefits Covered by Part C (Medicare Advantage)

If you are entitled to benefits under Medicare Part A and also are enrolled under Part B, you may choose to receive Medicare Part C from a Medicare Advantage plan. Medicare Part C plans must provide the services currently available under original Medicare Parts A and B, and usually include a prescription drug benefit. These plans may offer supplemental benefits, for which a separate premium may be charged. Part C provides beneficiaries with alternatives to original fee-for-service Medicare.

Medicare Advantage plans may include health maintenance organizations (HMOs), preferred provider organizations (PPOs), and private fee-for-service plans (PFFS). There are many different Medicare health plans available to Colorado residents, depending upon the person's county of residence.

Some Medicare beneficiaries choose to enroll in Medicare Advantage plans because the monthly premiums are lower and additional services are provided at lower costs to them. Before enrolling in a Medicare Advantage plan, investigate whether it will meet your particular health care and rehabilitation needs. **The annual open enrollment period to switch from original Medicare fee-for-service to a Medicare Advantage plan is October 15 to December 7. The annual Medicare Advantage open enrollment period is January 1 to March 31.**

Medicare Payment Policies

As with private insurance policies, Medicare Parts A and B have deductibles that you must pay before Medicare pays anything. Part B has a monthly premium, which is deducted from your Social Security check. Medicare Parts A and B also have co-insurance payments that go into effect after certain Medicare payments are made. You then must share some of the costs with Medicare.

Part A

The Medicare Part A hospitalization benefit has a deductible of \$1,600 (in 2023) for each "benefit period" or "spell of illness." Medicare measures your use of Part A hospital insurance with "benefit periods," which also are called "spells of illness." A benefit period is a period of consecutive days during which medical benefits for covered services, with certain maximum limitations, are available to you, the beneficiary. Your first benefit period begins the first day you enter a hospital after your insurance goes into effect.

A new benefit period of 90 days of hospitalization coverage (60 full benefit days and 30 co-insurance days) begins each time you are hospitalized, if it has been at least 60 consecutive days since your last discharge from a hospital or skilled nursing facility. Each benefit period is called a "spell of illness," and the number of benefit periods or spells of illness is unlimited. There is a deductible of \$1,600 for each new benefit period or spell of illness. For example, if you have two hospitalizations, or spells of illness, in 2023, your total deductible amount would be \$3,200.

Hospital Care

The Medicare Part A benefit allows you to receive up to 90 days of hospital care for each spell of illness. The following is what you must pay:

- ▶ For the first 60 consecutive days, Medicare requires you to pay only the deductible for the spell of illness, which in 2023 is \$1,600. Medicare pays the remaining covered expenses.
- ▶ For the next 30 days (days 61 to 90), Medicare requires that you pay a co-payment or co-insurance charge for each day you are in the hospital. For 2023, this daily co-insurance rate is \$400. Medicare pays the remaining covered expenses.
- ▶ Each beneficiary has a lifetime reserve of 60 days for days 91 to 150. This benefit is **not** renewable. Any number of the lifetime reserve days can be used for any spell of illness, up to the maximum the beneficiary has. So, after day 90, you may use some or all of your 60 lifetime reserve days. The 2023 co-insurance daily charge for each lifetime reserve day is \$800. Medicare pays the remaining covered expenses for each day, up to a 60-day maximum. A beneficiary can elect not to use these lifetime reserve days.

Skilled Nursing Care

Medicare Part A hospitalization insurance benefits provide up to 100 days of inpatient extended care benefit coverage for skilled nursing and skilled therapy services. However, there is no absolute right to payment for all 100 days unless they are “reasonable” and “medically necessary.”

Medicare Part A pays 100 percent of all costs for the first 20 days of covered skilled nursing care and skilled therapy services in a Medicare-certified facility after you are discharged from a hospital, following the required stay of at least three consecutive days, *which does not include the day of discharge*. Your care must begin within 30 days of the hospital discharge. There are a few exceptions to this 30-day admit rule.

Days 21 through 100 require a daily co-insurance rate of \$200 in 2023, and Medicare pays the remaining covered expenses. After 100 days, you are responsible for payment of the full amount and Medicare pays nothing. Your continued need for physical, occupational, and/or speech therapy might be covered by Medicare Part B. Your room and board is not a covered benefit. Also, you may be eligible for Medicaid payment for long-term care and during the application process (see Chapter 4, “Medicaid”). The level of care requirements for skilled nursing facility coverage are very restrictive. Rarely do individuals receive the full 100 days of coverage.

Home Health Visits

Home care services must start within 14 days of your discharge from the inpatient hospital or skilled nursing facility. Medicare Parts A and B pay for the *full* approved cost of home health visits by a Medicare-certified home health agency following a treatment plan of care prepared by a nurse or a physical, occupational, or speech therapist and approved by your physician. Strict requirements limit the coverage of home health services. The Medicare beneficiary receiving services must be “confined to her or his home” or “homebound” in order to receive home health services. This means it would take considerable and taxing effort to leave home. The person may be able to leave home for doctor appointments, an occasional walk or drive, or other limited trips

outside the home. Another requirement is that the services are needed only on an intermittent basis, rather than continually.

Home health care agencies *must* give the beneficiary a minimum of two days' notice of their intent to either cut back or terminate services. This notice must also explain the procedure for seeking review of the termination or cut back in services. If Medicare refuses to cover you for these types of services, you have a right to appeal this decision.

You should appeal any discharge or termination of services decision with which you do not agree. You may want to ask an attorney or someone else knowledgeable about Medicare to help you through the appeal process.

Hospice Care

The usual deductibles and co-payments do not apply to hospice care. Unless your prescriptions are covered from some other source or Medicare Part D, you pay 5 percent of the cost for prescription drugs, up to \$5 per outpatient prescription. You also pay 5 percent of the cost of respite care, up to a maximum equal to the yearly inpatient hospital deductible. (See Exhibit 2C, "Hospice and Part D Prescription Medications.")

Part B

Medicare Part B payment rules for covered medical services:

- ▶ Services must be reasonable and medically necessary, as defined by Medicare; and
- ▶ Medicare pays 80 percent of the approved charge after you pay your yearly deductible of \$226 in 2023. You pay the remaining 20 percent, plus any difference between the doctor's charge and the approved charge.

The approved charge is the amount that Medicare considers to be the value of the services you received. It is not always the same as the amount that the provider bills you for the services.

Medicare Payment Methods

Under Medicare Part A, you do not have to send in any bills you receive from a participating hospital, skilled nursing facility, or home health agency. The health care provider will file the claim for you, and Medicare will pay its share directly to the provider. You will then receive a Medicare Summary Notice (MSN) explaining what Medicare paid. If you disagree with this payment, you have the right to appeal (see section 2-3, "Appeal Rights").

Payment is made two ways under Medicare Part B Medical Insurance:

- 1) **Assigned Claims.** Participating physicians and health care providers who accept assignment will bill Medicare directly. You are responsible only for 20 percent of the approved Medicare Part B charge and not for any additional amount above the approved charge. If the doctor is a participating physician who has agreed to take Medicare assignment, then he or she has agreed not to charge above the Medicare approved rate, and also to accept the Medicare approved rate as payment in full. The simplest way to find out if the doctor is a participating physician who has agreed to take Medicare assignment is to ask in advance.
- 2) **Non-Assigned Claims.** With this method, the physician or health care provider sends in a completed claim form, but the payment from Medicare is paid directly to you. You

are then responsible for paying the provider the full amount of the bill for the services provided to you. Under this method, a physician or health care provider may bill you for the full charges, even if it is more than the Medicare approved charge.

With non-assigned claims, you are responsible for payment of the difference between the Medicare approved charge and the actual charge. For example, if the bill was \$100 and the Medicare approved charge was \$90, you would be responsible for the difference of \$10 (\$100 minus \$90), plus 20 percent of the approved charge (20 percent times \$90 equals \$18), for a total payment of \$28. The doctor cannot charge more than 115 percent of the approved charge.

Under either payment system, as Medicare Part B pays a maximum of 80 percent of the approved charge, you must pay at least 20 percent of the approved charge plus any unpaid part of your \$226 (for 2023) annual Medicare Part B deductible. You pay your share directly to the physician or health care provider.

The Medicare Prescription Drug Plan: Part D (Under Title 16 of the Social Security Act)

On January 1, 2006, the Medicare prescription drug plan began. Medicare has contracted with private companies to offer this drug coverage. Colorado currently has 23 stand-alone prescription drug plans (plans that only cover drugs) provided by private insurance companies and approved by Medicare. These plans have varying premiums, deductibles, and benefits. (For more information, go to <https://doi.colorado.gov/insurance-products/health-insurance/senior-health-care-medicare>. Then click on the box that says “2023 Part D Options.”) There are 38 Medicare Advantage (HMO, PPO, PFFS) plans and other Medicare health plans that provide prescription drug coverage in conjunction with health care coverage. These companies offer a variety of options, with different covered prescriptions and different costs. Medicare prescription drug plans are voluntary. If you want to participate, you must choose a plan offering the coverage that best meets your needs and then enroll. In most cases, there is no automatic enrollment to get a Medicare prescription drug plan.

Medicare prescription drug plans vary, but in general, this is how they work. When you join, you will pay a monthly premium (cost varies from \$3.50 to \$129.10 for Colorado plans) in addition to any premiums for Medicare Part A and Part B. Medicare prescription drug plans can offer basic coverage or more generous coverage for higher premiums. Joining is your choice. However, just as described above for enrollment in Part B, if you do not join when you are first eligible, you may have to pay a higher premium if you choose to join later. **You will have to pay this higher premium for as long as you have a Medicare prescription drug plan.**

Enrollment

To enroll, you must be eligible for Medicare Part A or Part B. You can first enroll three months before you become eligible for Medicare and until three months after you become eligible for Medicare. This is called the “initial enrollment period.” Enrolling is your choice. A counselor at the Colorado State Health Insurance Assistance Program (SHIP; (888) 696-7213) can assist you with the selection and enrollment process. *Note:* after your initial enrollment period, you can change your plan during the open enrollment period, which is from October 15 to December 7 each year. Your new Medicare prescription drug plan will begin January 1 of the following year.

You also can find up-to-date Medicare information and answers to your questions anytime on Medicare’s official website, www.medicare.gov. Or, you can call (800) MEDICARE

((800) 633-4227; TTY (877) 486-2048). This toll-free help line is available 24 hours a day, seven days a week to answer your questions.

Plan Costs to You

In 2023, the standard drug benefit plan includes your payment of an annual maximum deductible of \$505 (the Colorado plans range from \$3.50 to \$129.10) prior to payment of any prescription drug costs. Also, effective January 1, 2012, higher income Medicare beneficiaries have an income-related adjustment to their Medicare Part D premiums. This new income means adjustment is estimated to affect less than 5 percent of Medicare beneficiaries. Refer to the “Medicare Part B and Part D Premiums” rate chart in section 2-1 for premium amounts.

- ▶ If your yearly drug costs are \$0 to \$505 (or your deductible), you pay 100 percent of these costs.
- ▶ If your yearly drug costs are \$ 505.01 to \$ 4,660 in the initial coverage, you pay (\$1,165 or) 25 percent of your yearly costs (plus your deductible) and your plan pays the other 75 percent.
- ▶ The Medicare Part D “donut hole,” “coverage gap,” or “coverage in the gap” closed completely in 2020. You are responsible for a total cost of \$5,856.25 to get through the “donut hole.” Effective January 1, 2011, the Affordable Care Act legislation (health care reform) worked to decrease this coverage gap by providing a “Medicare Gap Discount Program.” In 2023, it provides a 75 percent discount on name-brand formulary drugs (Plan pays 5 percent and drug manufacturer gives 70 percent discount on costs), and a 75 percent discount on all generic formulary medications (Plan pays 75 percent). This means you actually pay 25 percent for name-brand formulary drugs or generic drugs while in the former donut hole.
- ▶ For catastrophic coverage, in 2023, when your total out-of-pocket expense on formulary drugs reaches \$7,400 (this is the total retail cost of all covered medications as well as your deductible, co-insurance, co-payments, and discounts), you pay the higher of 5 percent of your drug costs or \$4.15 per month for generic drugs and \$10.35 per month for name-brand (or non-preferred) drugs for the rest of the calendar year, your plan pays 15 percent, and Medicare pays 80 percent.

See the “Donut Hole: Who Pays What Under Part D” chart from the National Council on Aging, attached as Exhibit 2A (www.ncoa.org/article/donut-hole-part-d), and “2023 Part D Standard Plan Cost-Sharing,” attached as Exhibit 2B (www.ncoa.org/article/medicare-part-d-cost-sharing-chart/).

Additional Low-Income Assistance (“Extra Help”)

The 2023 monthly income figures for Low-Income Subsidy eligibility are now available. Guidelines are published following the release of the Federal Poverty Guidelines each year at the end of January or February. The maximum income eligibility figure is set at 150 percent of the federal poverty guideline for an individual.

If your monthly income is below \$1,843 (\$22,116 annual income) for a single person or \$2,485 (\$29,820 annual income) if you are married and living with your spouse, you may qualify for extra financial assistance through the Low-Income Prescription Drug Subsidy Program. Slightly higher income levels may apply if you provide half-support to other family members living with you, or if you work or reside in Alaska or Hawaii.

Effective January 1, 2023, if your resources (including your bank accounts, stocks, bonds, IRAs, mutual funds, life insurance policies with face values over \$1,500, and real estate, but not counting your home, car, burial plots, or irrevocable burial plan contracts) are less than \$16,660 (for a single person) or less than \$33,240 (for a married couple), you may qualify for extra help paying for your Medicare prescription drug costs. You can apply for this Low-Income Subsidy through the SSA or your State Medical Assistance Office. If the SSA can determine your eligibility by its internal records, an application will be sent to you. For others, you must apply.

The amount of subsidy you get depends on your income and resources. You still must join a Medicare prescription drug plan for Medicare to pay for any of your drug costs.

If you qualify for the Low-Income Subsidy or “Extra Help” program, you will have continuous drug coverage and will pay only a small amount for your prescriptions. The SSA (at (800) 772-1213, TTY at (800) 325-0778, or www.ssa.gov) can provide more information on the Low-Income Subsidy for prescription drug costs and information on how to apply for it.

2-3. Appeal Rights

Medicare beneficiaries are required to receive written notice of termination of services, non-coverage, and cutbacks in coverage pursuant to Medicare Parts A and B. Original Medicare Parts A and B Fee-For-Service Plans have five levels of appeals of the denial of payment of services. (See www.cms.hhs.gov/OrgMedFFSAppeals; see also www.medicareadvocacy.org for numerous articles.) The notice should state the appeal procedure you need to follow.

Most appeals must be written, and must be filed within the number of days stated on the notice. *Note:* Covid-19 has established alternative communication mediums in addition to submitting appeals via hard copy mail. It is recommended that all appeals and related correspondence be sent via certified mail, with a return receipt requested, so you have proof that you sent your appeal and it was done on time. Usually, the appeal forms are included with the notices. Otherwise, the appeal forms can be obtained from the Medicare website at www.medicare.gov. *Note:* if you have a Medicare Advantage Plan (Medicare Part C), you need to read your plan materials carefully to learn how to file an appeal and whether you have the right to an “expedited review” or fast appeal.

Parts A and B

Call the Colorado Quality Improvement Organization, Kepro, toll-free at (888) 317-0891 or (216) 447-9604 to appeal a denial of Medicare approval for a hospital admission, continued hospital stay, discharge, or termination of services.

If you feel your Medicare-covered services from a hospital, skilled nursing facility, home health care agency, comprehensive outpatient rehabilitation center, or hospice are ending too soon, you might have the right to a “fast” or “expedited” appeal with an independent reviewer to determine if your services should continue. You have by noon on the next calendar day after receiving the Notice of Discharge or Service Termination to appeal this decision for the Quality Improvement Organization Redetermination, which has 72 hours (3 days) to make its decision. Your second level of appeal is to the Qualified Independent Contractor for Colorado who is C2C Innovative Solutions, Inc. for Part A & B appeals. It must be done within 72 hours of the first denial. It also has 72 hours to give its decision.

If you still have concerns with this decision, your third level of appeal is to file an appeal within 60 days to the Office of Medicare Hearings and Appeals. You then follow the procedure and timelines as stated for a regular appeal. The Colorado State Health Insurance Assistance Program (SHIP), (888) 696-7213, (303) 894-7499, or (800) 930-3745 (toll-free), can assist you with filing an appeal.

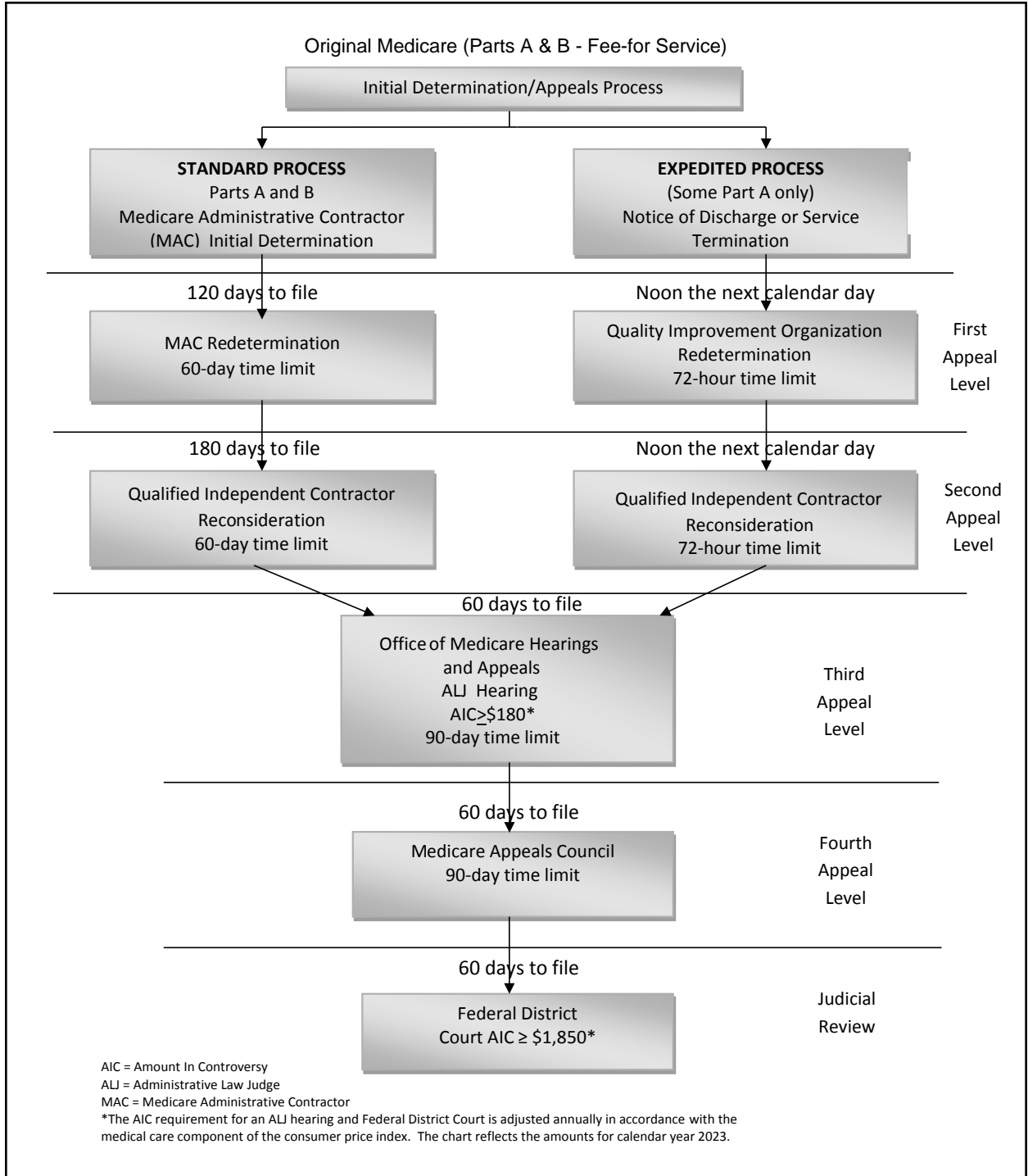


Diagram available at [www.cms.gov/Medicare/ Appeals-and-Grievances/ OrgMedFFSAppeals/ Downloads/ Flowchart-FFS-Appeals-Process.pdf](http://www.cms.gov/Medicare/Appeals-and-Grievances/OrgMedFFSAppeals/Downloads/Flowchart-FFS-Appeals-Process.pdf).

Original Medicare Parts A and B plans send you a Medicare Summary Notice (MSN) every three months. This MSN lists all the services you have had and states whether Medicare paid for these services. It also states your appeal rights. If Medicare denies payment of your claim, you may ask for an informal review or redetermination of the decision from the Medicare contractor by:

- 1) Circling the items you disagree with on the MSN;
- 2) Writing an explanation on the MSN, which is signed and dated;
- 3) Including your telephone number;
- 4) Attaching any supporting documentation to the redetermination request;
- 5) Sending the MSN or a copy by certified mail, return receipt requested, to the Fiscal Intermediary (FI), Carrier, or Medicare Administrative Contractor (MAC) listed in the appeals section of the MSN; and
- 6) Keeping a copy of all documents you send.

You must ask for that review within 120 days of the date of the decision in the MSN. If you still disagree with Medicare's decision of redetermination, you have 180 days from the date you receive this second denial of payment to submit a written request for review and reconsideration to the Qualified Independent Contractor (QIC). This is the second level of appeal. If you disagree with the independent review, and the amount in dispute is \$180 or more, in 2023, you may ask for a formal hearing from the Office of Medicare Hearings and Appeals from an administrative law judge (ALJ). This is the third level of appeal. You must do so within 60 days of Medicare's review decision. If you still disagree with the decision of the Office of Medicare Hearings and Appeals, you then can appeal within 60 days to the Medicare Appeals Council, which ultimately may decline a review. This is the fourth level of appeal.

Your fifth and final avenue of appeal is to the federal district court for judicial review if the amount in dispute is \$1,850 or more for appeals filed in 2023. If both you and Medicare maximize the time limits allowed for sending an appeal and giving a redetermination, your final appeal to the federal district court can take almost 23 months. Considering the present caseload of Colorado federal district court judges, it probably will take in excess of a year for your appeal to be determined, unless your appeal can be expedited.

Supplemental Health Insurance (Medigap)

Since Medicare does not pay all your medical or long-term care expenses, private insurance companies sell insurance to supplement Medicare, which is known as "Medigap" coverage. Supplemental Health Insurance is especially important to have for covering your daily co-insurance charges and deductibles, such as for hospitalization in days 61 through 150, skilled nursing facility days 21 through 100, and Medicare Part B 20 percent beneficiary responsibility for charges. It is highly recommended coverage. See Chapter 3, "Health Insurance Beyond Medicare," for information on Medigap or supplemental coverage. There is a six-month open enrollment period starting the first month you are 65 years old *and* enrolled in Medicare Part B.

Medicare Information Resources

If you need help or more information, an excellent Medicare resource is the nonprofit organization, the Center for Medicare Advocacy, Inc. Its website is www.medicareadvocacy.org.

org. It has a large library of excellent articles on a variety of Medicare topics. Another excellent resource is the National Council on Aging (www.ncoa.org).

You also can look at www.medicare.gov. This is Medicare's official consumer website, where you can find the most up-to-date Medicare information and answers to your questions anytime. You also can call (800) MEDICARE ((800) 633-4227; (877) 486-2048 for TTY users). This toll-free help-line is available 24 hours a day, 7 days a week, and has customer service representatives to answer your questions in either English or Spanish. These customer service representatives, however, may not be willing to answer any questions from currently non-eligible Medicare beneficiaries, such as family members of a beneficiary or educators.

The SSA sends free booklets providing detailed information on Medicare when you enroll. Also, the SSA provides periodic updates to information concerning Medicare Part A and Part B, as these programs are subject to change and review by Congress and the Centers for Medicare and Medicaid Services, formerly Health Care Financing Administration (HCFA).

The "Medicare & You 2023" handbook should have been mailed to each Medicare beneficiary between late October and late November 2022. You also can view and download it at www.medicare.gov (Go to "Menu" and click on "Basics," then "'Medicare & You' handbook," or call (800) MEDICARE ((800) 633-4227 to request a copy. TTY users should call (877) 486-2048.)

2-4. Resources

See section 5-6, "Resources," in Chapter 5, "Government Programs and Financial Assistance," for county Department of Human Services offices. See Appendix B, "Legal Resources," for a list of legal aid services in various Colorado locations. See section 11-6, "Resources," in Chapter 11, "Arm Yourself with Consumer Protection Information," for a list of Area Agencies on Aging. For more information about Medicare and Medicaid, call your nearest senior center.

Medicare Information:

U.S. Department of Health and Human Services

Provides counseling and information on Medicare benefits, eligibility guidelines, etc.

200 Independence Ave., SW
Washington, D.C. 20201
(877) 696-6775
www.hhs.gov

The Center for Medicare Advocacy, Inc.

National nonprofit organization and excellent Medicare resource.

National office:
P.O. Box 350
Willimantic, CT 06226
(860) 456-7790
www.medicareadvocacy.org

Centers for Medicare and Medicaid Services

7500 Security Blvd.
Baltimore, MD 21244
www.cms.gov

Kepro

5201 W. Kennedy Blvd., Ste. 900
Tampa, FL 33609
(888) 317-0891 (toll-free)
(813) 280-8256
(844) 878-7921 (fax)
711 (TTY)
www.keproqio.com

C2C Innovative Solutions, Inc. (QIC Part A East appeals)

(855) 371-5817 (Expedited appeals for Part A)
(904) 539-4074 (Fax)
P.O. Box 45305
Jacksonville, FL 32232-5305
www.c2cinc.com/QIC-Part-A-East

C2C Innovative Solutions, Inc. (QIC Part B South appeals)

(904) 539-4074 (Fax)
P.O. Box 45300
Jacksonville, FL 32232-5300
www.c2cinc.com/QIC-Part-B-South

Medicare Claims and Helpline

(800) 633-4227 (1-800-MEDICARE)
(877) 486-2048 (TTY)
www.medicare.gov

Social Security Administration

The local office locator is on the main webpage, www.ssa.gov. You can also send an email from a link on the main page. Click on "Contact Us" link at bottom of web page.

(800) 722-1213
(800) 325-0778 (TTY)
www.ssa.gov

Tricare for Life

Correspondence address — Colorado is in the West Region for claims filing

P.O. Box 7889 Madison, WI 53707
(866) 773-0404
(866) 773-0405 (TDD)

(608) 301-2114 and (608) 301-3100 (correspondence fax numbers)

www.tricare4u.com — *Click on the "Contact Us" link for numerous telephone numbers and email contact form.*

Health Insurance Counseling for Information:

Colorado State Health Insurance Assistance Program (SHIP)

Provides Medicare denial of services appeal filing assistance and answers questions about Medigap policies, long-term care insurance, Medicare rights and protection, and Medicare health plan choices.

1560 Broadway, Ste. 850

Denver, CO 80202

(303) 894-7490

(888) 696-7213

<https://doi.colorado.gov>; click on “Health Insurance,” then “Senior Health Care & Medicare Assistance”

AARP — Colorado Chapter

Provides counseling and information on health insurance to AARP members.

303 E. 17th Ave.

Denver, CO 80203

(866) 554-5376

<http://states.aarp.org/region/colorado>

Email: coaarp@aarp.org

Colorado Division of Insurance

Provides information on Medicare benefits, Medigap, etc.

1560 Broadway, Ste. 850

Denver, CO 80202

(303) 894-7499

(303) 894-7490 (consumer information)

(800) 930-3745

<https://doi.colorado.gov>

Colorado Gerontological Society and Senior Answers and Services

Provides counseling regarding health insurance issues, Medicare, etc.

1129 Pennsylvania St.

Denver, CO 80203

(303) 333-3482

(855)293-6911

(855) 880-4777 (Spanish)

www.senioranswers.org

National Council on Aging

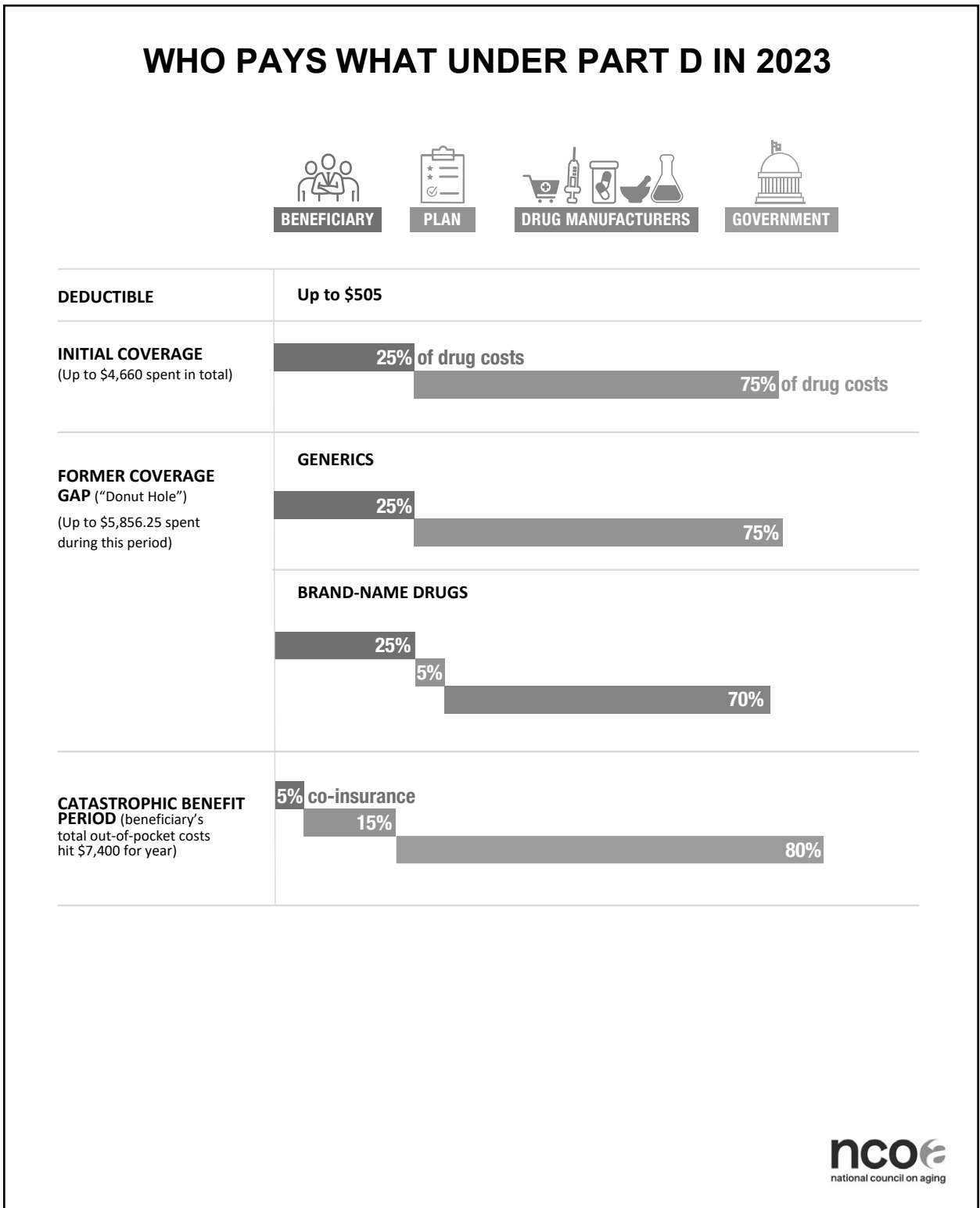
251 18th St. S., Ste. 500

Arlington, VA 22202

(571) 527-3900

www.ncoa.org

**Exhibit 2A.
Who Pays What Under Part D in 2023**



<https://www.ncoa.org/article/donut-hole-part-d>

Exhibit 2B. 2023 Part D Standard Plan Cost-Sharing

2023 Part D Standard Plan Cost-Sharing*				
Part D Benefit Cost Periods	Costs and Who Pays	Beneficiary Pays (TrOOP)	Plan Pays	Total Amount Spent on Plan-Covered Drugs
Initial Deductible	Beneficiary pays 100%	Up to \$505	\$0	\$505 (Amount spent on deductible, before ICP begins)
Initial Coverage Period (ICP)	Costs of covered drugs are shared: 25% by beneficiary, 75% by plan.	Up to \$1,165* *maximum an individual would pay if in plan with no deductible	\$3,495	\$4,660 (Amount spent during ICP, including applicable deductible, before Coverage Gap begins)
Former Coverage Gap ("donut hole")	<p>While the Part D coverage gap ("donut hole") officially closed in 2020, that does not mean beneficiaries don't have to share a portion of costs after the ICP:</p> <ul style="list-style-type: none"> • The beneficiary will continue to pay 25% for both generic drugs and brand-name drugs, plus a small portion of the pharmacy dispensing fee (approx. \$1-\$3). • The plan pays 75% of the cost of generic drugs and 5% for brand-name drugs. • The drug manufacturer provides a 70% discount on brand-name drugs. <p>Note about True Out-of-Pocket (TrOOP) costs: The total amount spent in this period (up to \$5,856.25) includes:</p> <ul style="list-style-type: none"> • The drug costs paid by the beneficiary, and • The 70% discount on brand-name drugs provided by the drug manufacturer. <p><u>Payments made by the plan</u> during this period (75% on generics, 5% on brand-name drugs) do <u>not</u> count toward TrOOP.</p>			<p>Up to \$5,856.25 (Total amount spent during the period between the end of the ICP and prior to the Catastrophic Benefit Period)</p> <p>\$11,206.28 (Total amount spent during both the ICP and this period, before Catastrophic Benefit Period begins)</p>
Catastrophic Benefit Period	When an enrollee's total out-of-pocket spending reaches \$7,400 , they hit the catastrophic benefits period, and costs of covered drugs are shared. Beneficiary pays reduced copay/coinsurance; plan pays the difference.	Greater of: 5% coinsurance OR \$4.15 copay for generic, \$10.35 copay for brand or non-preferred	Any remaining portion of the negotiated drug price	Beneficiary will remain in the Catastrophic Benefit Period through December 31, 2023. Part D benefit will reset on January 1, 2024, starting again with a deductible.

*Most Part D plans are not standard plans. This means calculating TrOOP costs during the initial deductible and ICP varies by plan.
Source: 2023 Call Letter (pp. 74-77) at: <https://www.cms.gov/files/document/2023-announcement.pdf>

National Council on Aging

Updated September 2022

This resource was supported in part by grant 90MINC0002-03-00 from the U.S. Administration for Community Living, Department of Health and Human Services. Points of view or opinions do not necessarily represent official ACL policy.

Exhibit 2C. Hospice and Part D Prescription Medications



Hospice and Medicare Part D Prescription Drugs

While hospice care is a covered service under Medicare Part A, it is important to understand how medications may be paid for when a beneficiary elects hospice, as outlined below.

How medications are supplied

Once a Medicare beneficiary elects the **hospice** benefit, the hospice provides all drugs to manage the pain and symptoms associated with the patient’s terminal illness.

However, in many cases, hospice patients continue to take medications not directly related to their terminal illness. The hospice does not provide these medications; instead, the patient’s **Part D drug plan** continues to fill medications for management of conditions not directly related to the terminal illness. The usual copays, coinsurance, and plan rules apply.

The Part D drug plan will require prior authorization (PA) for drugs that treat pain, nausea, constipation, and anxiety. PA is required because these drugs are typically related to the treatment of the patient’s terminal illness and should be provided by hospice.

Hospice supplied drugs	Part D supplied drugs
<ul style="list-style-type: none"> • Ease suffering and manage patient’s terminal condition • Cost no more than \$5 per prescription 	<ul style="list-style-type: none"> • Treat conditions unrelated to hospice • Obtain from local/mail order pharmacy • Part D copay/coinsurance, formulary restrictions apply • Require PA for drugs used to treat pain, nausea, constipation, and anxiety • Transitional fills do not apply

Prescription payment rules

The Centers for Medicare & Medicaid Services (CMS) provides guidance to ensure that the hospice and Part D plans correctly pay for prescription drugs covered under each respective Medicare benefit while ensuring timely access to needed prescription medications.

For those who elect the hospice benefit, it is important that Medicare beneficiaries and caregivers understand the rules that the hospice provider, pharmacy, and Part D plan must adhere to.

Hospice agrees to...	<ul style="list-style-type: none"> • Notify Part D plan at the time of hospice election or discharge • Proactively complete and submit <u>PA Form</u> to Part D plan for any drugs in the four categories noted above • Send PA information to Part D plan in the event of a claim denial • Provide “compassionate first fill” for those unable to get medication in the four categories
Pharmacies will...	<ul style="list-style-type: none"> • Receive claim denial and transmit the PA form or other documentation to the Part D plan • Contact hospice to determine if the denied drug will be covered by hospice

Part D plan must...	<ul style="list-style-type: none">• Fill prescription drugs not subject to prior authorization (PA)• Accept PA form or other documentation from hospice as proof of unrelated to terminal illness to override the PA requirement at point of sale (POS)• Accept evidence of hospice termination, PA form, or other documentation from prescriber, hospice or pharmacy to override PA requirement at POS• Process hospice/Part D complaints on claim denials for the four drug categories as the first step of the appeal process (coverage determination)<ul style="list-style-type: none">○ Standard appeal = 72 hours○ Expedited = 24 hours
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References

Center for Medicare & Medicaid Services, *Part D Payment for Drugs for Beneficiaries Enrolled in Medicare Hospice*

Centers for Medicare & Medicaid Services, *Medicare Hospice Benefits*

Chapter 3

Health Insurance Beyond Medicare

Michele M. Lawonn, J.D., P.T., C.A.P.S.*
Medical-Legal Advocates, LLC

SYNOPSIS

- 3-1. Know Medicare Gaps
 - 3-2. Options for Supplemental Medicare
 - 3-3. Supplemental Insurance
 - 3-4. Protecting Customers
 - 3-5. How to Compare Policies
 - 3-6. Medicare Advantage Plans
 - 3-7. Employer Group Health Plans
 - 3-8. Long-Term Care Insurance
 - 3-9. Resources
- Exhibit 3A. Benefits of the 10 Standardized Medicare Supplemental (Medigap) Insurance Plans
-

3-1. Know Medicare Gaps

Though most retired Americans over age 65 are covered by Medicare, many do not know its benefits and shortcomings.

Here are some of the major gaps left by Parts A and B of Medicare coverage. You must pay for:

- ▶ The inpatient hospital deductible for each benefit period (\$1,600 for 2023);
- ▶ Daily co-insurance for long inpatient hospital stays (over 60 days) per benefit period (\$400 per day for days 61-90 and \$800 for each lifetime reserve days used in 2023);
- ▶ Inpatient psychiatric care beyond 190 lifetime days;
- ▶ 20 percent of the Medicare-approved amounts for mental health services from doctors and providers during inpatient psychiatric hospitalization;
- ▶ Daily co-insurance for Medicare-certified skilled nursing beyond 20 days per benefit period (\$200 per day for 2023);
- ▶ All nursing home care other than Medicare's maximum of 100 skilled days;

- ▶ Home health care that is not skilled;
- ▶ The annual deductible for outpatient services (\$226 Part B deductible for 2023);
- ▶ Co-insurance of 20 percent for outpatient hospital, doctors', and suppliers' services;
- ▶ Up to 115 percent of amounts in excess of Medicare-approved charges;
- ▶ Medical expenses while traveling abroad;
- ▶ Nonprescription drugs;
- ▶ Dental exams;
- ▶ Eyeglasses;
- ▶ Hearing aids;
- ▶ Equipment that is considered non-medical or custodial; and
- ▶ Physical, occupational, or speech therapy after a maintenance level is attained and skilled therapy services are no longer indicated. However, the *Jimmo v. Sebelius* settlement agreement clarifies "maintenance" and that "improvement" is not required to obtain Medicare coverage for skilled therapy services.

3-2. Options for Supplemental Medicare

To fill these gaps, many retirees obtain additional insurance coverage. Options include:

- ▶ Purchasing Medicare supplemental (Medigap) insurance;
- ▶ Enrolling in a Medicare Advantage plan (Medicare C), such as a health maintenance organization (HMO), preferred provider organization (PPO), or private fee-for-service (PFFS) plan;
- ▶ Continuing coverage to complement Medicare under an employer's group retirement plan;
- ▶ Applying for federal or state assistance programs, if eligible. Colorado has four different "Medicare Savings Programs" (MSP). These include Qualified Medicare Beneficiary (QMB), Specified Low-income Medicare Beneficiary (SLMB), Qualifying Individual 1 (QI-1), and Qualified Disabled and Working Individuals (QDWI), as well as standard Medicaid programs (for more information, visit <https://hcpf.colorado.gov/medicare-savings-programs-msp>);
- ▶ Using military or veterans' hospitals and TRICARE for Life, if eligible;
- ▶ Purchasing long-term care insurance to cover nursing home and home health care costs; or
- ▶ Paying expenses out-of-pocket.

Some of these options are considered in more detail in the material that follows. State assistance programs are covered in Chapter 4, "Medicaid," and federal programs are covered in Chapter 2, "Medicare."

3-3. Supplemental Insurance

Standardized Plans

Medigap, or Medicare supplemental insurance, is a specialized type of insurance that coordinates benefits with original Medicare. It specifically fills some of the gaps left by Medicare, such as deductible and co-insurance, and, in some cases, may add additional benefits.

In Colorado, approximately 49 companies market these plans. There are 38 Medicare Advantage (health maintenance organization (HMO), preferred provider organization (PPO), or private fee-for-service (PFFS) plans) or other Medicare health plans that provide prescription drug coverage with health coverage. Federal law mandates that each state adopt standardized Medigap benefit packages. Colorado permits the sale of 10 standardized plans that must be labeled Plan A through Plan N (see Exhibit 3A of this chapter). Any company selling Medigap is required to offer Plan A. Other plans are marketed at the company's option. Policies purchased before the standardization (May 1993 in Colorado) are subject to standards in effect when purchased.

Effective January 1, 2006, new Medigap policies may no longer provide prescription drug coverage, and seniors need to obtain drug benefit coverage. (See Chapter 2, "Medicare," for information on Medicare Part D.) Effective January 1, 2020, Plans C and F are no longer offered for enrollment for individuals who are newly eligible for Medicare.

3-4. Protecting Customers

Colorado has regulations that govern Medigap policies, including:

- ▶ Each applicant must receive an outline of coverage.
- ▶ A free-look period of 30 days is provided, during which time the applicant may cancel the policy and receive a full refund.
- ▶ The maximum pre-existing medical condition waiting period is six months from the date the policy is in force.
- ▶ If the applicant is replacing a Medicare supplement policy, no pre-existing medical condition waiting period by the replacement insurer is allowed if it has already been met.
- ▶ Medicare supplement policies must be guaranteed renewable for life. This means that companies cannot cancel or fail to renew a policy for any reason other than failure to pay premiums or misrepresentation.
- ▶ Agents are prohibited from selling duplicative insurance, using high-pressure tactics, and pressuring consumers to switch policies.
- ▶ A six-month open enrollment period exists when an individual first signs up for Medicare Part B (including disabled individuals under age 65), during which time Medigap coverage cannot be denied because of pre-existing conditions. Disabled individuals have a second open enrollment period when they turn age 65.

3-5. How to Compare Policies

Since all Medigap policies are standardized, comparing policies is fairly easy. When comparing policies, consider:

- ▶ **Cost.** Premiums differ among companies for the same benefits, so it is important to compare premiums. Most companies increase premiums at some defined anniversary as the policyholder ages. In addition, most companies raise premiums annually as their costs go up.
- ▶ **Financial stability of the company.** You can contact rating companies such as Weiss Research Inc. (www.weissratings.com, (877) 934-7778), Standard & Poor's (www.spglobal.com/ratings, (877) 772-5436), Moody's (www.moody.com, (212) 553-1653), or A.M. Best Company (www.ambest.com, (908) 439-2200) to check the financial rating of a company, or check the resources at your public library or on the internet.
- ▶ **Waiting period.** By law, the maximum waiting period for pre-existing conditions is six months. Some companies have shorter waits; others have no wait. In some situations, when an individual has prior creditable coverage, a company may have to waive some or all of the waiting period.
- ▶ **Customer service.** Learn how efficiently claims are processed by asking friends who have filed claims with that company or by asking your doctor's bookkeeper.
- ▶ **Health underwriting standards.** A company may refuse to issue a policy because of a pre-existing health condition, except during the open enrollment period (and in some other limited situations).

3-6. Medicare Advantage Plans

The annual open enrollment period is from October 15 through December 7 for Medicare beneficiaries to supplement Medicare through one of the Medicare Advantage plans. Unlike "original" Medicare, these plans require the beneficiary to assign his or her Medicare Parts A and B benefits to an insurance company, for example, a health maintenance organization (HMO), and agree to receive all Medicare benefits, gap-filling benefits, and any extras such as prescription drugs from a network of providers set by the insurer. Medicare Advantage plans generally do not provide the same level of skilled therapy rehabilitation services (physical, occupational, and speech therapy) as original Medicare fee-for-service plans. Additionally, there may be a significant limit in the number of authorized home health visits for nursing; physical, occupational and speech therapy.

Currently in Colorado, the Medicare Advantage plans available can be HMO plans, preferred provider organization (PPO) plans, or private fee-for-service (PFFS) plans. However, only HMO plans will be discussed in this chapter.

Health Maintenance Organizations

HMOs provide or arrange for health services for a set monthly fee. Most Medicare Advantage HMOs have contractual arrangements with the federal government under which the HMO agrees to provide Medicare and supplemental benefits in return for a fixed payment from the government for each enrollee. The enrollee continues to pay the Medicare Part B monthly premium, as well as a monthly premium to the HMO, if any.

Currently, most Medicare HMOs have a lock-in feature. That means if the patient goes to a non-HMO doctor or hospital, neither the HMO nor Medicare will pay the bills. A few HMOs omit this lock-in feature, which means if the patient receives services outside the HMO network, Medicare, not the HMO, will pay the balance left by Medicare.

To be eligible to enroll in an HMO, a Medicare beneficiary must meet the following requirements:

- ▶ Have Medicare Parts A and B,
- ▶ Live in an area served by the plan you want to join, and
- ▶ Not have end-stage kidney disease (ESRD).

To disenroll from an HMO and return to standard Medicare fee-for-service, the beneficiary must do so during the annual enrollment period of October 15 to December 7 or the Medicare Advantage Open Enrollment Period of January 1 to March 31.

3-7. Employer Group Health Plans

Many retired individuals who have Medicare also have additional health insurance coverage resulting from their own or their spouse's employment. These employer group health plans (EGHPs) are secondary to Medicare. That means that Medicare pays benefits first, and the EGHP pays what is not covered by Medicare. Unlike Medigap policies, EGHPs are not strictly regulated by the states. This means that EGHP benefits can differ from plan to plan and are not subject to minimum benefit requirements.

Since some plans are excellent, it may be prudent to keep the EGHP as a back-up to Medicare if the premium is low and the benefits are good, especially for prescription drugs and dental care. However, some EGHPs pay few benefits because the complex coordination of benefit formulas are difficult to understand, and benefits change annually.

3-8. Long-Term Care Insurance

Long-term care is the most common catastrophic health expense. It can range from simple help with activities of daily living at home, such as bathing and dressing, to highly skilled nursing care. Though families continue to provide the majority of services to elderly relatives in the home, long-term care also is provided by nursing homes, senior centers, home health agencies, adult day care centers, and assisted living facilities. It is estimated that more than 60 percent of those people who live to age 65 eventually will need some kind of long-term care. Half will stay in a nursing home less than 90 days and the other half will stay at least several months.

Depending on location and quality, annual costs in a Colorado nursing home easily can exceed \$100,000. Medicare pays only a small percentage of nursing home costs since it only covers short-term skilled care, usually following hospitalization. Medigap insurance and employer health insurance plans seldom pay anything toward nursing home care. Nationally, almost half of nursing home residents eventually are covered by Medicaid when their assets have been spent down to the qualifying level (see Chapter 4, "Medicaid").

It is possible to buy insurance specifically for nursing home care. Federal tax laws give favorable treatment to those who purchase this type of insurance. Long-term care insurance pays the policyholder a specified amount for each day that he or she qualifies for benefits. Depending

on the policy, it may make payments when the individual needs home care, lives in an assisted living facility, attends adult day care, or resides in a nursing facility.

Some of the variables to consider when shopping for long-term care insurance are:

- ▶ **Age.** The risk of being admitted to a nursing home increases rapidly after age 75. Some insurance companies will not offer long-term coverage to persons older than 80 or 82.
- ▶ **How benefits are paid.** Most long-term care insurance pays a fixed daily amount rather than a percentage of the costs. Daily benefits can range from \$50 to more than \$250 per day. Many policies pay actual costs up to the daily benefit selected by the policyholder, while other plans pay the full daily benefit selected.
- ▶ **Covered settings.** Companies generally offer coverage for home care, assisted living, and nursing home care. The best coverage covers all these living settings.
- ▶ **Benefit triggers.** Under some contracts, benefits are paid when care is medically necessary. Most pay when the policyholder loses the ability to perform two or more activities of daily living: dressing (should include braces and artificial limbs), bathing, toileting, eating (should include taking medications), transferring (moving in and out of a chair), remaining continent, or when the person suffers cognitive impairment.
- ▶ **Length of coverage.** Purchasers select coverage for a specific period of time, perhaps only for two years or indefinitely. The insurance company pays the daily benefit for the number of years selected when the policyholder meets the requirements for services.
- ▶ **Elimination of “waiting” period.** (Also called a deductible period.) This refers to the number of days the individual must qualify for benefits before the insurance will begin to pay benefits. Most plans offer choices ranging from no wait to a one-year wait. The longer the wait, the lower the premium.
- ▶ **Health underwriting.** Most companies ask very detailed health questions before deciding to insure the applicant. They are especially sensitive to such risks as heart problems, leukemia, rheumatoid arthritis, Alzheimer’s disease, Parkinson’s disease, people already bedridden, and people with known mental or physical disorders. Companies would rather refuse business than assume a bad risk. Policies can be canceled later if patient information is found to be inaccurate or fraudulent.
- ▶ **Renewability of policies and premiums.** Long-term care policies issued in Colorado beginning July 1, 1990, must be guaranteed renewable. This means the company will not cancel or fail to renew the policy as long as the insured pays the premiums on time. Policies issued in Colorado prior to 1990 might not be guaranteed renewable. The premium is determined by the applicant’s age at the time the policy is issued and usually does not increase because the policyholder ages, although it may eventually be raised for everyone.
- ▶ **Inflation protection.** Consumers can purchase benefit increase options to protect against the rising costs of long-term care. This kind of protection increases premiums but is a very important benefit.

For more information, see Chapter 7, “Long-Term Care Insurance.”

3-9. Resources

Colorado Division of Insurance

1560 Broadway, Ste. 850
Denver, CO 80202
(303) 894-7499
(800) 930-3745
<https://doi.colorado.gov>

Colorado State Health Insurance Assistance Program (SHIP)

1560 Broadway, Ste. 850
Denver, CO 80202
(888) 696-7213
<https://doi.colorado.gov/health-insurance>; click on “Senior Health Care & Medicare Assistance”

* The author always wishes to thank former co-author John J. Campbell, Esq., for his previous contributions to this chapter, as well as his kindness, mentorship, and humor. Mr. Campbell passed away unexpectedly in April 2017 and he is missed.

**Exhibit 3A.
Benefits of the 10 Standardized Medicare
Supplemental (Medigap) Insurance Plans**

MEDIGAP BENEFITS BY TYPE OF PLAN	A	B	C ¹	D	F	G	K	L	M	N
Part A Inpatient Hospital Deductible		X	X	X	X	X	50% ²	75% ²	50%	X
Part A Coinsurance days 61-90	X	X	X	X	X	X	X	X	X	X
Part A Coinsurance 60 lifetime reserve days	X	X	X	X	X	X	X	X	X	X
100% of Medicare covered expenses for additional 365 lifetime days	X	X	X	X	X	X	X	X	X	X
Part B Coinsurance	X	X	X	X	X	X	50% ²	75% ²	X	X ³
Reasonable cost of 3 pints of blood	X	X	X	X	X	X	50% ²	75% ²	X	X
Part A Skilled Nursing Facility Coinsurance			X	X	X	X	50% ²	75% ²	X	X
Part B Deductible			X		X					
Foreign Travel Emergency (up to plan limits)			X	X	X	X			X	X
Part B Excess Charges					X	X				
Prescription Drugs ⁴										
Part A Hospice & Respite Care	X	X	X	X	X	X	50% ²	75% ²	X	X

NOTE: Minnesota, Wisconsin, and Massachusetts have different standardized Medigap plans.

1. Plans C and F will no longer be offered for enrollment for individuals newly eligible for Medicare on and after January 1, 2020. However, Plan D has the same benefits as Plan C, and Plan G has the same benefits as Plan F, except they do not cover the Medicare B deductible. Plans F and G also offer high deductible plans in Colorado.
2. For Plans K and L, after you meet your 2023 yearly out-of-pocket limit of \$6,940 for Plan K and \$3,470 for Plan L and your Part B deductible of \$226, the Medigap plan pays 100 percent of all covered services for the rest of the calendar year (Part A & Part B Coinsurance).
3. Plan N pays 100 percent of the Part B coinsurance except for a copayment of up to \$20 for some office visits and up to \$50 for emergency room visits not resulting in a hospital inpatient admission.
4. The prescription drug benefits are no longer offered.

Chapter 4

Medicaid

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Leventhal Lewis Kuhn Taylor Swan PC

SYNOPSIS

- 4-1. Medicaid
 - 4-2. Long-Term Care
 - 4-3. Medicaid Payment for Medicare Premiums, Deductibles, and Co-Payments
 - 4-4. Resources
-

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 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 or (844) 704-9613). In Colorado Springs, the PACE contract is managed by Rocky Mountain PACE (www.rmhcare.org or (719) 314-2327); in Pueblo, it is managed by InnovAge (www.innovage.com or (719) 738-8491); in Delta and Montrose, it is managed by Senior CommUnity Care (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, or visit your local county department of social services office.

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

Chapter 5

Government Programs and Financial Assistance

Michele M. Lawonn, J.D., P.T., C.A.P.S.
Medical-Legal Advocates, LLC

SYNOPSIS

- 5-1. Old Age Pension
 - 5-2. Supplemental Nutrition Assistance Program (SNAP)
 - 5-3. Energy Assistance Programs
 - 5-4. Veterans' Benefits
 - 5-5. Telephone Assistance Program
 - 5-6. Resources
-

5-1. Old Age Pension

The Colorado Old Age Pension (OAP) program provides a minimum level of income to needy Colorado residents age 60 or older. To qualify, an applicant's countable income must be less than the OAP standard of need, which is \$952 (\$1,904 for a married couple). An applicant's resources must be below \$2,000 for a single person, \$3,000 for a couple.

The benefit calculation and resource rules are similar to those used in the SSI program.

Applications may be filed at the County Department of Human Services (see "Resources" in section 5-6, below). Documents to bring include:

- ▶ Proof of age (birth certificate);
- ▶ Proof of citizenship or resident alien status (birth certificate or naturalization certificate);
- ▶ Proof of Colorado residency (photo ID, mail);
- ▶ Proof of income and assets;
- ▶ Social Security or Supplemental Security Income (SSI) award letters or copies of checks;
- ▶ Bank statements; and
- ▶ Copies of life insurance policies.

5-2. Supplemental Nutrition Assistance Program (SNAP)

Seniors with limited income and resources may be eligible for the supplemental nutrition assistance program, or SNAP. In general, people age 60 or older, living alone, must have gross income of less than \$1,473 per month, and non-exempt resources of less than \$4,250 to qualify. The limits are higher for couples and larger households. SSI and OAP recipients are automatically eligible for at least a minimal SNAP award.

The value of the SNAP award depends on the household income. Also, beginning in March 2020, SNAP recipients received additional emergency allotments authorized by Congress as a temporary strategy to help low-income individuals and families deal with the financial hardships of the COVID-19 pandemic. This emergency allotment ended after the February 2023 SNAP issuance, when all SNAP households' benefits returned to normal SNAP benefit amounts.

Household Income Limits			
Size	Gross Income per Month	Size	Gross Income per Month
1	\$1,473	6	\$4,029
2	\$1,984	7	\$4,541
3	\$2,495	8	\$5,052
4	\$3,007	8+	Add for each: \$512
5	\$3,518		

USDA, Supplemental Nutrition Assistance Program (SNAP) Fiscal Year (FY) 2023 Income Eligibility Standards, <https://fns-prod.azureedge.us/sites/default/files/resource-files/FY23-Income-Eligibility-Standards.pdf>. Note that income requirements vary by county in Colorado.

Applications may be filed at the local county Department of Human Services offices. See "Resources" in section 5-6, below.

Colorado also recognizes categorical eligibility for food stamps where any member of the household also is eligible for Temporary Assistance for Needy Families (TANF), County Diversion Assistance, or State Diversion Assistance, and where all members of the household are eligible for SSI.

5-3. Energy Assistance Programs

The Colorado Energy Office (CEO), at <https://energyoffice.colorado.gov>, offers free energy-efficiency upgrades and safety inspections for income-eligible households. The Energy Saving Partners (ESP) programs aim to lower energy bills, eliminate unsafe conditions, and improve the comfort of their recipients.

As energy costs continue to rise, investing in residential energy-efficiency improvements becomes more attractive and more economically sensible. Unfortunately, limited discretionary income may prevent many households from responding to price signals and incentives. At the same time, the burden of energy costs upon household income is the greatest for these consumers.

An average household consumes about 900 therms of gas and about 8,000 kilowatt hours (kWh) of electricity per year. Various factors affect the amount of energy that a household consumes, including the thermal efficiency of the home, the operating efficiency of the heating

system, the number of occupants, the age of appliances, and consumption behaviors of the occupants. Recognizing the variability in needs, the CEO has designed a variety of energy-efficiency services that are provided free of charge to eligible recipients.

There are many benefits to the home-efficiency services provided by the CEO. Its programs are designed to assist income-qualified households, so reducing the recipient’s energy costs is a top priority. In addition to reducing utility costs, its services offer a wide range of non-energy-related benefits. Because the CEO’s services often include health and safety inspections, recipients can avoid hazardous conditions that could lead to fires or unsafe buildup of carbon monoxide. Recipients of these services will also benefit from a more comfortable living space as a result of increased climate control.

If you have received assistance from any of the following programs in the past 12 months, you are automatically eligible for the CEO’s services: the Low-Income Energy Assistance Program (LEAP; described below), Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Income (SSDI), Supplemental Nutrition Assistance Program (SNAP), OAP, or Aid to the Needy Disabled (AND). You also may qualify if you are on Medicaid. Apply for the CEO’s services by calling (303) 866-2100 or the HEAT HELP line at (866) 432-8435, or contacting your local county Department of Human Services. (See “Resources,” section 5-6.)

An important energy assistance program is LEAP, which helps participants pay for winter home heating costs. To be eligible, your family household income needs to fall within 60 percent of the state median income level (see chart below), you must pay home heating costs to an energy provider or as part of your rent, and you must be a permanent and legal resident of the United States and Colorado. Applications will be accepted from November 1 through April 30.

LEAP Eligibility	
<i>People in Household</i>	<i>Gross Monthly Income Limits</i>
1	\$2,880
2	\$3,766
3	\$4,652
4	\$5,539
5	\$6,425
6	\$7,311
7	\$7,477
8	\$7,644
8+	Add for each: \$166

You can apply for LEAP at your local county Department of Human Services, by downloading a LEAP application and applying online at <https://cdhs.colorado.gov/leap>, or by calling (866) HEAT-HELP ((866) 432-8435). The application is available in English and Spanish. Energy.gov, Biden-Harris Administration Announces State and Tribe Allocations for Home Energy Rebate Program, www.energy.gov/articles/biden-harris-administration-announces-state-and-tribe-allocations-home-energy-rebate.

5-4. Veterans' Benefits

Two programs provide benefits for disabled veterans.

Veterans with service-connected disabilities may be entitled to a compensation benefit regardless of their income or resources. The amount of the benefit depends on the level of disability. Veterans who are rated as being more than 30 percent disabled also are entitled to a benefit for their dependents.

Veterans with nonservice-connected disabilities also may be entitled to a pension benefit, but only if they are permanently and totally disabled and have limited income and assets.

When a veteran dies, the surviving spouse and minor children may be eligible for pension benefits if the survivors' incomes are below a certain level. If the death was due to a service-connected disability, the surviving spouse is eligible for benefits that are not income based.

Medical care is provided at Veterans Administration (VA) hospitals and clinics for all service-related medical conditions.

Hospital care at VA hospitals and nursing home care at VA nursing homes is available to veterans who have service-connected disabilities, who receive a VA pension, or who fall into other special categories, such as former prisoners of war. Hospital care may be provided, as space is available, to other veterans, if the veteran's income is below the eligibility limit.

The Veterans Administration may contribute to the cost of burial, a headstone or marker, and a burial flag. The veteran may be eligible to be buried in a national cemetery.

To apply for VA benefits, write, call, or visit your local VA regional office. In Denver, it is at 155 Van Gordon St., Lakewood, CO 80228, online at www.va.gov, telephone: (800) 827-1000. Or contact the Colorado Division of Veterans Affairs, Administrative Office-Lakewood, 155 Van Gordon, Ste. 201, Lakewood, CO 80228, telephone: (303) 914-5832; or Administrative Office-Grand Junction, 482 28 Rd., Grand Junction, CO 81501, telephone: (970) 257-3760; online: cdvainfo@dmva.state.co.us.

Applicants for VA benefits are advised to seek the assistance of a veterans' advocate such as the Colorado Division of Veterans Affairs.

See Chapter 6, "Veterans' Benefits," for more information.

5-5. Telephone Assistance Program

The Colorado Low Income Telephone Assistance Program (LITAP), now called "Lifeline" or Affordable Connectivity Program (ACP), provides free or discounted cell phone services for individuals either receiving benefits from Old Age Pension, Aid to the Blind, SSI, Aid to the Needy/Disabled, TANF, Medicaid, SNAP, Section 8 Federal Public Housing Assistance (FPHA), tribal programs, and Veterans or Survivors Pensions, or have an income at or below 135 percent of Federal Poverty Guidelines. This is \$18,347 for a single household and \$24,719 for a household of two. (For each additional person in household add \$6,372 in income.) See www.lifewireless.com/plans/colorado.

All telecommunications companies that operate in the state are required to offer LITAP. Discounts vary. There also may be a discount for installation of new phone service. For information

on how to apply, contact Life Wireless at (888) 543-3620 or call the telecommunications provider directly as the Colorado Department of Human Services no longer runs this program. However, contact CDHS at (303) 866-5700 with any concerns and complaints.

5-6. Resources

County Departments of Social Services

For updates, go to <https://cdhs.colorado.gov/our-partners/counties/contact-your-county-human-services-department> and click on the clickable map.

<p>Adams County 11860 Pecos St. Westminster, CO 80234 (720) 523-2000</p> <p>Alamosa County 8900 C Independence Way Alamosa, CO 81101 (719) 589-2581</p> <p>Arapahoe County 14980 E. Alameda Dr. Aurora, CO 80012 (303) 636-1130</p> <p>Archuleta County 551 Hot Springs Blvd. Pagosa Springs, CO 81147 (970) 264- 2182</p> <p>Baca County 772 Colorado St., Ste. 1 Springfield, CO 81073 (719) 523-4131</p> <p>Bent County 138 6th St. Las Animas, CO 81054 (719) 456-2620</p>	<p>Boulder County 3400 N. Broadway Boulder, CO 80304</p> <p>515 Coffman St. Longmont, CO 80501 (303) 441-1000</p> <p>Broomfield County 100 Spader Way Broomfield, CO 80020 (720) 887-2200</p> <p>Chaffee County 448 E. 1st St., Ste. 166 Salida, CO 81201 (719) 530-2500</p> <p>Cheyenne County 560 W. 6th St. North Cheyenne Wells, CO 80810 (719) 767-5629</p> <p>Clear Creek County 405 Argentine St. Georgetown, CO 80444 (303) 679-2365</p> <p>Conejos County 12989 County Rd. G. 6 Conejos, CO 81129 (719) 376-5455</p>	<p>Costilla County 233 Main St., Ste. A San Luis, CO 81152 (719) 672-4131</p> <p>Crowley County 631 Main St., Ste. 100 Ordway, CO 81063 (719) 267-3546</p> <p>Custer County 205 S. 6th St. Westcliffe, CO 81252 (719) 783-2371</p> <p>Delta County 320 W. 5th St. Delta, CO 81416 (970) 874-2030</p> <p>Denver County 1200 Federal Blvd. Denver, CO 80204</p> <p>3815 Steele St. Denver, CO 80205</p> <p>4685 Peoria St. Denver, CO 80239 (720) 944-4347</p> <p>Dolores County 409 N. Main St. Dove Creek, CO 81324 (970) 677-2250</p>
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<p>Douglas County 4400 Castleton Ct. Castle Rock, CO 80109 (303) 688-4825</p> <p>Eagle County 551 Broadway Eagle, CO 81631 (970) 328-8840</p> <p>Elbert County 75 Ute Ave. Kiowa, CO 80117 (303) 621-3149</p> <p>El Paso County 1675 W. Garden of the Gods Rd. Colorado Springs, CO 80907 (719) 636-0000</p> <p>Fremont County 172 Justice Center Rd. Canon City, CO 81212 (719) 275-2318</p> <p>Garfield County 195 W. 14th St. Rifle, CO 81650 (970) 625-5282</p> <p>Gilpin County 2960 Dory Hill Rd., Ste. 100 Black Hawk, CO 80422 (303) 582-5444</p> <p>Grand County 620 Hemlock St. Hot Sulphur Springs, CO 80451 (970) 725-3331</p>	<p>Gunnison and Hinsdale Counties 225 N. Pine St. Gunnison, CO 81230 (970) 641-3244</p> <p>Huerfano County 121 W. 6th St. Walsenburg, CO 81089 (719) 738-2810</p> <p>Jackson County 350 McKinley St. Walden, CO 80480 (970) 723-4750</p> <p>Jefferson County 900 Jefferson County Pkwy. Golden, CO 80401 (303) 271-1388</p> <p>Kiowa County 1307 Maine St. Eads, CO 81036 (719) 438-5541</p> <p>Kit Carson County 252 S. 14th St. Burlington, CO 80807 (719) 346-8732</p> <p>Lake County 112 W. 5th St. Leadville, CO 80461 (719) 486-2088</p> <p>La Plata County 10 Burnett Ct., 1st Fl. Durango, CO 81301 (970) 382-6150</p> <p>Larimer County 1501 Blue Spruce Dr. Fort Collins, CO 80524 (970) 498-6300</p>	<p>Las Animas County 219 S. Chestnut St. Trinidad, CO 81082 (719) 846-2276</p> <p>Lincoln County 103 3rd Ave. Hugo, CO 80821 (719) 743-2404</p> <p>Logan County 508 S. 10th Ave., Ste. 2 Sterling, CO 80751 (970) 522-2194</p> <p>Mesa County 510 29-1/2 Rd. Grand Junction, CO 81502 (970) 241-8480</p> <p>Mineral County 1015 6th St. Del Norte, CO 81132 (719) 657-3381</p> <p>Moffat County 595 Breeze St. Craig, CO 81625 (970) 824-8282</p> <p>Montezuma County 109 W. Main, Rm. 203 Cortez, CO 81321 (970) 564-4100</p> <p>Montrose County 1845 S. Townsend Montrose, CO 81401 (970) 252-5000</p> <p>Morgan County 800 E. Beaver Ave. Fort Morgan, CO 80701 (970) 542-3530</p>
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<p>Otero County 13 W. 3rd St. La Junta, CO 81050 (719) 383-3100</p> <p>Ouray County 177 Sherman St., Unit 107 Ridgway, CO 81432 (970) 626-2299</p> <p>Park County 59865 Hwy. 285, 2nd Fl. Bailey, CO 80421 (303) 816-5939</p> <p>825 Clark St. Fairplay, CO 80440 (719) 836-4139</p> <p>Phillips County 127 E. Denver St., Ste. A Holyoke, CO 80734 (970) 854-2280</p> <p>Pitkin County 0405 Castle Creek Rd., Ste. 8 Aspen, CO 81611 (970) 920-5235</p> <p>Prowers County 1001 S. Main St. Lamar, CO 81052 (719) 336-7486</p>	<p>Pueblo County 201 W. 8th St. Pueblo, CO 81003 (719) 583-6160</p> <p>Rio Blanco County 200 Main St., Ste. 200 Meeker, CO 81641 (970) 878-9640</p> <p>101 E. Main St. Rangely, CO 81648 (970) 878-9531</p> <p>Rio Grande County 1015 6th St. Del Norte, CO 81132 (719) 657-3381</p> <p>Routt County 135 6th St. Steamboat Springs, CO 80477 (970) 870-5533</p> <p>Saguache County 605 Christy Ave. Saguache, CO 81149 (719) 655-2537</p> <p>San Juan County 1557 Greene St. Silverton, CO 81433 (970) 387-5631</p>	<p>San Miguel County 333 W. Colorado Ave., 3rd Fl. Telluride, CO 81435 (970) 728-4411</p> <p>Sedgwick County 118 W. 3rd St. Julesburg, CO 80737 (970) 474-3397</p> <p>Summit County 360 Peak One Dr., Ste. 230 Frisco, CO 80443 (970) 668-9160</p> <p>Teller County 800 Research Dr., Ste. 100 Woodland Park, CO 80863 (719) 686-5518</p> <p>Washington County 126 W. 5th Akron, CO 80720 (970) 345-2238</p> <p>Weld County 315 N. 11th Ave. Greeley, CO 80631 (970) 352-1551</p> <p>Yuma County 340 S. Birch St. Wray, CO 80758 (970) 332-4877</p>
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Veterans Resources

For more information about veterans' benefits, see Chapter 6, "Veterans' Benefits."

Federal Veterans Administration

General Information Number: (800) 827-1000 or (844) 698-2411

TDD: Dial 711

www.va.gov

Veterans Affairs Regional Office

155 Van Gordon St.

Lakewood, CO 80228

(800) 827-1000

www.benefits.va.gov/denver

State of Colorado Division of Veterans Affairs

This is the primary office for the State of Colorado Division of Veterans Affairs. It is separate from the United States Department, but provides advocacy and appeals assistance.

Administrative Office — Denver

155 Van Gordon St., Ste. 201

Lakewood, CO 80228

(303) 914-5832

<https://vets.colorado.gov> or

cdvainfo@dmva.state.co.us

Administrative Office — Grand Junction

482 28 Rd.

Grand Junction, CO 81501

(970) 257-3760, (844) 458-9767

cdvainfo@dmva.state.co.us

In General

Denver Veterans Center (for psychological counseling)

7465 E. 1st Ave., Ste. B

Denver, CO 80230

(303) 326-0645

Crisis line: 988 (press 1), or text 838255; (877) 927-8387

www.vetcenter.va.gov

There are also Colorado Vet Centers in Boulder, Colorado Springs, Fort Collins, Grand Junction, and Pueblo.

Disabled American Veterans State Office

1485 Holland St.

Lakewood, CO 80215

(303) 922-3631

www.davmembersportal.org/co/default.aspx

Colorado Legal Services Offices

The below offices help veterans with problems when dealing with government benefits and will intercede on their behalf.

www.coloradolegalservices.org

Alamosa (Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties)

Address: 603 Main St., Alamosa

Phone: (719) 589-4993

Boulder (Boulder and Broomfield counties)

Address: 2935 Baseline Rd., Ste. 301, Boulder

Phone: (303) 449-7575

Colorado Springs (El Paso, Lincoln, and Teller counties; Chaffee, Custer, Fremont, and Park counties shared with other offices)

Address: 102 South Tejon, Ste. 430, Colorado Springs

Phone: (719) 471-0380

Craig (Grand, Jackson, Moffatt, Rio Blanco, and Routt counties)

Address: 50 College Dr., #111, Craig

Phone: (800) 521-6968 (call before visiting)

Denver (Adams, Arapahoe, Denver, Douglas, Elbert, and Jefferson counties, as well as seniors in Clear Creek and Gilpin counties)

Address: 1905 N. Sherman St., Ste. 300, Denver

Phone: (303) 837-1313

Dillon (Clear Creek, Eagle, Gunnison, Lake, Pitkin, and Summit counties)

Address: P.O. Box 1895, Dillon

Phone: (800) 521-6968

Durango (Archuleta, Dolores, Hinsdale, La Plata, Montezuma, Ouray, San Juan, and San Miguel counties as well as Ute Mountain Ute and Southern Ute reservations)

Address: 835 E. 2nd Ave., #300, Durango

Phone: (888) 298-8483

Fort Collins (Larimer, Logan, Phillips, and Sedgwick counties)

Address: 211 W. Magnolia St., Fort Collins

Phone: (970) 493-2891

Grand Junction (Delta, Garfield, Mesa, and Montrose counties)

Address: 422 White Ave., Ste. 300, Grand Junction

Phone: (970) 243-7940

Greeley (Morgan, Washington, Weld, and Yuma counties)

Address: 912 8th Ave., Greeley

Phone: (970) 353-7554

La Junta (Baca, Bent, Cheyenne, Crowley, Huerfano, Kiowa, Kit Carson, Las Animas, Otero, and Prowers counties)

Address: 10 W. 3rd St., La Junta

Phone: (888) 805-5152

Migrant Farmworker Division (all counties)

Address: 1905 N. Sherman St., Ste. 400, Denver

Phone: (800) 864-4330

Pueblo (Pueblo and Custer counties; Fremont County shared with other offices)

Address: 1000 W. 6th St., Pueblo

Phone: (719) 545-6708

Salida (Chaffee, Custer, and Fremont counties; Park County shared with another office)

Address: 1604 H St., Ste. 201, Salida

Phone: (719) 539-4251

For Issues Regarding Medicaid

Colorado Department of Health Care Policy and Financing

1570 Grant St.

Denver, CO 80203-1818

(303) 866-2993

(800) 221-3943 (toll-free)

711 (TDD)

24-hour Nurse Helpline for People on Medicaid: (800) 283-3221

<https://hcpf.colorado.gov>

For Issues Regarding Public Assistance

Department of Human Services

<https://cdhs.colorado.gov>

For county Departments of Human Services, go to <https://cdhs.colorado.gov/our-partners/counties/contact-your-county-human-services-department> and click on the clickable map.

Chapter 6

Veterans' Benefits

Michael L. Shea, Esq.
The Law Offices of Michael L. Shea, LLC

SYNOPSIS

- 6-1. Home Loans
 - 6-2. Disability Compensation
 - 6-3. Pension Benefits
 - 6-4. Survivor Benefits
 - 6-5. Health Care Benefits
 - 6-6. Services and Aids for Blind Veterans
 - 6-7. Home Improvements
 - 6-8. Outpatient Dental Treatment
 - 6-9. Outpatient Pharmacy Services
 - 6-10. Nursing Home Care
 - 6-11. Domiciliary Care
 - 6-12. Medical Care for Dependents and Survivors
 - 6-13. Burial Benefits
 - 6-14. Miscellaneous Benefits
 - 6-15. Resources
-

A variety of benefits provided by the U.S. Department of Veterans Affairs (VA) are available to eligible veterans and their families. This chapter focuses on benefits most likely to be of interest to older veterans and their families.

6-1. Home Loans

Upon leaving military service, an honorably discharged veteran (Honorable, Under Honorable Conditions, General discharge) is entitled to apply for a Certificate of Eligibility for a VA Home Loan. The advantages of this type of loan are:

- ▶ No down payment (although some lenders *may* require a down payment for some buyers using the program);
- ▶ Competitively low interest rates;
- ▶ Limited closing costs; and
- ▶ No need for Private Mortgage Insurance (PMI).

This is a lifetime benefit and can be used multiple times.

The VA also has a number of homes for sale that have been reacquired by it, due to default on the original VA guaranteed loan. These homes are located around the country and are often reasonably priced for the area.

The surviving spouse of a deceased veteran, who had a VA Home Loan, may also be able to use this benefit if there is still eligibility. If the loan had been paid off and the surviving spouse wants to sell his or her existing home and purchase another home that better suits his or her needs, he or she may be able to use the Certificate of Eligibility for the new home.

6-2. Disability Compensation

Disability compensation is a monetary benefit paid to veterans who are disabled by injury or disease incurred or aggravated during active military service. The service of the veteran must have been terminated through separation or discharge under conditions other than dishonorable. This means that the service member must have an Honorable, Under Honorable Conditions, or General discharge. Disability compensation varies with the degree of disability and the number of dependents and is paid monthly. The benefits are not subject to federal or state income tax. The payment of military retirement pay, disability severance pay, and separation incentive payments known as SSB (special separation benefits) and VSI (voluntary separation incentives) also affects the amount of VA compensation paid. If you received separation pay, that amount will be deducted from any compensation benefits. If you are retired from the military, you will be paid the higher of your military retirement benefit or the VA compensation. If your VA disability rating is 50 percent or higher, you will be paid both your military retirement and your VA disability compensation.

Former prisoners of war (POW) are eligible for disability compensation if they are rated at least 10 percent disabled from certain conditions presumed by federal law to be related to the POW experience. Former POWs who were imprisoned for at least 30 days are also eligible by federal law for certain presumptive conditions.

Veterans who served on the ground in the Republic of Vietnam or who served on certain Navy ships during the Vietnam War are entitled to a presumption for certain illnesses due to exposure to Agent Orange. There are a number of illnesses that are presumptive, meaning that you do not have to show a connection between your military service and the current illness. Three of the major illnesses associated with Agent Orange today are ischemic heart disease, diabetes, and prostate cancer. However, the VA periodically adds new illnesses to the list of presumptions. Recent additions are Parkinson's disease, Parkinsonism, and prostate cancer.

Recent changes in federal law have expanded the groups eligible for presumptive conditions.

Blue Water Navy

Veterans who had “boots on the ground” in Vietnam during the Vietnam War were automatically presumed to be exposed to Agent Orange, and if they had any of the named illnesses (cancer, diabetes, heart disease, etc.), they were considered to be service connected and they received compensation appropriate to the level of symptoms. Some veterans who served aboard Navy ships were denied compensation for those same illnesses because they did not have “boots on the ground.” In 2019, Congress passed the Blue Water Navy Vietnam Veterans Act of 2019, which extended the presumption of herbicide exposure to those who served in the offshore waters of Vietnam between January 9, 1962, and May 7, 1975. Navy and Marine Corps veterans who served aboard named ships during that period and who were denied service connection for Agent Orange diseases should reapply. A list of qualifying ships can be found on the VA website, www.va.gov.

Certain members of the Air National Guard who flew on C-123 aircraft that were involved in the carrying and dissemination of Agent Orange are now covered.

Camp Lejeune Justice Act of 2022

The water at Camp Lejeune, NC was contaminated with toxic chemicals: trichloroethylene, benzene, vinyl chloride, and tetrachloroethylene. Navy and Marine Corps members and their families who were stationed at Camp Lejeune or Marine Corps Air Station New River were exposed to these chemicals and some developed certain cancers and other health issues as a result. The Act allows those veterans and their families to file tort actions against the government. These actions are handled by private attorneys, and it is advised to seek out veteran service organizations (VFW, American Legions, Disabled American Veterans, etc.) or contact a county Veteran Services Officer for advice. However, if the veteran has one of the listed diseases, he or she should file a claim for compensation with the VA.

The surviving spouse of a veteran who served at Camp Lejeune for more than 30 days may apply for Dependency and Indemnity Compensation if the veteran died of one of the illnesses listed in the Act, regardless of when the veteran died.

PACT Act (Promise to Address Comprehensive Toxics Act)

Due to the Congressional focus on toxic substances (and veteran pressure), the President signed the PACT Act in 2021. This Act expands health care benefits to veterans of Vietnam, the Gulf War, and subsequent wars in Iraq and Afghanistan.

Veterans, especially those Army National Guard and Air National Guard, who served in the Gulf War, Iraq, and Afghanistan are now of the age to take advantage of the information here. The exposure to burn pits, dust, and other environmental hazards, and the subsequent diseases that occurred, now provide these veterans with a path to file for compensation. There are 23 specific diseases covered by the PACT Act. For Gulf War veterans, the most critical diseases/illnesses are respiratory cancers and respiratory conditions (such as sleep apnea).

Increased Ratings for Current Disabilities

Veterans who are currently receiving compensation for service-connected injuries or illnesses should be aware that they are entitled to apply for an increase in their rating if the symptoms get worse. For example, the rating and payment for a Vietnam veteran who has diabetes and a spouse and can manage the diabetes by diet alone is 10 percent and \$165.92 (2023

rates). If the veteran's diabetic symptoms increase so that he or she is now required to have one or more daily insulin injections, a restricted diet, and a regulation of activities, the rating is now 40 percent with a monthly payment of \$812.32.

Total Disability, Individually Unemployable

If a veteran has a VA disability rating of 70 percent or higher, and the veteran cannot maintain a steady job, the VA has a category called TDIU. If the veteran has a total disability rating of 60 percent and at least one of the ratings is 40 percent or more, or a single disability rating of 70 percent, the VA may approve TDIU. This would allow the veteran to receive compensation at the 100 percent rate, even though he or she is only service connected at the 60 or 70 percent rate. There is a separate application process, which usually needs to be accompanied by a doctor's opinion that the veteran cannot maintain "substantial gainful employment" due to the disabilities. An example would be a veteran who is rated at 70 percent for PTSD and cannot have a good relationship with employers or fellow employees, cannot maintain concentration on a computer for more than a few moments, and cannot sit in one place or stand in one place for more than a few minutes. The same would apply to a veteran with a serious service-connected back injury who cannot lift more than a few pounds, cannot stand or sit for more than a few minutes, etc.

Appeals Improvement and Modernization Act (AMA)

Veterans whose claims have been previously denied by the VA now have additional options for appealing those denials. The Appeals Improvement and Modernization Act of 2017 modified the VA's entire appeals process. It now allows a veteran who has been denied service connection to continue to file appeals long after the regional office or Board of Veterans Appeals has denied the claim. A claim may now be reopened by use of a Supplemental Claim form with the addition of "new and material" evidence. An example would be a doctor's opinion that the symptoms are worse, or that new medical evidence shows the relationship between military service and the disease/injury. An Air Force fighter pilot with back problems may reopen a previously denied claim by showing the relationship between high G forces and the back problems.

The Specially Adapted Housing (SAH) Grants help veterans with certain service-connected disabilities to adapt or purchase a home to accommodate the disability. You can use SAH grants in one of the following ways:

- ▶ To adapt an existing home the veteran or a family member already owns in which the veteran lives; or
- ▶ To adapt a home the veteran or family member intends to purchase in which the veteran will live.

Under this entitlement, a Temporary Residence Adaptation grant (TRA) may be available to veterans who are or will be temporarily residing in a home owned by a family member. Any veteran who is entitled to receive compensation for a service-connected disability for which he or she uses prosthetic or orthopedic appliances may receive an annual clothing allowance. The allowance also is available to any veteran whose service-connected skin condition requires prescribed medication that irreparably damages the veteran's outer garments.

Severely disabled veterans who are entitled to a SAH grant may also be entitled to receive a grant to purchase a vehicle and the adaptive equipment needed so the veteran can access and utilize the vehicle.

Veterans whose service-connected disabilities are rated at 30 percent or more are entitled to additional allowances for dependents. The number of dependents and the degree of disability determines the additional amount.

A veteran who is determined by the VA to need the regular aid and attendance of another person, or a veteran who is permanently housebound, may be entitled to additional disability compensation or pension benefits. A veteran evaluated at 30 percent or more disabled is entitled to receive a special allowance for a spouse who needs the aid and attendance of another person.

6-3. Pension Benefits

Veterans with low income who are permanently and totally disabled, or are age 65 and older, may be eligible for monetary support if they have 90 days or more of active military service, at least one day of which was during a period of war. Veterans who entered active duty on or after September 8, 1980, or officers who entered active duty on or after October 16, 1981, may have to meet a longer minimum period of active duty, usually 24 months of active duty.

Requirements for eligibility to receive pension benefits include a discharge from active duty under conditions other than dishonorable. Permanent and total disability cannot be because of the veteran's own willful misconduct, such as lung cancer from smoking. Payments are made to qualified veterans to bring their total income, including other retirement or Social Security income, to a level set by Congress. Unreimbursed medical expenses may reduce countable income.

This benefit may be of substantial help to children with a non-service-connected disabled veteran parent. For example, a veteran father, with no spouse, has total income less medical expenses of zero. The father resides in an assisted living facility and needs the aid and attendance of another person. The expenses of the facility, plus doctor, nurse, and medication expenses qualify as deductions against the veteran's income. The children support the father's expenses of the care facility. The father may qualify for VA pension, which in 2023 is \$26,752. This can certainly offset the amounts paid by the children for their father's care. If the veteran is married, the amount went up to \$31,714 in 2023. Given that nursing home care in Colorado is approximately \$100,000 per year, this benefit is not trivial.

The VA has set certain net worth and income limits to be eligible for a VA pension. In 2023, assets plus income have to be less than \$150,538, but unreimbursed medical expenses may reduce the income.

Like Medicare, the VA has now established a look-back period for the disposal of assets. It is advised to contact a Veterans Service Organization, a county Veteran Services Officer, or an accredited attorney or representative for advice on applying for a VA pension.

6-4. Survivor Benefits

Dependency and indemnity compensation (DIC) is a monthly tax-free benefit that may be available to a veteran's survivor. For survivors to be eligible, the deceased veteran must have died from (1) a disease or injury incurred or aggravated while on active duty or active duty for training; (2) an injury incurred or aggravated in the line of duty while on inactive duty training; or (3) a disability compensable by the VA. Death cannot be the result of the veteran's willful misconduct. To be eligible, the surviving spouse must have been married to the veteran at the time of death, and for a period of one year prior to death.

DIC also may be authorized for survivors of veterans who, at the time of death, were determined to be totally disabled as a result of military service, even though their service-connected disabilities did not cause their deaths. The veteran must have been discharged under conditions other than dishonorable. The survivor qualifies if (1) the veteran was continuously rated totally disabled for a period of 10 or more years immediately preceding death; (2) the veteran was so rated for a period of at least five years from the date of military discharge; or (3) the veteran was a former POW who died after September 30, 1999, and who was continuously rated totally disabled for a period of at least one year immediately preceding death. Payments are subject to offset by any amount received from judicial proceedings brought on account of the veteran's death. The amount of DIC is not the same as the amount of compensation the veteran was receiving at the time of his or her death. In 2023, the amount paid to the surviving spouse was \$1,562.74 per month, or approximately what a veteran with a 60 percent disability rating and a spouse and one child was receiving at the time of death.

A survivor's pension is paid to a surviving spouse of a veteran who met the active-duty criteria if the surviving spouse meets the income criteria set by law. Some medical expenses can reduce the income of the surviving spouse. The surviving spouse pension is not the same as the pension received by a veteran. In 2023, a surviving spouse with no dependent children who does not qualify for Aid and Attendance, and whose income for VA purposes was \$0, is entitled to receive an annual pension of \$10,757 or \$896.42 per month.

There are additional amounts if there are dependent children, such as children with special needs.

6-5. Health Care Benefits

The VA operates the nation's largest integrated health care system, with more than 1,700 sites of care, including hospitals, community clinics, nursing homes, domiciliaries, readjustment counseling centers, and various other facilities. For additional information on VA health care, visit www.va.gov/health-care/.

The VA assigns those eligible for VA health care into priority groups. Those groups are determined by the rating level for service-connected disabilities. Those without service-connected disabilities may have to pay some co-pays, but the co-pays are minimal, compared to outside insurance. For example, in 2023, the co-pay for a visit to a VA primary care doctor is \$15 per visit.

Additionally, by being in the VA health care system, the veteran may eliminate the need for a Medicare supplemental policy.

Veterans will be assigned to the highest priority group for which they qualify. The VA uses the priority group system to balance demand with available resources. Changes in the VA's available resources may reduce the number of priority groups the VA can enroll. If this occurs, the VA will publicize the changes and notify affected enrollees. Veterans will be enrolled to the extent that congressional appropriations allow. If appropriations are limited, enrollment will occur based on the following priorities:

Priority Group 1: Veterans with service-connected disabilities rated 50 percent or more and veterans determined by the VA to be unemployable due to service-connected conditions.

Priority Group 2: Veterans with service-connected disabilities rated 30 or 40 percent.

Priority Group 3: Veterans with service-connected disabilities rated 10 and 20 percent, veterans who are former POWs or were awarded a Purple Heart, veterans awarded special eligibility for disabilities incurred in treatment or participation in a VA vocational rehabilitation program, veterans whose discharge was for a disability incurred or aggravated in the line of duty, and veterans awarded the Medal of Honor.

Priority Group 4: Veterans receiving aid and attendance or house-bound benefits and veterans determined by the VA to be catastrophically disabled. Some veterans in this group may be responsible for co-payments.

Priority Group 5: Veterans receiving VA pension benefits or eligible for Medicaid programs, and non-service-connected veterans and non-compensable, zero percent, service-connected veterans whose annual income and net worth are below the established VA means test thresholds.

Priority Group 6: Compensable, zero percent, service-connected veterans; veterans exposed to ionizing radiation during atmospheric testing or during the occupation of Hiroshima and Nagasaki; Project 112/SHAD participants; veterans who served in the Republic of Vietnam between January 9, 1962, and May 7, 1975; veterans of the Persian Gulf War who served between August 2, 1990, and November 11, 1998; veterans who served on active duty at Camp Lejeune for at least 30 days between August 1, 1953, and December 31, 1987; and veterans who served in a theater of combat operations after November 11, 1998, as follows:

- ▶ Currently enrolled veterans and new enrollees who were discharged from active duty on or after January 28, 2003, are eligible for the enhanced benefits for five years post discharge.

Priority Group 7: Veterans with gross household income below the geographically adjusted income limits (GMT) for their resident location and who agree to pay copays.

Priority Group 8: All other non-service-connected veterans and non-compensable, zero percent, service-connected veterans who agree to pay co-payments. (*Note:* Effective January 17, 2003, the VA no longer enrolls new veterans in Priority Group 8.) It is best if you apply for disability compensation prior to attempting to enroll in the VA health care system if you are not currently service connected for a disease or injury.

Veterans enrolling in Priority Group 5 based on their inability to defray the cost of care must provide information on their annual household income and net worth so the VA may determine whether they are below the annually adjusted "means test" financial threshold. Veterans completing a financial assessment must report their annual gross household income plus net worth, which includes Social Security, U.S. Civil Service retirement, U.S. Railroad retirement, military retirement, unemployment insurance, any other retirement income, total wages from all employers, interest and dividends, workers' compensation, black lung benefits, and any other gross income for the calendar year prior to application for care. Also considered are assets such as the market value of property that is not the primary residence, stocks, bonds,

notes, individual retirement accounts, bank deposits, savings accounts, and cash. The VA also is required to compare veterans' financial assessment information with a geographically based income threshold. If the veteran's income is below the threshold where the veteran lives, he or she is eligible for an 80 percent reduction in the inpatient co-payment rates.

Non-service-connected veterans and non-compensable, zero percent, service-connected veterans whose income is above the national "means test" threshold must agree to pay appropriate co-payments for care. If they do not agree to make co-payments, they are ineligible for VA care. Veterans whose income is determined to be above the means test threshold and below the VA's geographically based income threshold are responsible for paying 20 percent of the Medicare deductible for the first 90 days of inpatient hospital care during any 365-day period.

With certain exceptions, a veteran must agree to pay co-payments for extended care. A veteran's application for extended care services (VAF 10-10EC) requires financial information used to determine the monthly co-payment amount, based on each veteran's financial situation.

Prosthetic and Sensory Aid Services

The VA will furnish needed prosthetic appliances, equipment, and devices, such as artificial limbs, orthopedic braces and shoes, wheelchairs, crutches and canes, and other durable medical equipment and supplies to veterans receiving VA care for any condition. The VA will provide hearing aids and eyeglasses to veterans who receive increased pension based on the need for regular aid and attendance or being permanently housebound, receive compensation for a service-connected disability, or are former POWs. Otherwise, hearing aids and eyeglasses will be provided only in special circumstances, and not for normally occurring hearing or vision loss. Noise exposure is the defining criteria. Veterans who worked in engine rooms, on flight decks, in the motor pool, or were aviators or flight crew and have hearing loss or tinnitus may have a service-connected disability with at least a 10 percent rating.

6-6. Services and Aids for Blind Veterans

Blind veterans may be eligible for services at a VA medical center or for admission to a VA blind rehabilitation center. Services are available at all VA medical facilities through the Visual Impairment Services coordinator. In addition, blind veterans enrolled in the VA health care system may receive VA aids for the blind, including:

- 1) A total health and benefits review;
- 2) Adjustment to blindness training;
- 3) Home improvements and structural alterations to homes;
- 4) Specially adapted housing and adaptations;
- 5) Automobile grants;
- 6) Low-vision aids and training in their use;
- 7) Electronic and mechanical aids for the blind, including adaptive computers and computer-assisted devices such as reading machines and electronic travel aids;
- 8) Guide dogs, including the expense of training the veteran to use the dog; and
- 9) Talking books, tapes, and Braille literature.

6-7. Home Improvements

VA provides funding for eligible veterans to make home improvements necessary for the continuation of treatment or for disability access to the home and essential lavatory and sanitary facilities provided. See section 6-2, above.

6-8. Outpatient Dental Treatment

Outpatient dental treatment provided by VA includes examinations and the full spectrum of diagnostic, surgical, restorative, and preventive procedures. Veterans eligible to receive dental care include:

- 1) Veterans having service-connected and compensable dental disabilities or conditions;
- 2) Former POWs;
- 3) Veterans with service-connected, non-compensable dental conditions as a result of combat wounds or service injuries;
- 4) Veterans with non-service-connected dental conditions determined by VA to be aggravating a service-connected medical problem;
- 5) Veterans having service-connected conditions rated as permanently and totally disabling or rated 100 percent by reason of individual unemployability;
- 6) Veterans participating in a vocational rehabilitation program under Chapter 31 of Title 38 in the U.S. Code;
- 7) Certain enrolled homeless veterans participating in specific health care programs;
- 8) Veterans with non-service-connected dental conditions for which treatment began while the veteran was an inpatient in a VA facility when it is necessary to complete such treatment on an outpatient basis; and
- 9) Veterans requiring treatment for dental conditions clinically determined to be complicating a medical condition currently under treatment.

Recently discharged veterans who served on active duty 90 days or more and who apply for VA dental care within 180 days of separation from active duty may receive a one-time treatment for dental conditions if the veteran's certificate of discharge does not indicate that the veteran received necessary dental care within a 90-day period prior to discharge or release.

6-9. Outpatient Pharmacy Services

While many veterans are exempt from medication co-pays, non-service-connected veterans in Priority Groups 7 and 8 and veterans enrolled in Priority Groups 2 through 6 will be responsible for a small co-pay. Veterans may have their prescriptions delivered to the pharmacy at the VA hospital in Denver or may have them delivered by mail through Express Scripts.

6-10. Nursing Home Care

The VA provides nursing home services through three national programs: VA owned and operated nursing homes, state veterans' homes owned and operated by the state, and contract community nursing homes. Each program has its own admission and eligibility criteria. VA

owned and operated homes typically admit residents requiring short-term skilled care, or who have a 70 percent or more service-connected disability, or who require nursing home care because of a service-connected disability. The state veterans' home program is a cooperative venture between the VA and states whereby the VA provides funds to help build the home and pays a portion of the costs for veterans eligible for VA health care. States, however, set eligibility criteria for admission. The contract nursing home program is designed to meet the long-term, nursing home care needs of veterans who may not be eligible and/or qualify for placement in a VA or state veterans' home or if there is no VA or state home available.

To be placed in a nursing home, veterans must be medically stable, have a condition that requires inpatient nursing home care, and be assessed by an appropriate medical provider to be in need of institutional nursing home care. They also must meet the eligibility requirements for the home to which they are applying. For VA nursing homes, they may have to pay a co-payment depending on their financial status. VA social workers can help interpret eligibility and co-payment requirements.

In addition to nursing home care, the VA offers other extended care services either directly or by contracting with community agencies, including adult day care, respite care, geriatric evaluation and management, hospice and palliative care, and home-based primary care. These services may require co-payment.

6-11. Domiciliary Care

Domiciliary care provides rehabilitative and long-term health maintenance care for veterans who require minimal medical care but do not need the skilled nursing services provided in nursing homes. The VA may provide domiciliary care to veterans whose annual income does not exceed the maximum annual rate of VA pension or to veterans the Secretary of Veterans Affairs determines have no adequate means of support. The co-payments for extended care services apply to domiciliary care.

6-12. Medical Care for Dependents and Survivors

CHAMPVA, the Civilian Health and Medical Program of the Department of Veterans Affairs, provides reimbursement for most medical expenses: inpatient, outpatient, mental health, prescription medication, skilled nursing care, and durable medical equipment. To be eligible for CHAMPVA, an individual cannot be eligible for TRICARE (the medical program for civilian dependents, provided by the Department of Defense) and must be one of the following: (1) the spouse or child of a veteran who the VA has rated permanently and totally disabled for a service-connected disability; (2) the surviving spouse or child of a veteran who died from a VA-rated service-connected disability, or who, at the time of death, was rated permanently and totally disabled; or (3) the surviving spouse or child of a military member who died in the line of duty, not due to misconduct (however, in most cases, these family members are eligible for TRICARE, not CHAMPVA).

A surviving spouse under age 55 who remarries loses CHAMPVA eligibility on midnight of the date of remarriage. However, eligibility may be re-established if the remarriage is terminated by death, divorce, or annulment, effective the first day of the month after the termination of the remarriage or December 1, 1999, whichever date is later. A CHAMPVA-eligible surviving spouse who is 55 or older does not lose eligibility upon remarriage.

Individuals who have Medicare entitlement may also have CHAMPVA eligibility secondary to Medicare. Eligibility limitations apply.

6-13. Burial Benefits

Veterans discharged from active duty under conditions other than dishonorable and service members who die while on active duty, as well as spouses and dependent children of veterans and active-duty service members, may be eligible for VA burial and memorial benefits. The veteran does not have to predecease a spouse or dependent child for them to be eligible for benefits.

With certain exceptions, active-duty service beginning after September 7, 1980, as an enlisted person, and after October 16, 1981, as an officer, must be for a minimum of 24 consecutive months or the full period of active duty (as in the case of reservists or National Guard members called to active duty for a limited duration). Eligibility is not established by active duty for training in the reserves or National Guard.

Reservists and National Guard members, as well as their spouses and dependent children, are eligible if they were entitled to retirement pay at the time of death or would have been if they were over age 60.

Burial in a VA national cemetery is available for eligible veterans and their spouses and dependents at no cost to the family, and includes the gravesite, grave liner, opening and closing of the grave, a headstone or marker, and perpetual care as part of a national shrine. For veterans, benefits also include a burial flag (with a case, for active-duty veterans) and military funeral honors. Family members and other loved ones of deceased veterans may request Presidential Memorial Certificates.

The VA operates 142 national cemeteries, of which 77 are open for new interments (casket and cremation) and 17 accept only cremated remains. Burial options are limited to those available at a specific cemetery but may include an in-ground casket, or interment of cremated remains in a columbarium, in the ground, or in a scatter garden. Surviving spouses of veterans who died on or after January 1, 2000, do not lose eligibility for burial in a national cemetery if they remarry. Burial of dependent children is limited to unmarried children under 21 years of age, or under 23 years of age if a full-time student at an approved educational institution. Unmarried adult children who become physically or mentally disabled and incapable of self-support before age 21, or age 23 if a full-time student, also are eligible for burial.

Burial in a non-VA cemetery may entitle the surviving spouse a monetary benefit for out-of-pocket costs. In many cases, the funeral home may be able to assist with the burial and VA application.

6-14. Miscellaneous Benefits

The State of Colorado (and many other states) provides a variety of benefits to veterans that are outside of the VA.

- 1) Property tax exemption. There is a property tax exemption of 50 percent of the first \$200,000 of a home's value for 100 percent permanently and totally disabled service-

connected veterans. This exemption is also allowed to seniors 65 and over if they have lived in the home for more than 10 years.

- 2) Colorado has five state veterans' homes, in Aurora, Florence, Homelake, Rifle, and Walsenburg. Veterans' homes are now called veterans community living centers (VCLCs). VCLCs serve honorably discharged veterans, spouses of veterans, and "gold star" parents, who are the parents of veterans who died while serving in the military. VA regulations require that at least 75 percent of the residents at each state home be veterans. The VA pays the VCLCs a per diem rate for eligible veteran residents, starting at \$127.17 (2023 rates) for nursing home care. Veterans with a service-connected disability of 70 percent or higher, or those who meet certain less common eligibility standards, are eligible for a higher per diem rate of \$506.73 at the Fitzsimons VCLC or \$518.38 at the other facilities. The above rates are provided for comparison purposes only and may be higher or lower at the time of publication.
- 3) Veterans who are rated as totally and permanent disabled may be eligible to fly Space A on military aircraft. This may mean a savings of \$1,200 on a round-trip to Hawaii. Military retirees have the same benefit.
- 4) One year of qualifying service entitles a non-U.S. veteran to apply for citizenship.
- 5) Colorado offers free hunting and fishing licenses to veterans rated at 50 percent or higher.

6-15. Resources

Phone Numbers

Education: (888) 442-4551

Headstones and markers: (800) 697-6947

Health care: (877) 222-8387

Life insurance: (800) 669-8477

Special health issues: (800) 749-8387

TTD: Dial 711

VA benefits: (800) 827-1000

Websites

VA benefits — managing your benefits: www.va.gov

Burial and memorial benefits: www.cem.va.gov

Department of Defense: www.defense.gov

Education benefits: www.benefits.va.gov/gibill

Federal jobs: www.usajobs.gov

Health care eligibility: www.va.gov/healthbenefits

Home loan guaranty: www.benefits.va.gov/homeloans

Life insurance: www.benefits.va.gov/insurance

Mental health: www.mentalhealth.va.gov

Chapter 6. Veterans' Benefits

Records: www.archives.gov/personnel-records-center/military-personnel

Returning veterans: www.va.gov/post911veterans

Veterans employment and training: www.dol.gov/agencies/vets

Veterans preference: www.fedshirevets.gov

Vocational rehabilitation and employment: www.benefits.va.gov/vocrehab

VA benefit payment rates: www.benefits.va.gov/compensation

VA facilities: www.va.gov/find-locations

VA forms: www.va.gov/vaforms

VA website: www.va.gov

Written Materials

Federal Benefits for Veterans, Dependents and Survivors (2021 edition):

U.S. Department of Veterans Affairs

Office of Public and Intergovernmental Affairs

810 Vermont Ave. N.W.

Washington, D.C. 20420

www.va.gov/opa/publications/benefits_book.asp

Chapter 7

Long-Term Care Insurance

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SYNOPSIS

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- 7-2. Defining Long-Term Care
- 7-3. Who Needs Care
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- 7-7. The Colorado Long-Term Care Partnership Program
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7-1. Introduction

Few will argue that one of the biggest risks left in life for aging adults is developing the need for long-term care (LTC). Most Americans are ill prepared for the emotional, physical, and financial consequences of needing long-term services and supports. The Colorado Long-Term Care Partnership Program is but one insurance tool to protect assets from the ever-increasing costs of home care, assisted living facilities, nursing homes, and more.

7-2. Defining Long-Term Care

Long-term care is chronic, extended care, from which the afflicted person may or may not recover. LTC services include medical and non-medical care, providing for the health or personal needs of the care recipient. Most often, LTC does not require skilled medical professionals such as physical therapists, as many people begin by receiving care at home provided by family, friends, or neighbors. Loved ones acting as informal caregivers often deliver custodial care, which may include assistance with household chores, transportation, shopping, managing finances, or help with bathing, dressing, eating, using the restroom, or supervising one with dementia. When home care is not a viable option, LTC may be provided in formal settings such as adult day care centers,

assisted living facilities, skilled nursing facilities, or hospice. Because a medical professional is usually not required for supervising one with dementia, or bathing, dressing, or feeding a loved one, long-term care is not generally covered by health insurance or Medicare.

7-3. Who Needs Care

According to the U.S. Department of Health and Human Services, 52.3 percent of persons turning 65 in 2015-2019 will experience a high need for care over their lifetime (high need is defined as those who have at least two limitations in performing activities of daily living or are cognitively impaired). The March 2017 AARP Fact Sheet reported that women are more likely than men to need care (58 percent women; 47 percent men) and typically need care longer (2.5 years for females and 1.5 years for males). Fourteen percent of those needing care will need services for more than five years.¹ The foremost risk of needing care someday is longevity: 69 percent of those age 90 or more have a disability.² What's more is that 1 in 3 seniors dies with Alzheimer's Disease or another dementia. Alzheimer's disease remains the fifth-leading cause of death among individuals age 65 and older.³ According to Genworth Financial, which has tracked long-term care insurance claims since 1974, 51 percent of all claim dollars are paid to claimants with cognitive disorders, including dementia. Of course, long-term care services may be necessary for people of any age due to accidents or chronic illnesses like multiple sclerosis, cancer, Parkinson's, or arthritis, just to name a few.

7-4. Where Care Is Received

Many people erroneously believe that most long-term care services are provided in nursing homes. In fact, most care is received at home. The government's LTC website, <https://acl.gov/ltc>, reported that 90 percent of elderly people receiving care for a chronic illness are in private homes, while 13 percent are in nursing homes and 5 percent are in assisted living and other residential care facilities. As reported by the Pew Research Center,⁴ there are 40.4 million unpaid caregivers of adults ages 65 and older in the United States, and nearly one-quarter of adults ages 45 to 65 care for an aging adult. Among the caregivers, 22 percent provide help to two people; more than a third have been providing care for five or more years. Six in 10 caregivers are employed, with around 50 percent working full-time. Of the caregivers, 44 percent are caring for a parent, 18 percent for a friend or neighbor, 16 percent for a grandparent, and 22 percent for another relative. According to the AARP, 66 percent of disabled older people who receive care for a chronic illness at home get all of their care from family members, mainly wives or adult daughters; 26 percent receive a combination of family care and paid help; and only 9 percent receive all of their care at home from paid caregivers.⁵

¹ www.aarp.org/content/dam/aarp/ppi/2017-01/the-basics-medicaid-and-long-term-services-and-supports.pdf.

² <https://acl.gov/ltc>.

³ www.alz.org/media/Documents/alzheimers-facts-and-figures.pdf.

⁴ Pew Research Center, "5 Facts About Family Caregivers" (Nov. 18, 2015), available at www.pewresearch.org/fact-tank/2015/11/18/5-facts-about-family-caregivers.

⁵ L. Feinberg, Testimony before Commission on Long-Term Care, "Populations in need of LTSS and service delivery issues," AARP Public Policy Institute (July 17, 2013).

7-5. Cost of Care

2021 Colorado Median Costs and Projections					
	Nursing Home		Assisted Living Facility	Home Health Aide	Homemaker Services
	Private Room	Semi-Private Room	1 Bedroom, Single Occupancy	44 hours/week	44 hours/week
Annual Costs	\$116,709	\$102,810	\$57,000	\$76,648	\$76,648
Monthly Costs	\$9,726	\$8,567	\$4,750	\$6,387	\$6,387
5-year annual growth	4%	4%	3%	7%	8%
Future costs @4%:					
in 10 years	\$172,758	\$152,184	\$84,374	\$113,458	\$113,458
in 20 years	\$255,724	\$225,269	\$124,894	\$167,945	\$167,945
in 30 years	\$378,534	\$333,454	\$184,874	\$248,600	\$248,600
in 40 years	\$560,322	\$493,593	\$273,658	\$367,989	\$367,989

Source: Genworth Financial Cost of Care Survey 2021 (www.genworth.com/aging-and-you/finances/cost-of-care.html); Genworth Cost of Care Trends and Insights 2021 www.genworth.com/aging-and-you/finances/cost-of-care/cost-of-care-trends-and-insights.html.

7-6. Paying for Care

Given the high cost of care as evidenced in the chart above, it is vital to have a plan to pay for long-term care services. Because other authors will delve into the programs and resources listed below at length, this author will focus on self-funding and insurance-based solutions.

- ▶ Medicaid, www.medicaid.gov/medicaid/home-community-based-services/index.html.
- ▶ Program of All-Inclusive Care for the Elderly (PACE), <https://hcpf.colorado.gov/program-all-inclusive-care-elderly>.
- ▶ Home and Community Based Services (HCBS) Waivers, <https://hcpf.colorado.gov/elderly-blind-disabled-waiver-ebd>.
- ▶ Medicare Part A (limited to short stays in a nursing home in order to get care for a hospital-related medical condition), www.medicare.gov/what-medicare-covers/what-part-a-covers/medicare-part-a-coverage-nursing-home-care.
- ▶ Department of Veterans Affairs, www.caregiver.va.gov.
- ▶ Social Security Disability Income, www.ssa.gov/disability/.

Personal Funds

The vast majority of Americans who need long-term care will pay for services with personal funds. Some have enough wealth to pay for care no matter how long the event lasts.

Others might deplete assets paying for care and end up on Medicaid. When that is the case, income will be diverted to offset the cost of long-term care services provided by Medicaid.

Self-Insuring

A popular term among those with a degree of wealth is “self-insuring,” which is a misnomer. Insurance always involves leverage: a sizeable number of people with a common shared risk contribute premiums to an insurance pool in order to spread risk in case of a loss. An individual using his or her own funds to pay for a loss (in this case, needing long-term care) does not enjoy any leverage or spreading of risk. A more appropriate label is “self-funding.” Even those who can self-fund may run the risk of running out of resources, especially if dementia is involved. Common sources available to pay for care may include personal savings, pension income, income from Social Security, or proceeds from a reverse mortgage.

Family and Friends

According to the Alzheimer’s Association, 83 percent of care provided to older adults is delivered by family members or friends.⁶ The average caregiver happens to be a 49-year-old woman working outside the home while providing 20 hours of unpaid care to her mother.⁷ and unpaid care is said to total \$470 billion per year.⁸ An article from Reuters in June 2019 declared that the economic cost of unpaid family care is around \$67 billion and will reach \$147 billion by 2050.⁹ Anecdotally, when an adult caregiver is providing assistance to a child, spouse, or parent, he or she may be using personal funds to keep a loved one at home. Other times, a family might contribute monies to keep mom or dad in a better-than-average facility. Such situations might cause a family caregiver to reduce hours at work or give up employment entirely, reducing his or her own retirement funding or a college fund for children.

Insurance-Based Solutions

Those who wish to transfer at least some of the risk of needing care might consider one or more of today’s insurance-based solutions, which include:

- ▶ Traditional, stand-alone LTC insurance;
- ▶ Short-term care insurance;
- ▶ Life insurance with accelerated death benefits;
- ▶ Asset-based policies; and
- ▶ Fixed equity indexed annuities

For more than three decades, Americans have been purchasing “traditional, stand-alone” long-term care insurance policies. The term, “traditional,” is used to indicate that the insurance industry has offered such policies since the early 1970s, and, traditionally, such policies were the most popular form of insurance-based protection. “Stand-alone” refers to the idea that these policies are a form of health insurance that pay for chronic care. Unlike some of the solutions

⁶ www.alz.org/alzheimers-dementia/facts-figures.

⁷ www.caregiver.org/women-and-caregiving-facts-and-figures.

⁸ www.caregiver.org/caregiver-statistics-demographics.

⁹ www.reuters.com/article/us-health-caregiving/u-s-wages-lost-to-unpaid-family-care-to-hit-147-billion-by-2050-idUSKCN1TT36E.

described below, traditional LTC policies do not provide for a death benefit or money back if the coverage is cancelled, and, in most cases, premiums may increase in the future. Stand-alone LTC insurance policies include four building blocks: benefit amount, benefit period, inflation protection, and an elimination period.

- 1) The benefit amount is how much per day or per month the policy pays for care at home or in an assisted living facility, nursing home, adult day care, or hospice.
- 2) The benefit period may be thought of as the minimum length of time the benefits last before the policy is exhausted. Choices may include one, two, three, four, five, six, or 10 years, or for an unlimited amount of time. Let us assume a client has purchased a three-year benefit period and a \$200 daily benefit. The resulting lifetime maximum benefit is \$219,000 (1,095 days multiplied by \$200). This lifetime maximum benefit may also be referred to as a benefit account, pool of funds, or bucket of money.
- 3) All companies in Colorado must offer inflation protection, which increases the daily benefit and the pool of funds over time. For instance, using the example in the previous paragraph, if the insured with a \$200 daily benefit and a benefit account of \$219,000 were to include an inflation rider that increases the daily benefit and the pool of funds by 3 percent annually, benefits would roughly double over 24 years, resulting in a daily benefit of \$400 and a benefit account of \$438,000. Inflation rider options may include 1, 2, 3, 4, or 5 percent compound increases tied to the CPI (Consumer Price Index), or riders that increase the daily benefit, the benefit account, and the premium by 3 or 5 percent annually.
- 4) The elimination period is the number of days the policyowner receives LTC before benefits begin. The elimination period might also be thought of as a waiting period or a deductible: the longer the elimination period, the lower the premium. Common choices include 0, 30, 60, 90, 180, or 365 days.

There are many other features and riders available in the marketplace:

- ▶ Most insurance carriers provide a **Waiver of Premium** if the insured is receiving benefits.
- ▶ A **Joint Waiver of Premium** rider waives premium for both spouses or partners if just one is receiving benefits.
- ▶ **Shared Care** allows a couple to share in each other's benefits.
- ▶ **Survivorship** allows the surviving spouse or partner to stop paying premiums if the other spouse or partner has passed away after owning the coverage for at least 10 years.
- ▶ **Restoration of Benefits** allows the policy to be restored if the insured recovers and has not been chronically ill for at least six months.
- ▶ **Care Coordination** services, which assist with the development and coordination of the required plan of care. Care coordination may help identify appropriate services and reputable providers of such services and help make arrangements for the services to begin.
- ▶ All LTC insurance policies marketed must offer a **Nonforfeiture Benefit** rider, also known as the Shortened Benefit Period. Should a policyowner with this rider surrender the policy after owning it for at least three years, the premiums paid into the policy will be available to pay for care some day in the future. Note that this is not a return

of premium benefit. Instead, the policyowner has a paid-up policy with benefits equal to the premium paid.

- ▶ Modern policies also include a built-in **Contingent Nonforfeiture** benefit, which allows the policyowner to surrender the policy for a paid-up policy if premiums increase a certain percentage based on the issue age.

7-7. The Colorado Long-Term Care Partnership Program

Beginning January 1, 2008, a traditional LTC insurance policy sold in Colorado may qualify as a Partnership Plan, which allows for special treatment of one's assets if LTC is needed some day. The stated goals of the Partnership program are to (1) assist the citizens of Colorado in planning for their future LTC needs through quality LTC insurance, (2) without depleting the consumer's resources or assets paying for care. Another important aim is to preserve Medicaid dollars for the truly needy.

A Partnership policy allows the policyowner to protect a dollar in non-exempt assets from Medicaid spend-down for every dollar the Partnership LTC insurance policy has paid out in benefits. This is known as dollar-for-dollar asset protection. Taking liberties to simplify the Medicaid qualification rules, an unmarried Colorado resident seeking to qualify for Medicaid to pay for long-term care can have a house (subject to a limit of equity value), a car, and \$2,000. His or her income must also meet strict qualification limits. Let us assume that our citizen also has \$300,000 in non-exempt assets. Should our citizen suddenly suffer a stroke or other debilitating change in health, he or she must spend down the \$300,000 in assets before being eligible for Medicaid.

Now let us assume that our citizen purchased a Partnership LTC insurance policy. For every dollar the policy pays for qualified LTC expenses, Medicaid will disregard a dollar of his or her \$300,000 in non-exempt resources when applying for Medicaid. If the policy paid \$300,000 or more in benefits, all of the non-exempt resources may be disregarded. If the Partnership policy paid out \$200,000, and at the time of applying for Medicaid the remaining non-exempt assets were down to \$200,000, our citizen could apply for Medicaid and disregard the \$200,000 in assets. In addition, the disregarded assets are exempt from the estate recovery process at the Medicaid recipient's death.

Partnership policies do not cost more than non-Partnership policies. Assuming the insurance carrier's policy has been approved by the state, the policy is automatically Partnership as long as the policyowner purchased inflation protection equal to or exceeding certain minimum levels, which vary slightly from state to state. All Partnership policies must include inflation protection of 5 percent compounded annually or, in the alternative, consumer-price-indexed inflation protection compounded annually up to age 61. From age 61 to 75, Colorado requires inflation protection of 5 percent simple interest, 3 percent compound interest, CPI, or 5 percent compounded two times the maximum. From age 76 on, inflation protection is not required, but still may be purchased as part of the policy. All Partnership policies must be issued after the program begins in Colorado. Per federal law, Colorado cannot grandfather policies.¹⁰

It is important to note that only traditional, stand-alone policies may qualify for the Colorado Partnership program. Other forms of long-term care insurance do not qualify.

¹⁰ Long Term Care — Colorado Gerontological Society, www.senioranswers.org/insurance/long-term-care/.

7-8. Other Types of LTC Insurance

Short-term Care Insurance

Higher premiums and stringent health underwriting for long-term care insurance have helped give rise to another insurance-based solution gaining in popularity: short-term care insurance (STC). Most STC policies cover care in nursing homes, assisted living facilities, home care, and more. Unlike long-term care insurance, STC policies cover less than one year of care. Maximum benefit periods are often 300 to 360 days of care services. Importantly, two key factors drive the demand for STC: affordability and ease of health underwriting. Many people not healthy enough to purchase LTC insurance may qualify for STC. Likewise, those who may not be able to afford a robust LTC policy may opt for less expensive STC insurance.

Life Insurance with Accelerated Benefits

Most life insurance policies sold in the past require that the insured pass away in order for the death benefit to be paid. An ever-increasing number of life insurance companies now offer an accelerated death benefit (ADB) rider or built-in feature that allows the death benefit to be “accelerated” — that is, a portion of the death benefit can be used to pay for care while, obviously, the insured is alive. Any death benefit not used for care will be paid to the beneficiary(ies). Both permanent life insurance policies (*e.g.*, whole life and universal life) and, to a lesser extent at this point, term life insurance policies can now be purchased with ADBs. Such policies may offer a long-term care (LTC) rider or a chronic illness rider.

Policies offering an LTC rider charge additional premium for the privilege of using the death benefit at a rate determined at policy issue. Choices are often 2, 3, or 4 percent of the death benefit at issue. For example, if the insured has a life insurance policy with a \$150,000 death benefit and an LTC rider that accelerates the death benefit at 4 percent per month, the maximum monthly benefit available to pay for covered long-term care expenses is \$6,000. If the entire death benefit has been accelerated, the policy comes to an end.

Life insurance policies with chronic illness riders are becoming plentiful. Such policies are often designed in one of three ways:

- 1) A built-in chronic illness rider includes no charges up front as if the rider is free of charge. However, if the insured accelerates the death benefit, a discounted, or reduced, death benefit is calculated and is withheld from the amount the insured receives in case of a chronic illness. Typically, the discounted death benefit, and resulting amount that can be received, cannot be known until claim time. Because most policies offering this style of chronic illness rider do not require additional or extra medical underwriting, some applicants with conditions such as early Parkinson’s or Multiple Sclerosis may be able to purchase coverage.
- 2) The lien approach is similar to the above, but instead of a discounted death benefit, the payment of the accelerated death benefit is considered an offset or lien against the death benefit.
- 3) The third, and often the most attractive, chronic illness rider design is the dollar-for-dollar death benefit reduction approach. This method involves a known additional charge for the rider, a defined percentage of the death benefit (*e.g.*, 50 percent or 100 percent) that is available for acceleration, and a defined benefit amount (*e.g.*, 2 or 4 percent per month). This style of chronic illness rider involves additional medical

underwriting and a memory test — those that may not qualify medically to purchase LTC insurance may not be able to purchase this rider.

Consumers should fully understand which type of chronic illness rider is being considered. Those contemplating a built-in chronic illness rider should look at the fine print to determine if the policy requires a *permanent* illness. While not ideal, this requirement often signifies that those with conditions such as Parkinson's, Multiple Sclerosis, or even mild memory issues may be able to qualify for coverage. Healthier applicants should avoid policies requiring a permanent illness and/or a discounted death benefit at claim time. Also noteworthy is that chronic illness riders pay benefits in the form of cash indemnity, allowing the money received to be used for any purpose, including household bills or care from family members.

Some of the most attractive attributes of life insurance solutions with ADBs may include guaranteed premiums and/or cost of insurance (not all policies include such guarantees), a death benefit paid to beneficiaries if care is not needed, and cash values upon surrender (not available with term life). People with existing permanent life insurance policies with cash surrender values may consider a tax-free 1035 Exchange from an existing policy without an ADB to one with an ADB. Disadvantages include the lack of inflation protection, policies do not qualify for the Colorado Partnership program, and someone may be relying on receiving the death benefit.

Asset-based Policies

Asset-based policies are so-named because the coverage is often funded by a portion of one's assets and, because the policy features cash surrender values, the policy is an asset. There are two types of asset-based policies: life-based and annuity-based.

Also known as "hybrid," "combination," or "linked-benefit" policies, asset-based policies built on a life insurance platform combine life insurance with a long-term care insurance extension of benefits rider. Unlike asset-based policies, traditional, stand-alone policies cannot provide cash surrender values, a death benefit, or guaranteed premiums (with very few exceptions). Asset-based policies are popular for consumers with the ability to self-fund long-term care. For example, if a consumer were to purchase an asset-based policy with a \$100,000 single premium, if he or she were to cancel the coverage after a certain number of years (*e.g.*, five or 10 years, depending on the company), the \$100,000 would be returned to the insured. If the policyholder were to pass away without needing care, the beneficiary(ies) of the death benefit would collect \$100,000. And if care were needed, an extension of benefits rider would provide LTC benefits that last several years or more. In other words, asset-based policies ensure that someone will collect a benefit. Insurance companies are now offering more ways to pay premiums for this type of coverage, including payments over five, 10, or 15 years, or to age 100. Also noteworthy is that companies may pay benefits in the form of cash indemnity (anyone can provide care and receipts for covered care services are not required) or expense reimbursement (requires a home care agency or licensed facility and receipts for covered care are required).

A second form of asset-based coverage is an annuity with a long-term care extension of benefits rider. Covering one person or a married couple, this type of annuity is not purposed for income but for long-term care. Funded with a single premium or a tax-free 1035 Exchange from another deferred annuity, the value of the new, asset-based annuity contract grows tax-deferred, provides a death benefit if care is not needed, and can be used to pay for qualified long-term care services over a number of years or for life via an extension of benefits rider. If the policy is being funded by a 1035 Exchange, unlike other annuities, the monetary gain in the policy is not taxed as income if it is used to pay for qualified care. This form of LTC insurance involves self-funding,

as the initial LTC benefits are accelerated from the policyowner's annuity account. As a result, insurance carriers are able to issue coverage when someone is not healthy enough to qualify for other forms of LTC insurance.

Fixed Equity Indexed Annuities

In most cases, people purchasing fixed equity indexed annuities, which tie the growth of the annuity to the performance of indexed accounts, do so for guaranteed lifetime income and protection of principal. Some equity indexed annuities provide additional benefits if the annuitant were to need long-term care. For example, if the annuitant is confined to a nursing home, surrender charges may be waived, providing liquidity for care services or any other purpose. The most lucrative feature or rider offered allows the annuitant to receive twice the monthly guaranteed income benefit for up to five years if care is needed, regardless of the setting. While these enhancements are not technically long-term care insurance, most companies do not require medical underwriting in order to add these benefits to a policy. Generally, unless the person applying for the annuitant already needs care, these enhancements can be included.

* This chapter was originally written by Aaron R. Eisenach, CLTC, LTCP, and was updated through 2023 by Roma Costanza , PPACG Agency on Aging.

Chapter 8

Financial Difficulty for Seniors

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SYNOPSIS

- 8-1. Financial Difficulty for Seniors
 - 8-2. Credit Card and Consumer Debt
 - 8-3. Taxes
 - 8-4. Bankruptcy
 - 8-5. Resources
-

8-1. Financial Difficulty for Seniors

Seniors may be particularly vulnerable to the economic difficulties facing many Americans today. This chapter is intended to provide resources to tackle some of the common issues confronting seniors.

8-2. Credit Card and Consumer Debt

Chapter 11, “Arm Yourself with Consumer Protection Information,” has a helpful discussion about credit repair, debt collectors, and debt collection in court. There are options to lower the interest you are paying. Credit card rates and even outstanding balances can often be negotiated down by calling the credit card company or by working with a nonprofit debt relief company. You can find a list of credit counseling agencies approved by the U.S. Department of Justice in the resources in Section 8.5 of this chapter. Beware! Debt consolidation and credit repair services are rife with fraud. Make sure to check out the credentials of any company before working with them.

Am I Obligated to Pay the Debts of My Spouse After His or Her Death?

When someone dies in Colorado, any property that person owns that is subject to a secured debt (such as a car loan or a mortgage) is subject to collection by the secured creditor unless regular payments are made on the loan. Secured creditors can always recover against the security. For unsecured creditors, such as credit card debt or medical debt, some assets are exempt from collection. Some of the exemptions include a homestead exemption for up to \$350,000 (this exemption is only available to a surviving spouse or a disabled or elderly dependent who resides in the home) of home equity; an exempt property allowance of up to \$40,000 worth of property; a family allowance of \$40,000; life insurance proceeds paid to a beneficiary; and assets held in or

paid from a pension, retirement plan, IRA, or other similar account. The remaining assets of a decedent's estate are generally available to unsecured creditors.

If the creditor is the IRS, state exemptions from creditors do not necessarily apply.

A surviving spouse or other family member who is acting as a personal representative for an estate must be very careful to properly pay estate debts. It is highly recommended that anyone thinking about serving as a personal representative consult with an attorney before making any distributions from an estate. If a personal representative distributes estate assets to beneficiaries before all creditors are paid, those beneficiaries and/or the personal representative could be liable to creditors up to the amount improperly distributed. See Chapter 28, "What to Do When Someone Dies: Responsibilities of the Personal Representative and Trustee Under Probate," for more information.

If a husband and wife have both signed a debt obligation, they are generally both responsible for repayment, even if one of them dies. Some creditors claim that surviving spouses are responsible for certain debts incurred individually by their deceased spouse if the debt is a "family expense." This is an unclear area in Colorado law. Different states have different rules regarding debt between spouses. In Colorado, family members who are not spouses, such as children, parents, grandparents, brothers, sisters, or other family members, have no obligation to pay the decedent's debt unless they co-signed on the debt obligation.

Debt collectors may contact parents, friends and neighbors, or anyone believed to be handling the estate. The *Wall Street Journal* ran an article on December 3, 2011, regarding debt collection firms specializing in estate debts who have applied pressure to family members to pay credit card debts or medical bills that surviving family members had no legal obligation to pay. Any person contacted by a debt collector has certain protections under federal and Colorado law regarding debt collection. This is discussed in detail in Chapter 11, "Arm Yourself with Consumer Protection Information."

8-3. Taxes

Refund Anticipation Loans

A lot of businesses offer to loan you money until you get your tax refund from the IRS. Be careful about using these services. It is easy to electronically file your tax returns, and plenty of free help is available if you need it (see section 8-5, "Resources"). You can have the IRS deposit your refund directly into your bank account, which often takes only eight to 15 days, and all of your refund goes right to you. If you borrow money in anticipation of your refund, the lender gets part of your tax refund — sometimes a big chunk.

Tax Problems

Low-income taxpayers with a tax controversy can contact two clinics in Colorado:

- 1) San Luis Valley & Southern Colorado Low Income Tax Clinic: 401 Church Pl., P.O. Box 57, San Luis, CO 81152; (719) 672-1002, slvlitc@centurytel.net.
- 2) University of Denver Low Income Taxpayer Clinic, Graduate Tax Program: 2255 E. Evans Ave., #390, Denver, CO 80208, (303) 871-6331, litc@law.du.edu.

Property Taxes

Colorado law provides for a senior property tax exemption for seniors 65 years or older who live in Colorado and have owned their Colorado homes as their primary residences for at least 10 years. This exemption is also available to 100 percent disabled veterans and to the widow or widower of a qualifying senior. Qualifying taxpayers get a 50 percent break on their property tax bill, up to \$200,000 of property value. Details and applications are available from your county assessor's office. Please note Colorado has periodically suspended this program when tax revenues are expected to be low (2009-2011). You must file your application by July 15 of the year for which the exemption is requested.

Colorado offers a Property Tax/Rent/Heat Rebate Program for low-income seniors aged 65 years or older, widows or widowers aged 58 years or older, and disabled persons. Qualified applicants can receive a rebate of up to \$1,044 based on the applicant's actual rent, property tax, and heating expenses. Applications are available at every county assessor's office, through the Colorado Department of Revenue, Division of Taxation at (303) 238-7378, or online at <https://tax.colorado.gov/PTC-rebate>. Free assistance in completing the application is available. You can file an application for this year and two prior years.

The Colorado Senior Property Tax Deferral Program is a program for homeowners aged 65 years or older where the state makes tax payments directly to the county to pay the property tax due. These payments are loans, and the state will file a lien against the property, but no payment is due on the loan until the home is sold or the senior no longer qualifies for the program. The state charges interest at a market rate for the loan. Seniors can use this program for multiple years. To qualify, the home must be owned and occupied by the senior, and the property cannot generate rental income. The mortgage lender must agree that the state's lien will come first, before the mortgage. Applications and information are available at your local county treasurer's office. See additional information online at <https://colorado.propertytaxdeferral.com/faq>.

8-4. Bankruptcy

Theory Behind Bankruptcy

Bankruptcy allows a person in debt to file financial information with the court showing the need for bankruptcy, and to receive a "discharge" or relief from certain types of debt. In *Local Loan Co. v. Hunt*, the U.S. Supreme Court explained the purpose of bankruptcy is to give "the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." Bankruptcy carries significant disadvantages and has limitations. It should be considered only when other debt-management options have failed. Bankruptcy has adverse effects on your credit rating for at least 10 years, and may prevent you from receiving any type of loan or credit for some time after you file.

Types of Bankruptcy

An individual can file under one of four different "chapters" of the bankruptcy code. Each has different criteria for filing and some differences in the type of relief offered.

Chapter 7

This is known as a “liquidating” bankruptcy. The debtor will describe to the court all of its assets and debts. Certain types of assets are exempt from creditors. This varies from state to state. In 2022, Colorado increased the value of existing exemptions and expanded the list of exempt assets. In Colorado, exempt assets may include real estate or mobile homes with a value of up to \$350,000 if the homeowner is over 60 years of age; disability insurance payments; life insurance proceeds; state pensions; ERISA-qualified benefits; veterans’ benefits; retirement accounts, up to certain limits; public benefits; vehicles worth up to \$25,000 total if the owner / debtor is over age 60; clothing up to \$2,000, jewelry up to \$2,500, books and photos up to \$2,000, burial sites, provisions and fuel on hand up to \$600, hunting and fishing equipment up to \$1,000, home furnishings worth up to \$6,000; some earnings up to certain limits; tools of trade up to \$60,000; and certain agricultural assets, including livestock and equipment, with a value of up to \$100,000. There are other exemptions available for certain assets and benefits. Any nonexempt assets will be sold, and the proceeds will be used to pay creditors according to their statutory priority for repayment. If there are no nonexempt assets, the creditors receive nothing. A debtor will be presumed to be filing an abusive petition if the debtor’s aggregate current monthly income over five years, net of certain statutorily allowed expenses, is more than (1) \$13,650 or (2) 25 percent of the debtor’s nonpriority unsecured debt, as long as that amount is at least \$8,175.

Chapter 13

This is known as a “wage earner’s” bankruptcy. This allows individuals with regular income to put in place a court-approved plan to pay all or part of their debts over three to five years. This type of bankruptcy allows a debtor to keep his or her property as long as the debtor complies with the repayment plan.

Chapter 12

This is similar to Chapter 13, but is specifically for debtors who are family farmers or fisherman.

Chapter 11

This is known as “reorganization.” This type of bankruptcy is rarely filed by an individual, but is commonly filed by businesses. It allows a commercial enterprise to continue operation of a business and repay creditors through a court-approved plan.

Consultation with a bankruptcy attorney will help you decide if bankruptcy will help you, and what type of bankruptcy is best for your situation.

Filing for Bankruptcy

A debtor must pay a filing fee, and, along with the petition, must file a schedule listing all assets and liabilities, a schedule listing all income and expenses, a statement of financial affairs, a schedule of all contracts and leases, copies of tax returns, a list of all creditors, a list of all property, disclosure of all income, a list of all monthly living expenses, and a certification of attendance at credit counseling. Depending upon the type of bankruptcy filed, the debtor may also be required to file a statement of all interest in qualified educational funds and/or a repayment plan.

What Happens Once I File?

Filing for bankruptcy will result in an automatic stay where creditors must halt all efforts to collect debts. This stay can be lifted if a creditor requests relief from the court, or if the debtor is found to be delaying or otherwise abusing the bankruptcy process.

A creditor's meeting will be scheduled at the bankruptcy courthouse. The debtor must attend and answer under oath all of the creditors' questions regarding financial circumstances, a repayment plan, and related information.

The court will appoint a bankruptcy trustee, who is an impartial third party who can investigate or liquidate assets. The trustee has "avoiding powers" that allow the trustee to reverse payments the debtor made to favored creditors within 90 days of filing for bankruptcy (called "preferential payments"). The trustee can also take other actions to protect the integrity of the bankruptcy proceeding. The trustee can recommend that the court approve a repayment plan, or that the court dismiss a bankruptcy petition for fraud or other non-compliance.

If all of the requirements of the particular type of bankruptcy are followed by the debtor, certain types of debt will be discharged, meaning that the debtor does not have to pay them and the creditor cannot pursue the debtor.

Debts that Cannot be Discharged

Certain types of debts cannot be discharged in bankruptcy. The type of debt that is dischargeable depends on the type of bankruptcy. Under § 523(a) of the bankruptcy code, debts that cannot be discharged include certain tax claims, child support, alimony, debts arising from willful or malicious injury caused by the debtor, governmental fines or penalties, student loans (unless undue hardship can be established), overpayments by government programs, personal injury judgments resulting from the debtor driving under the influence, debts owed to retirement plans, secured debts, and debts to homeowner associations.

8-5. Resources

Resources Regarding Debts, Lending, and Collection Practices

United States Department of Justice

List of approved credit counseling services.

www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111

Colorado Attorney General Consumer Resource Guides

Consumer resource guides available on many topics, including credit and lending.

<https://coag.gov/file-complaint/resource-guide/>

AARP Elderwatch Colorado

A partnership between the Colorado Attorney General's Office and the AARP Foundation, Elderwatch is a clearinghouse for complaints, educational information, and training materials dealing with the financial exploitation of elderly Coloradoans.

(800) 222-4444 option 2

www.aarp.org/money/scams-fraud/elderwatch

Disability Law Colorado

Disability Law Colorado provides help for people with disabilities and older people in Colorado by using the legal system to protect and promote their rights through direct legal representation, advocacy, education, and legislative analysis. They educate consumers through their many consumer-oriented publications, group training, and one-on-one coaching.

455 Sherman St., Ste. 130

Denver, CO 80203

(303) 772-0300 (TTY)

(800) 288-1376 (TTY)

<https://disabilitylawco.org> dlcmail@disabilitylawco.org

332 N. 8th St.

Grand Junction, CO 81501

(970) 241-6371 (TTY)

(800) 531-2105 (TTY)

AARP

AARP publishes several bulletins, including "Eliminate Credit Card Debt." AARP also makes several money tools available, including a Health Care Costs Calculator and Credit Card Payoff Calendar.

www.aarp.org/money

Colorado Legal Services

Colorado Legal Services offers legal assistance to low-income Coloradoans, and has legal information for the public, including information specific to consumer debt. Offices in Alamosa, Boulder, Colorado Springs, Craig, Dillon, Durango, Fort Collins, Grand Junction, Greeley, La Junta, Pueblo, and Salida.

1905 Sherman St., Ste. 400

Denver, CO 80203

(303) 837-1313

www.coloradolegalservices.org

Consumer rights information available at:

<http://www.coloradolegalservices.org/node/365/consumer>

Wall Street Journal

Article referenced in section 8-2:

"For the Families of Some Debtors, Death Offers No Respite."

Wall Street Journal (Dec. 3, 2011), available at

<http://online.wsj.com/article/SB10001424052970204224604577030043890121710.html>

Tax Resources

AARP Foundation Tax-Aide

AARP Foundation Tax-Aide offers services for people who pay low to moderate income taxes, with special attention for those 60 years or older. Service sites throughout Colorado.

www.aarp.org/money/taxes/aarp_taxaide/

Denver Asset Building Coalition (DABC)

Free tax preparation services for Colorado residents with low to moderate income. The Denver Asset Building Coalition also has seasonal offices in Aurora, Denver, and Arvada.

2475 W. 26th Ave.
Denver, CO 80211
(303) 388-7030
www.denverabc.org

Tax Help Colorado

A partnership between the Piton Foundation and the Colorado Community College System offers free income tax return preparation for low-income taxpayers, including assistance with earned income tax credits and applications for the Property Tax/Rent/Heat Rebate Program. The Piton Foundation operates 27 tax sites in Colorado in cooperation with Colorado colleges and other agencies.

<https://taxhelpco.org>

Colorado Legal Services

Colorado Legal Services offers legal assistance to low-income Coloradoans, and has legal information for the public, including information specific to income and property taxes.

1905 Sherman St., Ste. 400
Denver, CO 80203
(303) 837-1313

Mile High United Way

Dial 211 to get information about free tax preparation sites throughout Colorado, as well as information about emergency shelter, legal aid, housing, utilities, home repair, senior issues, and more.

www.unitedwaydenver.org/2-1-1

Other Tax Resources:

- IRS forms and publications can be found at: www.irs.gov/forms-instructions.
- Colorado forms and tax information can be found at: <https://tax.colorado.gov/individual-income-tax-forms>.
- A website providing links to a number of tax related topics is: www.taxtopics.net.
- Public libraries often provide print or online access to tax forms and tax information.

Bankruptcy Resources

AARP

AARP has a web page devoted to money issues, including credit, loans, and debt. There are several useful articles available at:

www.aarp.org/money

Colorado Legal Services

Colorado Legal Services offers legal assistance to low-income Coloradoans, and has legal information for the public, including information specific to bankruptcy.

1905 Sherman St., Ste. 400
Denver, CO 80203
(303) 837-1313
www.coloradolegalservices.org

United States Courts

"Bankruptcy Basics" guides and videos are published by the administrative office of the United States Courts.

www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics

Denver Bar Association

The Denver Bar Association offers a free bankruptcy clinic on the second Tuesday of each month at the U.S. Bankruptcy Court. (This clinic is currently operating remotely. Call (720) 633-8866.)

721 19th St., Rm. 183

Denver, CO 80202

www.denbar.org/Public/Legal-Clinics

Chapter 9

Employment Discrimination

Rachel E. Ellis, Esq.*
Livelihood Law, LLC

SYNOPSIS

- 9-1. Age
 - 9-2. Race, Color, Religion, Sex, and National Origin
 - 9-3. Disability
 - 9-4. Before Filing a Charge of Discrimination
 - 9-5. Filing a Charge of Discrimination
 - 9-6. Family and Medical Leave Act
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-

Federal and state laws prohibit discrimination, harassment, and retaliation against employees based upon a person's age, race, color, religion, sex, national origin, disability, and use of job-protected leave.

The federal Age Discrimination in Employment Act (ADEA) makes it illegal for an employer to discriminate against employees because of their age; specifically, this law prohibits discrimination against persons 40 years of age or older.

Another federal law, Title VII of the Civil Rights Act of 1964 (Title VII), as amended, protects individuals from discrimination, harassment, and retaliation because of their race, color, religion, sex (including sexual harassment and pregnancy discrimination), and national origin.

Under the federal Americans with Disabilities Act (ADA), it is illegal to discriminate against people with mental and physical impairments that qualify as disabilities under the Act.

In addition to these federal laws, Colorado has a state law known as the Colorado Anti-Discrimination Act (CADA). Like the federal laws noted above, this state law prohibits discrimination against individuals in employment based on their disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry. However, in addition, Colorado law also prohibits discrimination on the basis of sexual orientation and being married to another employee, neither of which are currently covered by federal law.

The Family and Medical Leave Act (FMLA) is another important federal law, which provides eligible employees of covered employers with unpaid job-protected leave for up to 12 weeks of leave within a 12-month period of time.

Employers are prohibited from discriminating in a variety of employment issues, such as job advertisements; hiring; pay and benefits that affect compensation; promotion; demotion; and termination. Employers are also prohibited from retaliating against an employee who complains of discrimination or participates in the investigation of a discrimination complaint under the ADEA, Title VII, the ADA, or CADA. Finally, an employer cannot interfere with an employee's right to take job-protected leave, or retaliate against an employee for taking job-protected leave under the FMLA.

Employment discrimination includes adverse actions directly motivated by discriminatory intent, as well as adverse actions that may not be caused by a discriminatory intent but nevertheless have an adverse impact on employees in a protected group.

9-1. Age

The Federal Age Discrimination in Employment Act (ADEA) makes it illegal for an employer to discriminate against a qualified employee because of his or her age. Employers are prohibited from treating qualified workers who are 40 years old or older less favorably than other employees because of the older worker's age. Employers covered by this statute include those who employ 20 or more employees. It does not matter if the employee who is being treated more favorably is also over the age of 40, as long as one employee is being mistreated because of age.

The Older Workers Benefit Protection Act (OWBPA) is an amendment to the ADEA limiting the manner in which an employee 40 years or older may waive his or her protections under the ADEA. Under the OWBPA, an individual may not waive any right or claim under the ADEA unless the waiver is understood and voluntary. Any release executed by an employee is not considered valid unless the following minimum guidelines of the OWBPA are met:

- ▶ The waiver is part of an understandable written agreement that specifically refers to rights under the ADEA;
- ▶ The individual does not waive rights that may arise after the date the waiver is executed;
- ▶ The waiver must be accompanied by consideration (*i.e.*, money) in addition to severance or other benefits that the employee is already entitled to receive;
- ▶ The waiver must advise the individual in writing to consult with an attorney before executing the waiver;
- ▶ The employee must be granted a period of at least 21 days within which to consider the agreement; and
- ▶ The waiver also must state that the offer remains revocable for at least seven days after the date of signature.

If the waiver is requested as part of an exit incentive, group layoff, or other program offered to a class of employees, then these requirements are altered somewhat. Rather than having 21 days to consider the terms, 45 days must be given. Also, the employer must provide information about how eligibility for the program was determined and the job titles and ages for those selected or eligible, as well as for those not selected or eligible.

CADA prohibits discrimination based on age and applies to all employers, regardless of size, though there is an exemption for religious institutions. The Colorado statute prohibiting age discrimination contains an exception permitting employers to compel retirement for workers

between the ages of 65 and 70 who have held executive or policy-making positions and have access to immediate retirement benefits of at least a certain amount. The ADEA was amended to eliminate this upper-age exception. Employers covered by the Colorado statute include those who employ two or more employees. In 2022, the Colorado legislature agreed that employees subjected to age discrimination should be able to recover the same categories of damages available under other types of discrimination; under CADA, damages available include economic damages, compensatory damages including emotional distress, and attorney fees and costs.

These statutes were enacted to protect older workers from stereotypes, including beliefs that older workers are slow, unable to adapt to change, unable to learn current technology or procedures, or that they should retire at a certain age.

9-2. Race, Color, Religion, Sex, and National Origin

Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 (Title VII), prohibits employment discrimination and/or harassment based on race, color, religion, sex, and national origin. Employers covered by this statute include those who employ 15 or more employees.

CADA prohibits discrimination based on race, color, religion, sex, and national origin and applies to all employers, regardless of size, though there is an exemption for religious institutions. Additionally, CADA also prohibits discrimination based on creed, pregnancy, sexual orientation, transgender status, and, for employers with more than 25 employees, generally prohibits discriminating against a person because his or her spouse or fiancé(e) is an employee.

The damages available for these types of claims include economic damages; compensatory damages, including emotional distress; and attorney fees and costs.

9-3. Disability

Title I of the Americans with Disabilities Act (ADA) offers protection from employment discrimination based on disability for qualified people with disabilities. The law covers employers with 15 or more workers.

Another federal law, Section 504 of the Rehabilitation Act, states that no qualified individual with a disability will be “excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.” This includes employment.

The Colorado Anti-Discrimination Act protects employees with disabilities from discrimination regardless of the number of workers employed.

Definition of Disability and Qualified Individual with a Disability

Under the civil rights protections listed above, the term “disability” means, with respect to an individual:

- ▶ A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- ▶ A record of such an impairment; or

- ▶ Being regarded as having such an impairment.

In order to be considered a “qualified individual with a disability,” a worker must be able to perform the essential functions of his or her job, with or without a reasonable accommodation. Essential functions are the necessary duties and activities of the job position.

Reasonable Accommodations

A “reasonable accommodation” is any change in the work environment or the way things are usually done that enables a person with a disability to perform the essential functions of the job. An accommodation is considered reasonable if it is feasible and meets the needs of the person with a disability.

An employer must make a reasonable accommodation to an employee with a known disability, unless the employer can show that the accommodation would cause an undue financial burden or hardship on the operations of its business, or that providing the accommodation would pose a direct threat to the health or safety of the employee or others. There is no magic language required when requesting an accommodation.

Reasonable accommodations may be needed:

- ▶ During the application/interview process;
- ▶ To perform the essential functions of the job; or
- ▶ For the enjoyment of equal terms, conditions, and privileges of employment.

When an employee requests an accommodation, the employer can request medical documentation of the claimed disability and the need for the accommodation. Any medical information provided to the employer is to be treated as confidential and kept in a record separate from the employee personnel file.

An employee need not provide all of his or her medical files. The employee need only submit medical information relevant to the claimed disability and potential accommodation.

Requests for reasonable accommodations may include, but are not limited to:

- ▶ Changes in physical accessibility of the location or work site;
- ▶ Job restructuring;
- ▶ Modified work schedule;
- ▶ Acquisition or modification of work equipment;
- ▶ Modification of training materials or examinations;
- ▶ Modifications of policies;
- ▶ Altering how an essential function of the job is performed; or
- ▶ Reassignment to a vacant position.

Creating a reasonable accommodation is an individualized process and will vary from situation to situation, based on a person’s limitations, the job, and the employer’s business. The purpose of a reasonable accommodation is to enable the employee to perform the essential functions of the job.

An employee's request for a reasonable accommodation may, but need not, be written. The employer is required to enter into an interactive process with the employee to determine a reasonable accommodation. If a specific accommodation is requested by the employee, the employer should consider the specified request, but may provide an effective alternative. No employer is required to suffer an undue hardship in providing an accommodation; whether a requested accommodation is an undue hardship must be based on an individualized assessment of current circumstances showing that a specific reasonable accommodation would cause significant difficulty or expense to the employer.

The damages available for disability claims include economic damages; compensatory damages, including emotional distress; and attorney fees and costs.

9-4. Before Filing a Charge of Discrimination

If you suspect you have been the subject of employment discrimination covered by these federal or state laws, you have the right to file a complaint, known as a Charge of Discrimination, with the Equal Employment Opportunity Commission (EEOC), or the Colorado Civil Rights Division (CCRD). Before doing so, you should consider whether there are routes to open lines of communication within your employment setting:

- ▶ Are you represented by a union that can advocate for your rights?
- ▶ Does your company employ an EEO or ADA coordinator or someone who monitors compliance with discrimination laws? (You might be able to find this information through your human resources department.)
- ▶ Are you a federal or state employee who may be required to enter into an internal process before filing a charge with the EEOC or CCRD?
- ▶ Is there an internal grievance procedure, an administrator with decision-making powers, or a board where your issues will be heard and addressed?
- ▶ Is there an opportunity to negotiate or mediate with your employer?
- ▶ Would you like to meet with an attorney who practices in this area to help you understand the strength of your potential claims and to discuss strategies for resolution?

9-5. Filing a Charge of Discrimination

Where to file a charge of employment discrimination:

Colorado Civil Rights Division (CCRD)
1560 Broadway, Ste. 825
Denver, CO 80202
(303) 894-2997
TTY through Relay Colorado (711 plus regular phone number)
<https://ccrd.colorado.gov> (click on "Start a Complaint")

The CCRD has jurisdiction over businesses regardless of the number of employees. The CCRD may offer either group or individual intakes about a complaint. There is an online filing system at the CCRD that allows you to complete an intake form on their website, and then a Division employee will contact you to continue the process. For the purposes of timely filing, do not mistake the submission of an intake form as officially filing your Charge of Discrimination.

Equal Employment Opportunity Commission (EEOC)
950 17th St., Ste. 300
Denver, CO 80202
(800) 669-4000
(800) 669-6820 (TTY)

The EEOC has jurisdiction for businesses with 15 or more employees for Title VII and the ADA, and 20 or more employees for the ADEA.

Timelines for Filing to Protect Your Legal Rights

You must file a Charge of Discrimination with the EEOC or CCRD within 300 days from the date of employment discrimination, harassment, or retaliation, or you forfeit the chance to pursue your claims.

Federal, state, and/or union employees may have mandatory prerequisites to the deadlines listed above, and these deadlines can be very short, sometimes within a few days. Requirements may include filing with an internal EEO officer. Additionally, other employment claims may have different filing requirements and deadlines.

You generally must file a sworn written statement in order to file a charge with the EEOC or CCRD. Also, before a private lawsuit may be filed in court, you must exhaust administrative remedies with the agency. Prior to filing such a suit, you must receive a right-to-sue letter from the EEOC or CCRD (see “Filing a Charge,” below).

Filing a Charge

There is no cost for filing a Charge of Discrimination with the EEOC or the CCRD. You do not need to have an attorney for this process, but it is often helpful. As the charging party, you should be prepared to provide the who, what, when, where, and how concerning your complaint:

- ▶ Your name, address, and telephone number.
- ▶ Your employer’s name, address, telephone number, and number of employees, if known.
- ▶ A description and timeline of events, with any available documentation, to support your claim of discrimination.
- ▶ The names, addresses, and phone numbers of anyone who could support your claim of employment discrimination (witnesses).
- ▶ Documentation of your disability, if applicable.

When you file a charge of discrimination with the EEOC or CCRD, you will be assigned a charge number. An investigator will have primary responsibility for handling your complaint. The employer that you filed a charge against will have the opportunity to respond to your statements alleging discrimination.

You may be offered the chance to mediate with your employer. This step is voluntary.

You may be requested to submit additional information related to your charge.

After the claim has been investigated, the EEOC or CCRD will determine if there is “cause” to your complaint that may initiate further agency action.

If the EEOC or CCRD finds that there is “cause,” it may require conciliation efforts, choose to pursue a lawsuit on your behalf, or provide you with a right-to-sue letter.

Even if the EEOC or CCRD does not find that there is “cause,” you will still be provided with a right-to-sue letter that enables you to file a lawsuit asserting discrimination in a federal or state court. You will lose your right to sue if you do not file the complaint in court within 90 days from your receipt of the letter.

9-6. Family and Medical Leave Act

Eligibility

The Family and Medical Leave Act was enacted in 1993 to require covered employers to provide employees with job-protected and unpaid leave for qualified medical and family reasons. The FMLA requires that covered employers communicate the law’s protections to eligible employees, both by posting a notice and providing a written notice directly to employees.

For an employee to have protection under the FMLA, three things are required. An employee must: (1) have worked for the employer for at least 12 months; (2) have worked at least 1,250 hours in the last 12 months preceding the start of leave; and (3) be employed at a worksite where the employer has at least 50 employees within 75 miles.

There are specific reasons that an employee can use job-protected leave under the FMLA:

- ▶ The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care, and to bond with the newborn or newly placed child;
- ▶ To care for a spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
- ▶ For a serious health condition that makes the employee unable to perform the essential functions of his or her job, including incapacity due to pregnancy and for prenatal medical care; or
- ▶ For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

Under certain circumstances, an employee is entitled to take FMLA leave on an intermittent or reduced-schedule basis. In addition to providing eligible employees an entitlement to leave, the FMLA requires that employers maintain employees’ health benefits during leave and restore employees to their same or an equivalent job after leave.

The damages available for an FMLA violation include economic damages and attorney fees. And although compensatory damages are not permitted under the FMLA, if you can prove the discrimination was “willful,” you can be awarded double damages (“liquidated damages”).

Statute of Limitations

The EEOC and CCRD do not have jurisdiction over claims under the Family and Medical Leave Act, so there is no requirement that you file a Charge of Discrimination to exhaust administrative remedies in order to pursue a claim under the FMLA. Instead, there is a two-year statute of limitations to file a lawsuit against the employer.

9-7. Resources

If you believe that a federal program has discriminated against you, file a complaint with the federal agency that funds the program. Your U.S. senator or representative's office can tell you which federal agency to contact if you are uncertain.

If you believe that your employer has discriminated against you on the basis of a protected characteristic, don't wait to pursue your claims, or you will lose the chance to do so. See the discussion in section 9-5. Contacting a private attorney to talk about your specific situation is a good idea; also, you can use the following government agencies as resources for additional general information.

CCRD

(303) 894-2997 (bilingual Spanish/English)
<https://ccrd.colorado.gov> Unemployment Benefits

Colorado Department of Labor and Employment

Unemployment Benefits

(303) 318-9000
(800) 388-5515
<https://cdle.colorado.gov/unemployment>

EEOC

Headquarters:
U.S. Equal Employment Opportunity Commission
131 M St., NE
Washington, D.C. 20507
(800) 669-4000
(800) 669-6820 (TTY)
info@eeoc.gov
www.eeoc.gov

Denver Field Office:

950 17th St., Ste. 300
Denver, CO 80202
(800) 669-4000
(800) 669-6820 (TTY)

United States Department of Justice

950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001
(202) 353-1555 or (202) 514-2000
AskDOJ@usdoj.gov
www.justice.gov

* This chapter was originally reviewed by Valerie L. Corzine, Esq., Legal Center for People with Disabilities and Older People, and was updated through 2017 by Andrew Volin, Esq.

Chapter 10

Workers' Compensation and Seniors

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SYNOPSIS

- 10-1. Workers' Compensation Overview
 - 10-2. Benefits Available
 - 10-3. Filing a Workers' Compensation Claim
 - 10-4. Basic Forms
 - 10-5. Special Workers' Compensation Issues Pertaining to Seniors
 - 10-6. Special Resources for Native Spanish-speaking Workers
 - 10-7. General Resources for All
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10-1. Workers' Compensation Overview

Workers' compensation is a state insurance program designed to compensate workers who are injured on the job. The Colorado state legislature determines eligibility for benefits as well as amounts and duration of benefits.

Every employer in the State of Colorado is required to buy workers' compensation coverage for its employees, or qualify under the state's strict standards to be self-insured. The Colorado workers' compensation program is administered by a state agency, the Colorado Department of Labor and Employment, Division of Workers' Compensation. To learn more about the Colorado workers' compensation system, call the Division of Workers' Compensation customer service unit at (303) 318-8700, or visit their website at www.colorado.gov/cdle/dwc. The Division of Workers' Compensation website is very informative and user friendly.

Employees who qualify for workers' compensation benefits cannot sue their employers in a federal or state district court using personal injury, negligence, or other "common law" theories of liability. This is because workers' compensation is considered an "exclusive remedy" for injury claims. An employee who is injured on the job, however, is not prohibited from suing his or her employer for violation of a federal anti-discrimination law such as the Americans with Disabilities Act (as amended) or Title VII (discrimination based on race, age, gender, national origin, religion, etc.), or for sexual harassment, violation of the Family and Medical Leave Act, the Older Workers Benefit Protection Act, or the Age Discrimination in Employment Act.

The Colorado workers' compensation system is not easily understood by laypersons since it is governed by statutes, rules, and case law that are ever-changing and complicated. If you have questions about the workers' compensation system, call customer service at the Division of Workers' Compensation, or retain an attorney who specializes in workers' compensation.

10-2. Benefits Available

There are eight types of benefits available under the Colorado workers' compensation system:

Medical Benefits

An injured worker is entitled to all medical benefits that are reasonably necessary to cure or alleviate the effects of the industrial accident. Those benefits can include hospitalization costs, prescriptions, x-rays, surgery, physical therapy, medical transportation costs, prosthetic devices, bandages, and much more. Medical providers can only charge a certain amount for medical services and equipment, which is paid by the insurance company or self-insured employer. The injured worker does not make any co-payment. Medical benefits are available as long as necessary, sometimes even for life.

Temporary Total Disability

If a worker cannot work at his or her regular job at all, the worker is entitled to a wage replacement benefit known as temporary total disability (TTD). TTD is paid at the rate of 2/3 of the worker's average weekly wage, up to a state maximum amount. The state maximum amount for TTD from July 1, 2022, through June 30, 2023, is \$1,228.99. These benefits are usually paid every two weeks. TTD lasts until the worker is at maximum medical improvement, released to regular employment, returns to work at full wage, misses a rescheduled doctor's appointment, or fails to return to an offer of modified duty.

Temporary Partial Disability

Temporary partial disability (TPD) benefits are paid when a worker returns to work earning less than his or her regular wage. In such a case, the worker is paid TPD by the following formula:

Average weekly wage at time of injury - average weekly wage after return to work \times 2/3 = TPD rate.

For example, a worker who earns \$600 per week at the time of injury who returns to work half-time earning gross wages of \$300 per week would receive \$200 per week in temporary partial disability benefits (\$600 **minus** \$300 \times 2/3 = \$200).

Bodily Disfigurement

Bodily disfigurement is paid in addition to other benefits when a worker is left with a scar, amputation, or other bodily disfigurement. Beginning July 1, 2022, a worker may receive up to \$6,506.33 for certain bodily disfigurements, and up to \$13,010.36 for more serious bodily disfigurements. The maximum amount available for bodily disfigurement increases each year. Bodily disfigurement can be admitted by the insurance company or self-insured employer, or

an injured worker may submit photographs to an administrative law judge (ALJ) for evaluation. Alternatively, the injured worker may appear live before an ALJ at a disfigurement hearing.

Permanent Partial Disability

The purpose of permanent partial disability (PPD) benefits is to compensate the injured worker for anticipated wage loss due to the effects of an industrial injury. Injured workers are compensated for their permanent partial disability based on a formula that varies depending on whether the injury is to a specific body part or to the "whole person." The formula for injuries to specific body parts (knees, eyes, wrists) does not take into consideration the age or average weekly wage of the injured employee. An injury to the "whole person" (for example, back, neck, or hernia) does take into consideration age and average weekly wage. Since the formulas for calculating permanent partial disability are not easily understood, an injured worker should consult with the Division of Workers' Compensation or an experienced attorney to determine whether an insurance company has properly calculated his or her PPD.

Permanent Total Disability

If an injured worker is unable to earn any wages for the same or any other employer, he or she can collect permanent total disability (PTD) benefits. PTD benefits are potentially payable until the death of the injured worker. Such benefits are paid at the rate of 2/3 of the worker's average weekly wage, without a cost-of-living increase. If a worker is entitled to permanent total disability benefits, he or she may currently ask for a lump-sum payment of those benefits up to \$113,372.35. After the lump sum is paid, the remaining benefits due will be paid at a lower rate (amortized). The standard for proving entitlement to permanent total disability is rigorous, and it is very difficult to qualify for such benefits. An injured worker who turns down an offer of employment or vocational rehabilitation may not qualify for permanent total disability benefits. If an insurer can demonstrate that the worker has returned to work earning \$4,000 or more, permanent total disability benefits may end.

Vocational Rehabilitation

Vocational rehabilitation is not a mandatory benefit in the Colorado workers' compensation system. Insurers do offer vocational rehabilitation services on occasion, however, in order to avoid a determination of permanent total disability.

Death Benefits

Death benefits are paid to the dependents of a deceased employee whose death is related to his or her work injury. Benefits are payable at a rate that is 2/3 of the average weekly wage of the deceased worker, up to a state maximum. Dependent spouses are eligible for death benefits for life or, upon remarriage, for two years beyond the date of remarriage. Minor children are eligible for dependent benefits until the age of 18 or, upon full-time enrollment in an accredited institution of higher learning, until they are 21 years of age. If there are multiple dependents, all dependents share one amount. Death benefits are reduced by 50 percent of Social Security benefits received by the dependent(s).

10-3. Filing a Workers' Compensation Claim

There are three basic types of workers' compensation claims: **traumatic injury**, **occupational disease**, and **mental impairment**. A **traumatic injury** is an accidental injury that occurs at a specific time and place. An **occupational disease** is an injury due to the conditions at work that, over time, cause injury or disease. An example of an occupational disease is a carpal tunnel condition caused by repetitive motion at work. The third type of injury is **mental impairment**, which is an accidental injury that does not necessarily involve a physical injury and is due to an event or conditions of employment and that would cause symptoms of distress in a similarly situated employee. A mental impairment claim must be supported by evidence from a physician, it must result in either lost time from work or medical attention, and it must be primarily caused by some event or conditions at work. A mental impairment claim cannot be caused in full or in part by conditions of employment that are common to all fields of employment such as termination, promotion, suspension, or other disciplinary action at work.

If a worker feels that he or she has been injured because of work, the worker should notify the employer of the claim *in writing* within 10 working days. Alternatively, the employee may file a claim with the Division of Workers' Compensation by completing a form known as the "Worker's Claim for Compensation." This form, which can be found online at www.colorado.gov/cdle/dwc, is easily understood and can be completed by a lay person. If you need assistance in completing the Claim for Compensation, consult with a representative from the Division of Workers' Compensation or retain an attorney to file one for you. There are no filing fees associated with filing a claim for workers' compensation or any subsequent document.

Once the employer is notified of the work-related injury, the employer must offer the worker a choice of at least four medical providers (four physicians, four clinics, or a combination of physicians and clinics), unless the worker lives in a rural area. Failure to offer at least four treating providers within a short time after notice of the injury will result in the worker's right to choose his or her own provider.

Once the worker selects a medical provider, there are two ways to accomplish a change of treating physician. If the worker has not reached maximum medical improvement and no more than 90 days have passed after the date of injury, the worker may request a change of physician to one of the other medical providers offered at the time of injury. This request will automatically be granted. At any time, an injured worker may submit a written request for a change of treating physician to the insurance carrier. If the carrier does not respond within 20 days of the written request, the request will automatically be granted.

Once a claim is filed, the Division of Workers' Compensation notifies the worker's employer and the insurance company about the claim. The employer and its insurance company (known as "respondents") then file a response to the Claim for Compensation indicating whether they will accept or deny your claim. If the respondents accept your claim, they file a "General Admission of Liability." If they deny your claim, they file a "Notice of Contest." If respondents deny the claim, a claimant may file an "Application for Hearing." Once an Application for Hearing is filed, the respondents will file a "Response to Application for Hearing" that indicates their position on issues the injured worker has endorsed, and endorsing their own defenses and offsets as appropriate. The Response to Application for Hearing will tell the injured worker a great deal about what the respondents think about the worker's claim.

Once a claim is filed, the parties may gather information from each other about the facts and theories known to them. This is called "discovery," and is usually conducted through

questionnaires known as "Interrogatories and Requests for Production of Documents." Sometimes the parties will agree to take a deposition of an important witness, such as an employer representative or a doctor.

At any time after the Application for Hearing is filed, the parties may proceed to a prehearing conference to discuss procedural issues, or a settlement conference to try to resolve some or all of the issues in the case. Prehearing and settlement conferences are conducted by special judges known as prehearing administrative law judges. These judges have the power to make rulings concerning disputes about producing information, or when a hearing can commence. They also can help the parties settle the issues in dispute.

If the parties cannot resolve the issues on their own, they will proceed to a hearing before an administrative law judge, known as a "merits judge." The merits judge, who is a specialist in workers' compensation claims, will decide all issues pertaining to the workers' compensation claim.

If a party disagrees with the decision of an administrative law judge, it may appeal the order to an appellate body known as the Industrial Claim Appeals Office. A further level of appeal is the Colorado Court of Appeals. The ultimate appellate body for workers' compensation cases is the Colorado Supreme Court. Very few workers' compensation cases, however, are reviewed by the court of appeals or the supreme court.

10-4. Basic Forms

Most of the following forms can be found in the "Forms" section of the Division of Workers' Compensation website at www.colorado.gov/cdle/dwc.

► **Workers' Claim for Compensation**

This is a form that a claimant completes to give information concerning his or her claim. This form could suffice as the employee's notice of injury that the employee is required to submit within 10 days after an accidental traumatic injury.

► **Notice of Contest**

This is a form completed by the insurance company or third-party administrator on behalf of the employer by which the respondents deny a claim. Sometimes the respondents specify a legal or factual basis for the denial, but often they simply indicate "pending further investigation." In the latter case, a claimant should inquire about what information or documents the respondents need to complete their investigation.

► **Employer's First Report of Injury**

For certain injuries, an employer is required to file an Employer's First Report of Injury with its carrier within 10 days. The carrier or third-party administrator, in turn, will, as appropriate, file the Employer's First Report of Injury with the Division of Workers' Compensation to advise the Division and the injured worker about the claim.

► **General Admission of Liability**

Respondents admit for benefits on a form known as the General Admission of Liability. An injured worker does not need to respond to this notice, but he or she should review it carefully to make sure the respondents have admitted to all benefits that are appropriate.

▶ **Application for Hearing**

This is the form that any party to a claim can file if the party wants a hearing on an issue before an administrative law judge. (Available from the Office of Administrative Courts, www.colorado.gov/dpa/oac.)

▶ **Response to Application for Hearing**

This form, usually filed by respondents, is used to advise the other side about their position pertaining to the issues endorsed on the Application for Hearing and to state any affirmative defenses or offsets they may have.

▶ **Order**

An order is the written decision of an administrative law judge or any appellate body such as the Industrial Claim Appeals Office, the Colorado Court of Appeals, or the Colorado Supreme Court, or even the Director of the Division of Workers' Compensation. If a party is dissatisfied with an order, he or she may appeal it within 20 days from the date on the certificate of mailing of that order. Failure to appeal an order within 20 days makes the order final and there is no further right to appeal.

▶ **Final Admission of Liability**

When respondents seek to close out most or all issues in the case, they will file a Final Admission of Liability. Injured workers should review the Final Admission very carefully, because they have only 30 days from the date on the certificate of mailing to object to the Final Admission of Liability. If they fail to object in writing within 30 days, their case will be closed with respect to the issues concerned.

▶ **Objection to Final Admission of Liability**

This is the form that must be filed by the injured worker within 30 days from the date on the certificate of mailing of the Final Admission of Liability or else the claim will be closed as to the issues noted in the Final Admission of Liability.

▶ **Notice and Proposal and Application for a Division Independent Medical Examination (DIME)**

Either the claimant or respondents can advise the other side that they wish to have an independent physician review a determination of the treating physician with respect to maximum medical improvement or permanent impairment, or other medical issues as well. The "Notice and Proposal," as it is called in shorthand, must be filed within 30 days from the treating physician's determination of maximum medical improvement and permanent impairment or 30 days from the mailing date of the Final Admission of Liability. This form, which is used to apply for a DIME, will indicate whether a DIME physician has been negotiated, whether the Division of Workers' Compensation needs to give the parties a panel from which they can select a DIME physician, and what issues the parties want the DIME physician to address.

If the parties cannot negotiate a doctor before the DIME, the Division of Workers' Compensation will provide three names randomly selected from a computer program. The requesting party will strike one of those names and the non-requesting party will strike another. The remaining physician will conduct the DIME. The DIME cost may range between \$1,000 and \$2,000 depending on the age of the case and the number of body regions to be evaluated.

► **Request for Lump Sum Payment**

An injured worker can ask for a lump sum of up to \$10,000 of permanent disability benefits simply by writing the insurance carrier or a third-party administrator for a self-insured employer. If the worker wants the remainder of his or her award, up to \$113,372.35, paid in a lump sum, he or she must complete a "Request for Lump Sum Payment" form. The claimant must submit this form to the Division, which will usually enter an order for a lump sum payment and payments for the amortizing balance of benefits due.

10-5. Special Workers' Compensation Issues Pertaining to Seniors

► **Permanent Partial Disability**

If an injured worker's injury is to a specific part of the body (for example, eye, knee, or wrist), the amount of benefits received is calculated with a formula that has nothing to do with the person's age. If the injured worker, however, suffers a "whole person injury" to the neck, back, spine, head, or internal organs, the worker's benefits are calculated with a formula that does reflect his or her age. By means of a number known as the "age factor," a carrier determines a person's disability. In Colorado, older workers have lower "age factors" than younger people, and therefore they usually receive less in permanent partial disability benefits when they have a whole person injury.

► **Permanent Total Disability**

As described above in section 10-2, "Benefits Available," an injured worker who can prove that he or she cannot earn any wages from the same or any other employer can qualify for permanent total disability benefits. These benefits, which are measured by 2/3 of the worker's average weekly wage at the time of injury, are usually payable for life. The older a worker is at the time of injury, the higher the probability of qualifying for permanent total disability benefits.

► **Apportionment for "Old Age"**

The only means of reducing workers' compensation benefits because of age is use of the age factor (see above) in calculating permanent partial disability benefits. No other benefit may be reduced or paid differently for seniors. Apportionment may be available, however, when the effects of older age create a nonindustrial impairment that can be measured and subtracted out from the industrial impairment. Apportionment is a very complicated area of workers' compensation law, so injured workers should consult with the Division of Workers' Compensation or an attorney when they feel that respondents have unfairly apportioned out benefits in their case.

► **Offsets**

An injured worker's benefits may be reduced pursuant to a statutory formula when that worker receives unemployment compensation, Social Security disability benefits, Social Security retirement benefits, Public Employees' Retirement Association (PERA) benefits, or employer-funded disability or retirement benefits. The amount of the offset depends on the type of benefits received. In certain cases, the respondents may require the claimant to file for periodic disability benefits. Failure to do so may result in suspension of workers' compensation benefits.

▶ **“Responsible for Separation from Employment”**

In some cases, an injured worker may not receive temporary total disability benefits if an administrative law judge determines that he or she is “responsible for separation from employment.” If an employee violates an employer’s rule, does not show up for work, or voluntarily leaves employment for reasons unrelated to the injury, the carrier may refuse to pay temporary disability benefits. If the reason for separation is due to the injury, however, the carrier must pay full benefits. If seniors are scheduled to retire before or even after their injury, the carrier may take the position that they are “responsible for separation from employment,” so the prudent worker is honest with the employer about the real reasons that he or she is unable to return to work.

▶ **Intoxication Penalty**

An older worker may have his or her temporary disability benefits reduced by 50 percent if, at the time of injury, he or she has a blood alcohol level of .10 or more, or if he or she has any non-prescribed controlled substance in his or her body. Seniors should be aware that usage of marijuana, whether for medical or recreational purposes, may result in reduction of benefits. The same is true if the older worker is using someone else’s prescribed medication at the time of injury.

▶ **Pre-Employment Testing**

Because some older workers bring a history of prior injuries and reduced physical capacity, some employers are administering physical fitness tests between conditional job offers and job placement. Such tests are legal under the Americans with Disabilities Act (as amended) if properly conducted. A job applicant, regardless of age, is required to be honest about his or her physical condition at all stages of the application process. Willfully misleading an employer about an applicant’s ability to perform the essential functions of the job may result in a 50 percent reduction of nonmedical benefits if the worker is subsequently injured.

▶ **Fitness for Duty Testing**

Both the Americans with Disabilities Act (as amended) and the Family and Medical Leave Act allow fitness for duty testing of certain employees within certain narrow guidelines. Like other employees, senior workers may be requested to demonstrate that they are “fit for duty” by completing medical questionnaires and physical examinations. Current employees have greater rights under the Americans with Disabilities Act, the Americans with Disabilities Act Amendments Act of 2008, the Older Workers Benefit Protection Act, and the Age Discrimination in Employment Act, so an employer must be careful in disciplining, demoting, or terminating a senior worker based on the results of a fitness for duty examination. The prudent employer will follow a clearly understood process for evaluation of accommodations for a senior employee who has difficulties successfully completing a fitness for duty examination.

▶ **Attorney Fees**

Because Colorado workers’ compensation is complicated, injured seniors may need the assistance of an experienced attorney. Most attorneys offer services with a payment option of an hourly fee or a contingency fee. By statute, a contingency fee of 20 percent of contested benefits is presumed to be reasonable. Claimants are responsible for paying all expenses, including fees for DIMEs, medical records, and medical expert opinions. If a senior wants access to a list of experienced workers’ compensation practitioners or has questions about the reasonableness of attorney fees and costs, he

or she can call the customer service unit at the Division of Workers' Compensation at (303) 318-8000.

10-6. Special Resources for Native Spanish-speaking Workers

The Division of Workers' Compensation created an Injured Worker Guide for general information on the Colorado workers' compensation system available in English and Spanish versions. These are informative and not a substitute for legal advice or attorney representation. The customer service unit may be reached at cdle_workers_compensation@state.co.us or 303-318-8700 and is capable of handling English- and Spanish-speaking persons. An interpreter may be authorized or reimbursed when it is reasonable and necessary to provide access to medical benefits. Health care providers are discouraged from using adult family members and prohibited from using minor children as interpreters. Interpreter services are reimbursable whether they occur on-site or via remote interpreting services.

10-7. General Resources for All

For additional information about the Colorado workers' compensation system, see:

- ▶ Division of Workers' Compensation website: www.colorado.gov/pacific/cdle/dwc.
- ▶ *Injured Worker Guide*, published by the Division of Workers' Compensation. Available online at the Division of Worker 's Compensation website (www.colorado.gov/pacific/cdle/dwc) or in hard copy by calling the Customer Service Unit at the Division of Workers' Compensation: (303) 318-8700 or toll-free at (888) 390-7936.
- ▶ American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 6th ed. (rev. 2023).

Chapter 11

Arm Yourself with Consumer Protection Information

Mark Fetterhoff
AARP ElderWatch

SYNOPSIS

- 11-1. Recognize — Refuse — Report
 - 11-2. Identity Theft and Data Breaches
 - 11-3. Consumer Fraud
 - 11-4. Other Types of Financial Fraud
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-

11-1. Recognize — Refuse — Report

Financial exploitation cannot be completely prevented, but AARP ElderWatch strives to empower you as consumers and educate you on how to Recognize, Refuse, and Report frauds in Colorado. It is the goal of this chapter to help you (1) learn the red flags of fraud; (2) recognize when someone is trying to victimize you; (3) learn when to say “no” and close the door, hang up the phone, or disconnect online; (4) know how to report fraud to the appropriate agencies; and most importantly, (5) empower yourself. We value educating older Coloradans because we know that education is one of the most important factors in preventing consumer fraud.

11-2. Identity Theft and Data Breaches

Identity Theft

Identity theft is one of the most common types of fraud reported in Colorado. Criminals, using a variety of methods, steal personal information from victims, including bank account, credit card, and Social Security numbers; driver’s licenses; bank cards; and other key pieces of individuals’ financial identities. Criminals use this information to impersonate victims, spending as much money as they can in as short a period of time as possible. Victims faced with a damaged financial reputation and bad credit reports can spend months or even years trying to regain their financial health.

Ways to protect against identity theft:

- ▶ Don't leave your purse or wallet unattended in public areas.
- ▶ Regularly audit your wallet or purse for extra information that might be valuable for criminals, but not something needed on a daily basis. This includes your Social Security card. Take it out of your wallet today!
- ▶ Don't give any part of your SSN or credit card number over the phone, unless you have initiated the call. One ploy criminals use is to call and pose as your bank and ask you to "confirm" your SSN or other information.
- ▶ Shred pre-approved credit card offers and any papers that have your personal information using a cross-cut shredder.
- ▶ Keep a record and/or copies of your credit card numbers and their customer service phone numbers.
- ▶ Do not pay bills by leaving the envelope, with a check enclosed, in your mailbox for carrier pickup; instead, drop off bills at the post office or pay your bills online.
- ▶ To avoid the risk of convenience checks that come with credit card offers being lost or stolen, "opt out" of credit card solicitations by calling (888) 5-OPTOUT (567-8688). One contact will cover all three credit reporting agencies.
- ▶ Do not use common names or numbers or commonly chosen words (e.g., Password123, 123456, a pet's name, etc.) as passwords or PINs. Consider *two-factor authentication* as a second form of account verification if you can receive a PIN confirmation on your cell phone.
- ▶ Consider using a passphrase rather than a password, something easy to remember but also hard to guess with an increased amount of characters. Change passwords frequently if you do a lot of business over the internet — see "Cyber Crimes" under section 11.3, "Consumer Fraud."
- ▶ Utilize biometric options like fingerprints and facial recognition for accessing devices like phones, computers, and tablets, if available.
- ▶ Whether checking paper bank statements or banking online, be sure to dispute discrepancies with your credit card statements as soon as possible. Under the federal Fair Credit Billing Act (FCBA), the card issuer must investigate billing errors if you report them within 60 days of the date your card issuer mailed you the statement.
- ▶ Request a free copy of your credit report from the three major credit reporting bureaus: (877) 322-8228 or online at www.annualcreditreport.com.

If you think your identity has been stolen:

- ▶ Visit the Federal Trade Commission's Identity Theft website www.identitytheft.gov to file a report and create a personalized action plan.
- ▶ Considering filing a report with local law enforcement, especially if you believe your identity was stolen by someone in your community.
- ▶ Contact the fraud departments at one of the three major credit reporting bureaus and place a fraud alert on your credit report: Equifax, (800) 685-1111; Experian, (888) 397-3742; TransUnion, (888) 909-8872.

- ▶ Send a copy of the report or affidavit to your creditors and the credit reporting companies. Under Colorado law, once they receive your report or affidavit, they cannot put negative information in your credit file. Close any accounts that you think have been taken over or opened fraudulently. Get new cards with new account numbers. If you notice any irregularities on a bank statement, immediately notify your bank. You may need to cancel checking and savings accounts and open new ones.
- ▶ For additional specialized assistance contact the Colorado Bureau of Investigation Victim's Assistance Hotline (855) 443-3489.

Data Breaches

Data breaches are defined as the unauthorized (criminal) hacking of commercial or governmental networks for the purpose of stealing sensitive information on a consumer or entity. Like identity theft, this stolen information can be used by criminals for financial gain. However, unlike traditional forms of identity theft, consumers have no way of preventing a data breach from occurring, or their personal information from possibly getting into the hands of a thief. Also remember, just because your information may have been uncovered **does not** mean you are an actual victim of identity theft at that time. The following precautions should be undertaken to keep any financial information that may have been exposed from being used by an identity thief or crime ring:

- ▶ Follow the instructions given on the website of the business or entity whose network has been breached. Some companies may offer free identity theft monitoring services for a limited period of time, or other reparations. Note that credit reporting agencies must offer free electronic credit monitoring to all active-duty military.
- ▶ Consider placing a freeze on your credit with each of the three credit reporting bureaus (Equifax, (800) 685-1111; Experian, (888) 397-3742; TransUnion, (888) 909-8872). A freeze will stop creditors or thieves from accessing your report. Freezing and un-freezing your credit is free.
- ▶ Run a credit report at least annually and review it thoroughly to see if any accounts have been opened in your name and/or without your approval. This is one of the most effective means of discovering if you are a victim of identity theft. A copy of your credit report can be obtained at (877) 322-8228 or online at www.annualcreditreport.com.

If you discover your personal information has been used to impersonate you:

- ▶ File a police report.
- ▶ Place a fraud alert on your credit report by notifying one of the three credit reporting bureaus and your financial institutions to discuss options, such as placing a fraud alert on accounts or closing your accounts and opening up new ones. An initial fraud alert will last for one year. It will be free, and identity theft victims can get an extended fraud alert for seven years. Visit www.identitytheft.gov for detailed instructions, websites, and phone numbers.
- ▶ Follow the steps recommended under "Identity Theft," above.

11-3. Consumer Fraud

Charity Scams and Prevention

Older adults are often the most generous contributors to charitable organizations. Unfortunately, there are many scams done in the name of charities, and older adults are often victims. Common scams include groups who use fake names of police, fire, disease, and veterans organizations — causes that older adults are more likely to financially support. The Colorado Charitable Solicitations Act controls the activities of the persons who place the calls or mail the letters and the organizations they represent. Here are some of your rights:

- ▶ You have the right to ask if the solicitor is registered with the Secretary of State.
- ▶ If you make a donation in response to a telephone solicitation, the solicitor is required to give you a written confirmation of the expected donation. The confirmation should contain:
 - The name, address, and telephone number of the solicitor's organization;
 - A disclosure that the donation is not tax deductible, if applicable;
 - A disclosure that the solicitor is a paid employee of a for-profit professional fundraiser;
 - The name, address, and phone number of the office from which the solicitation occurred; and
 - The name, address, and phone number of the charity associated with the solicitation.

You may cancel your donation if the solicitor has failed to provide any of the above information. You have three days after you get the written confirmation to cancel. The solicitor must refund your donation within 10 business days of your cancellation.

To ensure your charitable dollars are wisely spent:

- ▶ Visit www.checkthecharity.com to ensure the charity you are giving to is registered to solicit donations with the Colorado Secretary of State's Office.
- ▶ Make an annual charitable giving plan — and stick to it! Give only to those charities on your list and disregard all other solicitations.
- ▶ Remember that many organizations intentionally use names that are similar to the names of well-known charities to confuse donors.
- ▶ Get proof that your donation will be tax deductible, such as a letter from the U.S. Department of the Treasury stating that the organization qualifies under § 501(c)(3) of the Internal Revenue Code.
- ▶ Find out how much of your donation will go to the charity for programs and services and how much will be spent on fundraising.
- ▶ Do your research by visiting charity watchdog sites like www.charitynavigator.org or www.give.org.

Cyber Crimes

Crimes that occur over the internet are frequently associated with identity theft, and many of the same scams that come over the phone are also common online. The anonymity of the internet makes it especially easy for criminals to not just make a lot of money, but to leave emotional scars on their victims, and to get away with their crimes. Some examples of the bolder crimes include illegitimate dating sites or bogus suitors and online classified ads posted by disreputable brokers and sellers, as follows:

Online Dating Scams

As impossible as it is to believe that scammers are pretending to be in love with you for money, it's true, and victims lose hundreds of thousands of dollars. Online dating can be a successful way to meet new people — even the love of your life — but go into it with eyes wide open and learn to recognize the following red flags:

- ▶ You meet someone on a dating website or someone messages you on social media. Soon he or she wants to move the conversation to another platform like text messages, WhatsApp or Google Hangouts.
- ▶ The person gets very serious, very quickly, even professing their love and that although you both live far away — perhaps due to work or military duty — someday you both will be together.
- ▶ He or she asks for money on the pretense of covering plane fare to visit you, or for emergency surgery, or something else very urgent. There are always a host of reasons.
- ▶ Recently, romance scams have also been tied to investment in cryptocurrency. It is not uncommon for a romantic interest to pose as an “expert” in cryptocurrency, who could make a lot of money for you if provided him or her with cash to invest. The second the person you are speaking with promises to double your money, it is time to disconnect.

Scammers, both male and female, use fake dating profiles, sometimes using photos of other people — even stolen pictures of real military personnel. They build relationships — some even fake wedding plans — before they disappear with your money. Make sure you don't send money or goods to anyone you haven't met before. Never wire money, purchase a gift card, send cash, or buy goods (computers, phones, etc.) for an online love interest. You won't get it back. If you do have someone you feel could be the “one,” do some checking to make sure you are talking to the person you think you are:

- ▶ Run image searches of their profile photos at images.google.com or TinEye.com, and paste suspicious text into search engines to see if it's been used elsewhere.
- ▶ Pay attention if they have poor grammar or many misspelled words.
- ▶ Don't share personal or financial information with anyone.
- ▶ Be vigilant about users who ask you to leave the site and communicate elsewhere.
- ▶ Trust your gut! If something feels a little off or “too good to be true,” it is probably a scam. It's time to move on and report the criminal to the platform you met them on.

Online Marketplace Sales

Marketplace sites and apps like Craigslist, Facebook Marketplace, OfferUp, and Nextdoor can be a great way to connect buyers and sellers and promote local services. However, criminals are also lurking on these platforms. Victims report losing thousands of dollars in scams involving rental properties, handyman services, auto sales, unscrupulous caregivers, and bogus sellers and dealers. Although these sites have some protections in place to safeguard against abuse, it is ultimately up to the consumer to determine the authenticity of the seller, contractor, service, or product, before doing business. The following are some tips and precautions to take:

- ▶ Research the product or service being offered. Understand what the market value of the product or service is before inquiring. A product or service outside of market value should be considered a “red flag” of a potential scam.
- ▶ Do not select individuals advertising in-home care or services from online advertising sites. Instead, stick to professional companies that provide licensed and bonded caregivers.
- ▶ Make transactions in a public place if the buyer or seller is unknown to you.
- ▶ Do not do business with anyone who cannot be present to finalize a deal. Many reported complaints involve buyer or sellers who are not local. Solicitors who require businesses or consumers to wire money or pay via a peer-to-peer payment app (*e.g.*, Venmo, Zelle, Cash App, etc.) to a third party in exchange for the goods or services are likely a scam.

Imposter Scams

Scammers will pretend to be someone they are not, and their method of extortion is to use scare tactics to get money out of their victims. Three very popular imposter scams are the government imposter scam, the tech support scam, and the grandparent scam, and they work like this:

Government Impersonation Scam

You get a call from someone who says she’s from the IRS or Social Security Administration. She says that you owe back taxes or there is something wrong with your benefits. She threatens to sue you, arrest or deport you, or revoke your license if you don’t pay right away. She tells you to put money on a prepaid gift card and give her the card numbers.

The caller may know some of your Social Security number. And your caller ID might show a Washington, D.C. area code. The real IRS won’t ask you to pay with prepaid debit cards or wire transfers. They also won’t ask for a credit card over the phone. And when the IRS first contacts you about unpaid taxes, they do it by mail, not by phone. Keep in mind that caller IDs are often faked — a ploy that is known as “spoofing” — to scare you into picking up the receiver. To prevent being taken in this scam:

- ▶ Large government entities like the IRS and Social Security will not call you. Never answer the phone. Instead, let the message roll into voicemail and delete it from there.
- ▶ Never send money, even if you believe it’s a legitimate call. Don’t wire money or pay with a prepaid gift card, because once you send it, the money is gone.

Tech Support/Computer Virus Scams

One of the most common scams reported in Colorado are tech support or computer virus scams. Computer users receive an unsolicited contact alerting them that there is an issue with their computer, tablet, cellphone, or other device that connects to the internet. Scammers often pose as someone who works at a well-known computer company like Microsoft, Apple, or Hewlett Packard to try to gain the trust of their victims. Recently, these criminals also have started to pose as workers from large computer virus protection software companies like Norton or McAfee. They contact victims over the phone, through a pop-up on a computer, or by creating a fake consumer support website. The following are some preventative steps consumers can take to avoid these types of scams:

- ▶ Hang up on unsolicited callers who claim to be with a computer company. Never let any unsolicited caller or unknown entity remotely access your computer or device.
- ▶ Always keep your computer updated with the latest security protections, including antivirus software and system updates to your device.
- ▶ If someone accesses your device and you believe they have bad intentions, shut it down, unplug it, or both to stop the connection with the scammer.
- ▶ If your computer or cell phone is infected, take the machine to a reputable computer repair store and have them clean it up.
- ▶ Be very careful about what you download on the internet. Viruses can unknowingly be introduced by clicking on links or opening attachments sent to you by strangers. Also be leery of downloading free, online documents. Only open emails from people you know.

Grandparent Scam

This scam is perpetrated over the phone by a caller pretending to be a grandchild in trouble who needs the grandparent to pay or wire money in order to avert their crisis at hand. The message is always urgent, and the grandparent must respond quickly before he or she has had a chance to think logically about the situation. In the typical scenario, the grandchild is in another country and has been mugged or in an accident. Victims may be contacted several times by the same caller, who will insist that more money is needed in order to make the problem go away.

- ▶ If you receive such a call, before doing anything, call your grandchild to verify the facts. Chances are your grandchild is safe and is in the United States. If you do not have your grandchild's phone number or are too frightened to take a risk, ask the caller to verify a fact known only to the family, such as the name of a beloved pet.
- ▶ If you have sent money to the criminal, once you realize what has happened, contact the wire service or payment method immediately and ask them to stop payment. There is a remote possibility that you can recover your funds if the perpetrator on the other end has not picked up the cash.
- ▶ Finally, be aware of what you and your family members post on social networking sites. Personal information about families is easy to obtain from these sites. Personal information can also be obtained through email distribution lists and through obituaries, which routinely list the names of surviving family members and their relationships to the deceased.

- ▶ This type of scam can happen with other familial relationships as well. Nieces and nephews, and even spouses. Stay calm, take time to think, and check with others before taking action.

Home Repair and Improvement Scams

Home repair scams are commonplace and take a few forms, either a fly-by-night operation that never does/partially does a job or is often a disagreement with a contractor. As is true with any product or service being offered, consumers need to know who they are dealing with before agreeing to do business. This is especially true with door-to-door solicitors. The following are important factors to consider before agreeing to any such service:

- ▶ Choose the persons you hire to do repairs and improvements on your home very carefully. Don't do business with anyone who comes to your door offering a bargain because he or she says he or she has materials left over from another job.
- ▶ Ask for references from previous customers and examples of the contractor's past work.
- ▶ On larger projects, get at least three written bids, and don't always choose the lowest bidder if it means compromising the extent of, or quality of the work you want done.
- ▶ Contact the Better Business Bureau (www.bbb.org) or other consumer review sites to find a business, and then review that company's rating and report.
- ▶ Never pay in advance or make a final payment until you are satisfied with the work.
- ▶ Get the contractor's full name, address, phone number, and vehicle license plate number.
- ▶ Ask the contractor to show you proof the business is bonded, carries liability insurance, covers workers with workers' compensation insurance, and is licensed to do business in your municipality. Contractors cannot pull a permit unless they are licensed. Verify this with your local building department before deciding on a contractor.
- ▶ Before deciding to hire someone to do your home repairs, get a detailed written estimate.
- ▶ It is important to agree upon a fee *before* work begins.
- ▶ Always get a written contract that specifies everything that was in the estimate, including all charges and costs, specific materials to be used, and the start and completion dates. You and the contractor both must sign the contract to make it binding. On high ticket items, it is always a good idea to review the contents of this contract with your attorney before you sign.
- ▶ Compare loans as carefully as you compare estimates from workers. Watch out for contractors that want to steer you to a particular lender, and never give the contractor a mortgage on your home.
- ▶ If you sign a loan for home repairs that involves a mortgage, you can cancel the loan within three business days from the day you signed the contract.
- ▶ The contractor may be entitled to what is known as a mechanics' lien. The law grants this special lien on your property for work performed there and not paid for. A mechanics' lien can also result in a forced sale of your home. Don't make a final payment to a home improvement contractor unless you've received a "lien waiver," which is a document showing that the contractor has paid his subcontractors and

suppliers. These parties can place a mechanics' lien against your property if they aren't paid by the general contractor.

Sweepstakes and Prize Promotion Scams

Consumers are often enticed with a valuable prize or award to buy merchandise or services or to contribute to bogus charities. The number one "red flag" of a sweepstakes scam is that you have to pay money to receive money. No matter what the excuse of the criminal is, even if they are using a common sweepstakes name like Publisher's Clearing House, never provide anyone with money to claim a prize.

Sweepstakes companies prey on consumers' sense of greed and luck that they've won something for nothing. But sweepstakes companies are not in the business of giving away millions of dollars — they're in the business of making money.

Under Colorado's Sweepstakes and Contests Law, promoters are prohibited from engaging in any of the following:

- ▶ Falsely representing that you have won a prize;
- ▶ Falsely representing an item as a "prize" if it is given to all promotion recipients;
- ▶ Falsely representing that you have been specially selected or that you are in a select group of potential winners;
- ▶ Making false, deceptive, or misleading statements about your odds of winning or what you need to do to become eligible to win;
- ▶ Falsely representing that your envelope has been delivered by express or first-class mail;
- ▶ Displaying urgent messages on envelopes unless there is truly a limited time period for a sweepstakes entry and the true deadline is disclosed adjacent to the urgent message;
- ▶ Representing that sweepstakes entries accompanied by an order for products will be treated differently than entries without an order; and
- ▶ Creating a false impression of the solicitation's source, authorization, or approval.

The law requires a promoter to prominently disclose:

- ▶ A "No Purchase Necessary" message;
- ▶ The fact that the recipient has not yet won anything;
- ▶ The value of the prize;
- ▶ The odds of winning;
- ▶ The name of the promoter;
- ▶ The true deadline for entering the sweepstakes; and
- ▶ The official rules of the sweepstakes.

Law enforcement personnel recommend that you don't play sweepstakes, but if you do, remember:

- ▶ Don't pay to win. Buying products such as magazines doesn't increase your chances of winning a sweepstakes. You never have to pay to play when the contest is legitimate.

- ▶ No purchase is necessary to win. Prizes are free. If you have to pay before you can receive your prize, it's a purchase. It's against the law to require you to buy something to win a prize or participate in a sweepstakes or prize promotion.
- ▶ Be cautious of charities that use sweepstakes promotions. More of your donation is going to the promotion than to any charitable purpose.
- ▶ Keep your credit card and bank information to yourself. Never give your credit card number, bank account information, or Social Security number to anyone you don't know, especially if the reason is to verify your eligibility or to "deposit" winnings to your account.
- ▶ Lottery sweepstakes from foreign countries such as Canada and Australia are illegal. No foreign lotteries may be conducted in the United States.
- ▶ Participating in sweepstakes promotions is the best way for you to get on every junk mail list in the country. Selling your name to other direct mail marketers is a huge part of sweepstakes companies' business.

Unwanted Calls

Unwanted calls have dramatically increased in recent years. Solicitation calls are channeled through the internet via Voice-activated Internet Protocol (VoIP), making it possible for telemarketers and criminals to place vast numbers of calls through the phone network at a fraction of the cost. Dishonest businesses and criminals were quick to jump on board.

Traditional landline (analog) phone users are the most vulnerable to unwanted calls, compared to those who have VoIP phone systems, due to their outdated technology, which lacks the ability to effectively block unwanted calls. Do the following if you receive such a phone call:

- ▶ Let the call roll over into voicemail if you don't recognize the number or information on caller ID, especially if you are using a landline phone. Use voicemail to screen out the call.
- ▶ If using a landline phone, check with your phone carrier on how to block unwanted calls.
- ▶ VoIP and cell phone users can block unwanted calls by signing up for Nomorobo at www.nomorobo.com. Nomorobo is a service that runs through internet-connected phone systems. It stops unwanted calls by filtering out numbers known to be associated with scams.
- ▶ Wireless (mobile) phone users — unwanted calls that come through cellular phones can be screened out through downloadable apps developed for just this purpose. To avoid possible malware infection, make certain the app you select comes from a reliable source, such as an official app store.
- ▶ Never send money based on a promise given over the telephone from a stranger.

Note: Phone carriers, working in partnership with the Federal Communications Commission (FCC) and other regulatory and legislative bodies, have rolled out an initiative that helps to curb the amount of robocalls. This initiative, an acronym referred to as SHAKEN/STIR, allows phone companies to "opt out" of sending suspicious, unverifiable robocalls on to consumers. Additionally, several phone companies are now offering free call-blocking services to their customers. For more information on call-blocking services, or on the SHAKEN/STIR initiative, contact your phone company.

11-4. Other Types of Financial Fraud

Health Insurance

- ▶ Do not purchase coverage you do not need or coverage that duplicates what you already have.
- ▶ Before buying or changing coverage, discuss your plans with someone you trust.
- ▶ The Colorado Division of Insurance operates a special counseling program for Medicare recipients and their families who need assistance in understanding Medicare benefits and coverage gaps, medical bills, and other insurance options, including long-term care insurance. For more information, call the Colorado State Health Insurance Assistance Program, (888) 696-7213 (for information in Spanish, call (866) 665-9668).

Predatory Lending

Predatory lending schemes are also on the rise. Predatory lending is the name given to an assortment of loans that take advantage of persons who borrow money. Predatory lenders target older homeowners by offering attractive-sounding loan offers that drain the value from their property. Some warning signs that you are a target for a predatory loan:

- ▶ You've fallen behind in your mortgage payments or you are already in foreclosure.
- ▶ You're getting phone calls and visits from companies offering to help you pay off your debts.
- ▶ A friend, advisor, or relative asks you to sign some forms without letting you read them.

To prevent predatory lending:

- ▶ Beware of companies who contact you in person or by fliers offering a foreclosure relief service.
- ▶ Don't sign any forms or papers without reading and understanding what you're signing. If you're uneasy or feeling pressured, get advice from a lawyer or other advisor.
- ▶ If you're having trouble paying your mortgage, contact your bank or mortgage company and discuss potential payment plans.

Pre-Paid Funeral Plans

Be cautious when investigating a pre-paid funeral agreement. These contracts engage a specific funeral home (or cemetery) to deliver specific services at a set price upon a person's death. While it is a good idea to plan ahead so your family knows your wishes, some pre-paid plans are risky.

- ▶ Read the policy carefully and understand all of its terms before you invest in the plan.
- ▶ Know what happens if your wishes or circumstances change.
- ▶ Only work with reputable companies that have been in business for over five years.

11-5. Prevention Tools and Consumer Protections

Auto Repairs

These are your rights under the Colorado Motor Vehicle Repair Act:

- ▶ An auto repair facility must give a written estimate that includes the total cost, completion date, a statement of your right to have parts returned (except exchanged or warranty parts), and a statement on storage fees. You waive the right to an estimate if you sign a waiver, the vehicle is towed to the facility, or the vehicle is left before or after business hours. A customer must receive an estimate on any charge over \$100.
- ▶ If you have not been given a written estimate, the facility must call to get oral consent before the repairs can be done. The facility must record on the invoice or work order the date and time of the call, your name, the name of the employee making the call, and your phone number.
- ▶ The facility must give a written estimate that includes the cost of disassembly and reassembly and the costs of parts needed to replace those lost in disassembly. The facility must obtain oral consent before the repairs are completed. If more work causes an increase in the bill, the facility must obtain your consent before doing work. The oral consent must be recorded as described above.
- ▶ All parts and labor charges must be written clearly on the final bill. If the facility has not gotten approval, the final bill cannot be more than 10 percent or \$25 over the estimate, whichever is less.
- ▶ A facility may charge storage fees at the facility's discretion if the vehicle is not picked up within three business days of completion notification. Storage fees should be conspicuously printed on a separate authorization provided to the customer.

Contracts

Every word in a contract is important. Before signing any contract, read it in its entirety. If you do not understand any part of the document, ask for clarification and/or consult an attorney. Do not do business with anyone who refuses to give you a copy of the complete contract before you sign it.

If you and the other party come to an agreement about something that is not written in the document, you must put that agreement in writing. To make sure there are no misunderstandings, document all additions or deletions from the original document and all parties should initial or sign next to each change.

Most contracts are binding as soon as you and the other party sign. However, contracts from door-to-door sales and any contract that calls for placing a lien on your house can usually be cancelled within three days. Consumers have one day to cancel a contract that was solicited over the telephone.

Put all notices of cancellation in writing. It is recommended to send cancellation notices by certified or registered mail so you have documentation showing when you sent the notice, as well as receipt of the notice by the company. Also, never sign a contract with blank spaces that can be filled in later.

Do not sign a contract that takes away your legal rights unless you understand and agree to the consequences of such action. Keep copies of all contracts, receipts, payment records, and letters you send about the product or service.

Before you sign any type of sales or services contract, ask yourself these questions:

- ▶ Do I really want what I am paying for?
- ▶ Do I understand the contract I am about to sign?
- ▶ Do I know the total price, including interest and other charges, I will have to pay?
- ▶ Do I know how many payments I will have to make?
- ▶ Can I get the same thing somewhere else for a better price?
- ▶ Am I getting any guarantees on the product or for the services I am paying for? (*Note:* Get all guarantees in writing.)
- ▶ Can I make the payments the contract requires?

Always remember that it will cost you far less to have an attorney review the contract before you sign than it will to have an attorney represent you in court because you made a deal that was unfair to you.

Credit Repair

Newspapers, magazines, and the internet are filled with ads offering to erase negative information in your credit file. The scam artists who run these ads can't deliver. Only time, diligent effort, and a debt repayment plan can improve your credit — your only choice is to help yourself re-build a better credit record. Start by contacting your creditors when you realize that you are unable to make payments. If you need help working out a payment plan and a budget, contact Money Management International at www.moneymanagement.org. Their services are free.

Credit Reporting Companies

- ▶ **Equifax**
To order a credit report by:
Phone, (800) 685-1111
Internet, www.equifax.com
- ▶ **Experian**
To order a credit report by:
Phone, (888) 397-3742
Internet, www.experian.com
- ▶ **TransUnion**
To order a credit report by:
Phone, (888) 909-8872
Internet, www.transunion.com

Debt Collectors

If you cannot make your credit payments, the seller, loan company, or bank may give your debt to a lawyer or collection agency. These debt collectors can use any legal means to collect money you owe.

The federal Fair Debt Collection Practices Act and the Colorado Fair Debt Collection Practices Act control debt collectors' activities. They cannot do the following:

- ▶ Continue calling or writing after you tell them, in writing, that you do not want to be contacted;
- ▶ Call your friends or neighbors;
- ▶ Contact you or your boss at work if the collection agency knows your boss prohibits these types of calls;
- ▶ Call you before 8:00 a.m. or after 9:00 p.m., or use harassment or scare tactics;
- ▶ Threaten to file criminal charges against you, take your property, or garnish your wages without first filing a lawsuit to give you a chance to defend yourself (*Note:* A lawyer acting as a debt collector cannot threaten criminal prosecution); or
- ▶ Threaten you with any physical harm.

Federal Telemarketing Sales Rules

- ▶ Telemarketers can only call you between 8:00 a.m. and 9:00 p.m.
- ▶ Telemarketers must tell you it is a sales call, the name of the seller, and what they are selling before they make their pitch. If it's a prize promotion, they must tell you that no purchase or payment is necessary to enter or win.
- ▶ It is illegal for telemarketers to misrepresent any information; any facts about their goods or services; earnings potential, profitability, risk, or liquidity of an investment; or the nature of a prize in a prize promotion.
- ▶ Before you pay, telemarketers must tell you the total cost of the goods and any restrictions on getting or using them, or that a sale is final or non-refundable. In a prize promotion, they must tell you the odds of winning, that no purchase is necessary to win, and any restrictions or conditions of receiving the prize.
- ▶ It is illegal for a telemarketer to withdraw money from your checking account without your express, verifiable authorization.
- ▶ Telemarketers cannot lie to get you to pay, no matter how you pay.

No-Call Registry

Residential telephone customers can place their telephone numbers on a no-call list free of charge. However, the law does not apply to business telephone customers. You can sign up for the no-call list by calling (800) 309-7041 or registering online at www.coloradonocall.com. The following applies under the No-Call Law:

- ▶ Commercial telemarketers may not call or send faxes to you at your home if you have placed your telephone number(s) on the no-call list, unless the telemarketer has an "established business relationship" with you.

- ▶ Calls by charities, political groups, and other non-commercial organizations are not subject to the Colorado No-Call Law.
- ▶ You have the right under the Federal Telemarketing Sales Rules to tell companies with whom you have established business relationships to put you on their “Do Not Call” lists.
- ▶ Report offending telemarketers to the Attorney General. You can also use the Colorado Consumer Protection Act to sue in small claims court if you are on the no-call list and get unwanted calls or fax transmissions from telemarketers.
- ▶ You can also add your home or cell phone number to the national Do Not Call list at www.donotcall.gov or by calling (888) 382-1222.

Security Freeze

If you don't anticipate opening any new credit accounts in the near future, you may want to consider placing a security freeze on your credit report. You have the option of requesting any consumer reporting agency (credit bureau) to place a security freeze on your credit report. A freeze means your file can't be shared with potential creditors. You must request separate security freezes for each of the three credit reporting agencies at:

Equifax Security Freeze

www.equifax.com; click on “Credit Report Help,” then “Place a Security Freeze.”

Experian Security Freeze

www.experian.com/freeze/center.html

TransUnion Security Freeze

www.transunion.com; click on “Services,” then “Freeze Credit Report.”

Consumer reporting agencies must place a security freeze on your credit report within five business days after receiving your written request and must send you written confirmation of the security freeze within 10 business days. They will provide you with a unique personal identification number or password for you to use in providing later authorization for the release of information from your credit report.

If you want potential creditors to be able to access information on your credit report, you must request that the freeze be temporarily lifted and provide the following information:

- ▶ Proper identification;
- ▶ The unique personal identification number and password provided by the consumer reporting agency; and
- ▶ The proper information regarding the third party who is to receive the credit report or the time period that the report shall be available.

11-6. Resources

The following are excellent resources for information on your rights as a consumer or to report complaints:

For Issues related to Fraud:

24-Hour Identity Theft Hotline

Colorado Bureau of Investigation
ID Theft/Fraud Investigation Unit
(855) 443-3489
cbivictimsupport.com

Colorado Consumer Line

AARP ElderWatch, Better Business Bureau, Attorney General's Office
(800) 222-4444 (toll-free)

First Judicial District (Jefferson and Gilpin counties)

District Attorney's Office, Consumer Fraud: (303) 271-6931

Second Judicial District (Denver County)

District Attorney's Office, Consumer Fraud Hotline: (720) 913-9179

Fourth Judicial District (El Paso and Teller counties)

District Attorney's Office, Consumer Line: (719) 520-6000

Seventeenth Judicial District (Adams and Broomfield counties)

District Attorney's Office: (303) 659-7720

Eighteenth Judicial District (Arapahoe, Douglas, Elbert, and Lincoln counties)

District Attorney's Office, Consumer Protection Line: (720) 874-8547

Twentieth Judicial District (Boulder County)

District Attorney's Office, Consumer Protection Line: (303) 441-3700

Twenty-First Judicial District (Mesa County)

District Attorney's Office, Consumer Protection Unit: (970) 244-1730

For Medicare Insurance Issues:

Colorado State Health Insurance Assistance Program

(888) 696-7213

For Securities-related Issues:

Colorado Division of Securities

(303) 894-2320

To request a free copy of your credit report once a year from the three major credit reporting companies:

(877) 322-8228
www.annualcreditreport.com

Credit Reporting Agencies:

Equifax
(800) 685-1111
www.equifax.com

TransUnion
(888) 909-8872
www.transunion.com

Experian
(888) 397-3742
www.experian.com

For Home Repairs and Improvements:

Contact your city or county building department to check on building permits and license status of contractors.

To “Opt Out” of Credit Card Solicitations:

(888) 5-OPTOUT (567-8688)
www.optoutprescreen.com

No-call Lists:

In Colorado: (800) 309-7041 or www.coloradonocall.com
Nationally: (888) 382-1222 or www.donotcall.gov

Area Agencies on Aging:

Logan, Morgan, Phillips, Sedgwick, Washington, and Yuma counties:

Region 1
Northeastern Colorado Association of Local Governments
Northeastern Region
Fort Morgan
(970) 867-9409

Larimer County:

Region 2A
Larimer County Office on Aging
Northeastern Region
Fort Collins
(970) 498-7750

Weld County:

Region 2B
Weld County Area Agency on Aging
Northeastern Region
Greeley
(970) 346-6950

Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson counties:

Region 3A
Denver Regional Council of Governments
Northeastern Region
Denver
(303) 455-1000

Boulder County:

Region 3B
Boulder County Area Agency on Aging
Northeastern Region
Boulder
(303) 441-3570

Park, El Paso, and Teller counties:

Region 4
PPAGC Area Agency on Aging
Southern Region
Colorado Springs
(719) 471-2096

Cheyenne, Elbert, Kit Carson, and Lincoln counties:

Region 5
East Central Council of Governments
Northeastern Region
Stratton
(719) 348-5562

Baca, Bent, Crowley, Kiowa, Otero, and Prowers counties:

Region 6
Lower Arkansas Valley Area Agency on Aging
Southern Region
La Junta
(719) 383-3166

Pueblo County:

Region 7
Pueblo Area Agency on Aging
Southern Region
Pueblo
(719) 583-6849

Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties:

Region 8
South Central Colorado Seniors, Inc.
Southern Region
Alamosa
(719) 589-4511

Archuleta, Dolores, La Plata, Montezuma, and San Juan counties:

Region 9
San Juan Basin Area Agency on Aging
Western Region
Pagosa Springs
(970) 264-0501

Delta, Gunnison, Hinsdale, Montrose, Ouray, and San Miguel counties:

Region 10
League for Economic Assistance & Planning
Western Region
Montrose
(970) 249-2436

Garfield, Mesa, Moffat, and Rio Blanco counties:

Region 11
Associated Governments of Northwest Colorado
Western Region
Grand Junction
(970) 248-2717

Eagle, Grand, Jackson, Pitkin, Routt, and Summit counties:

Region 12
Northwest Colorado Council of Governments
Alpine Area Agency on Aging
Western Region
Silverthorne
(970) 468-0295

Chaffee, Custer, Fremont, and Lake counties:

Region 13
Upper Arkansas AAA
Southern Region
Salida
(719) 539-3341

Huerfano and Las Animas counties:

Region 14
Huerfano/Las Animas Area Council of Governments
South Central Council of Governments AAA
Southern Region
Trinidad
(719) 845-1133

Legal Assistance Developer for the Elderly

Disability Law Colorado

455 Sherman St., Ste. 130
Denver, CO 80203
(303) 722-0300
<http://disabilitylawco.org>

Colorado Crime Victims Compensation Programs

First Judicial District

District Attorney's Office
500 Jefferson County Pkwy.
Golden, CO 80401
(303) 271-6846

Second Judicial District

201 W. Colfax, Dept. 801
Denver, CO 80202
(720) 913-9253

Third Judicial District

323 Main St.
Walsenburg, CO 81089
(719) 738-1510

Fourth Judicial District

105 E. Vermijo, Ste. 111
Colorado Springs, CO 80903
(719) 520-6723

Fifth Judicial District

P.O. Box 295
Eagle, CO 81631
(970) 337-3706

Sixth Judicial District

1060 E. 2nd Ave.
P.O. Drawer 3455
Durango, CO 81302
(970) 247-8850

Seventh Judicial District

1140 N. Grand Ave., #200
Montrose, CO 81401
(970) 252-4266

Eighth Judicial District

201 La Porte, Ste. 200
Fort Collins, CO 80521
(970) 498-7290

Ninth Judicial District

109 8th St., Ste. 308
Glenwood Springs, CO 81601
(970) 384-3517

Tenth Judicial District

701 Court St.
Pueblo, CO 81003
(719) 583-6092

Eleventh Judicial District

136 Justice Center Rd., Rm. 203
Cañon City, CO 81212
(719) 269-0170

Twelfth Judicial District

426 San Juan Ave.
Alamosa, CO 81101
(719) 589-3691

Thirteenth Judicial District

400 Warner St.
Fort Morgan, CO 80701
(970) 542-3473

Fourteenth Judicial District

221 W. Victory Way, Ste. 302
Craig, CO 81625
(970) 629-0485

Fifteenth Judicial District

110 E. Oak St.
Lamar, CO 81052
(719) 336-7446

Sixteenth Judicial District

323 Santa Fe, Ste. 201
La Junta, CO 81050
(719) 384-8786

Seventeenth Judicial District

1000 Judicial Center Dr., Ste. 100
Brighton, CO 80601
(303) 835-5690

Eighteenth Judicial District

6450 S. Revere Pkwy.
Centennial, CO 80111
(720) 874-8607

Nineteenth Judicial District

915 10th St.
P.O. Box 1167
Greeley, CO 80632
(970) 400-4748

Twentieth Judicial District

Boulder County Courts Building
1035 Kimbark St.
Longmont, CO 80501
(303) 682-6801

Twenty-First Judicial District

P.O. Box 20,000-5031
Grand Junction, CO 81502
(970) 244-1737

Twenty-Second Judicial District

109 W. Main St., Ste. 303
Cortez, CO 81321
(970) 564-2755

Elder Abuse:

Call 911 or your local police department.

Adult Protection

Call your county Department of Social Services. You may find a list of contact information for these offices at <https://cdhs.colorado.gov>; click on the "Our Partners," "Counties," and "County contact information."

AARP ElderWatch

Through the Colorado Consumer Line: (800) 222-4444, option 2, for referrals and assistance information.

First Judicial District (Jefferson and Gilpin counties)

District Attorney's Office: (303) 271-6800

Second Judicial District (Denver County)

District Attorney's Office: (720) 913-9179

Seventeenth Judicial District (Adams and Broomfield counties)

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Eighteenth Judicial District (Arapahoe, Douglas, Elbert, and Lincoln counties)

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Twentieth Judicial District (Boulder County)

District Attorney's Office: (303) 441-3700

Chapter 12

Protecting Yourself from Crime

Stephen C. Fauver, J.D., M.S., CFE*
18th Judicial District Attorney's Office

SYNOPSIS

- 12-1. Protection Outside Your Home
 - 12-2. Protection at Home
 - 12-3. Protection on the Computer and Telephone
 - 12-4. Protection from Abuse
 - 12-5. Resources
-

12-1. Protection Outside Your Home

- ▶ We all face an increased risk of violent encounters with other drivers. Honking, gesturing, yelling, and aggressive driving can lead to violence. If faced with this situation, do not engage, drive to a police station or public area and call 911.
- ▶ Walk with confidence and remain aware of your surroundings. Do not text and walk.
- ▶ Do not walk alone, especially on dark, deserted streets or in unfamiliar areas.
- ▶ Park in well-lit areas as close as possible to the door of a business. Ask a store clerk to walk you to your car.
- ▶ Lock your car doors at all times and keep windows rolled up when possible.
- ▶ Do not use the remote control to open your car door until you are at the car.
- ▶ Look under, around, and inside your car before getting in it. Be aware of your surroundings before getting out of your car, including inside your garage.
- ▶ Keep your wallet or purse where pickpockets cannot reach it. A close-fitting pouch is more secure than a purse. Your cell phone is essentially a wallet — Protect it!
- ▶ Hold your purse firmly and do not leave it outside your line of sight or unattended on a counter, grocery cart, or car seat.
- ▶ Only carry the cards and cash you know you will need that day, and never carry your Social Security card. Never carry a large sum of money.
- ▶ Carry a driver's license and other important papers in a small wallet kept in your pocket.
- ▶ Never write your PIN number on your ATM or Electronic Banking Transfer cards, or anywhere in your wallet.

- ▶ Avoid ATM machines in deserted areas, including drive-up locations. Instead, use ATMs in stores, bank lobbies, or well-lit areas. If people nearby or the situation causes you any concern, leave immediately.
- ▶ Immediately secure the money you withdraw in your wallet or purse before walking away.
- ▶ Keep a list of your credit cards somewhere other than your wallet to make it easier to report a loss. Use a copy machine to copy the front and back of all cards and keep the copies safe. Report any loss immediately.
- ▶ If you are going out alone, let someone know your plans. When out alone, keep a whistle or personal body alarm handy and hold your keys in your hand while walking. Learn the emergency call features of your cellphone.
- ▶ Avoid waiting at deserted bus stops. Consider walking to the next bus stop where others may be waiting. Also, consider taking a taxi or ride-share service (Uber/Lyft/other) and ask the driver to wait until you are inside your home.
- ▶ If you are riding the bus, be aware of anyone who might be staring at you. Tell the bus driver if you are concerned for your safety. You can prevent trouble by anticipating it.
- ▶ If someone grabs your purse, do not put yourself at risk by resisting. If you try to resist, you may be injured. Other options are to sit down to avoid being knocked down, make noise, whistle, or call for help. In any case, tell the police as soon as possible.
- ▶ Always remember — your life and well-being are more important than your belongings.

Victims' compensation programs help victims of violent crimes. If the police take a report, assistance is available even if no criminal case is filed. For more information or an application form, contact your local police department or district attorney's office.

12-2. Protection at Home

- ▶ Consider installing a doorbell camera and other outside cameras with cloud storage. Video may be viewed on a computer, tablet, cellular phone, or device such as an Amazon Echo, Google Home, or other device.
- ▶ Consider installing a security system including alarm, door/window sensors, movement sensors, and cameras. Some systems can be monitored by the homeowner alone or in conjunction with a monitoring company that will contact the police.
- ▶ Lock your doors and windows whether you are at home or away, and remember to keep your screen or storm door locked. Keep any burglar alarm armed when home or in the yard.
- ▶ When at home, keep your shades pulled at night and whenever you are undressing. Be cautious as to who knows you are alone.
- ▶ Keep outside lights near doors and large windows turned on. Strong outside lighting helps prevent burglaries. Consider adding additional outdoor lighting.
- ▶ Keep your garage door closed and lock the inside door to your garage. Check both doors at night to ensure both are closed and locked. Do not keep valuables in your car, even if it is in a garage.

- ▶ Never leave a firearm unsecured.
- ▶ When someone knocks at your door, first check to see who it is and do not open your door to a stranger. Ask for identification and references before you let anyone into your house. If the person shows you a business card, call the company for proof before you let the stranger into your home. Also, call the police or fire department if anyone claiming to be an officer is at your door.
- ▶ Use deadbolt locks that require a key inside and outside (but keep your key in the inside of the door in case of a fire). Consider having a contractor strengthen doorframes and doors to make it more difficult to force entry.
- ▶ Consider replacing the glass in your door with Plexiglas or Lexan or covering it with a decorative iron grill.
- ▶ Inside locks should secure all windows, except emergency exits. Place a broomstick or pole in the track of sliding doors or windows so they cannot be forced open by a burglar.
- ▶ Trim shrubs and bushes hiding doors and windows because they make excellent cover for burglars.
- ▶ Do not keep large amounts of money in your house. Burglars look in your bedroom first for valuables, so put valuables somewhere else in the house or in a safe deposit box.
- ▶ Do not list your first name or address in the telephone book or on your mailbox.
- ▶ Call your local police department for a home security and personal safety review of your home. Call your local fire department for help designing a fire safety plan.
- ▶ Mark your valuables with an identification number or name. This makes it difficult for a burglar to sell your valuables and easier for the police to return them to you. Your local police department can refer you to an engraving service. Sometimes libraries will have engraving tools to loan. Photograph jewelry, artwork, firearms, and all other valuables, including serial numbers, and keep copies of the photos in a digital cloud account, in a safe deposit box, or with your insurance agent.
- ▶ When planning to be away from home, never hide a door key under the doormat, behind the shutter, or in a mailbox. These are the first places a burglar looks. A neighbor or family member can keep an extra key for you. Protect any access codes.
- ▶ Turn on some inside lights when you are away. Use timers to vary the lights you leave on. A dark home is an invitation to burglars.
- ▶ When you plan to be away from home a long time, tell the police. Ask a friend or family member to check your home each day, turn on different lights, pick up mail and newspapers, mow the grass, and set out trash on regular trash pick-up days.

12-3. Protection on the Computer and Telephone

- ▶ If you receive an email or text that promotes sweepstakes, lotteries, charities, credit repair, work-at-home offers, or is threatening in nature (for example, if the email or text says you owe money or your account is being suspended), delete the message without opening it. Don't be "spooked" into responding quickly before you have time to verify the source of the message.

- ▶ Regularly back up all digital records to an external storage device and/or digital cloud storage. Ransomware, computer viruses, power surges, and aging drives can destroy files at any time.
- ▶ Use “strong” passwords to protect your information. Strong passwords are a combination of letters, numbers, and symbols and contain at least 12 characters (longer passwords are more secure). Never use personal or family names or dates.
- ▶ Always use your strongest passwords for email accounts, financial accounts, cellular provider accounts, and any merchant accounts. Consider using password management software to track and store passwords and fill in login forms securely.
- ▶ Never give any personal information, bank account numbers, or Social Security numbers to anyone who contacts you. Delete the email or text or hang up the phone. If concerned, contact the company directly using a phone number or website address that you know to be authentic. Do not open any email or text attachments unless you absolutely know who sent the message.
- ▶ Credit card companies, banks and other financial institutions, and government agencies (IRS, Social Security, etc.) will never contact you and ask for personal information (other than passphrases). Your Social Security number can never be cancelled, and you are not responsible for anyone falsely using it.
- ▶ Keep your security software updated. Personal firewalls and security software packages (with anti-virus, anti-spam, and spyware detection features) are a must-have for those who engage in online financial transactions. Also, make sure your computer has the latest security patches for the operating system.
- ▶ Make sure that you access your online accounts only on a secure webpage using encryption. The website address of a secure website connection starts with “https” instead of just “http” and has a key or closed padlock in the status bar.
- ▶ Use your own computer. It is generally safer to access your online accounts from your own computer than from other computers. If you use a computer other than your own, for example, you will not know if it contains viruses or spyware.
- ▶ Never post identifying information about you or your family on your personal website or social media sites. Ensure your privacy settings secure your accounts.
- ▶ When making purchases online, deal only with reputable, well-established companies that you know. Remember that online shopping is not different than shopping offline. You will find reputable and disreputable businesses in both worlds.
- ▶ Always use a credit card when making online purchases rather than a debit card. Never pay with cash, a check, money order, wire transfer, or cryptocurrency because in a fraudulent transaction, you will never get your money back. Report fraudulent use of a credit card or debit card immediately to limit or eliminate your liability.
- ▶ Computer pop-up messages that direct you to email someone or call a phone number to handle a computer security threat are *scams*. Do not email or call the phone number and simply close your internet browser. *Never* allow anyone online access to your computer or account by clicking on a link or providing login name and passwords.
- ▶ No legitimate company or agency will ever direct you to pay with a gift card you purchase from a store, a bank transfer using Zelle/Cash App/Venmo or similar service, or cryptocurrency (Bitcoin).

- ▶ For highest security, do not save login usernames and passwords on your browser — type them in each time you use the computer. If saved, anyone who uses your computer can login, view all web history, and gain total control of your accounts.
- ▶ Your cellular phone is a computer. Anyone you allow to use your phone can potentially access all your personal and financial information, transfer the information to others, change email and account passwords, and use banking applications to take money from your accounts very quickly. Never give your cellular phone to a stranger for any reason.
- ▶ Never authorize a transfer or wire money without being certain the destination account number really matches the destination person or company. Contact the destination bank directly using a trusted phone number and confirm the account. Fraudsters are using email and phone calls to impersonate company owners/managers, escrow agents, and bank finance officers to trick victims into wiring money to a scammer's bank account, and the funds can never be recovered.
- ▶ Anyone can fall victim to a romance scam, regardless of age, intelligence, or experience in life. Once a victim is fleeced of all money, the victim may be used to receive money from other victims and send it to the scammer.
- ▶ Romance scammers are experts in the science of psychology and use it to create fake personas and relationships to emotionally manipulate and assault the victim as they steal the victim's trust, self-worth, and life savings. Once the victim has sent any amount of money, the victim may never be able to free himself or herself mentally or emotionally from the perpetrator. The best and maybe only opportunity to save someone from a potentially horrible situation is to invite and encourage the potential victim to discuss the circumstances of the online/telephone relationship with a friend, coworker, family member, religious advisor, consumer protection advocate, or member of law enforcement or the district attorney's office.
- ▶ Scammers continue to make telephone calls with false threats of police/IRS action and false promises and claims that you have won money or other valuables. They spoof the Caller ID to make the call appear legitimate. The scammer will say anything and everything to keep you on the phone so you cannot take time to think about their claims or investigate the call. Don't say anything, and just *hang up* so you can verify the call.
- ▶ The police or other government agent will *never* request payment by telephone. If someone is claiming to be calling from a utility, cellular company, or financial institution, *hang up* and call the telephone number listed on your bill or credit card to verify the call.
- ▶ If someone asks you to pay money before you can receive money or something of value, *it is a scam*. Legitimate companies are required to withhold taxes for you. Any claim you won a foreign lottery is false because it is *illegal* to participate.

12-4. Protection from Abuse

You do not have to accept threats or abuse from anyone, including your family. If someone close to you has threatened you with violence or abused you in any way, there are state laws in place to protect you. A **protection order** can be issued through the district court, county court, or a qualifying municipal court in the city or county where you live, the abuser lives, or the abusive

acts occurred that restricts that person from having contact with you or continuing the abuse under certain conditions. There are both civil and criminal protection orders and each applies under the following circumstances.

Criminal Protection Orders: C.R.S. § 18-1-1001. When an abuser has been charged with a crime, a mandatory protection order is automatically put into place to protect the victim from the abuser and will stay in place for the duration of the court proceeding through the end of the abuser's sentence. If you are a victim or witness to a crime, you may contact the prosecutor to request a full no-contact order, an order for the offender to vacate the home, or other additional conditions to help you. A court may order GPS monitoring, monitored drug or alcohol sobriety, and other conditions to keep a victim safe.

Civil Protection Orders: C.R.S. §§ 13-14-100.2, et seq. If you are being physically or verbally threatened by an abuser, you can ask the court to protect you by requesting that a civil protection order issue against that abuser. Civil protection orders are especially appropriate when the abuser has not been charged with a crime. Court forms and instructions are available at www.courts.state.co.us.

For various reasons, actions taken by an abuser may not be reported to law enforcement or charged in a criminal case. Under these circumstances, if you fear for your safety or the safety of others, civil protection orders can offer you safeguards. Under Colorado law, a court may issue a temporary or permanent civil protection order against an adult or juvenile over the age of 10 for any of the following purposes:

- 1) To prevent assaults and threatened bodily harm;
- 2) To prevent domestic abuse;
- 3) To prevent emotional abuse of the elderly or of an at-risk adult;
- 4) To prevent sexual assault or abuse; and
- 5) To prevent stalking.

The protection order can issue against almost anyone: a stranger; a current or former relative by blood or marriage; someone who lives or has lived with you; a caregiver; or a spouse or someone you are, or have been, intimately involved with.

The judicial officer (judge or magistrate) can issue emergency oral protective orders, a temporary protection order, or a permanent protection order that directs the restrained person to stop doing something, to refrain from doing something in the future, or even to take certain actions to benefit the protected person.

To obtain a protection order, you may need to appear in person before the judicial officer and testify, submit a notarized/verified affidavit of facts from you and/or additional witnesses, produce copies of business or official records, or have other witnesses testify. Through the civil protection order process, you can request that the judge or magistrate issue specific orders to address the abuse and harm you are suffering, including orders to the restrained person to stop:

- ▶ Verbal threats or assault;
- ▶ Physical or verbal harassment;
- ▶ The inappropriate use or the threat of inappropriate use of medications;
- ▶ The inappropriate use of physical or chemical restraints, including locked doors; or

- ▶ The misuse of authority granted by a power of attorney, a guardianship, or a conservatorship that results in unreasonable confinement or restriction of an elder 60 years of age or older;

The protection order can require the restrained person to:

- ▶ Vacate the family home and stay away from any location the protected party is known to be; or
- ▶ Preserve or maintain the health and well-being of the protected person's animal or pet by not threatening to commit or committing any act of violence against the protected person's animal or pet, or otherwise taking, transferring, concealing, harming, or disposing of the animal in order to coerce, control, punish, intimidate, or exact revenge upon the elder, at-risk adult, or current or former domestic partner.

The necessary forms and instructions for protection orders are available at the courthouse or available online and should be filed in the county or municipality where the abuser lives, where the abuse occurred, where you live, where you work, or where the abuser works. The filing fee and sheriff's fee for service can be waived if you cannot afford to pay them. You can contact victim assistance agencies to accompany you and assist you with the paperwork. Your local police department, district attorney's victim assistance staff, and county department of human services can provide contact information for individuals who can assist you. They also can refer you to safe shelters and other services.

See also Chapter 33, "Mandatory Reporting of Elder Abuse or Exploitation."

12-5. Resources

Colorado Crime Victims Compensation Programs

First Judicial District (Gilpin and Jefferson counties)

District Attorney's Office-Victim Compensation: (303) 271-6846

Second Judicial District (Denver County)

District Attorney's Office-Victim Compensation: (720) 913-9253

Third Judicial District (Huerfano and Las Animas Counties)

District Attorney's Office-Victim Compensation: (719) 967-1068

Fourth Judicial District (El Paso and Teller counties)

District Attorney's Office-Victim Compensation: (719) 520-6000

Fifth Judicial District (Clear Creek, Eagle, Lake, and Summit counties)

District Attorney's Office-Victim Compensation: (970) 337-3706

Sixth Judicial District (Archuleta, La Plata, and San Juan counties)

District Attorney's Office-Victim Compensation: (970) 247-8850

Seventh Judicial District (Delta, Gunnison, Hinsdale, Montrose, Ouray, and San Miguel counties)

District Attorney's Office-Victim Compensation: (970) 252-4266

Eighth Judicial District (Jackson and Larimer counties)

District Attorney's Office-Victim Compensation: (970) 498-7290

Ninth Judicial District (Garfield and Rio Blanco counties)

District Attorney's Office-Victim Compensation: (970) 384-3517

Tenth Judicial District (Pueblo County)

District Attorney's Office-Victim Compensation: (719) 583-6092

Eleventh Judicial District (Chaffee, Custer, Fremont, and Park counties)

District Attorney's Office-Victim Compensation: (719) 269-0170

Twelfth Judicial District (Alamosa, Conejos, Costilla, Mineral, and Saguache counties)

District Attorney's Office-Victim Compensation: (719) 589-3691

Thirteenth Judicial District (Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, and Yuma counties)

District Attorney's Office-Victim Compensation: (970) 542-3473

Fourteenth Judicial District (Grand, Moffat, and Routt counties)

District Attorney's Office-Victim Compensation: (970) 629-0485

Fifteenth Judicial District (Baca, Cheyenne, Kiowa, and Prowers counties)

District Attorney's Office-Victim Compensation: (719) 336-7446

Sixteenth Judicial District (Bent, Crowley, and Otero counties)

District Attorney's Office-Victim Compensation: (719) 384-8786

Seventeenth Judicial District (Adams and Broomfield counties)

District Attorney's Office-Victim Compensation: (303) 835-5791

Eighteenth Judicial District (Arapahoe, Douglas, Elbert, and Lincoln counties)

District Attorney's Office-Victim Compensation: (720) 874-8607

Nineteenth Judicial District (Weld County)

District Attorney's Office-Victim Compensation: (970) 400-4748

Twentieth Judicial District (Boulder County)

District Attorney's Office-Victim Compensation: (303) 682-6801

Twenty-First Judicial District (Mesa County)

District Attorney's Office-Victim Compensation: (970) 244-1737

Twenty-Second Judicial District (Dolores and Montezuma counties)

District Attorney's Office-Victim Compensation: (970) 564-2755

* Based upon the earlier work of: Lisa Curtis, Denver District Attorney's Office; Robin Fudge Finegan, M.A., M.N.M., FEMA Region VIII; and Barbara Martin-Worley, M.A., former Director of Consumer Fraud Protection with the 18th Judicial District Attorney's Office.

Chapter 13

Family Relationships

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SYNOPSIS

- 13-1. Grandparents' and Great-Grandparents' Visitation Rights
 - 13-2. Allocation of Parental Responsibilities of Others Over a Child
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 - 13-5. Use of Former Name
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Family relationships are always changing, whether it be because of marriage, divorce, death, or birth. Grandparents often are affected by these changes. See Chapter 14, "Grandparent Custody and Visitation Issues."

However, as the composition of traditional American families has transformed dramatically over the past century, traditional nuclear family households are largely being replaced by nontraditional family structures.

Under Colorado law, Grandparent is defined as being a person related to the minor's mother or father, who is related to the child by blood, in whole or by half, adoption or marriage. But a person is no longer considered a legal grandparent when that grandparent's child has lost his or her parental rights to the minor child.

This chapter will discuss what options there are for individuals who may not be considered a legal Grandparent under the law and/or someone else that may have interests over a Minor.

In addition, marriage, divorce, change of name, and prenuptial agreements are issues affecting all ages. This chapter will familiarize you with the requirements for a divorce and issues to consider if you decide to remarry. You also will find out how to decide, before marriage, what rights you want to retain over certain property if divorce or death occurs.

Finally, this chapter discusses family violence and how Colorado laws can help you with protection orders.

13-1. Grandparents' and Great-Grandparents' Visitation Rights¹

If you have a dispute with your adult children, or one of your children gets a divorce, you could be denied contact with your grandchildren. You have a remedy in court if a parent does not let you visit your grandchildren in certain situations. See Chapter 14, "Grandparent Custody and Visitation Issues."

13-2. Allocation of Parental Responsibilities of Others Over a Child²

When an individual is seeking allocation of parental rights (also referred to as custody) and visitation (also called parenting time) over a child, but that person does not meet the legal definition of parent, grandparent, or great-grandparent, or step-parents, step-grandparents, and great-grandparents that have no legal parental rights, this person is referred to as a "non-parent" and may be considered a "psychological parent" if they have stepped into a parental role with respect to a child or children.

A "non-parent" must first determine if they have the legal right (*i.e.*, standing) to gain parental rights over a child. A "non-parent" has standing under C.R.S. § 14-10-123 if:

- ▶ The child is not in the physical care of one of the child's parents at the time of filing, or
- ▶ The "non-parent" has physically cared for the child for a minimum of 182 days, and either is still physically caring for the child at the time of filing, or files an action within 182 days of losing physical care of the child.

Determining what "physical care" means is vital for determining if the "non-parent" has cared for the child for the past 182 days, and proving it is very fact dependent. The Court will look at the nature, frequency, type, and duration of care the legal parent(s) has had with the child to determine if the "non-parent" has standing. Simply because the legal parent(s) has lived occasionally with the "non-parent" and child during the 182 days, or the child periodically spends the night with the legal parent(s) in a different location, does not mean that a "non-parent" lacks standing to bring the matter to Court. Also, a "non-parent" does not have to prove that the legal parent(s) is unfit or otherwise acting against a minor's best interest. The "non-parent" just has to prove that the "non-parent" has assumed a parent-like role in the minor's life over a period of time.

¹This section applies to both grandparents and great-grandparents. The word "grandparent" in this section should be understood as also meaning "great-grandparent."

²Special thanks and consideration given to Courtney M. Baldwin, Esq. for this section.

If a “non-parent” has standing, the next steps are to:

- ▶ File a Petition for Allocation of Parental Responsibilities into an existing case involving the child and the legal parent(s), such as a divorce or parental responsibilities matter. If no case exists, then file in the County where the minor is a permanent resident or where the minor is found.
- ▶ The Petition can be filed without either legal parent’s consent.
- ▶ Notice of all legal proceedings shall be sent to the minor’s legal parents, guardian(s), custodian(s), or other person(s) allocated parental responsibilities. These individuals have the right to file a response pleading.
- ▶ The Petition and Summons must be personally served on the respondent or upon waiver and acceptance of service by a respondent, at which time a temporary injunction will be in effect against both parties. This temporary injunction includes:
 - Neither party can “disturb or molest” the peace of the other;
 - Neither party can remove the child without consent of all parties or without a Court order;
 - Neither party can, at least without a 14-day advance notice and with written consent of all parties, or by Court order, cancel, modify, terminate, or allow any policy of health or life insurance that provides coverage to the child lapse for nonpayment of premiums;
 - This temporary injunction shall last until the Court makes a further ruling.

The determination of whether an individual is able to seek allocation of parental rights of a child, when that individual is not a legal parent, nor grandparent, nor great-grandparent, is whether that “non-parent” has developed a parent-child relationship with the child through day-to-day interaction, companionship, and caring for the child such that the individual consistently acted as a legal parent would.

It is important to note that in some situations, should a “non-parent” succeed in obtaining allocation of parental responsibilities, that “non-parent” may be required to financial support the child and/or even pay child support.

13-3. Divorce

Divorce has become more common in recent years. In Colorado, you do not have to prove that a failed marriage is anyone’s fault. A “no-fault” divorce will be granted based on your inability to get along with each other. You merely state that the marriage is “irretrievably broken.”

A divorce decree restores your status to that of a single person. It also divides marital property and debts and provides for maintenance (also called alimony or spousal support) when appropriate. The court will not order spousal support if neither party needs it, nor will they order spousal support if you can prove you cannot pay it. Spousal support can also be modified or terminated if the supporting spouse can prove a substantial change in circumstance that has affected his or her ability to pay.

For couples with minor children, divorce settles custody (now called allocation of parental responsibility); visitation (also called parenting time); and child support issues. In Colorado, child support ends at age 19. A court may not order a parent to pay college costs. Either spouse

may receive temporary or permanent maintenance/spousal support, if he or she cannot support himself or herself through employment or assets. The court will first apply a formula that gives the lower-earning spouse 40 percent of the parties' combined incomes, multiplied by either 80 or 75 percent, for a duration based upon the length of the marriage. The court will then look at various other factors in deciding whether and how much maintenance (spousal support) to award.

You can get a divorce in Colorado if you or your spouse has been living in Colorado for at least 91 days prior to filing for divorce. This is true if you have been living in Colorado for at least 91 days before filing and your spouse has not.

The same laws and requirements apply to an action when filing for a legal separation. A legal separation decides all the issues a divorce decides, except that it does not free you to remarry, and each spouse will retain his or her rights to the other spouse's estate. No less than 182 days after the decree of legal separation, there is an absolute right for either party to convert the legal separation to a divorce, upon filing of a written motion.

If you move to Colorado and leave your spouse behind in another state, a Colorado court may not be able to decide property, child custody, and support issues, even if the court has jurisdiction to grant a divorce. A family law attorney can help you determine in which state you should file your case.

If you cannot agree on care and support for minor children or the division of property or debts, these matters will be decided by the court. There is no legal requirement that you have a lawyer, but you may decide to hire or consult with one. One lawyer cannot ethically represent both spouses. Courts will order divorcing spouses to attend mediation before allowing a divorce trial.

Colorado is not a community property state; the law requires an equitable division of marital property. As a result, you have to decide three things: (1) what is marital property, (2) what is it worth, and (3) what is a fair division. In Colorado, the court usually assumes that each party contributed to the marriage and the property of the parties and that an equal division of marital property is fair. Property each spouse had at the time of the marriage is generally separate property (not marital property subject to division). Thus, in all cases where property exists, but especially in short marriages, the court will consider the separate property each spouse had at the time of the marriage and still has at the time of the divorce, but will not divide separate assets. If one spouse has more separate property than the other, the court might not divide marital property equally.

You may have more property than you realize. Property isn't limited to your home, cars, and household items. Property also includes limited partnerships, business interests, investments, the cash value of life insurance, and pensions and retirement benefits that will pay out in the future. In the absence of a marital or prenuptial agreement, all property acquired during the marriage is subject to division regardless of how the property is titled. If part of a pension was earned during the marriage, that part is property the court can divide. If your divorce involves a pension, you should get legal advice.

Divorce is also sometimes considered when looking at one spouse being eligible for Medicaid benefits. If this is something you are considering, you should also get legal advice to ensure things are done correctly to properly qualify.

13-4. Getting Your Divorce Without a Lawyer

If you and your spouse can reach an agreement on all issues, or wish to proceed without attorneys, you may do your own divorce without a lawyer representing you or your spouse. Some legal aid offices or other low-cost legal services offices can help you complete the necessary forms. For example, Colorado Legal Services is a non-profit agency that provides free legal services to eligible low-income Coloradoans and seniors. Denver District Court has a pro se resource center, which sells packets of forms with lengthy instructions, and has a paralegal and volunteer attorneys to assist with the paperwork. El Paso County Bar Association offers programs such as call-a-lawyer and email-a-lawyer. Check with your local county Bar Association as most offer some sort of pro bono programs.

Remember that any agreements not included in your court papers cannot be enforced later. You can also obtain instructions and forms online at www.courts.state.co.us.

If neither you nor your spouse can afford to pay the filing fee necessary to obtain a divorce, you may request a Fee Waiver Application. This allows you to file the documents free of charge, but only if you can prove to the court that you are in fact indigent and unable to pay the fee. The forms are available at the court clerk's office, on www.courts.state.co.us – Self Help Forms, or you may be able to get them from your local legal services or legal aid office.

13-5. Use of Former Name

You may use whatever name you wish. When you marry, you may keep your own name or use your spouse's name. You also can resume using your own name after you have started using your spouse's name. When you divorce, any former name may be restored. You may request the change of name as part of your divorce proceeding, and the court will grant it so long as you are not trying to defraud anyone by the name change.

13-6. Anticipating Marriage

Often, people marrying later in life have property or children from earlier marriages. A marital agreement (also known as a prenuptial agreement) allows the couple to decide, in advance, what rights each of them will retain over certain property if a divorce or death occurs. A verbal marital agreement is not enforceable. In order to be valid, a marital agreement must be in writing and signed by both parties, and the couple must first make a complete disclosure of their respective financial circumstances to each other, including incomes. The couple can revoke or change the agreement later only by a signed written agreement.

Retirement benefits only may be waived by a current spouse. People who want such an agreement should get their own separate lawyers well before the wedding. An agreement will not be valid if both parties did not have the time and opportunity to get an attorney. The party with more assets or income should offer to pay the other person's attorney fees. If there is a divorce, dispute over a will, or other action where the property rights are an issue, a valid marital agreement will govern the matter.

Marital agreements also may be made between spouses who have been married for any period of time, so long as no action for dissolution of marriage or for legal separation has been filed or contemplated.

13-7. Marriage and Public Benefits

When a person who receives public benefits marries, his or her benefits can change or stop, depending on the person's age and which benefits he or she is receiving, as well as other factors. This section will outline some effects that marriage can have on some specific public benefit programs.

Social Security

Many people receive Social Security retirement benefits as the spouse of a qualified worker. That is because an individual who does not have a sufficient work history to receive Social Security benefits may be entitled to benefits on the work record of the spouse who does. In order to receive benefits as a spouse, the recipient must have a valid marriage to the qualified worker, through either a traditional marriage or by common law marriage. The spouse of a retired or deceased worker is eligible for benefits. Under certain circumstances, a divorced spouse is also eligible.

In general, to receive benefits as a widow or former spouse, a person must be unmarried. Remarrying may cause benefits to stop, under certain circumstances. Contact your local Social Security office for information.

Disability

When a worker becomes disabled, his or her spouse may be eligible for benefits under certain circumstances. While the spouse of a disabled worker is entitled to benefits in these situations, there are no equivalent benefits for the disabled spouse of the worker because the spouse is disabled.

Under certain circumstances, these benefits also are available to a divorced spouse of a disabled worker. In order to receive benefits, a divorced spouse of a disabled worker must not be married at the time of applying for benefits, and remarriage will cut off benefits.

While a disabled spouse is not entitled to benefits, a disabled surviving spouse or divorced spouse may be. Contact your attorney or local Social Security office for more information.

Supplemental Security Income (SSI)

With Supplemental Security Income (SSI), the effect of marriage is more complicated. Marriage can cause SSI benefits to decrease or even to end. For more information regarding these and other Social Security questions, you can consult Social Security online at www.ssa.gov or speak to an attorney.

Old Age Pension

Chapter 5, "Government Programs and Financial Assistance," explains the eligibility requirements for the Colorado Old Age Pension (OAP). Each spouse receives benefits as an individual, so for a couple the combined benefit would not decrease as with SSI payments. If both spouses receive SSI and OAP, their combined SSI income will go down, but their total income will remain the same. If one of the spouses is eligible for OAP and the other is not, the income of the ineligible spouse will count as available ("deemed") to the eligible spouse. This is a serious problem because it can cause that spouse to lose Medicaid, which is an important benefit. Even if

that individual had income from another source, and received only a small amount of OAP, loss of the Medicaid benefit may be crucial.

Medicaid for Long-Term Care

See Chapter 4, “Medicaid,” for an explanation of benefits for spouses of a Medicaid long-term care recipient. Getting married does not affect the benefits of the long-term care recipient.

13-8. Protection from Family Violence

If a family member or household member has abused you physically or verbally, or stalked, harassed, or coerced you, you may request a protection order. Coercion is when someone forces or intimidates you into doing something you do not want to do, or stops you from doing something you have the right to do. You can also get protection orders when family members or household members control your property, money, or important documents, like a driver’s license. The court can even issue the order against someone you used to live with, are related to, or with whom you used to be in a relationship.

Under the law, you can get an order keeping the abuser from threatening or injuring you, contacting you, or coming to your home, school, or workplace. The court can order the abuser to leave the family home if you both live there, and can issue orders for temporary custody if you have minor children. To qualify for this type of protection order, you must convince the court that there is imminent danger to the life or health of one or more people.

However, you cannot file a protection order on behalf of someone else, unless you are a valid agent under a valid General Durable Power of Attorney, Medical Power of Attorney, Guardian, and/or Conservator. However, whether these individuals have the legal authority to do so is dependent on what authorities they have been given by the legal documents and/or court orders. If there is a minor child in your life who is in need of a protection order, only a parent or guardian of that child can file a protection order. If there is an ongoing custody dispute over a child, you can obtain a protective order to restrain any parties from taking that child outside the state in which the custody proceedings are taking place.

There is also a law that provides additional protection from emotional abuse for people 60 years of age or older. It enables the court to issue an order protecting the person from the following kinds of abuse:

- ▶ Repeated acts of verbal threats or assaults;
- ▶ Repeated acts of verbal harassment;
- ▶ Repeated acts of inappropriate use or threat of inappropriate use of medications, physical restraints, or chemical restraints; or
- ▶ Repeated acts of the misuse of power or authority by a person through a Power of Attorney or in a guardianship or conservatorship proceeding, which results in a person being unreasonably confined, or his or her liberty being unreasonably restricted.

Protection orders are free and are valid either temporarily or permanently. You can get the necessary forms and instructions from the court clerk at your county courthouse or on the Colorado Court’s Judicial Branch Website – www.courts.state.co.us – Self Help Forms. If the abuser disobeys the court order and comes to your home or office or threatens you, you can get immediate help from the police.

The victim assistance program in your county district attorney's office can help you prepare the forms. It can also refer you to safe shelters and other services.

Keep in mind that certain professionals are required to report abuse or exploitation of the elderly to law enforcement. These include doctors, nurses, dentists, chiropractors, psychologists, pharmacists, clergy members, bank personnel, and social workers.

13-9. Common Law Marriage

Despite the common belief, common law marriage in Colorado is not determined by the length of time that you and your partner have lived together, been in a relationship together, or if you have children together. In Colorado, there are two factors that must be present to establish a common law marriage. First, there must be a mutual consent or agreement between you and your partner to enter into a marriage followed by conduct that demonstrates that mutual agreement. The question is whether you and your partner intended to enter into a marriage – that is to share a life together as spouses in a committed, intimate relationship of mutual support and obligation.

An agreement to marry in the future is not sufficient to prove a common law marriage. If there is no express agreement between you and your partner to be married, a common law marriage can be inferred from your conduct. There is no one determining factor whether you and your partner were in a common law marriage as it varies from case to case and is very dependent on specific and individualized factors.

Many times, after someone dies, a partner may allege that he or she was in a common law marriage with the Decedent. If contested, this must be proven to a court. One cannot just claim to be a common law spouse for purposes of probate or in seeking guardianship and/or conservatorship. Therefore, it can be helpful to your heirs if you put in writing that you either consider yourself in a common law marriage with your partner, or that you do not. Should you have any questions about whether you are in a common law marriage, or how to avoid your partner later claiming you were in one, you should seek legal counsel.

Same-sex couples can also enter into a common law marriage. Although ceremonial marriage for same-sex couples was legalized in 2015, the courts will now recognize any common law marriage entered into by a same-sex couple before or after 2015. However, a common law marriage entered into by a same-sex couple may not have the "public acknowledgement" of the marriage that is typically required to prove a common law marriage. In this scenario, some objective evidence of the relationship combined with the mutual consent of the parties to enter into a marriage will be sufficient to establish a common law marriage.

Common law marriage is real marriage. Common law spouses have all the same rights and responsibilities as ceremonially married people.

Be aware that there is no such thing as common law divorce. Once you are married, whether by ceremony or by common law, you can terminate the marriage only by formal divorce. If you do not get a divorce after a common law marriage, all future marriages will be void, and your common law spouse will have all the benefits of a spouse, including the right to take a portion of your estate against your will and to receive various survivor benefits from the government or even from your retirement plan.

If you have received a divorce from a partner but have reconciled the relationship, you may have entered into a "common law remarriage." The factors for proving a common law remarriage

are essentially the same as those proving a common law marriage; however, the standards for evidence of a common law remarriage, , are much lower for establishing a remarriage than they are for establishing a first marriage.

13-10. Resources

See general resource lists of Chapters 5, 11, and 15 for legal services offices, legal aid offices, and more.

Aging and Adult Services

Colorado Department of Human Services

1575 Sherman St.
Denver, CO 80203
(303) 866-5700
www.colorado.gov/pacific/cdhs/older-adults

Douglas County Adult & Senior Outreach Services

100 3rd St.
Castle Rock, CO 80104
(303) 660-7400
TTY: (303) 663-7791
www.douglas.co.us/community/senior-adult-services/

Colorado Center for Aging

P.O. Box 102662
Denver, CO 80250
(303) 832-4535
www.coloradocenterforaging.org

Disability Law Colorado (Formerly the Legal Center for People with Disabilities and Older People)

Denver Office:
455 Sherman St., Ste. 130
Denver, CO 80203
(303) 722-0300

Grand Junction Office:
322 North 8th St.
Grand Junction, CO 81501
(970) 241-6371

Family Law Services

Denver District Court Pro Se Center

1437 Bannock St., Room 281
Denver, CO 80202
(303) 606-2442
www.courts.state.co.us/denverselfhelp

Colorado Legal Services

www.coloradolegalservices.org

Offices are available at the following locations:

Alamosa: serves Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties

603 Main St.

Alamosa, CO 81101

(719) 589-4993

Boulder: serves Boulder and Broomfield counties

2935 Baseline Rd., Ste. 301

Boulder, CO 80303

(303) 449-5616

Colorado Springs: serves El Paso, Lincoln, Teller, Chaffee, Custer, Fremont, Lake, and Park counties

(719) 471-0380

Craig: serves Grand, Jackson, Moffat, Rio Balanco, and Routt counties

(800) 521-6968

Denver: serves Adams, Arapahoe, Denver, Douglas, Elbert, Gilpin, and Jefferson counties

1905 N. Sherman St., Ste. 400

Denver, CO 80203

(303) 837-1313

Dillon: serves Clear Creek, Eagle, Gunnison, Lake, Pitkin, and Summit counties

(800) 521-6968

Durango: serves Archuleta, Dolores, Hinsdale, LaPlata, Montezuma, Ouray, San Juan, and San Miguel counties; also serves Ute Mountain and Southern Ute reservations

835 E. 2nd Ave., Ste. 300

Durango, CO 81301

(970) 247-0266

(888) 298-8483

Ft. Collins: serves Larimer, Logan, Phillips, and Sedwick counties

215 W. Oak St., Ste. 800

Ft. Collins, CO 80521

(970) 243-7940

Grand Junction: serves Delta, Garfield, Mesa, and Montrose counties

422 White Ave., Ste. 300

Grand Junction, CO 81501

(970) 243-7940

Greeley: serves Morgan, Washington, Weld, and Yuma counties

912 8th Ave.

Greeley, CO 80631

(970) 353-7554

La Junta: serves Baca, Bent, Cheyenne, Crowley, Huerfano, Kiowa, Kit Carson, Las Animas, Otero, and Prowers counties

10 W. 3rd St.
La Junta, CO 81050
(719) 384-5438

Pueblo: serves Pueblo and Custer counties

1000 W. 6th St., Ste. I
Pueblo, CO 81003
(719) 545-6708

Salida: serves Chaffee, Custer, and Fremont counties

1604 H. St., Ste. 201
Salida, CO 81201
(719) 539-4251

Family Tree

Serving the Denver and Surrounding Areas

24-hour Domestic Violence Contact Line: (303) 420-6752
Parenting Time Program: (303) 462-1060
<https://www.thefamilytree.org/>

Family Law Legal Clinic

1200 Federal Blvd., Room 1018
Denver, CO 80204
(303) 860-1115
Third Tuesday of the month: 5:30–7:00 p.m.

Jewish Family Service

3201 S. Tamarac Dr.
Denver, CO 80231
(303) 597-5000
<http://jewishfamilyservice.org>

The Justice Center

P.O. Box 429
Colorado Springs, CO 80901
(719) 473-6212
www.justicecenterco.org

Metro Volunteer Lawyers

1905 N. Sherman St., Ste. 400
Denver, CO 80
(303) 830-8210
www.denbar.org

Colorado Lawyers for Colorado Veterans

Denver County Office

VA Community Resource and Referral Center

3836 York St.

Denver, CO 80205

Second Tuesday of the month: 12:30–3:00pm

Colorado Springs Office

PFC Floyd K. Linstrom VA Outreach Clinic

3141 Centennial Blvd.

Colorado Springs, CO 80907

Fourth Tuesday of the month: 12:30–3:00 pm

Chapter 14

Grandparent Custody and Visitation Issues

Melissa S. Jensen, Esq.
Jensen Davis Law PC

SYNOPSIS

- 14-1. Options for Co-parenting Without Court Orders
 - 14-2. Intervening in an Existing Case
 - 14-3. Grandparent Visitation
 - 14-4. Decision-Making (Custody) under APR
 - 14-5. Guardianship of Grandchildren
 - 14-6. Grandparent Adoption
 - 14-7. Resources
-

14-1. Options for Co-parenting Without Court Orders

Many grandparents are involved in some aspect of raising their grandchildren, from picking up children from school to taking them to medical appointments to being the primary caretaker for their grandchildren for weeks, months, or even permanently. Parents can voluntarily delegate their authority without involving the court. This authority can include registering a child for school, consenting to medical or mental health treatment, and traveling with the child. Delegations are authorized by Colorado Revised Statute § 15-14-105. The court form for a delegation is JDF 751. Instructions are provided in JDF 750. Delegations are only valid for a stated term and cannot last for longer than one year from the date of signature. Although the delegation expires, a parent can sign a new delegation each year. Delegations must be notarized. Parents can revoke delegations at any time. Only one parent is needed to sign a delegation. However, a parent can only delegate the power that he or she has. If there are court orders that limit one parent's decision making or power, that parent cannot assign power that has been removed from him or her.

14-2. Intervening in an Existing Case

If a court has made or is considering orders concerning a grandchild in a domestic relations, probate, or dependency and neglect case, a grandparent can intervene and become a party in the court case. The court form for a motion to intervene is JDF 1704, and the proposed orders are JDF 1705. A grandparent must serve (provide a copy to) the child's parents or the parents' attorneys if

they have them, and all other parties, which may include a county department of human services, the county attorney's office, a guardian *ad litem*, a counsel for youth, a child's legal representative, a child's caretaker or custodian, or other people. The court form explaining how to serve other parties is JDF 1099(d). If the motion to intervene is granted by the court, a grandparent becomes a party to the case. As a party, a grandparent is able to file motions and present evidence to the court.

14-3. Grandparent Visitation

Colorado courts assume that a parent makes decisions, including decisions about a child's contact with his or her grandparent, in that child's best interests. When a family is intact and there are no court orders concerning the children, a court will not intervene to disrupt a parent's decision about contact with grandparents. However, when there are qualifying existing cases involving a child, a grandparent can intervene into the case and request grandparent visitation under C.R.S. § 19-1-117. Great-grandparents are also able to request visitation under this statute. Qualifying existing court cases include:

- 1) Decrees of invalidity of the parent's marriage (annulment), decrees of dissolution of marriage (divorce), and legal separation;
- 2) Domestic relations cases allocating parental responsibility (APR) between parents who were never married (APR cases);
- 3) Domestic relations cases in which APR was granted to someone other than a parent;
- 4) Dependency and neglect cases that have removed a child from the care of his or her parents; and
- 5) Situations in which a child's parent, who was the child of the grandparent, has died.

To request visitation in one of these situations, a grandparent must first file a motion to intervene in the existing court case. If it is granted and the grandparent becomes a party, a grandparent may file a motion for grandparent visitation. The court form for this type of motion is JDF 1701, and the proposed order is JDF 1702. A motion for grandparent visitation must include a sworn affidavit that explains why the visitation or contact being requested is in the best interests of the grandchild. A grandparent must serve a copy of the motion on the other parties in the case. The other parties will be able to respond to the motion with their own affidavits. Any party can ask the court to hold a hearing so that the court can hear the testimony of witnesses and receive evidence. If no party asks for a hearing, then the court may make a decision based on the sworn affidavits.

The court can only order grandparent visitation if it determines that the visitation or contact requested is in the best interests of the child. The United States Supreme Court and the Supreme Court of Colorado have said that a court must presume that a parent is making decisions that are in the child's best interests. The court must give a parent's position special weight. A grandparent may overcome this presumption either by showing that a parent is unfit due to, for example, drug use or abuse of the child, or by showing that what the grandparent is asking for is in the child's best interests with a high degree of probability (clear and convincing evidence).

Even if a grandparent were to show that contact with the grandparent is in a child's best interests, there are important limitations to what the court can order:

- 1) A court cannot order a parent not to move outside of Colorado to preserve contact with grandparents, even if there is a grandparent visitation order in place. Instead, the court can modify the prior order to accommodate a parent's move.
- 2) A court cannot order that a grandparent have visits to take a child to a religious service. A grandparent or great-grandparent may not interfere with a parent's wishes or decisions regarding religious training.
- 3) If a child was adopted after the termination of his or her parent's rights, a court cannot order contact or visits with the biological grandparent.

If grandparent visitation is ordered, either the grandparent or custodian can ask the court to enforce the order if it is violated with a verified motion for enforcement. The motion must include an affidavit that describes how and when the order was violated. The motion must be served on the other parties, who will have an opportunity to respond with their own affidavits about what happened. The court will determine if the violation occurred and if substantial and continuing noncompliance is likely to occur in the future. The court may hold a hearing or order that the grandparent and other parties attend mediation to try to come to agreement. If the court finds that the order was not followed, the court can make new conditions, modify the order, or order makeup visitation. The court could hold the person who violated the order in contempt of court. The court also has the power to make the violator of the order repay the other parties for their attorney fees and court costs.

Motions for grandparent visitation or to modify grandparent visitation can only be filed once every two years unless the court finds good cause. Good cause might include a major change of circumstances, like a change in the child's mental health or a change in a parent's or custodian's ability to make good decisions for the child. If a grandparent files a motion before the two years have passed and the court finds there is not good cause, the grandparent may have to pay the parent's or custodian's attorney fees and costs.

14-4. Decision-Making (Custody) under APR

An APR order is a decision-making order (formerly known as custody) that is entered through the domestic relations court. A grandparent can ask the court to enter orders that give the grandparent full or shared decision-making regarding the child. Orders can require a child to live with certain parties and can give rules and requirements around parenting time between the child and his or her parents.

If there is not an existing domestic relations case in which to intervene, a grandparent seeking decision-making can petition the court to open a new case to enter orders. New cases should be filed in the county where the child lives or is located. The court form for a petition for APR is JDF 1413.

A grandparent can only motion the court for decision-making after a grandchild has been in the grandparent's physical custody for 182 days. If a grandchild returns to the care and custody of a parent or other person, the petition or motion must be filed less than 182 days after the grandchild is no longer in the grandparent's physical custody. A grandparent must serve a copy of the motion on the other parties in the case. The other parties will be able to respond to the motion. If all the parties agree, then the parties can file a stipulated motion that everyone signs. Any party can ask the court to hold a hearing where the court can hear the testimony of witnesses and receive evidence that will help the court make a decision that is in the child's best interests.

A grandparent filing a motion or petition for APR must also file proposed orders. The court form for proposed orders is JDF 1422; however, parental responsibilities orders can be as detailed or as general as a particular situation requires.

In a domestic relations case, parents retain certain rights, including the right to later modify any orders that are entered, the right to have parenting time, and the right to have their wishes be given special consideration by the court. The United States Supreme Court and the Supreme Court of Colorado have said that a court must presume that a parent is making decisions that are in the child's best interests. This is called the *Troxel* presumption. The court must give a parent's position special weight under the *Troxel* presumption. A parent is entitled to the *Troxel* presumption even if he or she voluntarily gave up care and custody in the past or involuntarily had care and custody removed from him or her through a court proceeding, like a dependency and neglect action or a criminal charge that resulted in the parent's incarceration.

A non-parent bears the burden of overcoming the *Troxel* presumption. A grandparent may overcome this presumption either by showing that a parent is unfit due to, for example, drug use or abuse of the child, or by a showing that what the grandparent is asking for is in the child's best interests with a high degree of probability (clear and convincing evidence). The court has to make special findings that justify interference in a parent's decision-making.

The court must consider the best interest factors contained in the statute, C.R.S. § 14-10-124, which include:

- 1) The wishes of the parents;
- 2) The wishes of the child if he or she is mature enough to express a reasoned preference;
- 3) The relationship of the child, parents, grandparents, family members, and any other people who affect the child's best interests;
- 4) The child's adjustment to home, school, and community;
- 5) The mental and physical health of all parties involved;
- 6) The adults' respective abilities to encourage the sharing of love and contact between the child and the other parties;
- 7) The past pattern of the parents' and grandparents' involvement with the child;
- 8) Credible evidence of a history of child abuse or neglect on the part of the parents or grandparents;
- 9) The abilities of the adults to put the child's needs and best interests ahead of their own; and
- 10) Where each party lives and how physical proximity may affect the ability of a parent to participate in parenting time.

There is a strong presumption that decision-making orders that were previously entered by the court will continue to be in a child's best interests. A presumption for keeping prior orders can be overcome if all the parties agree to the change or if the person wanting to change orders can show that the current orders put the child in a dangerous environment. The party wanting to change the orders must show that (1) there are new facts or facts that were not known to the court when the prior orders were entered or (2) there has been a change in circumstances for either the child or the person who has decision-making under the current orders. The person asking for a

modification must also show that new orders are necessary for the child's best interests and the advantages to changing the orders likely outweigh potential harms.

In a domestic relations case, any party can ask the court to appoint a child and family investigator (CFI) or a parental responsibilities evaluator (PRE) to conduct an investigation and make recommendations to the court about what orders would best serve the child's best interests. The court can require all the adults in the case to cooperate with any evaluations, and can grant the evaluator access to records, documents, reports, and other court cases. The court can also appoint a child's legal representative (CLR), an attorney who represents the child's best interests in the court proceeding. In cases where a child's mental health is likely to come under scrutiny in the case, the court can appoint a limited CLR to either hold a child's therapeutic privilege or assist a young person in exercising his or her own therapeutic privilege.

If the court grants decision-making authority to a grandparent through an APR, those orders can be changed when the parties agree. Any agreements made to change the terms of an APR order should be made in writing. Agreements do not have to be filed with the court, but a court will only enforce the orders that are in the court file. If the court orders parents to have visits with their children on Wednesdays, but circumstances change, all the parties can agree to move the visits to Sundays. If a motion to enforce is filed by a party that wants to move back to Wednesdays, the court will not enforce the informal agreement and will require a move back to the originally ordered day.

If a grandparent who has decision-making under an APR wants to change the residence the grandparent lives in with the child, he or she must consider if the move will affect the child's ability to see the biological parent under the APR orders. Typically, a move within the same town is not considered a relocation, but a move of greater distance may be, depending on what kind of parenting time was ordered. If the move will affect parenting time, it is considered a relocation. A grandparent who has custody must ask the court for permission to relocate and must propose new parenting time orders that fit the new circumstances. The court form with instructions for filing a motion to relocate is JDF 1400.

14-5. Guardianship of Grandchildren

A guardianship is governed by a different set of statutes and is entered by a probate court. A young person, age 12 and older, must be given notice (service) of a petition for guardianship at the same time that notice is given to the biological parents. A young person over age 12 must also be given the opportunity to consent or not consent to the appointment of a guardian. A court can grant a guardianship over the objections of a young person if the court finds that the guardianship is in the young person's best interests.

A grandparent asking to become a guardian or conservator must submit criminal background checks and credit reports with the grandparent's petition. A guardianship may be granted on an emergency basis, as a short-term solution, while the parties prepare for permanent orders hearings. The court form with instructions for requesting appointment of a guardian is JDF 823.

Similar to in a domestic relations case, the court presumes that a biological parent is acting in his or her child's best interests. If a parent does not consent to a guardianship, a non-parent bears the burden of overcoming the presumption. A grandparent may overcome this presumption either by showing that a parent is unfit due to, for example, drug use or abuse of the child, or by

showing that what the grandparent is asking for is in the child's best interests with a high degree of probability (clear and convincing evidence). The court must make special findings that justify interference in a custodial parent's decision making.

During a guardianship, a biological parent's decision-making and other parental rights are partially suspended during the life of the guardianship. A biological parent retains his or her right to petition the court to dissolve a guardianship or conservatorship, but typically there are not parenting time orders connected with a guardianship.

A probate court has the power to appoint a guardian *ad litem* (GAL) for a child in a probate action. The GAL is an attorney who has authority to complete an investigation and advocate for the child's best interests in the probate case. If the parties are found to be indigent, the court may require the State to pay for the GAL.

A grandparent may also petition the probate court to become a child's conservator. A conservator handles financial matters for a child. This may become necessary if a child has independent income or the right to money through a settlement or court order but the child's parents are not available to manage the child's money or, for some other reason, should not control money belonging to the child. Petitions for conservatorship are often, but not always, filed with petitions for guardianship, and the same notice and opportunity for hearing must be given.

Both guardianships and conservatorships have reporting requirements each year. These are formal check-ins with the probate court to ensure that the child's needs are being met and that the appointed guardian or conservator is acting in the child's best interests. The court form with instructions for appointment of a conservator for a minor is JDF 860.

A guardian or a conservator has the ability to nominate his or her successors in the event that something happens to the appointed guardian or conservator. The court can use an appointed guardian or conservator's nomination as a guide when appointing a new person to these roles.

14-6. Grandparent Adoption

Grandparents may be eligible to adopt a grandchild under Colorado's kinship adoption statute, C.R.S. § 19-5-203(1)(j). If the grandparent is married, both partners must adopt together. Grandchildren who are subjects of a dependency petition have different rules for termination and adoption and are not eligible for adoption under C.R.S. § 19-5-203(1)(j).

Termination and adoption petitions are filed together. The court's guiding principle is the best interest of the child. In making its decision, the court may consider: the stability of the family; the effects of a possible adoption, including any detrimental effects of a severing of the parent/child relationship; the child's emotional ties to and interactions with the parties; the child's adjustment to his or her living situation; the child's age; and the mental and physical health of all the parties.

The court must first determine if the grandchild is available for adoption. Children become available for adoption when they have been in the physical custody of a relative for one year or more, there is no pending dependency case, and either:

- 1) The parents have abandoned the child for one year or more; or
- 2) The parents have failed without cause to provide reasonable support for one year or more.

There do not need to be court orders for the year that a grandchild has spent in the physical custody of a grandparent. If there are not orders, a grandparent will need to demonstrate by some other evidence or testimony that the grandchild has lived in the grandparent's home for at least one year before the adoption petition was filed.

Termination due to abandonment is a question of intent. A grandparent seeking to adopt must demonstrate a parent's intent to abandon the child by clear and convincing evidence. The court considers the totality of the circumstances. There does not need to be a showing of no contact whatsoever to demonstrate an intent to abandon. However, the court will consider extenuating circumstances that may have restricted a parent's ability to spend time with or work towards caring for his or her child. For example, a parent who is incarcerated typically does not demonstrate an intent to abandon his or her child.

Termination due to lack of reasonable support is typically more straightforward to prove. The court expects a parent to provide reasonable support regardless of whether there are child support orders in place. A court will consider if support was provided in the past and the likelihood of support being provided in the future. A parent's past non-compliance with court orders for child support is strong evidence that there will be non-compliance in the future. The Colorado Supreme Court has said that termination will be granted if it is unlikely that a parent will make future support payments on a regular and continuing basis.

When a grandparent petitions to adopt a grandchild, the grandparent must show that he or she is of good moral character, has a suitable home, and has the ability to support and educate his or her grandchild. As evidence of these requirements, a grandparent must give the court credit checks and a state TRAILS check showing that the grandparent does not have any child protection history. A grandparent must also complete a home study or petition the court to waive the requirement for a home study. A grandparent might be eligible to waive the home study if, for example, the grandparent was a certified kinship home through a dependency action but his or her certification has lapsed.

As with other types of court cases, a grandparent must provide service of the grandparent's petition to terminate the parent-child relationships and the grandparent's petition to adopt the child to the child's parents. A parent can consent to an adoption by a grandparent by completing JDF 510, but consent is not necessary. If a grandparent cannot locate a biological parent to provide service, the grandparent can ask the court to allow him or her to provide service by publication. Some parts of the petition for adoption, such as the credit and background checks, do not have to be served on the parent and are sealed by the court so that they are kept confidential. If a grandparent has safety concerns with sharing other information with the parents, the grandparent can ask the court to keep other parts of the petition confidential as well.

If a parent objects to termination of his or her rights and adoption of his or her child by a grandparent, the parent must file a response to the petition within three weeks of being given a copy. A parent can ask for a hearing if the parent disagrees with the facts that a grandparent has alleged in the petition. Because maintaining the parent-child relationship is a fundamental right under the Constitution, a parent is entitled to an attorney in a termination hearing. If the parent is incarcerated or otherwise indigent, the court may appoint the parent an attorney for the termination hearing.

14-7. Resources

Judicial Self Help:

Every Courthouse has a court resource center, and many counties offer opportunities to receive brief consultations with attorneys. Find out more about what is offered at your judicial district:

www.courts.state.co.us/Courts/County/Choose.cfm

Judicial Forms:

Grandparent Visitation and Custody

www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=85

Guardianship for Minors

www.courts.state.co.us/Self_Help/minorguardianship/

Adoption by a Family Member

www.courts.state.co.us/Self_Help/adoptionbyfamilymember/

Colorado Legal Services

Provides legal advice and statewide assistance for qualifying grandparents who are raising grandchildren:

www.coloradolegalservices.org

The Foundation for Grandparenting

Has innovative ideas for grandparents as parents and a large selection of books. Also involved in education, research, programming, and networking around grandparenting:

www.grandmagazine.com

Social Security Benefits for Grandchildren

Provides advice on Social Security benefits:

www.ssa.gov/people/parents/

Catholic Charities — Kinship Caregiver Program

Provides support groups, resource assistance, and training:

<https://ccdenver.org/kinship/>

(720) 799-9254

(720) 799-9253 (en Español)

Catholic Charities — Weld County

Provides monthly kinship support groups:

<https://ccdenver.org/greeley/>

(970) 353-6433

Colorado State University Extension — Relatives as Parents Program

Provides statewide support network of resources for grandparents:

<http://grg.colostate.edu/support-groups.php>

(970) 491-1118

Colorado Department of Human Services — Kinship Connection

Provides statewide services:

www.colorado.gov/pacific/cdhs/kinship-connection

(303) 866-4617

Families First

Provides statewide services, including support groups, parenting education classes, community resources, and a free telephone support line:

<https://shilohhouse.org/familiesfirst/>
(303) 695-7996

Circle of Parents

Support group led by parents and caregivers:

www.circleofparentsco.org

Chapter 15A

Estate Planning: Wills, Trusts, and Your Property

Clara Brown Shaffer, Esq.
Brown & Brown, P.C.

SYNOPSIS

- 15A-1. Overview of Lifetime and Post-Mortem Distributions of Your Assets
 - 15A-2. Ownership of Property
 - 15A-3. Types of Estate Planning Techniques
 - 15A-4. Additional Information
 - 15A-5. Resources
-

Estate planning is a process designed to help people ensure their assets are distributed upon their death in accordance with their wishes. In some circumstances, when an individual has a taxable estate, complex planning is used to minimize the amount of estate tax due upon the person's death. Estate planning also allows clients to name people to act on their behalf in financial and medical situations when the client is unable to do so, and allows a client to name a guardian and/or conservator for a minor or disabled child.

Many options are available to you when planning how to pass on your estate. To plan the distribution of your assets, you must decide what to give away, when to give it, who will receive it, and when they will receive it. You also may want to consider some methods that are less expensive and others that will reduce any estate taxes.

This chapter addresses important estate planning issues, such as making a will, distribution of assets when there is no will, the probate process, bank account options, trusts, life insurance, and estate taxes.

Wills, trusts, and documents of ownership that transfer assets can be very complex. This chapter explains the basics of each of these choices, and some of the advantages and disadvantages they present. With this information, you will be able to seek further legal advice about the choices that would benefit you and your family the most. For many people, talking to a lawyer about end-of-life issues can be uncomfortable; however, most people who complete the process are rewarded with a sense of relief and certainty that their wishes will be carried out.

15A-1. Overview of Lifetime and Post-Mortem Distributions of Your Assets

What if You Do Not Have a Will?

If you do not have a plan in place to give away your assets at your death, such as a will or a funded trust, your property will be disposed of through a process called intestacy or intestate succession. This, like probate, is a court proceeding wherein your estate is “administered.” Colorado law dictates who will receive your property if you die without a will. For example, if you are married when you die and have no surviving issue (children or their descendants) or parents, your spouse will receive all of your estate.

If you are not married at the time of your death, any of your children (whether biological or adopted) will receive all of your property in equal shares. If you have no spouse or children, your parents will receive your property. If your parents have died, your brothers and sisters will receive your property. If you have no living family or relatives, then by default the State of Colorado will get your property.

What if You Do Have a Will?

If you have a will, a court proceeding is necessary to administer your estate. This process is called probate. Probate also happens if you die without a will. Probate is the legal process by which your property is collected and distributed according to your will or intestacy, as referenced above. During probate, your property is managed by an administrator called a “personal representative.” Generally, a personal representative manages everything without extensive court involvement. You should appoint a personal representative in your will. If you do not have a will or if your will fails to appoint a personal representative, the court will appoint one for you. Similarly, if you have a minor or disabled adult child and do not have a will or your will fails to appoint a guardian, the court will appoint a guardian for your child. If the court appoints a personal representative or a guardian, the person named may not be the person you would have chosen; therefore, it is important to review your will to ensure you have a personal representative appointed.

If, at the time of your death, you own real property or if your estate includes personal property valued at more than \$80,000 (for decedents dying in 2023), and if these assets do not pass to another person through a survivorship interest, then your will must be probated (or an intestate court proceeding must take place) to pass your property on to your heirs (see the discussion on “Survivorship Interests” in this chapter). The probate process usually takes about six to 12 months and is much simpler and less expensive in Colorado than in many other states. However, probate may take longer than 12 months, depending on the size and complexity of the estate.

Small Estate Affidavit

If your estate does not include any real estate interests, or more than \$80,000 (for decedents dying in 2023) of property that does not pass through survivorship, your assets may be transferred through a small estate affidavit without any court involvement.

Transfer of Assets Other than Through Probate

The following is a list of legal techniques used to pass property to your intended beneficiaries. This section is meant to describe the different techniques and does not necessarily advocate for one over another.

Trusts

Property held in trust will pass under the terms of the trust rather than through probate. There are many types of trusts. Trusts can be revocable or irrevocable and can be designed to be effective during your lifetime or at your death. Trusts will be discussed in greater detail in section 15-3, "Types of Estate Planning Techniques," in this chapter.

Survivorship Interests

Holding property with another person under a survivorship interest, such as joint tenancy, is sometimes used as an inexpensive alternative to a will or trust. A survivorship interest may be applied to both real and personal property. However, there may be pitfalls to this transfer method both during life and at death, including problems with creditors, taxes, and the lack of control. Generally, attempting to use joint ownership to avoid having an estate plan is faulty logic, as there is substantial risk involved with this type of planning. Also, a will is still necessary in the event both joint owners die simultaneously. (See section 15-2 of this chapter, "Ownership of Property," for more information on survivorship interests and alternatives to joint tenancy, such as life estates.)

Payable On Death (POD) and Trustee Accounts

POD and trustee accounts are other alternatives to wills and intestate succession for bank accounts. Such an account is treated like a normal bank account during the lifetime of the account owner, sometimes called the trustee. On the account owner's death, any funds in the account will be automatically distributed to recipients, or beneficiaries, designated by the account owner. The beneficiaries have no control over the account during the owner's lifetime. Contact your bank if you wish to set up an account in this manner. Before doing so, however, it is important to consider whether an outright distribution to the intended beneficiary is appropriate. In some cases, an outright distribution is inappropriate due to a creditor issue or special need of the beneficiary.

Securities Registered to Transfer On Death (TOD)

This device for transferring stocks and bonds at death to named beneficiaries works like a POD bank account. It has similar advantages and disadvantages.

Beneficiary Deed

Title to an interest in real property may be transferred on the death of the owner by recording, prior to the owner's death, a beneficiary deed designating a beneficiary for the property. The transfer is effective only on the death of the owner, and the owner can revoke or cancel a beneficiary deed by recording a proper revocation prior to his or her death. The advantage of using such an instrument is that the designated transferee, or the person you wish to transfer the property to, can be changed during your lifetime, and creditors of the proposed transferee cannot attach the property during your lifetime. There can be disadvantages to beneficiary deeds in the context of Medicaid planning. It is important to talk to an attorney prior to using a beneficiary deed.

Life Insurance

Life insurance proceeds pass to whomever you have named to receive those benefits; that person is the beneficiary. The insurance company will have a record of the beneficiary you chose when you purchased your policy. You also should keep a record of the current beneficiaries of each life insurance policy for your own files.

You have the option to change the beneficiary at any time. You must tell your insurance company in writing if you wish to do this. Most insurance companies provide a form to change the beneficiary. It is also wise to name another person as an alternate, or contingent, beneficiary in case your first beneficiary dies before you do. A beneficiary may be the personal representative of your estate, though this can have unfavorable consequences if your estate has a substantial number of creditors; or the trustee of a living trust, which is sometimes referred to as a revocable or *inter vivos* trust. All beneficiary designations should be coordinated with your overall estate plan since the insurance company will pay the policy proceeds to the named beneficiary, even if your will says someone else should receive the money.

Retirement Accounts

There are numerous types of retirement accounts. There are IRAs, 401(k) and 403(b) accounts, and others. With these types of accounts, the proceeds pass upon your death in accordance with the beneficiary designation you create with the holder of the account. The beneficiary designation rules are similar to those with life insurance as discussed above. It is important to note that some beneficiary designations could have unfortunate tax consequences. It is important to consult with an attorney if you intend to name a trust or other entity as a beneficiary.

Estate Taxes

At the end of 2017, Congress passed sweeping tax reform called the Tax Cuts and Jobs Act. The president signed the act on December 22, 2017. The unified gift and estate tax exemption amount was changed by this legislation, which greatly increased the amount an individual can pass to his or her heirs tax-free. The adjusted amount for 2023 is \$12,920,000 for individuals and \$25,840,000 for a couple. This amount will continue to be adjusted annually for inflation, and, if Congress does not act prior to the end of 2025, the exemption amount will sunset back to the 2017 amount, adjusted for inflation. Those individuals with moderate wealth should review their estate plan to determine how the Tax Cuts and Jobs Act affects their planning.

Additionally, Congress decided to continue the availability of portability, which allows a surviving spouse to use the exemption of the first spouse to die. While portability sounds like a panacea, it is not without confusion and potential problems. Portability is still relatively new and can be a potential minefield for the unwary. It is important for a surviving spouse to seek legal counsel within nine months of his or her spouse's death to discuss how portability may be applicable to his or her situation.

Gifts

You can make a gift to be effective during your lifetime, called an *inter vivos* gift, and one that is effective upon death, called a testamentary gift. A lifetime gift is a voluntary transfer of personal or real property. The person giving the property, called the donor, receives nothing in return. The donor must intend to make the gift. For a lifetime gift to be completed under the law,

the gift must be delivered and the person receiving the gift must accept the gift. You cannot force a person to accept a gift he or she does not want.

Once a lifetime gift is given, it cannot be taken back unless the person receiving the gift agrees and actually returns it. To make a gift that is to become effective upon death, you may use a will, trust, or other special mechanism, such as a beneficiary deed or payable on death account.

A lifetime gift must be delivered to be valid. For example, suppose you want to give a special ring to your niece. If you put a note on it saying, "this ring is for my niece when I die," the gift will not be valid because it was not delivered to your niece during your lifetime.

If you want to give something that is very large, such as a piano, you may do so by symbolic delivery. Symbolic delivery occurs when you give something that represents what you actually want to give, such as a written description of the item or a model of it. To make a lifetime gift when you are unable to physically transfer the possession of the gifted item, you need to document the gift in writing.

Sometimes a person may be too sick to give the actual gift item. In this situation, a constructive delivery means the person receiving the gift is given the means of receiving the gift. For example, you may give that person the keys to a safety deposit box or to a car.

If there is a dispute, the court will decide whether the donor intended to make a gift, whether there was delivery, and whether the gift was accepted. Again, putting your intentions in writing is always a good idea.

When giving a gift of personal property, real property, or money, you may need to file a gift tax return. In 2023, you can give \$17,000 to any one person per year without paying a gift tax. If you give more than \$17,000 to one person in a year, you may have to report the gift on a gift tax return. Whether you are required to file a gift tax return depends upon your other assets, prior gifts, etc. Most likely you will not have to pay tax on the gift; however, you should consult your attorney or your accountant if you make a large gift to an individual or group of individuals in any single year. If you have questions, speak with an attorney or accountant prior to making the gift.

15A-2. Ownership of Property

In Colorado, you may hold title to real property in several different ways. Real property refers to land, as well as to whatever is erected or growing upon or affixed to that land. Ownership of what lies underground, such as mineral rights, water, oil, mining rights, etc., may or may not be a part of the real property interest you own. You can actually separate the rights to the property above ground from the rights of the property interest below ground. You can even restrict the use of the above-ground property rights through easements.

The way property is titled is important because it affects what happens to the property during your lifetime and upon your death. The principal types of ownership are:

- 1) Sole ownership;
- 2) Tenancy in common;
- 3) Joint tenancy (with right of survivorship); and
- 4) Life estate.

You should know what type of ownership you have for all of your property. This will tell you what your rights are concerning property that you fully or partially own.

Sole Ownership

If you own property solely in your name, you own all of the rights to that property. You can use it, rent it, sell it, or give it away. If you want to transfer property that is solely in your name to a person or entity on your death, then you may do so by a will, trust, or beneficiary deed. If you do not designate whom you want to receive your property (through a will, trust, or beneficiary deed), the property will pass to your legal heirs at your death by the laws of intestacy.

Tenancy in Common

If you own property with another person, then by law you own that property as a tenant in common unless the ownership document states otherwise. A tenant in common is a person who owns a percentage of the entire property. For example, if two parties purchase property, and each has contributed equally to the purchase, then the parties can agree that each owns one-half, or 50 percent, of the property. You may sell or gift this one-half interest to others. You also may transfer this interest upon your death to others through a will or trust.

If you are a tenant in common, you may appoint a specific person or persons in your will to receive your interest or it will become part of the residuary or balance of the estate. If your interest does not pass under the terms of your will, then your interest will pass to your heirs by the laws of intestacy. The other tenants in common do not become the owners of your interest on your death. Upon your death, the person(s) appointed receives your interest in the property from your estate. That person(s) will then hold your interest in the property with the other tenants in common.

Tenants in common who cannot agree on how to sell or manage the property usually have to go to court to settle their differences.

Joint Tenancy (with Right of Survivorship) for Real and Personal Property

In Colorado, persons may hold real and personal property with a right of survivorship. Usually, joint tenancy is used to hold real property, but sometimes people use it for personal property such as in bank and investment accounts. Creating a right of survivorship is a way of managing property. A right of survivorship ensures that when the owner dies, the remaining co-owner(s) will automatically receive the deceased owner's share of the property. For example, a husband and wife often hold property together in joint tenancy with this right of survivorship. Upon the death of either the husband or wife, the survivor will be the exclusive owner of the property.

You also may hold title with someone other than your spouse. You and the other owner will hold property with the right of survivorship. Friends, relatives, and business partners use this form of ownership when they want to own property jointly, but ensure the survivor will receive the interest in the property to the exclusion of the deceased owner's relatives or heirs. This allows the property to pass to the survivor(s) on death.

The party who dies first cannot transfer by will the property that is held subject to a right of survivorship. Holding title in joint tenancy will supersede the provisions in the will, which may try to dispose of the property interest. If you own property in this manner and you want to

pass that property to a particular person (other than the person with whom you hold the property in joint tenancy) or entity, you will need to sever the joint tenancy.

Creating a right of survivorship requires special language when used in a deed, trust, or will. Creating a right of survivorship in a deed has many possible legal consequences. Some of the legal consequences are the following:

- ▶ If you sign a deed transferring real property to yourself and someone other than your spouse, and you and this other person have the right of survivorship, then you may have made a gift. This may require you to file a federal gift tax return.
- ▶ Once you sign the deed, you cannot take the property back. You will have trouble selling or mortgaging the property without the agreement and signature of the other person you have named on the deed.
- ▶ The property held with a right of survivorship passes to the survivor. Even if you name someone else to receive property in your will or trust, the titling of the property will control who receives it.

There are also some risks in creating a right of survivorship:

- ▶ If you name someone as a joint tenant with the right of survivorship on a bank account, then that person can take part or all of the money out of the account without your permission.
- ▶ A right of survivorship may cause the property to go to someone other than your intended heirs.
- ▶ Sometimes a creditor of the other person you named on your property with a right of survivorship can take all or part of that property to pay debts.
- ▶ There may be adverse gift and/or estate tax consequences to titling property in joint tenancy.

It is also important to point out that titling property in joint tenancy as an alternative to an estate plan is generally not a good idea. An estate plan encompasses more than simply passing property; however, joint tenancy can be used as a technique within the estate plan.

Life Estate for Real Property

If you own a life estate interest in real property, then you are one of the owners of the property, together with the person or persons who own the interest after you die. This other person is referred to as the remainderman. Owning a life estate interest means you can live in or possess the property until you die, although you have the responsibility to take care of the property, pay the taxes, etc. When you die, the property passes to the remainderman. You may create a life estate by transferring the property to a third party and retaining the right to live on the property for your lifetime and receive any income generated by that property during your lifetime.

For example, if you want to give your property to a friend or to your child, but you want to live on that property or receive income from that property until your death, then you would create a life estate. You would do so by deeding the property to your friend or your child, the remainderman, to have it upon your death, and reserving a life estate to yourself in the deed.

You also may create a life estate by a will or trust. For example, suppose you want your friend, Harry, to own the property. When Harry dies, you want the property to pass to your brother, Bill. You can let Harry keep the property until his death by creating a life estate for Harry in your will or trust. On Harry's death, you can have the property go to Bill, the remainderman.

There are other ways that a person can hold title other than those described. If you have any questions about the nature and extent of property ownership, you should talk to a lawyer.

15A-3. Types of Estate Planning Techniques

Wills

A will is a statement that describes how your assets will be given away after you die. A will lets you give anything you own, including real estate, cars, business holdings, money, and personal property, to anyone you want after your estate debts are paid. A will also may state whom you want as the guardian of a minor or disabled adult child. In a will, you can appoint a personal representative (executor or administrator) to complete your affairs after your death. Wills provide substantial flexibility for leaving your assets to whomever you choose.

Colorado recognizes holographic wills. A holographic will is a will written in the decedent's own handwriting and signed by the decedent. While holographic wills are recognized in Colorado, they are not preferred because of authenticity issues.

If you wish to make a will, other than a holographic will, you must meet these minimum legal requirements:

- ▶ You must be at least 18 years old.
- ▶ You must be of sound mind. This means you must understand what property you have to give and to whom you are giving this property after your death.
- ▶ You must be making a will because you want to make a will and not because someone is forcing you to do it.
- ▶ The will must be in writing (typed) and dated.
- ▶ You must sign the will. If another person is signing for you because you cannot, he or she must sign the will at your request and in your presence.
- ▶ Two disinterested witnesses must sign the will in your presence, and certify that you signed the will voluntarily and were of sound mind, or your signature must be acknowledged by a notary public.

You may prepare your own will; however, it is not recommended. There are certain restrictions to giving away your property. For example, your will cannot give away property you own in joint tenancy with right of survivorship if the other joint owner survives you. (See section 15-2 of this chapter, "Ownership of Property," for more information on the transfer of real property.) In addition, your will cannot give away property that has a named beneficiary, such as the proceeds of life insurance policies. To change the beneficiary designation on property with a named beneficiary, you must fill out a change of beneficiary form with the company holding the property. Simply giving the property away through your will is not sufficient.

Also, while Colorado law generally gives you broad freedom to give away your estate as you desire, it is important to keep in mind that a surviving spouse has a right to a percentage

of the deceased spouse's estate, if the surviving spouse is disinherited by his or her husband or wife. This right is referred to as an elective share. Depending on the number of years a husband and wife were married, the surviving spouse is entitled to a specific percentage of the deceased spouse's estate. If this is something you may be concerned about, it is best to see an attorney to discuss your options. Because some of the restrictions on giving away property can be confusing, it is a good idea to review your will periodically to make sure it reflects your wishes, especially after any financial or other changes in your life.

Trusts

A trust is an arrangement where real or personal property is held by one person, called the trustee, for the care or benefit of another person, the beneficiary. There are basically two types of trusts: those created at your death, referred to as testamentary trusts, and those you create during your lifetime, usually referred to as living trusts, revocable trusts, or *inter vivos* trusts. A testamentary trust is set up in your will, and takes effect only after your death and after your estate has been administered. Testamentary trusts, like living trusts, can be established to save estate taxes and to manage assets for minor or disabled adult children. Because testamentary trusts become effective after death, they are useful in situations where asset management is not needed during life.

A living, or *inter vivos*, trust may be revocable or irrevocable, and it may be funded or unfunded. A funded living trust is an alternative to a will and to probate. In a funded living trust, a person, the settlor, puts property and money into his or her trust during his or her lifetime for his or her benefit and possibly for the benefit of other family members. An unfunded living trust typically receives assets through a simple "pour-over will" following the settlor's death.

Most people who are able to manage their own financial affairs usually name themselves as trustee of living trusts they establish. The trustee's duties are to invest the trust assets and make the assets and income available to the settlor/beneficiary during his or her life. Such a trust is almost always revocable, meaning that the settlor can revoke or amend the trust as long as he or she is able.

In situations where the settlor is also the trustee and he or she becomes disabled, alternate trustees are usually named in the trust to assume trustee responsibilities, the most important of which is providing for the financial needs of the disabled settlor/beneficiary. A settlor will usually name a spouse, adult child, relative, friend, or bank as alternate trustees. When the settlor/beneficiary dies, the trust often terminates, and the successor trustee will distribute the trust property to the beneficiaries, similar to the distributions in a will. In many situations, however, living trusts will continue for the benefit of the settlor's spouse and children and terminate at a later date.

Benefits of Using a Trust

A living trust has several advantages if it is set up properly and fully funded, meaning all the settlor's assets are placed in trust. These are listed below.

First, a fully funded trust can reduce or eliminate the need for probate upon the death of the settlor. While this is a significant reason in many states, Colorado's probate process is relatively simple and inexpensive.

Second, a Colorado resident who owns real property in another state can put that real estate into a living trust and thereby reduce or eliminate the need for probate in the other state. This is an especially important reason when the probate system in the other state is expensive and cumbersome.

Third, a living trust may avoid the need for a conservatorship for the settlor if he or she becomes legally disabled and the settlor has funded his or her trust. However, a living trust cannot avoid a guardianship proceeding, because the trustee of a living trust cannot make medical or care decisions for the settlor unless the trustee is the named agent for the settlor under a separate medical power of attorney. (See Chapter 24, "Medical Advance Directives," and Chapter 26, "Guardianship of Adults," for more information on guardianships and health care powers of attorney.)

Fourth, the terms of a living trust are generally private, unlike a will where the document is delivered to the court as part of the probate proceeding. For instance, many individuals may not want the "world" to know the terms of their distributions to their heirs, as would be the case with the use of a will deposited with a court.

Fifth, trusts are a good tool for tax planning. Some trusts are designed specifically to minimize federal estate tax. The terms of the trust dictate the distribution of the trust assets to utilize the currently effective estate tax exemption, or use the marital deduction to avoid any tax at the first spouse's death. There are also trusts that are designed to be funded with specific assets, like a residence or life insurance, that can create favorable tax consequences for the settlor and the beneficiaries.

Finally, trusts can be used to accomplish asset protection for individuals and their beneficiaries. Third-party asset protection trusts can be created for beneficiaries. This type of trust protects an inheritance from a beneficiary's creditors, a beneficiary's divorce, or a spendthrift beneficiary. First-party asset protection trusts can provide some creditor protection for individuals, but these trusts must be set up with a great deal of care, as there can be unfavorable consequences if they are set up incorrectly.

If the trust is not drafted correctly, significant harmful tax liabilities may occur. Generally, you should not try to create your own trust or purchase a preprinted living trust. Preparing and managing the living trust can be more expensive in Colorado than a will and probate. Initially, living trusts and wills with testamentary trusts are usually more expensive to prepare and manage than wills without trusts; however, the expense up front may save your estate future expenses.

Pet trusts have become increasingly popular as part of an estate plan. Often, people are concerned about the well-being and care of their pets after they die. One of the most famous pet trusts of recent history was Leona Helmsley's trust for her dog, Trouble. In her will, she established a \$12 million trust to benefit Trouble.

A pet trust can be established in either a will or a trust, and can benefit one pet or many pets. The idea behind a pet trust is to appoint a person or organization to care for your pet and establish a trust fund to finance the care of your pet. The trust will continue after your death until the pets pass away and the remaining funds, if any, will be distributed to a contingent beneficiary named in the trust. If you would like to establish a trust for a pet, you will need to work with an attorney to coordinate the pet trust with your estate plan.

Changing Your Will or Living Trust

A will or living trust that meets all of the requirements described earlier is valid until you revoke it. You may revoke either a will or a living trust at any time. A will or living trust that is valid in another state is also valid in Colorado, so simply moving to another state does not revoke a will or trust.

If you change your mind about a particular distribution of your property, or if circumstances force you to otherwise change your will or living trust, you can create a codicil to your will (a document amending your will) or a trust amendment to change your living trust. The codicil or trust amendment must be signed and witnessed with the same formalities as your original will or living trust. While a codicil or trust amendment provides you with a convenient method for making minor changes to your will or living trust, significant modifications may require redrafting the original document. You should never write on your will or living trust after it is executed. Such writing may not be legally effective and may invalidate the entire document. Always consult an attorney about how to change your will or living trust.

Power of Attorney

A power of attorney gives another person the legal authority to manage some or all of your financial affairs. A power of attorney is created when a person, called the principal, gives someone else, called the attorney in fact or agent, written permission to act on the principal's behalf. The attorney in fact does not have to be a lawyer and may be a spouse, relative, or friend.

A power of attorney can give the attorney in fact authority to manage most of the business that may otherwise require the principal's presence or signature. For example, if you are physically unable to go to the bank, you could give someone the power to deposit and withdraw money from your account. The principal also could create a limited power of attorney. This grants permission to the agent to perform only certain acts. In other situations, the principal could create a general power of attorney. This grants permission to the agent to handle all financial affairs.

A power of attorney does not take away the principal's rights to make his or her own decisions about financial matters. The principal can end the power of attorney at any time by simply telling the agent in writing. The principal should send copies of the termination notice to anyone with whom the agent may need to conduct business, such as the bank. A power of attorney ends automatically when the principal dies.

The principal must be mentally competent to grant a power of attorney. The power of attorney must be in writing and signed. It also should be notarized, but it does not need to be witnessed. If a power of attorney is used to transfer real property, it must be recorded in the Clerk and Recorder's Office in the county where the property is located.

In Colorado, the principal may state in the document that the power of attorney is durable. This means that it continues to be valid even if the principal becomes incapacitated. If no such statement is contained in the document, then the power of attorney stops being valid when the principal becomes incapacitated. If the principal has stated in the document when the power is to end, then the power will be effective only until the ending date. However, the principal may revoke the power of attorney at any time as long as he or she is not incapacitated. You should only give a power of attorney to someone you trust completely. (See Chapter 24, "Medical Advance Directives," for more information on the medical durable power of attorney.)

Transferring Ownership Interests of Real Property During Your Lifetime

Deeds

If you want to transfer your interest in real property, you must do so in writing. The document used to transfer your interest is called a deed. There are four types of deeds in Colorado:

- 1) General warranty deeds;
- 2) Special warranty deeds;
- 3) Bargain and sale deeds; and
- 4) Quit claim deeds.

A general warranty deed tells the person to whom the property is being sold or transferred that you are warranting the title and making other warranties about the property. A warranty means a representation as to the title of the property. This means you will guarantee the title except for any conditions specifically listed in the deed.

A special warranty deed is similar to a general warranty deed, but does not give all the warranties that a general warranty deed gives.

A bargain and sale deed transfers whatever title or interest you may have at the time of the transfer or later acquire. However, it does not give any warranty that your title is good.

A quit claim deed, on the other hand, only transfers whatever title you may have at the time of the transfer.

You must give the deed to the person receiving the property. A deed will not be effective if you fill it out, sign it, and keep it in the desk drawer or other place for safekeeping. If you want to give your real property to someone, you must complete the deed properly. You must sign the deed in front of a notary public. You must give the deed to the person you want to receive the property or you may record the deed in the Clerk and Recorder's Office in the county where the property is located. Once you give your property to someone else, it becomes theirs, and you cannot take it back.

There are a few practical matters you should know about completing a deed:

- ▶ The property legally must be described by lot and block numbers, if it is located in a subdivision.
- ▶ It must be described by metes and bounds or a sectional description if not in a subdivision. A tax lot number or street address is not enough.
- ▶ The deed must state what was given or paid, called consideration, for the property. If the property is a gift, the deed can say that the consideration is love and affection.
- ▶ Never sign a deed someone else has prepared for you, unless you know and understand the results.
- ▶ Once a deed has been received or delivered, it must be recorded with the county clerk and recorder where the property is located.

All deeds, mortgages, contracts, and other writings concerning ownership interests in real property should be recorded. This protects you and the person receiving the property. If you do not record a deed when you are purchasing property, the seller could sell the property again to

someone else and you would lose the property. An unrecorded deed also could create problems with transferring the property in the future, because upon selling the property one requirement is that you are the rightful owner. If you have not recorded the deed, then you are not the owner of record.

Funeral Issues

Your specific wishes for your own funeral arrangements are best done in writing. To avoid any problems, you should communicate your wishes to your family or loved ones in advance. If you leave the original of this writing in your safety deposit box, then you also should have a copy outside of the box and known to your family or loved ones. This is because the safety deposit box is very often not opened until after the funeral has been held.

Colorado law provides that you may execute a Declaration Instrument (Declaration) that gives your specific instructions for disposition of your last remains and your funeral arrangements. The Declaration needs to be in writing, dated, and signed by you. It can be inserted in your last will and testament, or it can simply be any separate writing making your Declaration as to your wishes. The Declaration also can be made within a prepaid funeral, burial, or cremation contract with the mortuary or crematorium. In the Declaration, you may specifically direct the arrangements for disposition of your remains and any ceremonial arrangements to be performed after your death. Or, you can direct that the person you name in the Declaration has the authority to make all those arrangements.

If you wish to provide for cremation, be sure your wishes are communicated to all of your family, and that your wishes are properly documented in your will or declaration. If not, and if any family member objects, the funeral home usually will not allow cremation.

As a pre-planning option, you may wish to make arrangements directly with a funeral home. However, it is very important to let a loved one know you have purchased a funeral and burial plan from a specific funeral home. This allows the loved one to carry out your wishes.

Generally, you may purchase a revocable (can be changed) or irrevocable (cannot be changed) funeral and burial plan. An advantage to an irrevocable funeral and burial plan is that it is an exempt asset if you are attempting to qualify for Medicaid.

If you decide to exercise a pre-planning option, be sure to read all of the documents carefully to confirm you are getting exactly what you paid for. It is very important to check for competitive rates. It also is very important to be sure there will not be any additional charges to your estate. The main reason for obtaining a prepaid funeral and burial plan is to pay all of the costs in advance.

If you are receiving state public assistance, such as financial aid payments, or medical assistance, such as Medicaid, you may be eligible to receive a limited contribution of state funds to assist with the expenses of the funeral, burial, or cremation.

To apply for assistance with funeral, burial, or cremation expenses, and to determine whether you are eligible for such assistance after your death, your family should contact the county Department of Social Services that was handling your case during your lifetime.

15A-4. Additional Information

General Advice

You should keep an up-to-date, itemized list of all your property and debts. This includes insurance policies, securities, bank accounts, real estate, jewelry and artwork, business interests, pension plans, IRAs, and other retirement benefits. You should keep this list with your other important documents, like your will, trust documents, and powers of attorney. You should record where you maintain a safe deposit box and where you keep your important documents. You also should list your current financial advisors, your attorney, and your accountant on a piece of paper and keep it with your list of property. Give a copy of this list to your personal representative, successor, trustee, relative, or friend you trust, and to your attorney or financial advisors. Giving people who will be involved with your estate administration a list of where your documents are kept will help them gather the appropriate information to uphold your wishes.

A letter regarding your funeral wishes and any prepaid arrangements should be given to whoever you think will be involved with your funeral, as this will ensure that your family will know your wishes.

Guardianship and Conservatorship Proceedings

Under certain circumstances, a guardian or conservator may need to be appointed for an individual (see Chapter 25, "Conservatorship of Adults," and Chapter 26, "Guardianship of Adults," for additional information).

15A-5. Resources

Colorado Bar Association Brochures

(303) 860-1115

www.cobar.org; Go to "For the Public," then find the list of brochures under "Brochures" on the right-hand side of the page.

Brochure titles include:

- ▶ What to Do When Someone Dies
- ▶ So Now You Are a Personal Representative
- ▶ So Now You Are a Conservator
- ▶ So Now You Are a Guardian
- ▶ So Now You Are a Trustee
- ▶ Wills in Colorado
- ▶ Living Trusts
- ▶ Estate Planning

Metro Volunteer Lawyers

An organization of the Denver Metro-area bar associations where lawyers volunteer to take certain categories of civil cases for indigent people. Intake for the cases is done by Colorado Legal Services.

Mailing address:

1905 Sherman St., Ste. 300

Denver, CO 80203

(303) 837-1313

www.denbar.org/mvl

Colorado Legal Services

For Denver, Adams, Arapahoe, Broomfield, Douglas, Elbert, and Jefferson counties, call (303) 837-1313. This will be answered by voice mail; please stay on the line for information.

(See Chapter 5 under "Resources," section 5-6, for other Legal Aid Offices.)

1905 Sherman St., Ste. 300

Denver, CO 80203

(303) 837-1313

www.coloradolegalservices.org

Colorado Department of Revenue

1375 Sherman St.

Denver, CO 80261

(303) 238-7378

<https://cdor.colorado.gov>

NAELA (National Academy of Elder Law Attorneys)

www.naela.org

Click on "Consumer Resources," then "Find a Lawyer" to find a NAELA attorney in your area.

ACTEC (American College of Trust and Estate Counsel)

www.actec.org

Click on "Find an ACTEC Lawyer" to find an ACTEC attorney in your area.

Chapter 15B

Making Provisions for the Care of Your Animals After Your Incapacity or Death

Bette Heller, Esq.
Bette Heller, P.C.

SYNOPSIS

- 15B-1. Overview of Handling Animals in an Estate Plan
 - 15B-2. Trusts for Animals
 - 15B-3. What About Incapacity?
 - 15B-4. Alternatives to Trusts
 - 15B-5. Tell Your Attorney What You Want
-

15B-1. Overview of Handling Animals in an Estate Plan

One of the most overlooked aspects of estate planning is making provision for animals should their owners become incapacitated or die.

Statistics show that a great majority of households contain pet animals, such as dogs and cats. In most cases, these pet animals are considered as part of the family. In addition, many people also own what are usually considered to be “farm animals”, such as horses, donkeys, goats, llamas, potbelly pigs, etc., which they also consider as their “pets”, but which are indeed “livestock” and regulated by the laws regarding livestock.

This section will discuss how to handle such pets and other animals in an estate plan.

15B-2. Trusts for Animals

Legal Concerns

A “Pets Trust” is a trust created for the care of a particular animal, or animals. In many states, these trusts are not valid because there is no beneficiary who can enforce its provisions and they violate the rule against perpetuities.

Colorado does honor “Pets Trusts”, and our statute, C.R.S. § 15-11-901 (2) and (3), is one of the best. It provides that a trust can be set up for the care of one or more designated animals

during their lifetime; and can also continue for the lifetimes of their offspring which are “in gestation” when the pets become present beneficiaries of the trust.

A Word of Caution

Since trusts can be created for the care of any type of animal, as long as it is not part of a business venture, it is helpful to call these “Animal Trusts” rather than “Pet Trusts.” As mentioned above, there are animals that some people consider their “pets”, which are really livestock. Calling these animals “pets” could eventually result in the loss of their livestock designation, which would in turn result in the loss of many protections that they currently have under the Department of Agriculture.

Trust Provisions

An “Animal Trust” can be included in a will or revocable living trust, to take effect upon your death. A charitable remainder trust can also be created if you are making a charity the remainder beneficiary after the death of the animal(s).

A trust for animals should specify the following provisions:

- ▶ Description of the animal(s) to be cared for.
- ▶ Who is to be the caregiver, and the successor caregiver.
- ▶ Who is to be the trustee, and the successor trustee.
- ▶ What types of things can be paid for by the trust:
 - Medical care;
 - Food and shelter;
 - Grooming;
 - Training;
 - Travel with the caregiver, etc.;
 - Descriptions can be very specific or left up to the trustee to decide.
- ▶ Whether both income and principal can be used for the care of the animal(s); or just income, leaving the principal for the remainder beneficiaries;
- ▶ Are capital gains to be considered income or principal?
- ▶ When will the trust end?
 - ▶ After a specific period of years, or
 - ▶ After the death of the animal(s).
- ▶ Who is to receive the remaining funds of the trust after the trust ends?
- ▶ Who is to receive the trust funds if the trust fails?

Miscellaneous

In Colorado, “Animal Trusts” are subject to the same rights and restrictions regarding administration that all other trusts are subject to, such as trust registration rules, accounting rules, and rules of fiduciary conduct.

Because the current beneficiary is an animal that does not pay income taxes, all income earned by an “Animal Trust” is considered to be accumulated in the trust and income taxes will be paid by the trust at the trust’s income tax bracket.

As specified above, laws vary from state to state:

- ▶ Special language should be included in the trust to try to make sure that the intent of the maker of the trust will be upheld, even if the trust is being administered in a state that does not recognize “Pets/ Animal Trusts”.
- ▶ If moving to another state, have legal documents reviewed by an attorney in that state.
- ▶ Also, there is always the possibility that the provisions for the care of animal(s) might be challenged by a disgruntled remainder beneficiary or heir of a decedent.

As with any other trust, if the language of the trust is ambiguous or misleading, the trustee may find him/herself in front of the court requesting an interpretation or involved in a contest regarding the administration of the trust funds. Therefore, it is important that the drafter try to consider all contingencies and draft clearly.

15B-3. What About Incapacity?

Provisions should also be made for the care of your animal(s) in case you become incapacitated and can no longer take care of them.

Provide in your durable power of attorney for finances that:

- ▶ Funds should be used for the care of your animal(s);
- ▶ Your attorney-in-fact can use the provisions for animal(s) which are contained in your will or trust, while you are incapacitated.

15B-4. Alternatives to Trusts

A trust is not always the best option for an individual. Each person’s situation should be analyzed based on:

- ▶ Amount of money available for the animal(s)’ care;
- ▶ Amount of money available to set up the trust before death;
- ▶ Whether there are people you can trust to take care of your animal(s) without the need of a trust.

Options other than a trust include:

- ▶ Outright cash bequest to the caregiver;
 - Bequest can be contingent upon the person actually taking custody of the animal(s);
 - There is no control over how the money is then used by the caregiver once he/she receives it.
- ▶ Arrange for family or friends to care for the animal(s);

- ▶ The Guardian program at the Denver Dumb Friends League which keeps the animal(s) in a foster home (not the kennels) until adoption occurs.

15B-5. Tell Your Attorney What You Want

If you want to provide for your animal(s), consult with your attorney so that the appropriate avenues can be explored. If your attorney is unfamiliar with the options mentioned here, suggest contacting us. We are happy to help, because it is really the animals that we are helping.

Chapter 16

Estate and Succession Planning for Farmers and Ranchers

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Attorney at Law

SYNOPSIS

- 16-1. Economic Background of Farm and Ranch Estate and Tax Planning
- 16-2. Property Ownership and Transfer
- 16-3. Choice of Business Entity
- 16-4. Estate Planning
- 16-5. Succession Planning
- 16-6. Conclusion

16-1. Economic Background of Farm and Ranch Estate and Tax Planning

Prior to the 1950s, farmers and ranchers in the United States were primarily concerned with upgrading farming practices to improve food and fiber production, often to provide food just for their own families. In the fairly agrarian society of the 1950s, the total U.S. population was about 150 million and farmers made up 12.2 percent of the labor force. One farmer supplied an agricultural food source for approximately 15.5 persons in the United States, and there were about 5.4 million farms in the country.¹ Since the 1950s, many new technologies, including

¹ *A History of American Agriculture, 1607-2000* (ERS-POST-12.) (Sept. 2000). Washington, D.C.: U.S. Department of Agriculture, Economic Research Service.

those developed within the framework of the land-grant universities,² became available to the American farmer and rancher and, as a result, farms and ranches began to grow in size. During these post-1950s decades of tremendous technological and productivity growth, farmers and ranchers invested greater capital into their agribusinesses. Farm acreage was consolidated into larger production units.³

In the 1970s, farmland values began to increase, accelerated throughout the decade, and reached record land prices in the early 1980s.⁴ In many cases, farmland and ranchland values more than doubled. Inflation became a major force for landowners to deal with, as speculators moved into the land markets trying to seek shelter or a “hedge” against the erosion of buying power due to an oversupply of dollars. Subsequent increases in land and other farm property values made many farmers and ranchers millionaires (however, most of their wealth was merely on paper, as they were in many cases land rich and cash poor). As our population became more concentrated in urban and suburban living centers, agrarian statistics changed significantly. In the 1990s, farmers accounted for 2.6 percent of the U.S. labor force, with only 2.1 million farms in existence. Farmers had become more productive, however: one farmer supplied a food source for approximately 100 persons.⁵

Although most farmers and ranchers enjoyed the benefits of inflation in their property values and their technologically enriched farm and ranch industries, this increase in success and wealth brought new concerns such as property ownership options, business entity selection, estate and retirement preparation, and succession planning. This chapter attempts to address some of the issues surrounding farm and ranch ownership and the special concerns relating to estate planning for the farmer and rancher. Any comprehensive estate, retirement, or succession plan will be influenced by the decisions made in these matters, and one should be attentive to the consequences of these choices.

16-2. Property Ownership and Transfer

Property may be owned by one person, two people, or multiple people concurrently. The two most common types of co-ownership for individuals are joint tenancy and tenancy-in-common. Agricultural land is also sometimes held by an entity, like a limited liability company or

²Land-grant universities (also called land-grant colleges or land-grant institutions) are institutions of higher education in the United States that have been designated by each state to receive the benefits of the Morrill Acts of 1862 and 1890. The Morrill Acts funded educational institutions by granting federally controlled land to the states. The mission of these institutions, as set forth in the 1862 Act, is to teach agriculture, military tactics, the mechanic arts, and home economics, not to the exclusion of classical studies, so that members of the working classes might obtain a practical college education. Land-grant universities maintain state cooperative extension offices throughout the country; thus, they are a tremendous resource for the agricultural community.

³In 1950, the average acres per farm was 216; in 1992, the average acres per farm was 461. In 1950, the number of U.S. irrigated acres was 25,634,869. In 1992, there were 49,404,000 irrigated acres.

⁴Farm income, grain prices, interest rates, return on other investments, and 1031 exchanges are often mentioned as reasons for the increase.

⁵*Supra*, n. 1. For comparison, in 2006, Colorado had 30,700 farms and ranches, with an average farm size of 1,000 acres. *High Plains Journal*, Dec. 10, 2007, Article 2007-50. In 2020, Colorado had 38,700 farms, with an average farm size of 822 acres. U.S. Dep’t Agric., Nat’l Agric. Stat. Service, Mountain Region, Colo. Field Office, *Colorado Agricultural Statistics 2020*, www.nass.usda.gov/Statistics_by_State/Colorado/Publications/Annual_Statistical_Bulletin/Bulletin2020.pdf.

a corporation. The entity selected may affect both the size of one's estate and the estate and gift tax consequences. The federal estate tax exemption limits (and future changes to these exemptions) and the values of estates should be considered when deciding how to hold property. Farmers and ranchers should be even more vigilant about these matters, due in great part to constantly shifting property values.

Joint Tenancy

In a joint tenancy, all co-owners are equally entitled to the use, enjoyment, control, and possession of the land, or its equivalent in rents and profits. Joint tenants are also responsible proportionally for their share of the land's expenses, such as taxes and fences. The best-known characteristic of joint tenancy is the right of survivorship. Upon the death of one joint tenant, the decedent's rights pass immediately to the surviving joint tenant(s). Death of a joint tenant does not affect title, as the title is vested equally in all joint tenants rather than individually. Many persons, particularly married couples, hold or own much of their property as joint tenants with the right of survivorship.⁶

When a joint tenant dies, the decedent's interest passes immediately and automatically to the surviving joint tenant(s) and does not go through probate.⁷ The property does not pass according to the property owner's will, nor does it descend to the property owner's heirs according to state law. The decedent's interest merely disappears, and the entire ownership remains in the hands of the surviving joint tenant(s). Generally, joint tenancy property passes free of the claims of unsecured creditors. Disadvantages or unintended consequences of joint tenancy may arise if marital difficulties occur, or if one of the parties has obligations or responsibilities (such as children) resulting from a previous marriage.

With regard to estate planning, the passing of jointly held property to a surviving spouse may not allow the decedent's federal tax exemption to be fully utilized. Since the property is simply passed on, it is not necessarily included in the value of the decedent's estate and therefore cannot have the exemption made against it. For this reason, many estate planning practitioners recommend against holding property in joint tenancy with rights of survivorship, especially for estates that approach or may potentially exceed the estate tax exemption.

Tenancy-in-Common

Tenancy-in-common is a way to hold an estate in land held by two or more persons. Unlike joint tenants, tenants-in-common may hold varying size interests, may take title at different times, and may receive their interests through different deeds. Also, each tenant-in-common is entitled to the undivided possession and use of the property, according to their proportionate share and subject to the rights of possession of the other tenants. Upon the death of a tenant-in-common, there is no right of survivorship, and probate proceedings may be necessary. Each decedent's interest passes according to his or her will or the state law of descent and distribution.

Farmers or ranchers must look at their overall estate plan to determine if the real and personal property they own is held appropriately to permit all allowable tax advantages. Professional advisors will assist in this determination and should be utilized for estate planning purposes as well as property acquisition opportunities.

⁶C.R.S. §§ 38-11-101, *et seq.*

⁷ An exception occurs when both or all of the joint tenants are involved in simultaneous deaths. The property now goes through probate because there is no surviving joint tenant.

16-3. Choice of Business Entity

Businesses, including ranches and farms, can be structured in a variety of ways. While sole proprietorship may work for the size of your farm or ranch, it may be advantageous to select a more complex form of business entity. Reduction of taxes, limiting liability, raising capital, expanding operations, bringing a family member or other person into your operations — these are just some of the objectives a business owner must consider when determining how the business is best owned. The possible forms of doing business are numerous.⁸ The four most basic forms are sole proprietorship, general partnership, corporation (C and S varieties), and limited liability company. Consultation with a professional advisor is crucial to provide help with entity selection.

Sole Proprietorship

Simply put, a sole proprietorship is defined as going into business for oneself. The business is not distinct from one's personal tax and liability concerns. No state registration is required, and the business owner has total control over his or her business operations. When the sole proprietor dies, the business is terminated, without need for formal documentation or procedure. The sole proprietor reports all business income and losses on his or her individual tax return.⁹ The largest drawbacks are that the business owner has no shield from liability and personal non-business assets can be sought after to settle debts of the business.

Partnership

Like a sole proprietorship, a partnership requires no formal creation documentation.¹⁰ A partnership begins when two or more people start doing business together. Partners are responsible for each other's actions, business debt, and obligations, including court judgments, jointly and severally. A partnership does not pay taxes on profits. The Internal Revenue Service (IRS) considers partnerships to be "pass-through" or "flow-through" entities: the income or losses from the business flow through to the individual partners, who then report those items on their individual tax returns. The partnership is required to file an annual Form 1065, which provides information on the entity to the IRS, and each partner attaches Schedule K-1 to his or her Form 1040, setting out each partner's share of profits and losses.

Limited Partnerships

Limited partnerships are another type of entity that can be created under Colorado law. Limited partnerships include at least one general partner who operates the business and one or more limited partners who contribute investment capital but do not participate in day-to-day management. Liability for limited partners can be limited, but general partners retain unlimited liability. One of the benefits of the limited partnership is that individuals may invest capital without becoming involved in management.

⁸ For example, limited partnerships, registered limited liability partnerships, joint ventures, business trusts, and others.

⁹ There is a separate Schedule F for farms and ranches, but this is part of the individual's Form 1040.

¹⁰ A partnership agreement, however, is highly recommended. In the absence of an agreement, there are state statutes that govern partnership relationships, which may not coincide with your own intentions. Uniform Partnership Law, C.R.S. §§ 7-60-101, *et seq.*

Limited partnerships can be taxed like corporations. Limited partnerships are less common than limited liability companies, but they are still useful entities for family businesses, where estate taxes are often a factor for one or more of the generations involved.

Corporations

A corporation is a legal entity, separate from its owners and managers. It is created by state statute with the filing of articles of incorporation with the Colorado Secretary of State and is governed by the laws of Colorado.¹¹ A corporation may either be a “C” corporation or an “S” corporation. All corporations are C corporations unless they elect to be treated by the IRS as an S variety. The election is solely a federal income tax matter; under state law, the election of C or S status makes no difference.

The biggest advantage of conducting business as a corporation is the aspect of limited liability or “corporate shield.” This can protect business owners and shareholders from personal liability for corporate debts and obligations so that only corporate assets are used to pay corporate debts. To maintain this shield, the corporation must conduct itself separately from the personal affairs of its owners. There must be corporate formalities, such as adequate funding for the corporation, maintaining separate books and records and bank accounts, no commingling of personal and corporate assets (unless the assets can be documented as investments to fund the corporation), holding regular meetings of the shareholders and directors, formally issuing stock, and others.

A corporation is the only type of business that must pay its own income taxes on profits. However, any justifiable business cost can be deducted as an expense. Net corporate income is taxed to the corporation even if it is retained as earnings or paid out as dividends to its shareholders. Corporations have favorable tax treatment in the form of lower rates, but shareholder dividends may face double taxation, being taxed once at the corporate tax rate and again as ordinary income to the shareholder (however, corporate losses do not flow through to be taken by the shareholders).

S corporations are a hybrid form of entity, combining the legal characteristics of a C corporation and the tax treatments of a partnership. In this type of corporation, with few exceptions, the business profits, losses, credits, and deductions pass through the corporation to the owners, who report them on their own Form 1040 returns. There are no taxes owed at the entity level, and profits and losses are proportionately allocated based on the ownership interest of the shareholders. Closely held family businesses like farms and ranches are often S corporations.

Limited Liability Company (LLC)

S corporations and limited partnerships have been increasingly replaced as the entity of choice by the LLC.¹² In an LLC, members can retain their limited personal liability while still performing the business affairs of the company. LLCs do not require the formal management of a corporation, but members still should be careful to shield the LLC from liability by keeping separate books, records, and bank accounts and keeping the LLC adequately funded. Best practices would dictate drafting an operating agreement also (similar to corporate bylaws). LLCs can be taxed like partnerships, meaning flow-through of profits and losses to the members. Single-owner LLCs are treated as sole proprietorships by the IRS and do not file a separate return. When there is a single

¹¹ Colorado Corporations and Associations Act, C.R.S. §§ 7-90-101, *et seq.*

¹² See the Colorado Limited Liability Company Act at C.R.S. §§ 7-80-101, *et seq.*

owner, the single owner reports all income and losses on Schedule C of his or her Form 1040. Like a partnership, a multiple-member LLC is required to file an informational tax return, Form 1065, and provide each member with a Schedule K-1 to report his or her share of profits and losses.

Overall, the LLC provides simplicity and flexibility and the pass-through feature could help save on taxes (although a C corporation and its shareholders are subject to double taxation on the gain from a sale of land, if ever any farm/ranch property must be sold). If your plan is to include multiple shareholders and/or investors in your business operations, or if you have employees to whom you offer benefits, a corporation might work best: a corporation can deduct the cost of health insurance premiums, reimbursement of medical expenses, etc., but in an LLC, only a portion of these types of expenses can be deducted.

Every farmer and rancher will have different objectives to meet when selecting the entity by which he or she wants to conduct business. If employees are working in a farm or ranch operation, it makes good sense to protect one's personal assets in the event of an accident or death by structuring the business as a corporation or limited liability company. Only a simple and very small farm or ranch operation might work well as a sole proprietorship or partnership. Consultation with a professional advisor will assist one in determining the appropriate entity to use.

16-4. Estate Planning

The fundamentals of estate planning are really no different for farmers and ranchers than they are for individuals in the non-farm and ranch world. However, retirement and succession planning perhaps have special significance in that farm and ranch households are often affected by savings and retirement policies in ways that are different from other households. For example, farm operators are typically older than the majority of the U.S. workforce. Healthcare, medical improvements, and technological advances in farming equipment and techniques have all contributed to this phenomenon, not to mention that farming is becoming popular as a part-time, retirement activity.

In addition to the issue of age, farmers and ranchers often have several income sources and different forms of wealth and savings habits as compared to the general population. Increased personal savings, land and equipment holdings, contributions through self-employment taxes, off-farm income,¹³ and less reliance on Social Security — all of these factors contribute to a different setting for farmers and ranchers and their retirement and estate planning.

Getting Started

Part of estate planning includes organizing and assessing assets. Doing so might include the following tasks:

- ▶ Create and maintain an up-to-date, itemized list of all assets and debts, including, but not limited to, insurance policies, securities, bank accounts, real estate (farm and

¹³ Off-farm income — outside business interests, wages, salaries, interest and dividends, pensions, annuities, military retirement, unemployment, Social Security, veterans' benefits, other public retirement and public assistance programs, and rental income from non-farm properties — can account for up to 90 percent of total farm household income. See *Structure and Finances of U.S. Farms: Family Farm Report, 2014 Edition – Economic Information Bulletin No. (EIB-132)* (December 2014).

other), farm and recreational equipment, jewelry and artwork, business interests, pension plans, IRAs, and other retirement benefits.

- ▶ Consult with appropriate advisors to begin creating a will or trust or maintain existing documents. Appropriate advisors may include an estate planning attorney, CPA, and financial advisor. Estate planning will include managing your asset base and tax (income, gift, and estate) considerations. Maintain a written list of your current financial advisors, attorney, and accountant, and keep it with your list of assets. Give a copy of this list to your personal representative, successor trustee, relative, or friend you trust, and to your attorney or financial advisors.
- ▶ Draft estate planning documents, including a health care power of attorney, financial power of attorney, declaration of disposition of last remains, and advance directive to physicians. Consider sharing appropriate documents with health care providers.
- ▶ Create a viable estate-management plan, considering the exemption limits for passing along assets free of transfer taxes. The federal estate tax exclusion is now set at \$10,000,000 for an individual, indexed for inflation, so the 2023 exclusion is \$12,920,000. This increased amount is set to sunset after the year 2025, when the federal estate tax exclusion will go back to \$5,000,000 for an individual, as adjusted for inflation. Public Law 115-97.
 - The federal gift and generation-skipping transfer tax exemption is the same as the estate tax exclusion. The top federal estate tax rate is approximately 40 percent on the largest estates. Transfers from one spouse to the other are typically tax-free.
 - Coordinate the marital deduction and the estate tax credit. Simply leaving everything to your spouse is not always the best estate planning, especially if your combined estates exceed the limits of a single tax credit. Remember that each spouse is entitled to the estate tax exemption, and all efforts should be made so that both spouses are allowed to take their credit, if needed. When assets pass directly to a surviving spouse (such as when assets are held in joint tenancy with rights of survivorship), then one decedent's estate may not get the benefit of the exemption and it is therefore wasted if the estate assets are subject to the exemption amount (\$12,920,000 in 2023, adjusted yearly for inflation). The unlimited marital deduction (property passing to surviving spouse without any estate tax) can be used in coordination with both estate tax credits to ensure that as much property passes to heirs and the surviving spouse as possible without imposition of any estate taxes.¹⁴

¹⁴ Over the years, a number of provisions have been enacted to reduce the burden of the estate tax on farms and small business owners. These include a special provision that allows farm real estate to be valued at farm-use value rather than its fair market value, an installment payment provision, and a special deduction for family-owned business interests. A provision encouraging farmers and other landowners to donate an easement or other restriction on development has provided the possibility of additional tax savings. Along with overall higher estate tax exemptions, these provisions have reduced the potential impact of estate taxes on the transfer of a farm or other small business to the next generation. See "Federal Estate Taxes Affecting Fewer Farmers but the Future is Uncertain: Special Provisions," *Amber Waves* (June 2009). Based on simulations using farm-level survey data from a 2019 Agricultural Resource Management Survey (ARMS), in 2020, only about .6 percent of farm estates would be required to file an estate tax return, with a much smaller share of estates (about .16 percent) owing any federal estate tax. U.S. Dep't Agric., Economic Research Service, Federal Estate Taxes (March 8, 2021), www.ers.usda.gov/topics/farm-economy/federal-tax-issues/federal-estate-taxes.

- The American Taxpayer Relief Act of 2012 made portability permanent. “Portability” means that the federal estate tax exclusion amount is “portable” between spouses, so that when one spouse dies, the surviving spouse can typically use the other spouse’s unused exemption amount without having to set up trusts or utilize other tax-saving conventions. However, portability is not automatic, and the trouble and expense of a timely filed IRS Form 706 estate tax return is required upon the death of the first spouse in order to utilize portability.
- ▶ Keep in mind the special-use valuation tax election available to farmers and ranchers under I.R.C. § 2032A. This provision allows an estate administrator to value real property according to its actual use, rather than its highest or best use. Allowing valuation at its actual use can result in a lower estate value, thus potentially lowering taxes. The 2023 special use valuation limit is \$1,310,000.¹⁵
- ▶ Obtain accurate values for your assets from qualified appraisal agents. Assets to be valued include real estate, farm equipment, machinery and other inventory, homesteads, vehicles, supplies, livestock, and any other tangible assets with value.
- ▶ If you own real property in multiple states, you need an estate plan that contemplates asset ownership in each state. For example, an estate with ranch land in Colorado and Nebraska may require probate proceedings in each state to transfer or convey that property to heirs. In this situation, a trust is often the best tool: probate can be minimized, and the trustee can more easily dispose of or manage multiple-state real estate.
- ▶ Record whether and where you maintain a safe deposit box and where you keep your important documents.
- ▶ Provide instructions regarding your funeral wishes and any prepaid funeral plans to whoever will be involved in making arrangements.
- ▶ Consider charitable transfers to accomplish estate planning goals, whether they be a charitable remainder trust, a charitable lead trust, a charitable gift annuity, or outright gifts to charities and family members. See Chapter 18.

Some Estate Planning Transfer and Tax Reduction Strategies

Conservation Easements

A conservation easement is a restriction or encumbrance placed on real property that protects the property from certain types of development, often preserving the environmental and open-space values of the land. It is a legally enforceable land-preservation agreement between a landholder and either a governmental agency (a municipality, county, state, or federal entity) or a qualified not-for-profit land trust organization. Conservation easements are voluntary and allow the landowner to continue to privately own and manage the land and potentially receive

¹⁵ To qualify for the I.R.C. § 2032A limit, (1) the net value of the business property must be at least 50 percent of the decedent’s gross estate and at least 25 percent of the decedent’s adjusted gross estate (the gross estate reduced by certain deductible debts, expenses, claims, and losses); (2) the decedent must have transferred the business to specified close family relatives; and (3) the decedent or family members must have used the qualifying property for five of the eight years prior to the decedent’s death. Qualified heirs must use the farm or business property for 10 years after the decedent owner’s death.

significant state and federal tax advantages by donating the conservation easement. Perhaps of even greater value to a farmer or rancher, by creating this type of environmentally friendly restriction, they have contributed to the public good by preserving the conservation values associated with their land for future generations.

To gain tax advantages from granting a qualified conservation easement on their land, farmers and ranchers must obtain a written appraisal report of the value of the easement. The value described in the appraisal is the fair market difference between the land's value before the easement was granted and the value after the restriction is placed. The amount of the difference is the easement value allowed to the landowner. The value of the corresponding tax credit is based on the appraised value of the conservation easement.¹⁶ In Colorado, the credit is quite generous: if donated on or after January 1, 2021, then 90 percent of the fair market value of the donated portion of the conservation easement in gross when created, with an overall cap of \$5,000,000 per donation.¹⁷

In addition to the state tax credit, those who donate a qualifying conservation easement to a qualified land-protection organization under the regulations set forth in I.R.C. § 170(h) may be eligible for a federal income tax charitable deduction equal to the value of their donation. To qualify for this income tax deduction, the easement must (a) be perpetual, (b) be held by a qualified governmental or nonprofit organization, and (c) serve a valid conservation purpose. To serve a valid conservation purpose, the property must have an appreciable natural, scenic, historic, scientific, recreational, or open space value.

Another beneficial aspect of the Colorado law is that donors of conservation easements may transfer or sell their tax credits to other Colorado taxpayers and receive cash for the credits. Not only does this help landowners who do not have enough income to utilize the credits, but it provides cash flow.

The Colorado Conservation Easement Tax Credit Program has recently been scrutinized by the Colorado Department of Revenue and the Internal Revenue Service. At least 14 other states have similar programs, but Colorado's generous tax credits, and especially the ability to sell or transfer those credits, concerns the tax regulatory agencies.¹⁸ The State of Colorado created an Oversight Commission¹⁹ to review conservation easement applications and appraisals of

¹⁶ See C.R.S. § 39-22-522.

¹⁷ For example, assume that a farmer has real estate valued at \$800,000. The farmer places a conservation easement on the property, restricting it to perpetual agricultural use and now the property is worth \$600,000 as a result of this encumbrance. The farmer has "reduced" the value of his property by \$200,000 and therefore his donation value is \$180,000. The amount of the tax credit for this donation is \$180,000 (90 percent of its fair market value).

¹⁸ Beginning in 2014 and each year thereafter, the cap is \$45 million pursuant to C.R.S. § 39-22-522(2.5). The Division of Real Estate administers the cap by issuing tax credit certificates to landowners that submit an application. Approved applications submitted after the cap is reached are placed on a \$15 million wait list for the next applicable year pursuant to C.R.S. § 39-22-522(2.5). The Department of Revenue will not allow a tax credit claim unless a tax credit certificate is first issued by the Division of Real Estate.

¹⁹ See C.R.S. § 12-15-103.

the easements.²⁰ Anyone considering granting a conservation easement should consult with a specialized attorney to determine the current legal status of these types of encumbrances.

Installment Sales

When selling real property and receiving one or more payments in subsequent years, the taxpayer may report the sale as an installment sale. This allows the taxpayer to defer the recognition of gain over many years and save on taxes.²¹ Under federal income tax law, a farmer who sells development rights to his or her land and receives payment for the sale in installments would be taxed each year only on the capital gain from the sale he or she receives during that tax year. The farmer would not be required to pay taxes on the full capital gain in the sale year, although the farmer could elect to do so if he or she wished, even if he or she is receiving payment in installments.

The installment land contract (ILC) is also a method of effecting a sale. An ILC is a contract for delayed delivery of a deed providing for periodic payments over a term of years, similar to a promissory note. It is distinguished from the typical real estate buy-sell contract in that the buy-sell contract does not usually contain provisions for installment payments. The ILC is merely intended to hold the deal for a short period until the condition of title is completed and title is delivered to the buyer. Installment land contracts are more prevalent during periods of “tight” money or when a property is difficult to finance conventionally. Oftentimes a person with little or no cash for a down payment will be permitted to take possession of property under an installment land contract providing for monthly payments to the seller. The seller will still hold “legal” title, and the buyer will possess “equitable” title. Farmers and ranchers with equitable title can still use the property as needed as long as the conditions to complete the final purchase are met.

16-5. Succession Planning

Succession planning is a continuous process to transfer knowledge, skills, labor, management, control, and ownership between the generations. Decisions regarding ownership of assets; choice of business entity; and estate, retirement, and tax planning are all part of the overall plan for succession. Successful farm and ranch generational transfers depend in great part on the financial aspects of the farm or ranch operations, as well as the personal aspects. So many factors come into play when handing down a business — expectations and goals of both older and younger generations can be similar or quite different. As with any business transaction, open communication is essential and sharing these expectations and goals is crucial to a successful transition.

Surveys provide some alarming statistics. Only 1 percent of family-owned farm and ranch businesses in North America are transferred to a third generation. Another report shows that 30 percent of all family-owned farm and ranch businesses have not considered a successor, with only 63 percent having done so after the owner has reached age 65. Another recent survey shows

²⁰ In 2008, Colorado’s Appraiser statutes were amended by the passage of HB 08-1353, the Conservation Easement Bill, to prevent abuses of the state’s land preservation tax credit program. This legislation created a nine-member Conservation Easement Oversight Commission, appointed by the governor, that meets at least quarterly to review applications for conservation easement holder certification and to review any other issues referred to the commission by any state agency.

²¹ See 26 U.S.C. § 453.

that more than 58 percent of farm and ranch business owners list inadequate succession planning as the biggest threat facing their business.²²

Handing It All Down

As difficult as it may be, it is important to envision the day when you will no longer be in charge of your farm or ranch. You could leave your heirs and your business vulnerable to considerable estate taxes and management upheaval if a succession plan is not created. Even though estate taxes are historically blamed for the “loss” of the family farm, it is as often a case of ignoring the problem or failing to use the financial and legal tools that are available.

Typically, succession planning entails several steps: (1) determining the practicality of transferring your business (*i.e.*, are your farm or ranch operations sufficiently viable for this transfer to make sense?); (2) choosing a successor (is there a family member, friend, or employee who is willing to succeed into your responsibilities and take on the new ownership role and responsibility?); (3) beginning the transfer of ownership and management to the successor; and (4) finalizing the transfer of ownership and management responsibilities to the successor. Typically, the process of succession planning is stretched out over several years, as a moderately paced transition provides the best environment for the bottom line and overall stability of the operations.

Experts in the field of succession planning suggest using these best practices:

- ▶ Set a target date for your last day as primary decision-maker on the farm or ranch, and start shifting responsibilities ahead of time. You want to be able to oversee the transition while you are still living.
- ▶ Assist in the development, training, and education of your successors along the way and keep them fully informed of your work. Schedule regular meetings to review finances (including debt and revenue updates and forecasts), workload expectations and schedules, employee issues, important non-farming topics, and equipment and supply, to name a few.
- ▶ Work with professional advisors to complete any transfer of assets and debt restructuring, review and modify (if necessary) existing business structures, and review or finalize any other legal and financial transfer requirements. Consider having a buy-out agreement in place if multiple successors are involved.
- ▶ Set goals and expectations that take into consideration the needs of your successor, including family time, lifestyle, work habits, and the successor’s expectations and goals.
- ▶ Decide with your successor whether to offer an incentive to retain key employees during and after the transition.
- ▶ Consider off-farm family members’ needs and expectations. Provide for buying out a family member’s interest, if necessary (*e.g.*, sons or daughters who are not on the farm or ranch, but with whom you wish to share your estate). Accommodating the conflicting interests of the on-farm and off-farm adult children can often be the difference between a successful or unsuccessful transfer of the farm or ranch.

²² *Amber Waves* (April 9, 2013), a publication of the U.S. Department of Agriculture, Economic Research Service. For additional economic research, see www.ers.usda.gov/publications.

- ▶ Review the asset protection and liability insurance needs of your business operations.

Some Additional Tax-Saving Devices

Trusts

Trusts can be extremely helpful tools to use during estate and succession planning. They can be valuable in administering the orderly transfer of assets and management to heirs. Trusts, including charitable trusts, may be used to shelter capital gains tax and provide greater cash flow for the retirees that in some cases may be used in wealth replacement strategies. Trustees can add valuable assistance as an objective third party to issues that arise within families during and after succession transition. Goals of trust creation can be numerous: replacing wealth, providing for a special-needs beneficiary and/or minor children, avoiding probate (especially if real property is owned in more than one state), providing for a beneficiary or spouse without financial management skills, keeping your estate private, protecting assets, organizing business assets into one vehicle, and allowing for flexible distribution of assets, among others.

Charitable trusts might work well for your estate and succession plans as well. Charitable trusts can achieve multiple goals, including removing assets from large estates, providing an income stream to you or other beneficiaries with the remainder left to a charity of your choice, fulfilling your philanthropic goals and desires, passing along assets to heirs with reduced transfer costs, potentially providing you with a significant charitable deduction for the value of assets transferred into a charitable trust, establishing a means by which you can create a philanthropic legacy or family foundation, and passing along your values to your heirs. When properly set up, a charitable lead trust allows you to transfer income-producing assets into this type of trust, which provides an income for the charity for a term of years, with the remaining assets in the trust transferred free of estate, generation-skipping, and other transfer taxes to children or grandchildren.

Gifts

In 2023, the limit for tax-free gifting is \$17,000 per person per year or \$34,000 for spouses combined. Using this annual gift tax exemption can be particularly important in cases where the value of the estate of a farmer and/or rancher exceeds the estate tax applicable exclusion amount available to both spouses. These gifts can serve several purposes: perhaps providing “early” inheritance to those non-farm family members, establishing educational trusts for grandchildren, funding a wealth-replacement trust, creating an irrevocable life insurance trust, and more.

16-6. Conclusion

A good estate and succession plan can save farm and ranch families hundreds of thousands of dollars in estate taxes, income taxes, and administrative costs. Many farmers and ranchers wait too long to begin their financial, business, and estate plans, to the detriment of their families. Some of the concepts discussed above may not apply to your farm or ranch operations, but they are typical of issues facing all business owners in today’s world, including agribusiness owners. We intended this chapter to provide an overview of the many business issues facing the farmer and rancher, knowing before we started that we could not address them all adequately. Our hope is that it will give you thoughts and ideas to take to your professional

advisors and develop an estate or succession plan that meets all of your and your family's needs, goals, and expectations. Peace of mind is a wonderful thing.

* With special thanks to William M. Sheets and Stacie Kelly, Esq., for their invaluable writing and research contributions to this chapter.

The Office of Gift Planning at CSU cultivates, designs, facilitates, and stewards planned gifts to the University, and works with donors who contribute non-cash gifts (appreciated stocks, real estate, etc.). In our efforts, we use a variety of financial tools and techniques for giving, including bequests, charitable gift annuities, charitable remainder trusts, and charitable lead trusts. All planned gifts require the assistance of one or more qualified specialists: an attorney, certified public accountant, estate planning specialist, trust officer, and/or an insurance agent can be involved as we work with donors to accomplish their charitable goals.

In addition, we provide education to our donors through marketing and outreach efforts that include advertisements, publications, brochures, website information, e-newsletters, public speaking presentations, and the like. We consider it absolutely essential to make our office a resource for folks who are contemplating a deferred gift or have any questions concerning their estate planning goals. Additionally, we supply technical expertise to our colleagues in the development staff and work closely with them if they have a donor who is considering a planned gift.

Chapter 17

Annuities*

SYNOPSIS

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 - 17-2. Types of Annuities
 - 17-3. Regulation of Annuities
 - 17-4. How Variable Annuities Work
 - 17-5. Questions to Ask Before Investing
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Variable annuities have become a part of the retirement and investment plans of many Americans. This chapter provides a general description of annuities, with special focus on variable annuities, including what they are, how they work, and the charges you will pay. Before buying any variable annuity, however, you should find out about the particular annuity you are considering. Request a prospectus from the insurance company or from your financial professional, and read it carefully. The prospectus contains important information about the annuity contract, including fees and charges, investment options, death benefits, and annuity payout options. Additionally, you should compare the benefits and costs of the annuity to other variable annuities and to other types of investments, such as mutual funds. Moreover, be prepared to ask your insurance agent, broker, financial planner, or other financial professional lots of questions about whether a variable annuity is right for you.

17-1. What Is an Annuity?

An annuity is a contract between you and an insurance company under which you make a lump-sum payment or series of payments. In return, the insurer agrees to make periodic payments to you beginning immediately or at some future date. Annuities typically offer tax-deferred growth of earnings and may include a death benefit that will pay your beneficiary a guaranteed minimum amount, such as your total purchase payments.

17-2. Types of Annuities

There are generally two types of annuities: fixed and variable. In a **fixed annuity**, the insurance company guarantees that you will earn a minimum rate of interest specified in the annuity contract during the time that your account is growing. The insurance company also guarantees that the periodic payments will be a guaranteed amount per dollar in your account. These periodic payments may last for a definite period, such as 20 years, or an indefinite period, such as your lifetime or the lifetime of you and your spouse.

In a **variable annuity**, by contrast, you can choose to invest your purchase payments from among a range of different investment options, typically mutual funds. You may direct allocations of your money into separate accounts. The rate of return on your purchase payments, and the amount of the periodic payments you will eventually receive, will vary depending on the performance of the investment options you have selected.

Variable annuities differ from mutual funds in several important ways, such as:

- ▶ Variable annuities let you receive periodic payments for the rest of your life (or the life of your spouse or any other person you designate). This feature offers protection against the possibility that, after you retire, you will outlive your assets.
- ▶ Variable annuities have a death benefit. If you die before the insurer has started making payments to you, your beneficiary is guaranteed to receive a specified amount — typically at least the amount of your purchase payments. Your beneficiary will get a benefit from this feature if, at the time of your death, your account value is less than the guaranteed amount.
- ▶ Variable annuities are tax deferred. This means you pay no taxes on the income and investment gains from your annuity until you withdraw your money. You may also transfer your money from one investment option to another within a variable annuity without paying tax at the time of the transfer. When you take your money out of a variable annuity, however, you will be taxed on the earnings at ordinary income tax rates rather than lower capital gains rates. In general, the benefits of tax deferral will outweigh the costs of a variable annuity only if you hold it as a long-term investment to meet retirement and other long-range goals.

An **equity-indexed annuity** is a special type of annuity. During the accumulation period — when you make either a lump-sum payment or a series of payments — the insurance company credits you with a return that is based on changes in an equity index, such as the S&P 500 Composite Stock Price Index. The insurance company typically guarantees a minimum return, but guaranteed minimum return rates vary. After the accumulation period, the insurance company will make periodic payments to you under the terms of your contract, unless you choose to receive your contract value in a lump sum.

17-3. Regulation of Annuities

Fixed annuities are not securities and are not regulated by the Securities and Exchange Commission (SEC). Check with the Colorado Division of Insurance regarding regulation of fixed annuities (see section 17-6, “Resources,” for more information). Variable annuities are securities regulated by the SEC. Equity-indexed annuities combine features of traditional insurance products (guaranteed minimum return) and traditional securities (return linked to equity markets). Depending on the mix of features, an equity-indexed annuity may or may not be a security. Currently, the typical equity-indexed annuity is registered with the state insurance commissions, and is not registered with the SEC.

17-4. How Variable Annuities Work

A variable annuity has two phases: an **accumulation phase** and a **payout phase**. During the **accumulation phase**, you make purchase payments, which you can allocate to a number of investment options. For example, you could designate 40 percent of your purchase payments to a bond fund, 40 percent to a U.S. stock fund, and 20 percent to an international stock fund. The money you have allocated to each mutual fund investment option will increase or decrease over time, depending on the fund’s performance. In addition, variable annuities often allow you to allocate part of your purchase payments to a fixed account. A fixed account, unlike a mutual fund, pays a fixed rate of interest. The insurance company may reset this interest rate periodically, but it will usually provide a guaranteed minimum (*e.g.*, 3 percent per year).

During the accumulation phase, you can typically transfer your money from one investment option to another without paying tax on your investment income and gains, although you may be charged by the insurance company for transfers. If you withdraw money from your account during the early years of the accumulation phase, however, you may have to pay “surrender charges,” which are discussed below. In addition, you may have to pay a 10 percent federal tax penalty if you withdraw money before the age of 59½.

Tip: Your most important source of information about a variable annuity’s investment options is the prospectus. Request the prospectuses for the mutual fund investment options. Read them carefully before you allocate your purchase payments among the investment options offered. You should consider a variety of factors with respect to each fund option, including the fund’s investment objectives and policies, management fees and other expenses that the fund charges, the risks and volatility of the fund, and whether the fund contributes to the diversification of your overall investment portfolio. The SEC’s online publication, *Mutual Fund Investing: Look at More Than a Fund’s Past Performance*, provides information about these factors. Another SEC online publication, *Invest Wisely: An Introduction to Mutual Funds*, provides general information about the types of mutual funds and the expenses they charge. (See section 17-6, “Resources,” for a link to the SEC’s website.)

At the beginning of the **payout phase**, you may receive your purchase payments plus investment income and gains (if any) as a lump-sum payment, or you may choose to receive them as a stream of payments at regular intervals (generally monthly). The choice regarding how you receive payments is called a **settlement option**. Moreover, the **maturity date** is the latest date on which you can begin receiving payments from your annuity under any of the settlement options

available to you. The date shown on the **specifications page** of your contract is automatically set as the date when you *must* begin receiving payments from your contract.

If you choose to receive a stream of payments, you may have a number of choices of how long the payments will last. As mentioned above, under most annuity contracts, you can choose to have your annuity payments last for a period that you set (such as 20 years) or for an indefinite period (such as your lifetime or the lifetime of you and your spouse or other beneficiary). During the payout phase, your annuity contract may permit you to choose between receiving payments that are fixed in amount or payments that vary based on the performance of mutual fund investment options.

The amount of each periodic payment will depend, in part, on the time period that you select for receiving payments. Be aware that some annuities do not allow you to withdraw money from your account once you have started receiving regular annuity payments.

In addition, some annuity contracts are structured as **immediate annuities**, which means that there is no accumulation phase and you will start receiving annuity payments right after you purchase the annuity.

Caution: Withdrawals prior to age 59½ may be subject to 10 percent federal tax penalties.

The Death Benefit and Other Features

A common feature of variable annuities is the **death benefit**. If you die, a person you select as a beneficiary (such as your spouse or child) will receive the greater of (1) all the money in your account, or (2) some guaranteed minimum (such as all purchase payments minus prior withdrawals).

Some variable annuities allow you to choose a “stepped-up” death benefit. Under this feature, your guaranteed minimum death benefit may be based on a greater amount than purchase payments minus withdrawals. For example, the guaranteed minimum might be your account value as of a specified date, which may be greater than purchase payments minus withdrawals if the underlying investment options have performed well. The purpose of a stepped-up death benefit is to “lock in” your investment performance and prevent a later decline in the value of your account from eroding the amount that you expect to leave to your heirs. This feature carries a charge, however, that will reduce your account value.

Variable annuities sometimes offer other optional features, which also have extra charges. One common feature, the **guaranteed minimum income benefit**, guarantees a particular minimum level of annuity payments, even if you do not have enough money in your account (perhaps because of investment losses) to support that level of payments. Other features may include **long-term care insurance**, which pays for home health care or nursing home care if you become seriously ill.

Caution: You will pay for each benefit provided by your variable annuity. Be sure you understand the charges. Carefully consider whether you need the benefit. If you do, consider whether you can buy the benefit more cheaply as part of the variable annuity or separately (*e.g.*, through a long-term care insurance policy).

Tip: You may want to consider the financial strength of the insurance company that sponsors any variable annuity you are considering buying. This can affect

the company's ability to pay any benefits that are greater than the value of your account in mutual fund investment options, such as a death benefit, guaranteed minimum income benefit, long-term care benefit, or amounts you have allocated to a fixed account investment option.

Variable Annuity Charges

You will pay several charges when you invest in a variable annuity. Be sure you understand all the charges before you invest. **These charges will reduce the value of your account and the return on your investment.** Often, they will include the following:

- ▶ **Surrender charges.** A **surrender charge** is a type of sales charge you must pay if you sell or withdraw money from a variable annuity during the "surrender period," which is a set period of time that typically lasts six to eight years, but sometimes 10 years or longer, after you purchase the annuity. Surrender charges will reduce the value of, and the return on, your investment. Generally, the surrender charge is a percentage of the amount withdrawn, and declines gradually over a period of several years, known as the "surrender period." For example, a 7 percent charge might apply in the first year after a purchase payment, 6 percent in the second year, 5 percent in the third year, and so on until the eighth year, when the surrender charge no longer applies. Often, contracts will allow you to withdraw part of your account value each year — 10 or 15 percent of your account value, for example — without paying a surrender charge.
- ▶ **Mortality and expense risk charge.** This charge is equal to a certain percentage of your account value, typically around 1.25 percent per year. This charge compensates the insurance company for insurance risks it assumes under the annuity contract. Profit from the mortality and expense risk charge is sometimes used to pay the insurer's costs of selling the variable annuity, such as a commission paid to your financial professional for selling the variable annuity to you.
- ▶ **Share classes.** A variable annuity may offer different share "classes" with different charges (including mortality and expense fees) and different surrender charge periods. For example, "L class" shares may have a shorter surrender charge period, but may have higher ongoing fees, while "B class" shares may have a longer surrender charge period and lower ongoing fees. Consider how long you expect to own the variable annuity and your need to access funds when you think of any tradeoff between the length of the surrender charge period and the level of ongoing fees. Also, because fees are paid from the amount you invest, they can reduce your potential investment return.
- ▶ **Administrative fees.** The insurer may deduct charges to cover record-keeping and other administrative expenses. This may be charged as a flat account maintenance fee (perhaps \$25 or \$30 per year) or as a percentage of your account value (typically around 0.15 percent per year).
- ▶ **Underlying fund expenses.** You will also indirectly pay the fees and expenses imposed by the mutual funds that are the underlying investment options for your variable annuity.
- ▶ **Fees and charges for other features.** Special features offered by some variable annuities, such as a **stepped-up death benefit**, a **guaranteed minimum income benefit**, or **long-term care insurance**, often carry additional fees and charges.

- ▶ **Initial sales loads**, or fees for **transferring** part of your account from one investment option to another, may also apply.

Tip: You should ask your financial professional to explain to you all charges that may apply. You can also find a description of the charges in the prospectus for any variable annuity that you are considering.

Tax-Free “1035” Exchanges

Section 1035 of the U.S. tax code allows you to exchange an existing variable annuity contract for a new annuity contract without paying any tax on the income and investment gains in your current variable annuity account. These tax-free exchanges, known as 1035 exchanges, can be useful if another annuity has features that you prefer, such as a larger death benefit, different annuity payout options, or a wider selection of investment choices.

You may, however, be required to pay surrender charges on the old annuity if you are still in the surrender charge period. In addition, a new surrender charge period generally begins when you exchange into the new annuity. This means that, for a significant number of years (as many as 10 years), you typically will have to pay a surrender charge (which can be as high as 9 percent of your purchase payments) if you withdraw funds from the new annuity. Further, the new annuity may have higher annual fees and charges than the old annuity, which will reduce your returns.

Caution: If you are thinking about a 1035 exchange, you should compare both annuities carefully. Unless you plan to hold the new annuity for a significant amount of time, you may be better off keeping the old annuity because the new annuity typically will impose a new surrender charge period. (Remember — exchanging your original variable annuity contract for a new annuity contract generally is considered a withdrawal.) Also, if you decide to do a 1035 exchange, you should talk to your financial professional or tax adviser to make sure the exchange will be tax free. If you surrender the old annuity for cash and then buy a new annuity, you will have to pay tax on the surrender.

Other Tax Considerations

Other investment vehicles, such as IRAs and employer-sponsored 401(k) plans, also may provide you with tax-deferred growth and other tax advantages. For most investors, it will be advantageous to make the maximum allowable contributions to IRAs and 401(k) plans before investing in a variable annuity.

In addition, if you are investing in a variable annuity through a tax-advantaged retirement plan (such as a 401(k) plan or IRA), you will get *no additional tax advantage* from the variable annuity. Under these circumstances, consider buying a variable annuity only if it makes sense because of the annuity’s other features, such as lifetime income payments and death benefit protection. The tax rules that apply to variable annuities can be complicated; before investing, you may want to consult a tax adviser about the tax consequences to you of investing in a variable annuity.

Bonus Credits

Some insurance companies are now offering variable annuity contracts with “bonus credit” features. These contracts promise to add a bonus to your contract value based on a specified percentage (typically ranging from 1 to 5 percent) of purchase payments.

Frequently, insurers will charge you for bonus credits in one or more of the following ways:

- ▶ **Higher surrender charges.** Surrender charges may be higher for a variable annuity that pays you a bonus credit than for a similar contract with no bonus credit.
- ▶ **Longer surrender periods.** Your purchase payments may be subject to surrender charges for a longer period than they would be under a similar contract with no bonus credit.
- ▶ **Higher mortality and expense risk charges and other charges.** Higher annual mortality and expense risk charges may be deducted for a variable annuity that pays you a bonus credit. Although the difference may seem small, over time it can add up. In addition, some contracts may impose a separate fee specifically to pay for the bonus credit.

Before purchasing a variable annuity with a bonus credit, ask yourself — and the financial professional who is trying to sell you the contract — whether the bonus is worth more to you than any increased charges you will pay for the bonus. This may depend on a variety of factors, including the amount of the bonus credit and the increased charges, how long you hold your annuity contract, and the return on the underlying investments. You also need to consider the other features of the annuity to determine whether it is a good investment for you.

Caution: Variable annuities with bonus credits may carry a downside, however: higher expenses that can outweigh the benefit of the bonus credit offered. You should also note that a bonus may only apply to your initial premium payment, or to premium payments you make within the first year of the annuity contract. Further, under some annuity contracts, the insurer will take back all bonus payments made to you within the prior year or some other specified period if you make a withdrawal, if a death benefit is paid to your beneficiaries upon your death, or in other circumstances.

Tip: Take a hard look at bonus credits. In some cases, the “bonus” may not be in your best interest.

Remember: Variable annuities are designed to be long-term investments, to meet retirement and other long-range goals. Variable annuities are not suitable for meeting short-term goals because substantial taxes and insurance company charges may apply if you withdraw your money early. Variable annuities also involve investment risks, just as mutual funds do.

17-5. Questions to Ask Before Investing

Questions to Ask When Purchasing Variable Annuities

Variable annuities combine features of insurance and securities investments. They can be an important part of your retirement and investment plans, but it is important to make sure they are right for you. **Before you purchase an annuity, request a prospectus from the insurance company or from your financial professional, and read it carefully.** The prospectus contains important information about the annuity contract, including fees and charges, investment options, death benefits, and annuity payout options. You should compare the benefits and costs of the annuity to other variable annuities and to other types of investments, such as mutual funds.

Recently, the SEC issued a report on how these products are sold. Based on the problems we've seen, here are some important questions we recommend that you ask before purchasing a variable product.

- ▶ Will you use the variable annuity primarily to save for retirement or a similar long-term goal?
- ▶ Might I need this money in the next few years? Variable products are long-term investment vehicles. They aren't appropriate if you'll need your money in the short term because substantial taxes and insurance company charges may apply if you withdraw your money early.
- ▶ Am I willing to take the risk that my account value may decrease if the underlying mutual fund investment options perform badly?
- ▶ Do I understand the features of the variable annuity? Do I understand all of the fees and expenses that the variable annuity charges?
- ▶ If a variable annuity offers a bonus credit, will the bonus outweigh any higher fees and charges that the product may charge?
- ▶ Are there features of the variable annuity, such as long-term care insurance, that I could purchase more cheaply separately?
- ▶ Do I have enough money right now to purchase this product? Because variable products are long-term investments, it can be dangerous to your financial health to mortgage your home in order to purchase a variable annuity. If a salesperson pressures you to do so, call the SEC or another agency listed in section 17-6, "Resources."
- ▶ Am I being urged to purchase a variable annuity or variable insurance in my IRA, 401(k), or other retirement account? One key benefit to purchasing variable products is the fact that earnings on the invested money accumulate tax deferred. But these tax benefits are of no value if you're purchasing the product in your IRA, 401(k), or other retirement account because those accounts are already tax-advantaged. Make sure that the features you're buying are worth the money you're paying.
- ▶ Does the firm recommend this product to all its customers? Everyone has different investment objectives. Variable products are not "one size fits all." Be careful if a salesperson recommends one product to all customers. That may mean the product isn't right for you.
- ▶ What will I lose if I exchange this product? If a salesperson is urging you to exchange your variable product for a new contract, you'll need to compare both products carefully, because:
 - The guaranteed death benefit of the new product may be less than the old;
 - You may have to pay a "surrender charge" to get out of the old product;
 - The new product may impose higher annual fees and a new surrender charge; and
 - The new product may impose a new surrender charge period.
- ▶ Have you consulted with a tax advisor and considered all the tax consequences of purchasing an annuity, including the effect of annuity payments on your tax status in retirement?

Remember: Variable annuity contracts typically have a “free look” period of 10 or more days, during which you can terminate the contract without paying any surrender charges and get back your purchase payments (which may be adjusted to reflect charges and the performance of your investment). You can continue to ask questions in this period to make sure you understand your variable annuity before the “free look” period ends.

Questions to Ask the People Who Sell Investments or Provide Investment Advice

Financial professionals who sell variable annuities have a duty to advise you as to whether the product they are trying to sell is suitable to your particular investment needs. Don't be afraid to ask them questions, and write down their answers, so there won't be any confusion later as to what was said.

Tip: Check the background of your financial professional: you can verify your broker's disciplinary history by checking the Central Registration Depository (CRD) either through the Colorado Division of Securities or the Financial Industry Regulation Authority (FINRA). You can also find out about investment advisers and whether they are properly registered by reading their registration forms, called the “Form ADV.” You can view an adviser's most recent Form ADV online by visiting the SEC's website. (See section 17-6, “Resources,” for more information.)

- ▶ Are you registered with our state securities regulator? Have you ever been disciplined by the SEC, a state regulator, or other organization (such as FINRA or one of the stock exchanges)?
- ▶ What training and experience do you have? How long have you been in the business? What other firms have you been registered with? What is the status of those firms today?
- ▶ Have you personally been involved in any arbitration cases? What happened?
- ▶ How long has your firm been in business? How many arbitration awards have been filed against your firm?
- ▶ What is your investment philosophy?
- ▶ Describe your typical client. Can you provide me with some names and telephone numbers of your long-term clients?
- ▶ How do you get paid? By commission? Amount of assets you manage? Another method? Do I have any choices on how to pay you?
- ▶ Do you make more if I buy this annuity (or stock, or bond, or mutual fund) rather than another? If you weren't making extra money, would your recommendation be the same?
- ▶ Are you participating in a sales contest? Is this purchase really in my best interest, or are you trying to win a prize?
- ▶ You've told me what it costs me to buy this stock (or bond, or mutual fund); how much will I receive if I sell it today?
- ▶ If your financial professional changes firms, ask if he or she was paid to change firms. Do you get anything for bringing me along?

17-6. Resources

U.S. Securities and Exchange Commission

Office of Investor Education and Advocacy
100 F St., NE
Washington, D.C. 20549
(800) SEC-0330
www.sec.gov
www.Investor.gov

Denver Regional Office
1961 Stout St., Ste. 1700
Denver, CO 80294
(303) 844-1000
Denver@sec.gov

Colorado Division of Insurance

1560 Broadway, Ste. 850
Denver, CO 80202
(303) 894-7499 (metro-area)
(800) 930-3745 (statewide)
<https://doi.colorado.gov>

Colorado Division of Securities

1560 Broadway, Ste. 900
Denver, CO 80202
(303) 894-2320
<https://dora.colorado.gov>; click on "Divisions & Programs," then "Division of Securities"

Colorado Attorney General/AARP ElderWatch Hotline

(800) 222-4444

Local District Attorneys Offices

Metro Area District Attorney Offices or Fraud Hotlines:

Adams and Broomfield counties: (303) 659-7720
Arapahoe, Douglas, Lincoln, and Elbert counties: (720) 874-8500
Boulder County: (303) 441-3700
Denver County: (720) 913-9179 (Fraud hotline)
Jefferson and Gilpin counties: (303) 271-6800

Financial Industry Regulatory Authority (FINRA)

The largest non-governmental regulator for all securities firms, including sellers of variable annuities, doing business in the United States. As of June 2007, FINRA is the combination of the National Association of Securities Dealers (NASD) and the New York Stock Exchange (NYSE) regulatory bodies. Call for a free Central Registration Depository (CRD) broker check at (800) 289-9999.

www.finra.org
www.SaveAndInvest.org/index.htm

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Chapter 18

Philanthropy and Planned Giving

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SYNOPSIS

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- 18-2. What Are Planned Gifts?
- 18-3. Types of Planned Gifts and the Advantages to the Donor
- 18-4. Conclusion
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18-1. About Philanthropy

Throughout life, you may be asked to make donations to individuals or charities, and, after considerable discerning thought, may give to those to which you feel a connection. However, in the “golden years,” you may be asked to consider a different type of gift: your legacy.

What can you leave the next generation? This question may not be as difficult to answer as: How will you leave your gift to the next generation? The decision about “how” to leave a legacy gift may seem complex at first glance. After all, financial gifts given throughout your lifetime probably came from your income, but now you are deciding about gifts from your accumulated wealth. This chapter is designed to provide some insight into philanthropy as an activity and as a philosophy, help you find information about your favorite charity, and provide you with options with which to plan your gift.

A great essay on the topic of deciding how one should engage in appropriate philanthropy comes from the book, *Philanthropy: Voluntary Action for the Public Good*, by Robert L. Payton. It is an essay on friendship, charity, the human condition, and the methods and values of science and morals. Payton’s reflections on reason and emotion in philanthropy are inspired by Thomas Jefferson’s famous letter to Maria Cosway entitled, “A Dialogue Between My Head and My Heart,” in which Jefferson theorizes that common sense and emotion can often be at odds as we consider charitable intent and acts. Payton postulates that even today, we all have conflicts in

deciding how and when and to whom to give — conversations between our Head and our Heart. What gift makes sense in today's world, where homelessness, famine, and constant human needs are worldwide and ever-present? Will my gift make a difference? Can I be sure that my gift will be used appropriately? We present a part of the essay here to stimulate your thoughts about how to evaluate the question of determining your giving nature.

From Payton's essay:

Beyond friendship, in our less personal relations in society at large, Jefferson counsels against the misleading influence of narrow self interest. The Head leads us astray when it intrudes in the affairs of the Heart. He illustrates his theme with the example of a weary soldier seeking a lift on the back of Jefferson's carriage. Jefferson's self interest advises against it: His Head argues that there will be other soldiers further on; eventually we'll put too much of a burden on the horses. Jefferson rides on, but his conscience gets the better of him: It may not be possible to help everyone, his Heart pleads, but we ought to help those we can. The logic of compassion wins out, but too late, because when Jefferson turns back to find the soldier, the soldier has taken another road.

The Center on Philanthropy at Indiana University describes philanthropy in a less complex way:

It's a powerful feeling, helping others.

You've felt it: The "warm glow" that comes when you do something good for someone else.

You feel it every time you give money to a cause you believe in. But it radiates just as strongly when you volunteer at a community event, participate in a service club, take food to a sick neighbor, or help out a friend.

This feeling is an expression of your concern for others rather than yourself. Of wanting to help fill a need, solve a problem, make life better for someone else. In short, of wanting to take action, voluntarily, for the public good.

This is philanthropy.

Philanthropy is personal and private. Everyone will have a different philosophy and follow his or her own Heart or Head, or both. We hope you enjoy the journey as you come to a decision regarding your own charitable path.

18-2. What Are Planned Gifts?

Planned gifts include a variety of charitable giving methods that allow donors to express their personal values by integrating charitable, family, and financial goals. Making a planned, charitable gift usually requires the assistance of a knowledgeable advisor such as an attorney, financial planner, or CPA to help structure the gift. Planned gifts can be made with cash, but many planned gifts are made by donating assets such as stocks, real estate, insurance, or business interests — the possibilities are endless. Planned gifts can provide valuable tax benefits and/or lifetime income for donors, spouses, or other loved ones. The most frequently made planned gifts are bequests to charities, made through wills. Other popular planned gifts include charitable trusts and charitable gift annuities.

The advantages of planned gifts are many, but some of the more popular reasons for establishing this type of gift are:

- 1) Providing life income to the donors;
- 2) Receiving a charitable income tax deduction;
- 3) Avoiding or mitigating capital gains taxes by gifting appreciated, long-held property;
- 4) Removing assets from one's estate to lessen the estate tax burden;
- 5) Turning low or non-income-producing assets into higher income payouts;
- 6) Fulfilling one's charitable intent by supporting a favorite charity; and
- 7) Providing a charitable gift while receiving tax benefits *and* maintaining control of the asset during one's lifetime.

18-3. Types of Planned Gifts and the Advantages to the Donor

Bequests

The basic, easiest, and most popular planned gift is a bequest. Many planned gifts to charities are bequests. A charitable bequest is a provision in your will or trust that designates a charity as a beneficiary. Bequests can either be specific (leaving a certain asset or a set sum of money to the charity) or general (leaving a percentage of your estate to the charity). Many charities will help you with the bequest language you'll want to use in your will or trust. It is important to include enough information in the bequest so that your estate administrator or trustee will know to which charity or charities you want your gift directed.

The greatest advantage of bequests to charity is that you, the donor, maintain control over your assets until your death. For this reason, charities consider bequests to be *revocable* or incomplete in nature — that is, the gift is not absolute. If the estate's assets cannot support payment of the bequest to a charity, there may be no legal obligation on the part of the estate to make payment. The donor can also change his or her beneficiaries during life and can remove a charity (or any other beneficiary) from his or her will. As in all other types of planned gifts, a bequest can be designated to be used for any purpose that the donor wishes, so long as the gift is not to be used for any intention that is in violation of the law. If you have a particular use to which you would like your bequest directed, the charity will be most pleased if the terms of your intentions are set forth specifically in the will provision so that the charity can use your gift in the way that you intended. If acceptable to you, many charities would appreciate the opportunity to know of your bequest provision and charitable intentions. While you are still living, you could send them the entire will or simply the pages with their particular gift noted thereon. It would be up to you, of course, if you wanted to be publicly thanked and recognized for your future gift by the charity, or you could remain anonymous if that is more comfortable for you.

Retirement Plan Gifts

One way to provide a planned gift to a charity is to include your favorite nonprofit organization in your retirement plan documents. You can designate a charity as a beneficiary of your individual retirement account (IRA), 401(k), or other qualified retirement plan. In many regards, if a person is charitably inclined, it is preferable to fund such gift with this type of asset because the proceeds from these accounts are, at death, considered income in respect of a decedent

(IRD). This tax law concept is generally defined as taxable income earned but not received prior to death. No matter who the beneficiary is, the income, when received, will be taxed to the beneficiary as it would have been taxed to the decedent. Generally, inherited property is not included in an heir's taxable income, but if a family member receives an IRD asset, he or she will be subject to income tax when the gift is distributed.

When a donor provides at death for a direct transfer from his or her retirement account to a qualified charity, however, the entire value of the IRD assets will go to the charity *tax free*. In addition, the donor's estate receives a charitable estate tax deduction for the entire amount of the gift. Making a gift of IRD can be quite easy. For example, a donor can make a specific bequest of U.S. savings bonds owned at death to a charity, or the donor can simply change the beneficiary designation on his or her retirement account — *e.g.*, IRA, 401(k), 403(b), or defined contribution plan.

Your retirement plan administrator can furnish you with the appropriate designation of beneficiary forms to complete. As in a will bequest, you can authorize a portion or percentage of your retirement assets to be shared by any combination of charities and/or other heirs.

If you have ample retirement income and sufficient qualified retirement plan assets such that taking mandatory distributions adds to your current income taxes or may be subject to estate taxes someday, a variation is the Charitable IRA Rollover. Within some limitations, you may be able to distribute up to \$100,000 per year directly to a charity, in lieu of any minimum required distribution to yourself, and regardless of your income or any other donations to charity that year. There is no income tax deduction for a Charitable IRA Rollover, but you save on the income taxes paid on an ordinary distribution in the year that you make the gift, along with any estate taxes later.

The federal SECURE Act effectively eliminated “stretching” distributions beyond 10 years from a traditional or Roth IRA for most beneficiaries who are not spouses. Two techniques exist to re-create many of the benefits of the former “stretch” IRA. One involves leaving the IRA to charity and replacing the distributions with tax-free cash from life insurance in a life insurance trust. The other involves leaving the IRA to a charitable remainder trust (see below) with the “heirs” as income beneficiaries of the CRT. See your estate planning attorney or charitable giving officer for more details.

Gifts of Appreciated Stock

If you would like to make a larger gift to a charity, appreciated stock is often a better choice than a cash gift of the same value. By donating securities held long-term (more than one year) to a charitable organization, a donor can avoid capital gains tax on appreciation and receive a charitable deduction for the full fair market value of the donation. If the estate will be subject to federal estate tax, removing assets from the estate can also decrease estate taxes. Taxpayers may be responsible for a 15 percent capital gains tax. Here is an example of the advantages of giving appreciated stock versus the gift of money using a taxpayer in the 28 percent tax bracket and 15 percent capital gains tax.

Giving Appreciated Stock

Value of stock gift (28% tax bracket) = \$25,000

Your basis (what you paid for it) in the stock = \$5,000

Expected gain from the sale of the stock = \$20,000

Savings by contributing the stock to charity:

\$25,000 charitable deduction (savings of \$7,000 in income taxes
($\$25,000 \times 28\%$))

\$3,000 capital gains tax savings ($\$20,000 \times 15\%$)

NET COST OF GIFT = \$15,000 ($\$25,000 - \$7,000 - \$3,000$)

Selling Stock to Give a \$25,000 Cash Gift

Value of the gift (28% tax bracket) = \$25,000

\$25,000 charitable deduction (savings of \$7,000 in income taxes ($\$25,000 \times 28\%$))

Capital gains tax on sale of stock with basis of \$5,000 ($\$20,000 \times 15\%$) = \$3,000

NET COST OF CASH GIFT = \$21,000 ($\$25,000 - \$7,000 + \$3,000$)

Life Income Gifts

Charitable Gift Annuity (CGA) and Deferred Charitable Gift Annuity (DCGA)

A charitable gift annuity is a contract between a donor and the issuing charity. This is often the gift of choice when a guaranteed present income or future income is desired. Typically, in this gift option, a gift of cash or securities is transferred to the charity of the donor's choice in exchange for a contractual life income paid to the donor or donors at least annually, or deferred to a later date in the case of a DCGA. The income is guaranteed by the issuing charity, and the donor can name himself or herself as sole annuitant or designate a second annuitant, usually a spouse. A gift annuity can also be purchased on behalf of another party — for example, an adult child. If the CGA is a two-life annuity, the payout will continue until the death of the second annuitant. A portion of the gift is invested by the charity and used to provide income for life, and the remaining portion qualifies as a present-interest gift to the charity, which then entitles the donor to a charitable tax deduction. Some charities require that annuitants be of a certain age — say, 65 — before they can enter into any gift annuity. Some charities also have a minimum dollar amount to fund a CGA.

The American Council on Gift Annuities (ACGA) sets suggested maximum rates for CGAs and DCGAs. The ACGA reviews the rates and changes them periodically, depending upon the current interest rates and current mortality tables. The majority of charities use the rates recommended by the ACGA, and these rates are incorporated into charitable CGA software programs. The annuity payout rate will be determined by the age or ages of the annuitants, although some charities deviate from the suggested rates. (If a charity does not use the suggested rates, be sure to consider whether it has sufficient assets to pay for a higher rate over a long period of time.) In the case of a DCGA, the rate is set at the time the gift is made, but the rate is reflective of what the software program projects the appropriate payout rate will be when the annuitant begins to take payment. Almost all charities that offer gift annuities use software programs that automatically calculate the rate. You can easily request an illustration that will include your variables of amount of gift and age(s) of annuitant(s). This illustration or projection will clearly show the charitable deduction, payout rate, and annuity payment.

Technically, a CGA/DCGA is part gift and part sale, or a *bargain sale*. Think of it as two separate transactions: a gift to the charity and then the purchase of an annuity. The gift portion is the value of the property transferred to the charity minus the present value of the annuity.

The sale portion is the present value of the annuity. The payout of any gift annuity depends on the asset that was transferred to the charity. Some of the annuity payment will be tax free, some might be return of capital gain income, and some might be ordinary income. The following is helpful to know:

- ▶ *If the donor contributes cash:* The annuity payment is part tax-free return of principal and part ordinary income for the duration of the annuitant's life expectancy.
- ▶ *If the donor contributes appreciated, long-term property:* The annuity payment is part tax-free return of principal, part return of capital gain income, and part ordinary income — all for the duration of the donor's life expectancy. Another way to look at it: if a donor transfers this kind of property to fund the gift annuity, he or she is deemed to have sold a portion of the property to the charity and the donor can then spread the capital gains over his or her life expectancy (as opposed to incurring the full amount of the capital gains tax if the same property was sold on the open market and not given to charity).

Another component to consider in a CGA or DCGA is the Internal Revenue Service (IRS) discount rate, which is used to determine the charitable deduction. The rate is the annual rate of return that the IRS assumes the gift assets will earn during the gift term. It is related to the prime interest rate, and is updated monthly.

Basically, the higher the discount rate, the higher the charitable deduction will be, and vice versa. If the charitable deduction is important to the donor, he or she may want to wait until the discount rate is at an acceptable percentage. Lower federal interest rates mean lower IRS discount rates, which, consequently, mean lower charitable tax deductions for CGA or DCGA annuitants. The upside of a lower discount rate is that the tax-free portion of a gift annuity's payment is maximized.

The CGA or DCGA is a very popular planned gift option. Let us sum up the benefits of this type of gift, which may be attractive to you:

- ▶ It yields income for life (fixed payments).
- ▶ The donor can select the starting date of the income.
- ▶ It gives the possibility of one or two income beneficiaries.
- ▶ It is a guaranteed contractual agreement — payment is an absolute obligation of the issuing charity.
- ▶ The donor desires to make a present gift to a favorite charity.
- ▶ The donor can turn low or non-producing assets into higher-return assets by establishing a charitable gift annuity with cash or securities.

Here's an example of how a gift annuity can work:

Donor profile:

Mr. Brown, age 72, currently owns \$25,000 in highly appreciated stock, which is producing low dividends; he purchased the stock over one year ago for \$10,000. With retirement approaching, Mr. Brown is considering ways to secure his future income.

Strategy to reduce capital gains:

Mr. Brown establishes a \$25,000 charitable gift annuity by donating his highly appreciated stock to a charity. By gifting to charity, his 15 percent capital gains tax (\$2,250 or $(\$25,000 - \$10,000) \times 0.15$) is not immediately due to the IRS but will be paid by Mr. Brown over his lifetime.

Financial benefits:

Annuity: \$25,000

Annuity Payout: 5.4%

Annual Payout for Life: \$1,350

Immediate Charitable Tax Deduction: \$10,377.50 (assumes a 2.2 percent IRS discount rate)

A great advantage of funding a charitable gift annuity with a donation of highly appreciated stock is the reduction of capital gains tax liability. The 15 percent capital gains tax is eliminated on the gift portion of the transfer. Although he will have some capital gains tax spread out over his life expectancy, Mr. Brown avoids an immediate payment of \$2,250 in capital gains tax (15 percent of the gain) that would be due if he sold the securities.

Charitable Remainder Trust (CRT)

A charitable remainder trust is a separate trust arrangement between a donor and a trustee chosen by the donor, and will always involve a legal document establishing the terms of the trust. The trustee can be a bank, trust company, brokerage firm, individual, charity, or sometimes even the donor. Under the terms of the CRT, the donor reserves the right to receive payment from the trust or can provide for payment to other beneficiaries. When the trust is dissolved (often at the death of the donor or surviving beneficiaries), the remaining principal is distributed to the charity or charities named by the donor who established the trust. A CRT is an irrevocable planned gift; that is, the donor cannot change his or her mind once the trust is established and he or she receives the corresponding charitable tax deduction. The beneficiary charities can sometimes be changed, but the trust remainder must be paid out to a charitable organization or punitive tax results will occur. As with all planned gifts, if you are considering a CRT, be sure to seek the advice of your advisors, including tax consultants and attorneys.

To fund a CRT, cash, securities, real property, or other unencumbered assets are transferred into a trust. The trustee manages the trust assets and pays the donor's beneficiaries a fixed income for life or for a term of years. CRTs come in a variety of forms, including a fixed income annuity trust, in which the annual income never changes, and a unitrust, in which the assets are valued each year and the income is paid according to the trust's value. CRTs can even be designed to hold real estate and pay no income, but once the real estate is sold, the trust flips into a life income trust (flip unitrust).

Most banks and trust companies that serve as trustees require a minimum of \$250,000 to establish this type of planned gift. The administrative costs for managing charitable trusts can be quite high, usually a percentage of the trust's assets. Because the CRT is considered a separate entity, it must file a specialized tax return and can be responsible for other reporting duties, which can make the cost of maintenance too high for smaller-sized accounts below \$250,000. Further, preparing the CRT documents can cost a few thousand dollars. The CRT is certainly not for everyone. Fortunately, other options like gift annuities and donor-advised funds exist for the

charitably inclined, which have many of the same personal and tax benefits as CRTs but may be established with lower amounts.

The benefits of a CRT, though, especially a unitrust, are numerous: these trusts are extremely flexible, can be established with higher payout rates, can be used to provide support for a surviving spouse, can turn low or non-producing assets into higher payout assets, can receive additional assets during the life of the CRT (in the case of a unitrust), and more. Here is a comprehensive list of the advantages of this type of gift:

- ▶ The donor retains the right to receive income for his or her life, the lives of others, or for a specified term of years.
- ▶ There is the possibility of multiple beneficiaries.
- ▶ Assets transferred into the CRT can be sold and reinvested in higher-income-producing assets.
- ▶ The donor has the ability to choose the trustee (and can self-trustee in some cases).
- ▶ A CRT can preserve the principal of one's assets while generating life income.
- ▶ The donor can elect to receive a fixed income based on the original value of assets transferred or an income based on the value of the assets recalculated each year (annuity trust versus unitrust options).
- ▶ The donor can continue to fund the CRT if it is a charitable remainder unitrust (CRUT) (assets revalued each year). If the CRT is established as a fixed income trust (a charitable remainder annuity trust), the donor cannot make additional gifts to the trust in the future.
- ▶ The donor receives a charitable income tax deduction in the year that he or she funds the CRT or makes any additional contribution (CRUT). Unused portions of the income tax charitable deduction may be applied in up to five future years.
- ▶ The donor chooses the amount of the payment within a range (generally, a percentage of the initial gift amount or value of assets).
- ▶ The trustee can tailor the investment strategy of the CRT and the taxable character of the income to meet the unique needs of the donor.
- ▶ The donor can choose one or more charitable organizations to share in the trust principal upon termination of the CRT and can reserve the right to change any charity.
- ▶ The donor can change the frequency and timing of the payments (monthly, quarterly, semi-annually, or annually).
- ▶ The donor can reduce potential estate taxes by removing the assets from his or her estate.
- ▶ The donor can avoid/mitigate capital gains tax by funding the trust with appreciated property.

A CRT can be an excellent strategy to use with illiquid assets, and CRTs come in several varieties. Consider the following example. John and Jane Green, ages 72 and 70, jointly own undeveloped land that is currently valued at \$550,000 and has a cost basis (the price they paid for the property) of \$70,000. They are in a 35 percent tax bracket, and property taxes run \$10,000 per year. They owe nothing on the property and are in a 15 percent capital gains bracket. The property does not produce any income. If they sold the property, the Greens would incur capital

gains of \$480,000. Therefore, their capital gains tax would be \$72,000 ($\$480,000 \times 0.15$) if they sold the land. At the 35 percent tax bracket, the Greens are subject to the 3.8 percent Affordable Care Act income tax surcharge on capital gains.

The Greens learned that they could convert the property to new income with favorable tax benefits using a charitable remainder flip unitrust. They transferred the land to a 5 percent flip unitrust, retaining a joint and survivor income interest. When the land is sold, the trust holding the property “flips” to a regular CRT unitrust and the proceeds from the land sale are reinvested in assets that produce an income for the Greens. When the trust is dissolved, *i.e.*, at the death of the survivor, the remaining assets will go to a charity of their choice.

By transferring the land to a flip unitrust, the Greens accomplished the following:

- ▶ Made an irrevocable gift to one or more of their favorite charities;
- ▶ Avoided an immediate capital gains tax of \$72,000;
- ▶ Generated new income once the property was sold;
- ▶ Received a substantial charitable income tax deduction in the year of the transfer; and
- ▶ Reduced probate expenses and potential estate taxes by removing the property from their probate estates.

Charitable Lead Trust (CLT)

A charitable lead trust is like a mirror image of the charitable remainder trust. In this gift option, a donor transfers property to the lead trust, which pays a percentage of the value of the trust assets, usually for a term of years, to the charity of the donor’s choice. At the end of the trust term, the remaining assets in the trust and any growth it has realized are passed on to the donor or his or her designated beneficiaries. Donors use lead trusts to accomplish the following:

- ▶ Accelerate an income tax charitable deduction for future charitable gifts into the current tax year (qualified grantor lead trust);
- ▶ Pass property to heirs and beneficiaries at reduced transfer tax cost (qualified non-grantor lead trust); and
- ▶ Make charitable gifts beyond the federal income tax charitable deduction ceilings.

There are two types of charitable lead trusts: the *grantor lead trust* and the more popular *non-grantor lead trust*. A grantor lead trust provides the donor with a charitable income tax deduction for the present value of the payments the charity is to receive from the trust. The donor continues to be taxed on the income earned by the trust each year — including the amounts distributed to the charity. At the end of the trust term, the trust assets are returned to the donor or other designated beneficiaries. To avoid any negative tax result, lead trust donors often fund grantor trusts with tax-exempt securities.

In the other type of lead trust, a non-grantor trust, the donor is not treated as the owner and neither reports income earned in the trust nor receives an income tax deduction for the charity’s lead interest. The goal of a non-grantor lead trust, however, is not to get an income tax deduction, but to significantly reduce or even eliminate either the gift or estate transfer tax on the value of the assets used to fund the trust. Like the grantor lead trust, at the end of this CLT’s term, the assets remaining in the trust are distributed, usually to children or grandchildren. Any

appreciation of the value of the trust will avoid gift and estate taxes (transfer taxes) when the assets are eventually received by beneficiaries.

A CLT, either a grantor or non-grantor variety, is not for everyone. They require extensive tax and legal expertise and usually benefit those with serious gift and estate tax considerations. A CLT can be a terrific option if a donor has an income-producing asset that has or will increase in value over time, the donor does not need the income from the asset, and the donor wants the asset back eventually. Here are some of the CLT advantages:

- ▶ The donor receives a gift and estate tax deduction for the assets transferred to the trust (qualified grantor lead trust).
- ▶ CLT property can be transferred to the ultimate beneficiaries at a low transfer cost.
- ▶ Appreciation of the value of the trust will avoid gift and estate taxes (transfer taxes) when eventually received by the beneficiary (non-grantor lead trust).
- ▶ Management of transferred assets can be carried out by an institutional trustee, such as a bank or trust department.
- ▶ It is the best option if the donor has a moderate to large taxable estate.
- ▶ The trust will hold assets with growth and income potential outside of the donor's estate.
- ▶ The donor desires to pass certain assets to heirs or keep them in his or her estate, but also has charitable intent and wants to benefit his or her favorite charity.

Retained Life Estate Deed: Personal Residence or Farm

You can donate your personal residence, farm, or vacation home to the charity of your choice while retaining the right to live on and use the property for life or for a fixed term of years. This arrangement is called a retained life estate. In exchange for this type of planned gift, you receive an immediate income tax deduction. The amount of the deduction depends on the value of the property and your age as well as the age of any other person given lifetime use. You retain the right to rent your home or make improvements to it, and you continue to have responsibility for maintenance, insurance, and property taxes. The advantages of this type of planned gift could be attractive for a donor who does not plan to leave the property to his or her heirs or has no heirs, who has taxable income and could benefit from a charitable deduction, and who wants to benefit his or her favorite charity. Here is a list of the benefits of making a retained life estate gift:

- ▶ The donor receives an immediate income tax deduction for the value of the property minus the present value of the retained life estate.
- ▶ The donor retains full use of the property during his or her lifetime.
- ▶ The donor can reduce gift and estate taxes that would be owed by his or her heirs by removing assets from his or her probate estate.
- ▶ The donor can make a gift now, while retaining the right to use the realty.
- ▶ The donor can benefit a charity of his or her choice.

Obviously, this type of gift will work best for donors who have no plans or desire to pass their residence, farm, or vacation home to their heirs or who have no heirs to whom they wish to leave the property.

Here's an example of how a retained life estate gift works. Ellen, aged 65, a widow, deeds her home to XYZ Charity, though she plans to live there for the rest of her life. The market value of the property is \$200,000 (the house, \$160,000, and the land, \$40,000). Using the required IRS table to discount the gift based on Ellen's life expectancy and future depreciation of the house, her accountant determines her income tax deduction to be in excess of \$70,000, which she can take the year of her gift, plus she can carry over any excess deduction over an additional five tax years. Ellen remains on the property until her death or she moves, retains most incidents of ownership, removes her home from her estate (and thus negates the need for her heirs to use probate proceedings to transfer the deed), and makes a substantial future gift of her home to charity.

Gifts of Life Insurance Policies

Gifting life insurance policies can be another way to make charitable gifts and to potentially achieve income tax deductions. Gifts of life insurance policies can be made by naming a charitable organization as the beneficiary of a life insurance policy, resulting in a charitable estate tax deduction upon the donor's death. Another way to gift a life insurance policy is to irrevocably transfer ownership of the life insurance policy to the charitable organization, resulting in a current income tax deduction at the present value of the policy. Gifting the ownership of the life insurance policy can also provide annual income tax deductions for policy premiums paid by the donor after the gift is made.

A gift of an old, small life insurance policy can result in a much larger gift to charity than a senior might otherwise be able to afford.

18-4. Conclusion

Hopefully, this chapter has enticed you to think about your giving nature and brought about such questions as: Do I want to give to charity? Can I afford to give? How much should I give? Is my charity worthy of a gift? What about my heirs? In the event that you have come to a "Heart and Head" conclusion that charitable giving, especially the gift of a legacy, is something you would like to pursue, the options that gift planning provide are numerous. Although by no means a complete explanation or listing of all the varieties of planned gifts, we provide here a starting point we hope you will find helpful.

18-5. Resources

In today's society, there are more complexities than Thomas Jefferson could ever have anticipated. Fortunately, modern technology gives us an opportunity to evaluate charitable organizations through a variety of resources. Some of those resources are listed here for your convenience:

Charity Navigator

Charity Navigator, America's premier independent charity evaluator, works to advance a more efficient and responsive philanthropic marketplace by evaluating the financial health of over 5,300 of America's largest charities.

www.charitynavigator.org

U.S. National Better Business Bureau

A project of the BBB Wise Giving Alliance, give.org evaluates charities based on financial and management practices. This is the only major site that names charities that do not meet standards.

www.give.org

American Institute of Philanthropy Charity Watch

The mission of CharityWatch, a nonprofit charity watchdog and rating organization, is to maximize the effectiveness of every dollar contributed to charity by providing donors with the information they need to make more informed giving decisions.

www.charitywatch.org/toprated.html

GuideStar

The idea here is to provide enough information for donors to make their own judgments. The database includes all IRS-registered tax-deductible charities, comprising over 700,000 organizations. Some listings do not provide full data. You can find interesting information on this site, such as charity CEO and director salaries.

www.guidestar.org

American Red Cross

For over 130 years, Red Cross volunteers have been guided by a single principle: to help people in need, regardless of race, religion, gender, or national origin. The Red Cross has been there, and will continue to be there, for disaster victims in need of food, clothing, and shelter.

www.redcross.org

Network for Good

Network for Good is an e-philanthropy site where individuals can donate, volunteer, and get involved with the issues they care about.

www.networkforgood.org

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The Office of Gift Planning at CSU cultivates, designs, facilitates, and stewards planned gifts to the University, and works with donors who contribute non-cash gifts (appreciated stocks, real estate, etc.). In our efforts, we use a variety of financial tools and techniques for giving, including bequests, charitable gift annuities, charitable remainder trusts, and charitable lead trusts. All planned gifts require the assistance of one or more qualified specialists: an attorney, certified public accountant, estate planning specialist, trust officer, and/or an insurance agent can be involved as we work with donors to accomplish their charitable goals.

In addition, we provide education to our donors through marketing and outreach efforts that include advertisements, publications, brochures, website information, e-newsletters, public speaking presentations, and the like. We consider it absolutely essential to make our office a resource for folks who are contemplating a deferred gift or have any questions concerning their estate planning goals. Additionally, we supply technical expertise to our colleagues in the development staff and work closely with them if they have a donor who is considering a planned gift.

Chapter 19

Estate Planning for Unmarried Couples

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SYNOPSIS

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19-1. Colorado and Federal Laws Affecting Unmarried Couples

In this chapter, the term “unmarried couples” refers to same- and opposite-sex couples who enter into, or are deemed to be in, a Colorado civil union; and same- and opposite-sex couples who choose not to marry or enter into a civil union for reasons both personal and financial. In this chapter, “spouses” refers to couples who have entered into a marriage, “partners” refers to couples who have entered into or are deemed to be in a civil union, and “life partners” refers to same- and opposite-sex couples who have not entered into a marriage or civil union.

The State of Same-Sex Marriage in Colorado

Same-sex couples are currently allowed to marry in many countries around the world. On June 26, 2015, the U.S. Supreme Court ruled that state-level same-sex marriage bans are unconstitutional and that states must recognize valid same-sex marriages performed in other jurisdictions. Same-sex couples may marry in any jurisdiction in the United States and their

marriage will be recognized regardless of their state of residence. As a result, same-sex marriages are now legal in all 50 states, the District of Columbia, and some Indian Nations.

Common Law Marriage

Couples that choose not to marry may question whether they could be deemed to be in a common law marriage. There is a discussion of common law marriage in Chapter 13, “Family Relationships.” Whether common law civil unions exist in Colorado remains unclear currently.

Civil Unions

In March 2013, the Colorado legislature passed the Colorado Civil Union Act (Act), which became Colorado law on May 1, 2013. The Colorado Civil Union Act states that the rights of partners in a civil union are the same rights as those extended to spouses who are married under Colorado law.

A civil union may be entered into by two unrelated persons over the age of 18, regardless of gender, who are not married or in a civil union with another person. People who wish to enter a civil union must obtain a license from a local clerk and recorder, which must be certified by a person authorized under the Act, then recorded with the local clerk and recorder to verify the civil union. A priest, minister, rabbi, or other official of a religious institution or denomination or an Indian nation or tribe is not required to certify a civil union in violation of their right to free exercise of religion. A copy of the civil union certificate received from the state registrar is presumptive evidence of the civil union in all courts.

If a same- or opposite-sex couple has entered into a civil union, domestic partnership, or a “substantially similar legal relationship” that is legally created in another jurisdiction, the couple *shall be deemed to be in a civil union for purposes of Colorado law*. States other than Colorado may not recognize Colorado civil unions unless they have specific legislation or have court decisions that recognize domestic partnerships, or civil unions performed in other states. Even if a Colorado civil union is recognized by another state, the rights, privileges, and responsibilities granted by the other state may be different than those available in Colorado.

Second Parent Adoption

As of 2007, Colorado allows second parent adoptions. In a second parent adoption, it is not necessary for the two parents to be married to each other or in a civil union with each other, as is the case with stepparent adoptions. Therefore, two life partners can now both be the legal parents of a child. The result is that both life partners will have the same rights and obligations associated with being a parent under Colorado law.

To seek a second parent adoption, the child must have only one legal parent, and that parent must consent to the adoption. If the second parent is found by the court to be qualified to adopt, the result will be a new birth certificate for the child naming both parents as legal parents.

Stepparent Adoption

Partners in a civil union can adopt each other’s children using a stepparent adoption. This process differs from second parent adoption because it does not require the adopting parent to undergo a home study by a home study agency.

The result of a stepparent adoption is that both partners will have the same rights and obligations associated with being a parent under Colorado law. If the court grants the adoption, the result will be a new birth certificate for the child naming the two partners as the child's legal parents.

Presumption of Parentage

Colorado's civil union law states that if a child is conceived by one of the partners during the civil union, the partners to the civil union are both presumed to be the parents of the child. This differs from a opposite sex marriage, where the child is presumed to be the child of a husband if the child is born to his wife during the marriage. The child need not be conceived during the marriage. It is important to remember that in any case, this presumption is rebuttable if proof is provided to a court that both partners or spouses are not in fact the parents of the child and someone else is a parent. On April 1, 2022, the Colorado legislature passed Marlo's Law, which became Colorado law in August 2022. Marlo's Law ensures that all parents who conceive through assisted reproductive technology (ART), regardless of gender identity, sexual orientation, or marital status, are eligible for the same rights and legal protections. Not only does the law provide a streamlined process for parents to have their parentage affirmed by a Colorado court, but it also makes ART provisions and parentage presumptions in Colorado gender-neutral and expands overall access to establishing parentage.

State Employee Domestic Partner Benefits

Colorado offers domestic partner benefits to same-sex partners of state employees who are not married and are not in a civil union. These domestic partner benefits do not apply to opposite-sex partners. The partner must be over the age of 18 and must be the same sex as the state employee. The partners must have shared an exclusive committed relationship for at least one year, and they must have the intent that their relationship will last indefinitely. The two must not be related by blood, and neither of them can be married to or in a civil union with another person. For information about the benefits offered and the procedure for obtaining those benefits, employees should speak with their specific employers.

One item of note is that employees should also speak with their tax professionals prior to enrolling their partners for benefits. If the employer is paying for the benefits, the value of the benefits is taxable income to the employee partner, if the partners are not married under federal law.

Employment Non-Discrimination

Colorado has added sexual orientation, real or perceived, to the list of characteristics for which a person may not be discriminated against at work. This includes areas of hiring, firing, harassment, and compensation. Additionally, the definition of sexual orientation was written to include one's gender status. If someone believes they have been a victim of discrimination based on their sexual orientation or gender status, they should contact a qualified employment law attorney. The LGBT Center of Colorado has a legal helpline for issues of employment discrimination based on sexual orientation, gender identity or gender bias, and HIV status (call (303) 733-7743 to reach this helpline).

Pension Protection Act and the Secure Act

In the past, if a life partner died and left their 401(k), 403(b), or 457 plan to their life partner (or any non-spouse), the surviving life partner, rather than having the opportunity to withdraw the proceeds over one's life expectancy, had to withdraw the 401(k) proceeds immediately, or in some cases, over a five-year period. In many instances, this created a major income tax burden on the surviving life partner in the year(s) in which the money had to be withdrawn.

With the passing of the Pension Protection Act and additional IRS action in 2010, custodians of these types of retirement plans must now allow a non-spouse beneficiary, such as a life partner, to make a direct trustee-to-trustee transfer of the retirement plan proceeds to an inherited IRA. If done correctly, the surviving life partner would then be allowed to spread the distributions from that inherited IRA out over their life expectancy, thereby spreading out the income tax burden over that same time period. However, with the passage of the Secure Act in 2020, the life expectancy payout for non-spouse partners would now be reduced to 10 years.

It is important to note that there are several traps that could be triggered if this process is not carried out correctly. Therefore, if a surviving life partner is due to inherit their deceased partner's retirement plan, they should contact a tax advisor prior to taking action to claim the plan proceeds.

Federal Estate Tax

The federal estate tax is a tax on a deceased person's estate if the estate is over the limit set by federal law for the year in which the person died. In 2023, that limit is \$12,920,000. The details of estate taxes are beyond the scope of this chapter. However, one area of frustration to those in same-sex relationships who are not married under federal law is that they are not able to benefit from what is known as the unlimited marital deduction.

As a married couple, federal law allows a spouse to leave an unlimited amount to their spouse at death, without the estate being subject to estate tax. The limits set forth above do not apply if the estate is being left to a spouse. For those life partners who are not married under federal law, when a partner dies, their estate will be subject to the estate tax if it is over the estate tax limit. Additionally, if the estate is given to the surviving life partner, and that life partner is then over the estate tax limit at their death, the estate will be taxed again. The unlimited marital deduction is one factor some same-sex couples take into consideration when deciding whether to marry.

19-2. Reasons People Do Not Complete Estate Plans

The reasons people do not do estate planning are usually the same for all communities. Not understanding the process, procrastination, believing that one doesn't have enough assets to require planning, or the feeling that "it isn't going to happen to me," are just a few of the reasons that are often heard.

I Only Have Personal Property Items

Many times, people feel as though they do not have an "estate" so they do not need to do an "estate plan." However, this is a trap for unmarried life partners. Even if your estate is made up only of the tangible personal items you and your life partner have accumulated over the years, you need to create a plan for where those items are to go upon your death. With a legally

recognized marriage or civil union, when one spouse or partner dies, all of the tangible items are presumed to be owned jointly, and therefore they automatically transfer to the surviving spouse or partner. In a relationship that does not qualify as a marriage or civil union, this is not the case. When a life partner dies, his or her tangible personal items do not transfer automatically to the surviving life partner. They transfer under the intestacy laws, often to the deceased life partner's children, parents, or siblings. This can be very distressing to the surviving life partner and is probably not what the deceased life partner wanted. A will or a Designated Beneficiary Agreement can avoid this scenario.

I Own Everything Jointly with My Life Partner

When two life partners own an asset in joint tenancy, if one of them dies, the entire asset transfers to the surviving life partner. This transfer by operation of law at one life partner's death may seem like the easiest answer to many life partners' concerns. However, there are several issues and potential problems that can arise when using joint tenancy.

These issues surface primarily where one life partner owns an asset and wishes to change the sole ownership to joint ownership with their life partner. As an example, let's look at the concerns where one life partner owns a home and wants to put their life partner on the title as a joint owner. The following considerations must be addressed.

Neither partners nor life partners are allowed to make unlimited, tax-free gifts to each other the way that spouses are allowed under federal law. If Life Partner A owns the home and adds Life Partner B to the property title, Life Partner A has made a gift of one-half of the equity in that property to Life Partner B. If that gift is over the annual gift exclusion amount (currently \$15,000), Life Partner A is required to file a gift tax return with the IRS. If partners or life partners are considering any type of transfer between them, they should consult with their tax professional before doing so.

Most mortgages in this country have a "due on transfer" clause. If the owner transfers any interest in the property to someone not on the mortgage without the mortgage company's permission, the lender can demand full payment of the mortgage debt immediately. There is a federal law called Garn St. Germaine that exempts such transfers between spouses, but this does not apply to partners or life partners. Partners and life partners need to check with their mortgage company before transferring the ownership of property from one of them to both of them.

Adding a partner or a life partner to the title of property as a gift may also cause unfavorable capital gains tax issues.

If a property transfers to the surviving life partner automatically at the death of the first life partner, the first life partner's children or other family and friends will not receive any of the property when the surviving life partner dies, unless the surviving life partner makes a will or trust or otherwise provides that the property will be split between both life partners' families at the second life partner's death. This can be an unintended consequence of owning property as joint tenants.

In summary, transfers and gifts should not be made before consulting with a tax and/or legal professional familiar with these issues.

19-3. What Happens When There Is No Estate Plan

Before deciding *not* to do any estate planning, it is important to understand what can happen if no estate planning is done. Following are some examples of what can happen when a person does not have estate planning documents in place.

If There is No Durable Power of Attorney for Property in Place

If someone in Colorado is unable to make their own financial decisions (i.e. manage their finances), and there is no durable power of attorney for property (also called a durable financial power of attorney) that names a person to act on their behalf, a court must appoint a conservator. Who the court will appoint is governed by Colorado law. In general, the priority list for appointment of a conservator is as follows:

- 1) A spouse or partner in a civil union;
- 2) A person designated in a Designated Beneficiary Agreement (discussed in section 19-5);
- 3) Parents;
- 4) Adult children; or
- 5) An adult the person has lived with for the past six months.

While it is possible for a life partner to be appointed conservator if they qualify under (5), above, the other people with higher priority may object. Even though the life partner has the legal ability to apply to the court to be appointed conservator, there is a mandated review process and court hearing that must be completed before a conservator is appointed. Once appointed, the conservator must make annual reports to the court. The delay and expense associated with the conservatorship process can be avoided with the execution of a durable financial power of attorney appointing the life partner to make financial decisions. Durable financial powers of attorney are discussed in more detail in Section 19-4.

If There is No Durable Medical Power of Attorney or Living Will in Place

Every adult has the legal right to consent to or refuse medical treatment and may declare their wishes in writing if they cannot communicate them. Colorado law recognizes three documents as advance medical directives. These are the living will, durable medical power of attorney, and the CPR directive [also known as a Do Not Resuscitate (DNR) directive]. There is also a document referred to as a MOST form – Medical Orders for Scope of Treatment - which is basically a checkbox style medical directive that is occasionally used in nursing homes with the chronically or severely ill. If someone in Colorado suffers a medical emergency or is unable to make medical decisions on their own behalf and does not have a durable medical power of attorney or advanced directives in place, their loved ones may be forced to go to court to pursue guardianship to have the authority to make medical decisions on their behalf. As with a conservatorship, who the court will appoint is governed by Colorado law. In general, the priority list for appointment of a guardian is as follows:

- 1) A currently acting guardian;
- 2) A person nominated as guardian by the respondent;
- 3) An agent under a medical durable power of attorney;
- 4) An agent under a general durable power of attorney;

- 5) The spouse of the respondent or a person nominated by a will or other signed writing of a deceased spouse;
- 6) An adult child of the respondent;
- 7) A parent of the respondent or an individual nominated by a will or other signed writing of a deceased parent; and
- 8) An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.

If good cause is shown, the court can appoint as guardian someone who has lower priority or no priority at all. With the legalization of same-sex marriage in Colorado, if one spouse becomes disabled or incapacitated, the other spouse will be recognized as the preferred medical decision-maker, just as with married same-sex couples. However, while it is possible for a life partner to be appointed guardian if they qualify under (8), above, the other people with higher priority may object. Even though the life partner has the legal ability to apply to the court to be appointed guardian, there is a mandated review process and court hearing that must be completed before a guardian is appointed. Once appointed, the guardian must make annual reports to the court. The delay and expense associated with the guardianship process can be avoided with the execution of a durable medical power of attorney appointing the life partner to make financial decisions.

If There is No Will or Trust in Place

When someone dies without a will or a trust and has assets in their name (those that are not jointly owned and those without a beneficiary designation or payable on death designation), Colorado law will determine what happens with these assets, according to what are called the intestacy statutes. A court process called probate is required to distribute these assets. Colorado's intestacy statutes list to whom the assets are to be distributed under probate, in the following order:

- 1) A spouse or partner in a civil union;
- 2) A person granted the right to inherit under a Designated Beneficiary Agreement (see Section 19-5);
- 3) Issue (children or descendants of deceased children);
- 4) Parents;
- 5) Siblings or descendants of deceased siblings; or
- 6) Grandparents or descendants of deceased grandparents.

Not included in the list are a life partner, a favorite charity, or a best friend. If a person does not want the intestacy statutes to say what will happen to their assets, a will or trust is needed.

19-4. Essential Estate Planning Documents

Estate planning is a term that is often misunderstood. In this chapter, it means not only planning for health and financial issues that may arise during life, but also planning for the distribution of assets at death. Estate planning is important for everyone, but it is especially important for those in the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) community and those opposite-sex and same-sex couples who choose not to marry or enter a civil

union. Where the law does not recognize one's committed relationship, the need to proactively plan is paramount.

Wills or Trusts

A thorough overview of wills and trusts is provided in Chapter 15, "Estate Planning: Wills, Trusts, and Your Property." For those in the LGBTQI+ community and those who are in non-married partnerships or are not in a civil union, having a will or a trust is important because the laws that apply when someone dies without a will or trust (intestacy laws) do not provide for one's life partner or for charitable gifts.

Durable Power of Attorney for Property

A durable power of attorney for property (also called a financial power of attorney) allows a person (the principal) to appoint someone else (the agent) to make financial decisions for the principal. When referring to a power of attorney, the word "durable" means that the document remains valid during any period that the principal is incapacitated. There are non-durable powers of attorney. However, when the power of attorney is not durable, if the principal becomes incapacitated, the document is no longer effective, and the agent has no power to make decisions. Therefore, in most cases, a durable power of attorney is appropriate.

A good power of attorney should not only appoint a primary agent, but should appoint a successor agent, and, if possible, a back-up to the successor agent. Then, if the primary agent is unable or unwilling to act, the next agent can take over, and if the next agent is unable to act, the second successor agent can take over.

The document should set out when the power of attorney will become effective. There are three primary ways a power of attorney will become effective:

- 1) The power of attorney may be effective only upon the incapacity of the principal. Therefore, if the principal is not incapacitated, the agent has no power. In this case, the power of attorney document must define how incapacity is to be determined. In most cases, this can be done by a court determination, or upon obtaining the written opinion of a doctor or doctors that the principal lacks the capacity to handle their own financial affairs. If the power of attorney is valid upon incapacity, the agent will also need a HIPAA release in order to obtain a doctor's statement that the principal is incapacitated (HIPAA releases are explained below).
- 2) The power of attorney may be effective at the time the principal signs it. In this instance, the agent can act on behalf of the principal as soon as the power of attorney is signed by the principal.
- 3) The power of attorney may also be a hybrid power of attorney. This type of power of attorney provides that if the agent is the spouse or partner, the powers are granted immediately, but as to the successor or second-successor agent, the powers are not granted unless the principal becomes incapacitated.

In 2010, Colorado passed a law that potentially limits the powers of an agent who is not a spouse, partner in a civil union, descendant, or ancestor of the principal. Therefore, it is important that a power of attorney appointing an agent who is not a spouse, partner in a civil union, descendent, or ancestor of the principal be reviewed and possibly updated to comply with Colorado law.

Finally, many powers of attorney for property nominate the appointed agent as the court-appointed conservator in the event the principal would need a court-appointed conservator.

Medical Power of Attorney

A medical or healthcare power of attorney allows a person (the principal) to appoint someone else (the agent) to make medical decisions for the principal in the event the principal is unable to make such decisions for themselves.

As with a financial power of attorney, a medical power of attorney should name successor and second successor agents if possible.

Some medical powers of attorney cover the issue of whether the agent may make organ donations for the principal upon death. Additionally, many nominate the appointed agent as the court-appointed guardian, in the event the principal would need a court-appointed guardian.

When the agent appointed is not a blood relative, the power of attorney should specifically state that the agent will be able to visit the principal in any healthcare facility.

Most states do not recognize civil unions as legal relationships. Therefore, even if the agent is a partner in a civil union, the right to visit should be specifically set out in case the principal requires medical treatment while traveling outside of Colorado. President Barack Obama signed a presidential memorandum banning discrimination against hospital visitors based on sexual orientation. However, it is still the best practice to specifically include such visitation rights in the medical power of attorney.

Living Wills

A living will is also referred to as an advance directive. A living will is designed to allow the principal to state their directions with regard to whether they would like to have life-sustaining procedures implemented or continued in the event the principal is declared to have a terminal condition or be in a persistent vegetative state.

Colorado's living will statute provides that two physicians must determine, in writing, that the principal is terminally ill or in a persistent vegetative state. If that determination is made, then the living will directs the physicians to carry out the principal's wishes regarding life-sustaining procedures. Some living wills direct that a certain number of days must pass where the principal is unable to effectively receive or evaluate information or communicate decisions before any decision is made to withdraw life-sustaining procedures, and some living wills direct that life-sustaining procedures should never be withdrawn. A living will also allows the principal to state their wishes with regard to whether artificial nutrition and hydration are to continue, if they are the only procedures being provided.

The living will is legally binding on healthcare providers, and can diminish the possibility of a battle concerning such issues between the principal's partner (regardless of whether they are in a civil union) and the principal's family of origin.

Declaration of Last Remains

A declaration of last remains allows the principal to make a legally binding written statement regarding what is to happen to their last remains. Burial or cremation are the two most common directions. The declaration also allows the principal to appoint an agent and successor

agents to have the burial or cremation carried out. Under Colorado law, such written statement, signed by the principal, is legally binding on the funeral home. As with so many other statutes, the law regarding last remains declarations provides a list of agents that have the power to make such decisions if someone dies without having made a written statement regarding their wishes. The priority list to be able to make these decisions does not include a life partner. It is as follows:

- 1) Personal representative;
- 2) Spouse/partner in a civil union;
- 3) The person granted such power in a Designated Beneficiary Agreement;
- 4) A majority of adult children;
- 5) A majority of parents and guardians;
- 6) A majority of siblings; or
- 7) Anyone that will take on the responsibility.

To ensure that a life partner is able to make these decisions, a written statement signed by the principal should be used. The statement need not be in a separate document; it may be a part of another document, such as a will.

HIPAA Release

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), a federal law, provides that doctors and other healthcare providers may not share a patient's medical information or medical records with anyone other than the patient. This can be very problematic if the patient has family or friends that need such information. While spouses and partners in civil unions are not exempt from HIPAA privacy laws, it is sometimes the case in practical settings that healthcare professionals will share medical information about a patient with their spouse or partner in a civil union. This willingness to share information does not always extend to unmarried life partners. Therefore, any thorough estate plan needs to include a HIPAA release, allowing the release of medical records and information to the life partner, and other friends or family members, if desired.

19-5. Colorado's Designated Beneficiary Agreement

Another Colorado Estate Planning Tool

Another estate planning tool for Colorado citizens who are not married or in a civil union is a document called a Designated Beneficiary Agreement (DBA). The adoption of DBAs in Colorado became effective on July 1, 2009. A DBA permits adults who are neither married nor in a civil union to give each other certain rights and appoint each other for certain roles. This section will explain the requirements for making a valid and enforceable DBA, discuss what rights the DBA can confer, and discuss what must be done to revoke or override the rights conferred in a DBA. It will also explain the benefits of a DBA, as well as point out its significant limitations.

Although a DBA has been generally viewed as an estate planning tool for non-traditional couples (same- and opposite-sex couples who choose not to marry or enter into a civil union), its application is much broader and can include unmarried friends and relatives, such as an unmarried parent and their unmarried adult child.

Who Can Enter into a DBA and What Makes a DBA Valid and Enforceable?

First, there can only be two parties to a DBA, and both parties must satisfy *all* of the following criteria: both must be at least 18 years of age, both must be competent to enter into a contract, and both must enter into the DBA without force, fraud, or duress. Additionally, neither party may be married or in a civil union, and neither party may be a party to another DBA with a different person.

If both parties meet all of the criteria listed in the previous paragraph, then additional criteria must be satisfied. The DBA form must be in “substantial compliance” with the standard form set forth in the Colorado statutes. It must also be properly completed, signed, acknowledged by a notary, and recorded with the county clerk and recorder in a county where one of the parties to the DBA resides. A copy of a DBA form is included as Exhibit 19B.

What does “substantial compliance” mean? A DBA is in substantial compliance if it includes the disclaimer contained in the box at the top of the DBA form in Exhibit 19B, the instructions and headings about how to grant or withhold a right or protection, the statements about the effective date of the DBA and how to record the agreement, and the notarized signatures of the two parties. If the DBA does not contain all of these requirements it may be invalid, so you should use the form provided in Exhibit 19B.

What Rights Can Be Conveyed with a DBA?

There are 16 distinct rights and protections set forth in a DBA. Six of the rights listed on the DBA are rights that people already have under Colorado law, with or without a DBA. These are the right to: (1) jointly acquire, own, and transfer title to property; (2) be designated as a beneficiary in a will, trust, or for non-probate transfers; (3) be designated as a beneficiary and recognized as a dependent in a life insurance policy; (4) be designated as a beneficiary and recognized as a dependent in a health insurance policy (if the health insurance policy is an employer-sponsored group plan, confirm whether the employer allows such coverage); (5) be designated as a beneficiary in a retirement or pension plan; and (6) act as a proxy decision-maker or surrogate regarding medical decisions.

Eight of the rights are statutory rights that are usually given in a will, trust, or medical power of attorney, and can now be given in a DBA. These are the right to: (1) inherit real or personal property from the other designated beneficiary when there is no valid will or trust; (2) petition and have priority for appointment as personal representative, guardian, or conservator for the other designated beneficiary; (3) visit the other designated beneficiary in a hospital, nursing home, hospice, or similar care facility; (4) initiate a formal complaint regarding alleged violations of the other designated beneficiary’s rights as a nursing home patient; (5) receive notice of withholding or withdrawal of life-sustaining procedures from the other designated beneficiary; (6) challenge the validity of a living will of the other designated beneficiary; (7) act as agent for the other designated beneficiary to make, revoke, or object to anatomical gifts; and (8) direct the disposition of last remains of the other designated beneficiary.

The remaining two rights are new statutory rights, which were historically only available to a spouse or dependent children. These are the right to: (1) have standing to receive benefits pursuant to the Workers’ Compensation Act of Colorado in event of the death of the other designated beneficiary while on the job; and (2) have standing to sue for the wrongful death of the other designated beneficiary.

Know the Rights You Are Granting and Carefully Complete the DBA Form

You need to know that a DBA is presumed to grant all of the rights listed in the statutory form *unless* the parties to the DBA explicitly withhold a right or protection. If there are some rights that you *do not* want to give the other party, you *must* withhold the rights by initialing the line in the form next to the right to be withheld. As with any document that grants legal rights, it is essential for you to carefully and fully complete the form.

When is a DBA Effective?

Currently, a DBA is effective as of the date and time received for recording by the county clerk and recorder of the county where one of the designated beneficiaries resides. A DBA can be delivered or mailed, along with a filing fee in cash or check. The clerk and recorder must issue two certified copies of the DBA showing the date and time the office received the DBA for recording. The filing fee will vary with each county, so you should call the clerk in advance to find out the amount of the check to include. It is also a good idea to include a pre-addressed and stamped envelope for the return of the document to you.

Can a Valid DBA be Revoked or Terminated?

There are several ways to revoke or terminate a valid DBA. One way is when one of the designated beneficiaries unilaterally records a Revocation of Designated Beneficiary Agreement form (revocation) with the county clerk and recorder of the county where the DBA was originally filed. A copy of a revocation form is included as Exhibit 19C. Revocation is effective as of the date and time the revocation is received for recording by the county clerk and recorder. The clerk is to issue a certified copy of the revocation to the designated beneficiary recording the revocation and must mail a certified copy of the revocation to the other designated beneficiary at that party's last-known address.

Another way to revoke a valid DBA, or a portion of a valid DBA, is for a designated beneficiary to sign a legal document that conflicts with all or a portion of the DBA, such as a will or a beneficiary designation form for a life insurance policy. A DBA is revoked upon the marriage or civil union of either of the designated beneficiaries. A valid DBA is also terminated upon the death of a designated beneficiary; however, a right or power conferred upon the living designated beneficiary survives the death of the deceased designated beneficiary. Thereafter, the surviving designated beneficiary may enter into a new DBA with a different person, as long as the other requirements of the law stated above in "Who Can Enter into a DBA and What Makes a DBA Valid and Enforceable?" are met.

What Is the Effect of a DBA on Any Existing Estate Planning Documents I Have?

A DBA does not override documents you may already have or subsequently enter into, such as a will, trust, medical power of attorney, or a beneficiary designation under a life insurance policy or retirement asset. Said another way, a valid legal document entered into before or after a DBA is recorded that conflicts with all or a portion of the DBA causes the DBA, in whole or in part, to be replaced or set aside.

If I Have a DBA, Do I Need Other Estate Planning Documents?

It is essential to understand that a DBA does not replace the need to prepare other estate planning documents. The DBA is a Colorado document, and it is unclear whether it will be honored outside the State of Colorado. Therefore, if you travel outside the state, you still need documents such as a medical power of attorney. Be aware that a DBA is limited in scope, as it only allows a party to name one decision-maker, whereas a medical power of attorney names successor agents. Additionally, the DBA does not appoint an agent to handle the financial affairs of the other designated beneficiary, so having a current financial power of attorney is essential if you want someone to be able to make financial decisions for you. Finally, while the DBA does provide intestacy rights between the two parties, it cannot provide for the simultaneous death of both parties.

If I Have Other Estate Planning Documents, Why Would I Want a DBA?

One reason is that a DBA is the only way for two persons who are not married or in a civil union to seek workers' compensation benefits if either of them dies at work. Another reason is that a DBA may give both parties the right to sue for the wrongful death of the other designated beneficiary. If you are in a same- or opposite-sex relationship, you might want a DBA to provide evidence that you are not in a common law marriage.

Does Having a DBA Mean that I Don't Have to Do Anything Else with My Assets?

A DBA does not automatically designate the other party as a beneficiary of contractual benefits, such as life insurance or retirement assets, or create co-ownership of real estate. If you want the other party to a DBA to be the designated beneficiary of your life insurance or retirement assets, you *must* complete and sign a separate beneficiary designation form for those assets. If you want the other party to a DBA to be a current co-owner of any property you own, you need to add that person to the title of the property. You should seek help from an attorney to make sure it is done correctly or you may cause problems with the title, which a court may have to correct. Be aware that adding someone to the title of your property may have unintended tax consequences.

What Happens at the Death of a Party to a Valid, Unrevoked DBA?

If the deceased party to the DBA has given the right of intestate succession to the other party, then that surviving party is technically an heir of the deceased party, and has the right to challenge a will or trust document of the deceased party. If the personal representative has actual notice or actual knowledge that there is a valid, unrevoked DBA in existence, the surviving party must be identified as an heir on the documents submitted to the court to open the deceased party's probate, and must be notified if a probate is opened. The personal representative will also need to search the county clerk and recorder's records in any county where the personal representative has actual knowledge that the deceased party was domiciled for the three years prior to the deceased party's death, to determine whether there is a valid, unrevoked DBA in existence.

So Should I Prepare and Sign a DBA?

A DBA is an additional estate planning tool for Colorado citizens who are not married or in a civil union, and may be a document you should prepare. But, it does not provide all of the protections and benefits most people need, both during lifetime and after death, and should not

be relied on as the only document you need to have. It is really a document to reinforce the other life and estate planning documents (powers of attorney, wills, and trusts) you should have in place to ensure your wishes are known and can be legally enforced.

19-6. Resources

Administration for Community Living

<https://acl.gov>

American Society on Aging

LGBT Aging Issues Network (LAIN)

605 Market St., Ste. 1111

San Francisco, CA 94105

(800) 537-9728

www.asaging.org/education-topic/lgbtq-aging

DRCOG

*Ombudsman Office: LGBT Training/Project Visibility for Assisted Living and Nursing Homes.
Publishes an LGBT Elder Resource Guide.*

Denver Regional Council of Governments

(303) 455-1000

www3.drcog.org/documents/archive/LGBT_ElderResourceGuide.pdf

Family Caregiver Alliance

LGBT Caring Community Program and Online Support Group.

101 Montgomery St., Ste. 2150

San Francisco, CA 94104

(800) 445-8106

www.caregiver.org

To subscribe to the LGBT Caregiver Online Support Group, visit:

http://lists.caregiver.org/mailman/listinfo/lgbt-caregiver_lists.caregiver.org

Gay and Lesbian Medical Association

1629 K St. NW, Ste. 300

Washington, DC 20006

(202) 600-8037

info@glma.org

www.glma.org

Lambda Legal Defense Fund National Headquarters

120 Wall St., 19th Fl.

New York, NY 10005-3919

(212) 809-8585

www.lambdalegal.org

National Center for Lesbian Rights (NCLR)

870 Market St., Ste. 370

San Francisco, CA 94102

(415) 392-6257

www.nclrights.org

National Resource Center on LGBT Aging, a program of SAGE

(212) 741-2247
www.lgbtagingcenter.org

National Gay and Lesbian Task Force

1050 Connecticut Ave. NW, Ste. 65500
Washington, DC 20035
(202) 393-5177
www.thetaskforce.org

Old Lesbians Organizing for Change (OLOC)

P.O. Box 834
Woodstock, NY 12498
(888) 706-7506
www.oloc.org

One Colorado

303 E. 17th Ave., Ste. 400
Denver, CO 80203
(303) 396-6170
www.one-colorado.org

Project Visibility: A Training to Understand the Strengths and Needs of LGBT Elders

Audience: assisted living residences, nursing homes, and all senior care providers.

Boulder County Aging Services
(303) 441-3570
www.bouldercounty.org/families/seniors/services/project-visibility/

Services and Advocacy for GLBT Elders (SAGE)

305 7th Ave., 15th Fl.
New York, NY 10001
(212) 741-2247
www.sageusa.org

The Center

Denver's GLBT community center for over 30 years. Includes programs for LGBT seniors as the SAGE of the Rockies affiliate.

1301 E. Colfax Ave.
Denver, CO 80218
(303) 733-7743
<https://lgbtqcolorado.org>

Transgender Aging Network

P.O. Box 1272
Milwaukee, WI 53201
(414) 559-2123
<https://forge-forward.org/resources/aging/>

Other Online Resources and Reports:

- ▶ <https://acl.gov/ltc>
- ▶ www.sageusa.org/wp-content/uploads/2018/05/sageusa-successful-lgbt-caregiving-education-guide-longterm-care.pdf
- ▶ www.lgbtmap.org/improving-the-lives-of-lgbt-older-adults— “Improving the Lives of LGBT Older Adults,” March 2010

Exhibit 19A.
Information from SAGE at The Center

The Center
<https://lgbtqcolorado.org/>

The Center is proud to recognize and affirm that our community is made up of a wonderful diversity of LGBT people of all ages. Understanding that folks have different interests, strengths, needs, relationships, and resources as they get older, The Center offers programming designed especially for people over 50.

Over the past decade, an active and committed group of advocates has drawn increasing attention to the often neglected issues of growing old as a gay man, a lesbian, a bisexual, or a transgendered person. Gay and Gray in the West was an organization begun very informally that eventually produced three significant conferences in Denver that helped to articulate these issues locally, and that ultimately led to the creation of a full-fledged program at The Center.

In 2009, The Center became an affiliate of SAGE (Services and Advocacy for GLBT Elders), the nation's oldest and largest organization dedicated to the older members of the LGBT community, and our program was officially named SAGE of the Rockies. Our program embodies the principles and values of SAGE as reflected in all we have to offer.

The services offered through SAGE of the Rockies include a variety of exciting, educational, and helpful ways to get involved as an older LGBT adult. Whether planning for the future (housing, finances, legal issues, health care), having a good time (social events, intergenerational opportunities, travel), or finding help when you need it (caregiver support groups, referrals to safe and quality community services, educational presentations), SAGE of the Rockies is here for you.

We know from experience that when we come together and speak as a united voice, we can make things happen to negate the effects of ageism and homophobia. We are a whole generation of change-makers (the 60's, Stonewall, LGBT Pride, response to HIV/AIDS) and we haven't stopped yet. Now we have new fronts needing our attention, like safe places to live and receive care, affordable housing, laws that protect against discrimination and harm, and being treated equally with other older (and married) people when it comes to benefits and service eligibility. SAGE of the Rockies gives us that voice.

SAGE (Services and Advocacy for GLBT Elders) of the Rockies

Imagine you are a 70-year-old GLBT person and you are not completely open about your sexuality or gender identity. You have been told for the past 50 years that you are sick, a sinner, depraved, or that you are mentally ill. You are estranged from your family, you do not have children, and you are statistically more likely to age alone. You will likely NOT access community services. You are invisible within the GLBT community.

Our mission at SAGE of the Rockies is to build programs to serve the unique needs of the aging GLBT population and to promote successful aging. We hear repeatedly from participants in SAGE programs that they have formed friendships and connections that are improving their quality of life and saving lives.

At SAGE, we offer social gatherings, grief groups for surviving partners and spouses, a written storytelling opportunity, culture outings, spirituality and wisdom workshops, coming out support groups, writers' workshops, yoga, art, and more. In addition, we operate "Capitol Hill Care Link" a program working to help elders to maintain independence, health, and quality of life by helping to deliver supportive services so elders can stay in their homes longer. Capitol Hill Care Link is a single referral resource for comprehensive senior services, including:

- ▶ **Health and Wellness:** In-home health screenings, counseling and wellness coaching, Silver Sneakers and other senior exercise programs, and assistance with food and meal programs.
- ▶ **Benefits Counseling:** SNAP, Medicare, Medicaid, and other government benefits.
- ▶ **Care Management:** We can help navigate systems to improve quality of life, and offer affordable services homemaker, home repair, and in-home safety evaluations.
- ▶ **Transportation.**

Finally, we work with GLBT elders on housing options, legal issues, financial planning, and training health care providers and senior agencies about the specific cultural histories of GLBT elders. With the help of several community partners such as Jewish Family Service, Kaiser Permanente, and the Area Agency on Aging (DRCOG), we are doing important work on behalf of the 50+ GLBT population in Denver and Colorado.

**Exhibit 19B.
Designated Beneficiary Agreement**

DESIGNATED BENEFICIARY AGREEMENT

Warning: while this document may indicate your wishes, certain additional documents may be needed to protect these rights.

This designated beneficiary agreement is operative in the absence of other estate planning documents and will be superseded and set aside to the extent it conflicts with valid instruments such as a will, power of attorney, or beneficiary designation on an insurance policy or pension plan. This designated beneficiary agreement is superseded by such other documents and does not cause any changes to be made to those documents or designations.

The parties understand that executing and signing this agreement is not sufficient to designate the other party for purposes of any insurance policy, pension plan, payable upon death designation or manner in which title to property is held and that additional action will be required to make or change such designations.

The parties understand that this designated beneficiary agreement may be one component of estate planning instructions and that they are encouraged to consult an attorney to ensure their estate planning wishes are accomplished.

If the relationship contemplated by this designated beneficiary agreement ends, it is the responsibility of the signing parties to revoke the agreement.

We, _____, who resides at _____, referred to as Party A,
(Full Name) (Street Address, City, State, Zip)

and _____, who resides at _____, referred to as Party B,
(Full Name) (Street Address, City, State, Zip)

hereby designate each other as the other's Designated Beneficiary with the following rights and protections, granted or withheld as indicated by our initials:

*To grant one or more of the rights or protections specified in this form, initial the line to the left of each right or protection you are granting.
To withhold a right or protection, initial the line to the right of each right or protection you are withholding.*

A DESIGNATED BENEFICIARY AGREEMENT SHALL BE PRESUMED TO GRANT ALL OF THE RIGHTS AND PROTECTIONS IN THIS FORM UNLESS THE PARTIES TO THE AGREEMENT EXPLICITLY EXCLUDE A RIGHT OR PROTECTION.

To **grant** a right or protection, initial:

To **withhold** a right or protection, initial:

Party A	Party B		Party A	Party B
_____	_____	The right to acquire, hold title to, own jointly, or transfer inter vivos or at death real or personal property as a joint tenant with me with right of survivorship or as tenant in common with me;	_____	_____
_____	_____	The right to be designated by me as a beneficiary, payee, or owner as a trustee named in an inter vivos or testamentary trust for the purposes of a nonprobate transfer on death;	_____	_____
_____	_____	The right to be designated by me as a beneficiary and recognized as a dependent in an insurance policy for life insurance;	_____	_____
_____	_____	The right to be designated by me as a beneficiary and recognized as a dependent in a health insurance policy if my employer elects to provide health insurance coverage for designated beneficiaries;	_____	_____
_____	_____	The right to be designated by me as a beneficiary in a retirement or pension plan;	_____	_____
_____	_____	The right to petition for and have priority for appointment as a conservator, guardian, or personal representative for me;	_____	_____
_____	_____	The right to visit me in a hospital, nursing home, hospice, or similar health care facility in which a party to a designated beneficiary agreement resides or is receiving care;	_____	_____
_____	_____	The right to initiate a formal complaint regarding alleged violations of my rights as a nursing home patient as provided in section 25-1-120, Colorado Revised Statutes;	_____	_____
_____	_____	The right to act as a proxy decision-maker or surrogate decision-maker to make medical care decisions for me pursuant to section 15-18.5-103 or 15-18.5-104, Colorado Revised Statutes;	_____	_____

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To grant one or more of the rights or protections specified in this form, initial the line to the left of each right or protection you are granting.
 To withhold a right or protection, initial the line to the right of each right or protection you are withholding.

To **grant** a right or protection, initial:

To **withhold** a right or protection, initial:

Party A	Party B		Party A	Party B
_____	_____	The right to notice of the withholding or withdrawal of life-sustaining procedures for me pursuant to section 15-18-107, Colorado Revised Statutes;	_____	_____
_____	_____	The right to challenge the validity of a declaration as to medical or surgical treatment of me pursuant to section 15-18-108, Colorado Revised Statutes;	_____	_____
_____	_____	The right to act as my agent to make, revoke, or object to anatomical gifts involving my person pursuant to the "Revised Uniform Anatomical Gift Act," part 2 of article 19 of title 15, Colorado Revised Statutes;	_____	_____
_____	_____	The right to inherit real or personal property from me through intestate succession;	_____	_____
_____	_____	The right to have standing to receive benefits pursuant to the "Workers' Compensation Act of Colorado," article 40 of title 8, Colorado Revised Statutes, in the event of my death on the job;	_____	_____
_____	_____	The right to have standing to sue for wrongful death in the event of my death; and	_____	_____
_____	_____	The right to direct the disposition of my last remains pursuant to article 19 of title 15, Colorado Revised Statutes.	_____	_____

This Designated Beneficiary Agreement is effective when received for recording by the county clerk and recorder of the county in which one of the designated beneficiaries resides. This Designated Beneficiary Agreement will continue in effect until one of the designated beneficiaries revokes this agreement by recording a revocation of the designated beneficiary form with the county clerk and recorder of the county in which this agreement was recorded or until this agreement is superseded in part or in whole by a superseding legal document.

Signature of Designated Beneficiary, Party A

Signature of Designated Beneficiary, Party B

Date

Date

State of Colorado
 County of _____

State of Colorado
 County of _____

This document was subscribed, sworn to, and acknowledged

This document was subscribed, sworn to, and acknowledged

before me by _____
 on _____, 20_____.

before me by _____
 on _____, 20_____.

My commission expires: _____.

My commission expires: _____.

SEAL

SEAL

Signature of Notary Public

Signature of Notary Public

APPLICANT: COMPLETE THIS BOX AT TIME OF ACTUAL SUBMITTAL TO COUNTY CLERK. (Leave box blank if submitting form by mail.)

This Designated Beneficiary form is effective on the date it is received by the County Clerk and Recorder for recording. This form was received by the County Clerk and Recorder on _____, at _____ o'clock.

Exhibit 19C.
Revocation of Designated Beneficiary Agreement

REVOCATION OF
DESIGNATED BENEFICIARY AGREEMENT

This revocation form must be recorded in the same county as the Designated Beneficiary Agreement form it revokes.

I, _____, residing at _____.
(Full Name) (Street Address, City, State, Zip)

entered into a Designated Beneficiary Agreement on _____, with the following person:
(Date)

_____, whose last known address is:
(Full Name)

(Street Address, City, State, Zip)

in which I designated such person as a Designated Beneficiary. This Designated Beneficiary Agreement was recorded on _____, in the County of _____.
(Date)

The indexing file number of the Designated Beneficiary Agreement is _____.

I hereby revoke that Designated Beneficiary Agreement, effective on the date and time that this revocation is received for recording by the Clerk and Recorder of _____ County.

(Signature)

(Date)

State of Colorado
County of _____

This document was acknowledged before me on _____.

[SEAL]

My commission expires: _____.

Signature of Notary Public

This revocation of beneficiary agreement was recorded in my office on _____, at _____ o'clock, and pursuant to section 15-22-111, Colorado Revised States, I mailed a copy of this revocation of beneficiary agreement to _____ at the address contained in this revocation of beneficiary agreement.

Clerk and Recorder of _____ County

By: _____

Chapter 20

Reverse Mortgages

Doni Dolfinger
Paulette Wisch, CML
Universal Lending Corporation

SYNOPSIS

- 20-1. What Is a Reverse Mortgage?
 - 20-2. Reverse Mortgage Financial Assessment
 - 20-3. Eligibility, Responsibility, and Repayment
 - 20-4. HECM (Reverse Mortgage) for Purchase
 - 20-5. Pros and Cons
 - 20-6. Awareness and Education
 - 20-7. Frequently Asked Questions
 - 20-8. Real-Life Examples
 - 20-9. Proprietary (Private) Reverse Mortgage Products
 - 20-10. Resources
-

Many senior homeowners realize that their greatest financial asset is the equity or money they have accumulated in their homes. If they want to use this money, for whatever reason, they consider either selling the home or borrowing against it. The problem with selling is, they still need a place to live and may not want to rent. The problem with borrowing may be the difficulty in making the mortgage payments. Another option might be a reverse mortgage, which allows the homeowner to live in the home without a monthly repayment to the lender. This often misunderstood option is not as complicated as it is made out to be.

20-1. What Is a Reverse Mortgage?

A reverse mortgage is a special type of mortgage loan designed for homeowners who are 62 years of age and older. It is a loan against the home that does not have to be paid back as long as the homeowner lives in the home.

Proceeds received from a reverse mortgage are considered proceeds of a loan instead of income; therefore, you do not pay income taxes on the money you receive. There are also no restrictions on how you choose to spend your money. A few ideas might be to:

- ▶ Increase monthly income;
- ▶ Hire in-home help;
- ▶ Eliminate a house payment;
- ▶ Update the home;
- ▶ Pay off credit cards;
- ▶ Pay for long-term care insurance; or
- ▶ Purchase a second home.

20-2. Reverse Mortgage Financial Assessment

Effective April 27, 2015, the Federal Housing Authority (FHA) requires lenders to conduct a financial analysis of the borrower's income and credit to prove "capacity and willingness" to pay taxes and insurance. Proof of all income is required, and monthly obligations are subtracted to determine residual income. The amount of residual income needed is determined by family size and geographic area of the country. The analysis also includes a review of the borrower's credit history, including history of payment of property taxes, homeowners insurance, and homeowners dues. If the borrower has not demonstrated willingness to meet his or her financial obligations, the lender will require a set-aside of some of the mortgage proceeds to cover future property charges. Lenders will not automatically decline borrowers based on derogatory credit; there may be extenuating circumstances, such as an illness, job loss, or death that contribute to credit issues. The borrower will be required to fully explain all circumstances surrounding derogatory credit.

20-3. Eligibility, Responsibility, and Repayment

When considering a reverse mortgage, it is important to know if you are eligible, how much money you qualify for, and if the programs you are looking at help you accomplish your goal. If your goal is to pay off your \$45,000 mortgage and the reverse mortgage provides you with \$100,000, you can leave the balance in the line of credit or you can receive a monthly stipend. If you are short of funds, you may want to wait until the variables are more favorable or you may bring in the difference from other assets or savings.

How Much Money Can I Get with a Reverse Mortgage?

The money that you qualify for is based on the following factors:

- ▶ The age of the borrower(s);
- ▶ The current interest rate;
- ▶ The appraised value of the home
- ▶ The amount of debt owing on the home; and
- ▶ The lending limits (on the Home Equity Conversion Mortgage (HECM) program).

Eligibility Requirements

- ▶ At least one homeowner on the HECM program *must* be 62 years or older. At least one of the homeowners must live in the home as his or her principal residence. If your

spouse is not yet 62, you may still qualify; however, you would be subject to the “non-borrowing spouse” rules.

- ▶ All homeowners must agree to attend a one-on-one educational session on reverse mortgages with an approved counselor. After speaking with the counselor, you will receive a certificate. The certificate must be provided to the lender to start the loan process.
- ▶ The home must be owned free and clear or have a mortgage balance that can be paid off by the proceeds of the reverse mortgage or by the homeowner. As explained earlier, the homeowner may choose to bring cash in to make up a shortage.
- ▶ The property can be a single-family home or a one- to four-unit dwelling on most programs.
- ▶ Townhomes, approved condominium units, planned unit developments (PUDs), and some manufactured homes qualify on most programs.

Responsibilities of the Homeowner

- ▶ Keep property taxes and HOA dues current.
- ▶ Maintain adequate homeowners insurance.
- ▶ Maintain the property in good condition.
- ▶ Use the home as your primary residence.

Choices on Your Payment Plans

Although there may be other reverse mortgage products available, the FHA-insured program (also called a Home Equity Conversion Mortgage, or HECM) has been the most popular nationwide for the past 30+ years. An experienced reverse mortgage lender will offer you several options. You choose the one that best fits your needs. With the FHA-insured program, you are able to adjust your payment plan as your life situation changes. You may change your plan as many times as needed for a small fee of \$20 per change. The exception to this is the fixed-rate plan, which is a closed-end loan and cannot be changed.

FHA-Insured Options

- ▶ ***Tenure Payments.*** The lender pays you equal monthly payments for as long as at least one homeowner is living in the home. This monthly payment continues even if the loan balance grows higher than the value of the home. (Tenure payments are not available on all programs.)
- ▶ ***Term Payments.*** The lender pays you equal monthly payments for a pre-determined period of time. Even after the last payment ends, you still remain the homeowner. No repayment is required for as long as you are living in the home. (Term payments are not available on all programs.)
- ▶ ***Line of Credit.*** With a line of credit, you may access your money as needed. The remaining balance in your line of credit grows in value over time. There is no fee to withdraw money from your account. Once your withdrawal request has been made, the lender has five business days to deposit it to your account. (Not all programs have line of credit growth.)

- ▶ **Initial Draw or Lump-Sum Cash Advance.** Lump-sum withdrawal allows for immediate cash at loan disbursement (three business days after closing). You may choose to draw a portion of the money available to you. If you have an existing mortgage or property lien, these would be paid at loan disbursement.
- ▶ **Combination.** You may choose a combination of the above plans. (Not available on all programs.)

When Is the Reverse Mortgage Repaid?

A reverse mortgage becomes due and payable when the last living homeowner sells, dies, or moves away. If needed, a homeowner can be away from the home for 12 months due to health reasons.

The total loan amount owed is the amount of money the lender has disbursed to you, plus interest and fees accrued during the life of the loan. You, or your estate, are legally required to pay back *only* the balance due on the loan. All money (equity) left after the loan is repaid belongs to you or your estate.

The reverse mortgage is repaid in one payment, either from the sale of the house or by other assets. If the amount owed is more than the sale of the house, *the remaining debt is paid by the insurance fund*. You, or your heirs, have no personal liability.

Interest Rate Information

Reverse mortgages, like traditional mortgages, are tied to a specific index that may be tracked by the public. They are usually based on the CMT (Constant Maturity Treasury) plus the investor margin. Once your loan closes, changes in interest rates do not affect the amount of money that you originally qualified for. Even if you choose the variable rate option, your payment will only change if you change it. If, for example, you receive \$850 per month, you will get that for your chosen term unless you change the plan.

Interest rates are determined by the program. Remember, one size does not fit all. Each program has pros and cons. A knowledgeable lender will be able to explain them so you can make an educated decision about which reverse mortgage would be best for you.

20-4. HECM (Reverse Mortgage) for Purchase

Effective January 1, 2009, the FHA added an HECM (Reverse Mortgage) for Purchase enhancement. HECM stands for Home Equity Conversion Mortgage. HECM mortgagors can now purchase a home with reverse mortgage proceeds. This saves the customer money, as it is a “one close” transaction.

- ▶ Transactions may be completed on a single-family home, an FHA-approved condo, a duplex, a triplex, or a fourplex, so long as the owner lives in the dwelling.
- ▶ Additional monetary investment must come from current assets or from the sale or liquidation of the mortgagor’s home.
- ▶ The lender must verify the source of all funds.
- ▶ No bridge loans are allowed.
- ▶ If the property is new construction, a Certificate of Occupancy must be issued.

- ▶ Customers must occupy the property within 60 days of closing.

20-5. Pros and Cons

Pros

- ▶ You remain in title to the home.
- ▶ You decide how you would like to spend your money.
- ▶ There are no monthly payments required. Your lender cannot foreclose on you for non-payment because there is no monthly repayment required.
- ▶ There is no pre-payment penalty on most reverse mortgages.
- ▶ A reverse mortgage is an insured loan. You (or your heirs) are guaranteed never to owe more than the value of the home.
- ▶ There are several choices in how you can receive your money.
- ▶ The money you receive is considered proceeds of a loan, not income; therefore, it does not affect Medicare, Social Security, SSI, or Medicaid. (Note: It is important to know and follow your benefit program rules to maintain your eligibility for certain programs.)

Cons

- ▶ Your loan balance gets larger, not smaller, because you are not making payments; moreover, interest and fees accrue and add to the balance owing. If you want to leave the home free and clear to the heirs, you should not choose a reverse mortgage.
- ▶ Reverse mortgages may be desirable for someone planning to stay in his or her home because of the initial costs. The longer you stay, the more cost effective the loan, just like a traditional loan.
- ▶ There are adjustable and fixed rate reverse mortgages. Obviously, the adjustable rate loans will change according to the program chosen. The fixed rate loan would guarantee the rate for the life of the loan.
- ▶ The adjustable rate offers many different options to remove proceeds from the loan, and interest is charged only on what is taken. The fixed rate is a “lump sum” disbursement at the time of closing.

20-6. Awareness and Education

Many homeowners have not had a mortgage or loan against their home for many years. It is important to know what to expect from the lender and how to get your questions answered. Gathering information is fairly easy. Classes are often provided on reverse mortgages, free booklets from AARP are available, and, of course, approved counselors are a great resource.

- ▶ **Counseling.** Counseling is mandatory for all reverse mortgage programs. This is a one-on-one session with an approved counselor to review the legal and financial implications of the reverse mortgage, as well as any other alternatives that may be available. As part of your session, you will be given a Certificate of Borrower

Counseling. If you choose to go forward with an application, you must provide a copy of the certificate to your reverse mortgage lender. This certificate expires in 180 days.

- ▶ **Application.** This is when you sign all the paperwork to get the loan started. Typically, your reverse mortgage specialist will meet you at your home or his or her office to explain each page in great detail. You will receive a copy of all the paperwork you sign. If you have completed your counseling, the lender will need the *counseling* certificate and photocopies of other documents such as a driver's license, Social Security card, and homeowners insurance. Your lender will let you know what they require for application.
- ▶ **Appraisal.** An appraisal will be ordered to determine your home's value. You should receive a copy of the appraisal at or prior to closing. The appraised value of your home will be used for the final loan calculations. The FHA reverse mortgage requires that your home meets FHA guidelines. The appraiser will determine if any repairs are required on your home. In many cases, if repairs are needed, they can be completed within six months after your loan closing.
- ▶ **Processing and Underwriting.** There are many things happening behind the scenes while your loan is in process. Your lender will order the appraisal, title work, credit report, flood certification, lien payoffs (if applicable), homeowners insurance verification, etc. After receiving all the pertinent data, the lender sends your loan package to underwriting for final loan approval. When your loan is ready for closing, your loan specialist will contact you to determine which payment plan you have selected. Processing typically takes three to six weeks, depending on your lender.
- ▶ **Loan Closing and Disbursement.** Now it is time to sign the final closing documents. This typically takes place in your home, the lender's office, or the title company office. If you want your lawyer to review your documents, notify your lender so it may provide them in advance of your closing. You will receive copies of all the paperwork you sign to retain for your personal records. After closing, you have three business days in which to cancel the loan, if you so choose. After this three-day period passes, the loan is in place and the funds are disbursed. (The three-day cancellation period only pertains to refinances, not purchases.)

20-7. Frequently Asked Questions

Q: What is so unique about this program?

A: There are no required monthly payments – *none*.

Q: Can I make payments if I want to?

A: Yes, and any payments you make will increase the amount of equity that will be left when the home is sold.

Q: Who is eligible for a reverse mortgage?

A: You and any co-borrowers must:

- ▶ Be at least 62 years of age;
- ▶ Live in the home as a primary residence;
- ▶ Speak with the approved counselor;

- ▶ Have equity in the home; and
- ▶ Meet certain credit and residual income guidelines.

Q: Do I have to own my home free and clear?

A: No. Even if you have an existing loan, in many cases, reverse mortgage proceeds can be used to pay the debt.

Q: May I use a reverse mortgage to buy a new home?

A: Yes, but working with an experienced reverse mortgage lender is key. There may be additional steps required. Your lender can walk you through this process.

Q: Will I have to pay fees?

A: No out-of-pocket fees are usually required. Closing costs, origination fees, and mortgage insurance (if required) can be financed by the loan. Ask your lender if it charges any up-front fees; some lenders may ask you to pay for the appraisal up front, while others ask you to pay it only if your loan does not close.

Q: Is there a charge for the required FHA Counseling?

A: Some counseling agencies do charge and some *do not*. The fees vary but are usually between \$135 and \$190. When you set your appointment, ask your counselor if the agency charges any fees.

Q: Are there any out-of-pocket fees after closing?

A: Yes, there are typically mortgage insurance fees (on the HUD program), as well as interest accrual and sometimes servicing fees, but you are not required to pay them; they are added to your loan balance.

Q: I know I will be charged interest, but on what?

A: Interest is charged only on the amount disbursed to you or on your behalf and is added to your loan balance each month.

Q: Is this a fixed rate loan?

A: There is a fixed rate option available. The fixed rate program requires that the homeowner take a full disbursement of funds (no line of credit or monthly payments).

Q: What is helpful when “shopping” for a reverse mortgage lender?

A: You should shop for a knowledgeable, experienced lender who can accurately complete your loan in a reasonable time frame and offer you more than one program. Ask your lender how long they have offered reverse mortgages and how many they personally have done. You may want to ask for references and speak with a previous customer they worked with and who has had their reverse mortgage for a while. Are they a member of the Better Business Bureau?

Q: Can I sell my home whenever I want?

A: Yes – and you keep whatever money is left over after you pay off your loan balance. Most programs have *no* prepayment penalty. Have your lender confirm this in writing or show you where it is in your paperwork.

Q: If I take a reverse mortgage, who owns my home?

A: *You* remain the owner of the property.

Q: What are my/our responsibilities?

A: Borrowers must live in the home, keep the property in good repair, make sure the property taxes and homeowners insurance are current, and pay any homeowners association dues and utilities.

Q: Are reverse mortgage benefits taxable by the IRS?

A: No, benefits are considered loan proceeds and the reverse mortgage is not considered a taxable event.

Q: What if my property is in a revocable trust?

A: Property in a revocable trust usually qualifies. The lender will need a copy of the trust to see that it meets the program guidelines. If it does not, oftentimes your lawyer can modify it so that it meets the program guidelines and you may leave the property in the trust.

Q: Are there restrictions on how I use the money?

A: No. It is your money and your decision on how to spend it.

Q: What if my house needs repairs?

A: You find the contractor or handyman, get the estimate, and the repairs can be completed after your loan is finalized. Money will be reserved from your loan for these repairs, and you will have up to six months to complete them. (Repairs cannot be more than 15 percent of the value of the home.) This does not apply to the purchase program.

Q: When is my loan due?

A: When the borrowers no longer live in the home as a primary residence.

Q: Are reverse mortgages safe?

A: Yes. You or your heirs are guaranteed never to owe more than the value of the home at the time of sale.

Q: Can I sell whenever I want to?

A: Absolutely. It is no more difficult to sell a home with a reverse mortgage than to sell a home with a traditional mortgage.

Q: Will my heirs owe anything if I die?

A: *No*, reverse mortgages have insurance to guarantee that you would never leave a debt to your heirs. When you die, the house goes to your estate. The reverse mortgage is repaid from either the sale of the house or other assets, and the remaining equity goes to your estate. If the house does not repay the loan, it is paid by the insurance fund, *not* your heirs.

Q: If my home appreciates in value, who gets that money?

A: You or your estate are legally required to pay back only the balance due on the loan. Again, all money left after the loan is repaid belongs to you or your estate.

Q: What if I have to go to a nursing facility?

A: You can be gone from the property for up to one year because of illness and the loan is not affected.

Q: Will this affect Social Security, Medicare, or Medicaid?

A: Money from a reverse mortgage will not affect Social Security or Medicare. Even if you are getting Medicaid, Supplemental Security Income, or Old Age Pension, you may qualify. You must abide by program guidelines to avoid termination of benefits.

20-8. Real-Life Examples

Lois had her home paid free and clear, and then her daughter needed some money because of a divorce. Lois secured a traditional loan on her home to help her daughter, who promised to help with the payments. When her daughter did not help her, Lois could not keep up with the payments and was in danger of losing her home. She applied for and completed the reverse mortgage, and, with the proceeds, paid off her previous mortgage in time to rescue the home from foreclosure.

When Betty's husband died suddenly, she was in shock. She and Bill had been getting by on their fixed incomes, and when Bill died, her Social Security benefits were reduced and the loan on the house still had to be paid. Betty researched reverse mortgage programs and decided the FHA-Insured program was the right one for her. She obtained the reverse mortgage and used part of the proceeds to pay off the home loan. With the balance of the proceeds, she is receiving \$400 a month to offset the loss of income, and she left \$35,000 in her line of credit that she can use as needs arise.

Davis and Jane sold their large home with a large yard to downsize and have a more maintenance-free retirement home. They netted \$350,000 from the sale of the old property and found their "dream retirement home" for \$438,000. They opted for an HECM for Purchase instead of a traditional mortgage because they wanted to also free up their monthly income and preserve some of their proceeds for future living expenses. Based on their ages, the value of the new home, and the interest rate at the time they closed, the HECM for Purchase provided them with about \$241,000 (plus closing costs and FHA mortgage insurance were included in the loan). The \$241,000, along with \$197,000 in proceeds from their previous home, enabled them to purchase the new \$438,000 property and still preserve \$153,000 to live on while also eliminating the need for a mortgage payment.

Grace, who is 98, said, "I saved for my retirement, I just didn't think I would live this long." As Grace aged, she used all of her savings to hire home care, as she was adamant she would not go to a nursing home. When she was 98, her savings were gone, so she secured a reverse mortgage and was able to remain in her home, with care paid for by utilizing the equity she had in her home.

20-9. Proprietary (Private) Reverse Mortgage Products

Many lenders are developing their own private reverse mortgage products. Unlike FHA reverse mortgages, where all lenders must follow the same rules, these products are designed and administered by the lenders who created them, so there are different rules and regulations for each product.

In general, private reverse mortgages offer a fixed rate loan that is higher than the FHA rate. Some mandate a disbursement of at least \$100,000 when the loan is completed, and some require a full disbursement of funds. Some offer a line of credit, like FHA, and most do not offer a monthly income. Some require the home value to be at least a certain amount. Some have different requirements for credit and income qualification.

20-10. Resources

Colorado is fortunate to have many good reverse mortgage counselors. Here are some of the local counselors for your convenience. You may look at the entire list on the FHA website, www.hud.gov.

The HUD-approved housing agencies listed below provide assistance to renters, homebuyers, and homeowners requiring housing information. They are not HUD offices. Any of these agencies will conduct the required informational session for the FHA-insured reverse mortgage.

City of Aurora Community Development Division

15151 E. Alameda Pkwy.
Aurora, CO 80012
(303) 739-7404
www.auroragov.org (Click on "Residents," then "Community Development.")

Boulder County Housing Authority

2525 13th St.,
Boulder, CO 80304
(720) 564-2279
www.bouldercounty.org/families/housing/personal-finance-coaching/

Northeast Denver Housing Center

1735 Gaylord St.
Denver, CO 80206
(303) 726-4034
www.nedenverhousing.org

Neighbor to Neighbor

1550 Blue Spruce Dr. #67
Ft. Collins, CO 80524
(970) 829-0435
Contact@N2N.org

Money Management International

Telephone Counseling Only: (877) 908-2227
www.moneymanagement.org

Grand Junction Housing Authority

524 30 Rd.
Grand Junction, CO 81504
(970) 241-2871

Douglas County Housing Partnership

9350 Heritage Hills Cir.
Lone Tree, CO 80124
(303) 784-7857
www.douglascountyhousingpartnership.org

Horizon Counseling

(888) 315-4326
www.CallHorizon.com

Helpful Reverse Mortgage Websites

National Reverse Mortgage Lenders Association

www.nrmlaonline.org

Federal Housing Administration

U.S. Department of Housing and Urban Development
www.hud.gov

AARP

www.aarp.org

Colorado Housing Counseling Coalition

www.coloradohcc.org

Loan Calculations

www.reversemortgage.org

Chapter 21

Assisted Living and Nursing Home Issues

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Area Agency on Aging

Denver Regional Council of Governments

SYNOPSIS

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 - 21-2. Long-Term Care Communities
 - 21-3. Six Key Steps to Selecting a Good Assisted Living Residence or Nursing Home
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 - Exhibit 21B. Assisted Living and Nursing Home Checklist
 - Exhibit 21C. Colorado Area Agencies on Aging Regions
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21-1. Introduction

The purpose of this chapter is to provide information to help you select an appropriate assisted living residence or nursing home for yourself or your loved one. In this chapter, we provide:

- ▶ A description of the Ombudsman Program;
- ▶ An overview of the long-term care options in Colorado;
- ▶ A description of the type of care that is provided at assisted living residences and nursing homes;
- ▶ Factors you should consider when evaluating and selecting an assisted living residence or nursing home; and
- ▶ Resources to help you select an appropriate resident-centered care setting.

Selecting an appropriate long-term care community for yourself or a loved one can be confusing and stressful. The selection process is challenging because it often occurs at a time of crisis, sometimes without time to prepare. Additionally, most people are not familiar with

the available long-term care options, the services that are provided, or the rights and legal protections that are available to residents of assisted living communities or nursing homes. We will refer to the people who live in assisted living residences or nursing homes as “residents” to reflect that for most individuals the long-term care community is their home.

The Ombudsman Program is an important resource as you choose the long-term care community that best meets your needs. It is a free, nationwide advocacy program for residents of assisted livings and nursing homes who might feel powerless and vulnerable. Every long-term care community in Colorado has an ombudsman assigned to visit and investigate complaints from family and residents. Ombudsmen are required to visit assisted living residences at least once every three months and nursing homes at least once a month. Long-term care ombudsmen are responsible for educating residents, family members, and care providers about the rights that residents have been granted under federal and Colorado law. (A complete list of residents’ rights appears at the end of this chapter as Exhibit 21A.) Ombudsmen are resident advocates who take the perspective of residents when resolving issues. Their work is funded by federal grants under the Older Americans Act. They are frequent visitors to assisted living residences and nursing homes, and are trained to identify issues affecting resident rights. Ombudsmen are ideally suited to provide information to consumers when selecting long-term care communities.

21-2. Long-Term Care Communities

Long-term care communities are broadly divided into two groups: assisted living residences and nursing homes. Smaller assisted living residences are also referred to as personal care boarding homes or simply PCBHs. In this chapter, we will use the term “assisted living residences” or “assisted livings” to include personal care boarding homes and assisted living residences.

Assisted Living Residences

An assisted living residence is a residential community that provides room, board, and at least the following services: personal care services, protective oversight, social care, and regular supervision available on a 24-hour basis. Personal care services include a physically safe environment, supervision, and assistance with activities of daily living (often referred to as ADLs) such as medication administration, bathing, dressing, and toileting. Protective oversight includes monitoring the needs of residents to ensure that they receive the services and care necessary to protect their health, safety, and well-being. At a minimum, staff at assisted livings must be present at all times. Some assisted living residences, known as secured communities, also have locked doors to prevent residents with dementia from leaving the building. Some assisted living communities specialize in providing care to residents with dementia, who tend to wander. These communities may identify themselves as secured or locked environments.

There are over 650 assisted living residences in Colorado. There are approximately 408 assisted living residences in the Denver metro area alone. Assisted living residences range in size from 3 to 274 residents. The smaller assisted living residence may have a home-like aspect, whereas the large assisted livings have amenities such as common areas, dining rooms, theaters, libraries, and spa-like services. The most common reasons for admission to assisted living residences are medication management; eating, bathing, and dressing assistance; and the need for supervision without requiring the skilled nursing care available at nursing homes.

Assisted living residences with more than three residents who are not related to the owner of the community are required to be licensed by the Colorado Department of Public Health and Environment (CDPHE). Communities that accept Medicaid payments must also be certified by the Colorado Department of Health Care Policy and Financing. Assisted living

residences are inspected or surveyed by the CDPHE. Department inspectors may enter the community at any time to investigate complaints made by residents, ombudsmen, families, members of the public, or any other concerned citizens. The CDPHE survey results and complaint investigations should be posted or easily accessible within the community.

Staffing

Staffing at assisted living residences and nursing homes differs in relationship to the needs of the residents. Assisted livings often try to provide a home-like environment while providing 24-hour non-medical supervision. In smaller homes, it is common for the owner to be directly involved with resident care. Larger communities, by contrast, have an administrator who is responsible for the overall management and daily operations of the community, and various staff members provide direct resident care.

Assisted living residences are required to have at least one staff member on-site whenever residents are present, 24 hours a day. There are no state-mandated staffing requirements or staff-to-resident ratios for assisted living residences. Rather, an assisted living residence must employ the type and number of care providers necessary to operate the home in compliance with CDPHE regulations. However, if the community accepts Medicaid, the federal government requires a staffing ratio of 1 staff member to every 10 residents during the day, and 1 staff member to every 16 residents at night. The staffing ratio for a secured environment is one staff member to every six residents. Staffing at assisted living residences generally includes Qualified Medication Administration Persons (QMAPs), whose responsibility it is to distribute medication to residents. There has been an increase in assisted living residences having either a Licensed Practical Nurse (LPN) or Registered Nurse (RN) on staff. They typically are given the title "wellness coordinator." They oversee the medication program and the QMAPs. As of November 1, 2008, all assisted living communities are required to have on-site at all times at least one staff member who has been trained in cardiopulmonary resuscitation (CPR) and first aid. They are also required to have training in lift assistance.

Nursing Homes

Nursing homes, sometimes called skilled nursing facilities, provide skilled nursing care, rehabilitative services, or health-related care and services to chronically ill individuals, including those with chronic mental illnesses. Many nursing homes also offer short-term care (often called respite care), extended care rehabilitative services, and special locked units or neighborhoods for people with Alzheimer's disease or other types of dementia. Some nursing homes have expertise in caring for individuals with brain injuries, behaviors that occur after a stroke or as a result of dementia, wound care, drug and alcohol addictions, or specific diseases such as multiple sclerosis or various mental illnesses. Many people mistakenly think that nursing homes only provide care to elderly adults, but nursing homes serve people, regardless of age, who have chronic illness and need long-term care. It is not unusual to have young residents who have suffered brain injuries, or who are morbidly obese, living in the same community with elderly residents who have dementia, chronic obstructive pulmonary disease, or who are mentally ill.

There are over 200 nursing homes in Colorado, 96 of which are located in the Denver metro area. They range in size from 30 to 240 residents. Nursing homes are inspected or surveyed annually by the CDPHE. Additionally, the CDPHE may enter the community at any time to investigate complaints that are made by residents, families, ombudsmen, members of the public, or anyone concerned about the care residents are receiving at the nursing home. The CDPHE survey results and complaint investigations are required to be posted within the nursing home and available for public inspection at any time.

The trend in nursing homes and assisted livings is to move away from an institutional model to a resident-centered model of providing care. Communities associated with the Eden Alternative or the Pioneer Network, or identifying themselves as embracing “culture change,” are most likely to meet the needs of the residents as individuals rather than forcing the resident to fit into the needs of the nursing home staff and administration. A nursing home or assisted living that emphasizes culture change views life in a nursing home as a time of continued growth. Culture change communities work to empower the resident to take control over his or her care and believe that spontaneity and creativity are ways to reduce boredom and depression. (See section 21-6, “Resources,” for more information about culture change.)

Like assisted living residences, nursing homes vary in size and type of amenities available. Some nursing homes have large common areas, private dining rooms appropriate for family gatherings, recreational areas, libraries, gardens, and small general stores.

Communities may also offer use of their transportation vehicles to take residents to medical treatments and social outings. Nursing homes are required to meet all the care needs of the resident, including health, social, and recreational needs. The social worker should be an internal advocate for residents living in nursing homes. Loved ones should know the administrator, director of nursing, social worker, and the resident’s certified nurse aides (CNAs) by name and by face.

The Centers for Medicare and Medicaid Services offer ratings for nursing homes nationwide on the Nursing Home Compare website. This can be a useful tool during the process of selecting a nursing home. See section 21-6, “Resources.” The rating system gives each nursing home a rating between one and five stars. Nursing homes with five stars are considered to have above-average quality, while nursing homes with one star are considered to have quality that is below average. The ratings are based on the health department inspections, staffing, and quality indicators such as the prevalence of pressure sores on residents’ bodies or changes to residents’ mobility.

Staffing

Staffing at nursing homes is more standardized to meet the regulatory requirements of the state and federal governments. Staff are divided into departments that are responsible for meeting the needs of the residents. Nursing homes are required to have a nursing home administrator who is responsible for the overall operations of the community. The nursing home administrator must be licensed by the State of Colorado and identified by the initials “NHA” after his or her name. The name of the administrator and medical director are available at the CDPHE’s website. (See section 21-6, “Resources.”)

All medical care at the nursing home must be provided under the supervision of a physician. Each community is required to have a medical director, a physician who formulates and directs overall policy for medical care in the nursing home. The director of nursing (DON) supervises nursing services and must be a registered nurse; he or she is responsible for supervising the entire nursing staff, including nursing supervisors and certified nurse aides. Nursing supervisors are either registered nurses or licensed practical nurses. Their responsibility is to supervise the care that is provided during the shifts for one section or unit of the nursing home.

Certified nurse aides (CNAs) provide most of the personal care for residents, including assistance with bathing, eating, dressing, and assisting the resident in and out of bed. CNAs comprise about 80 to 90 percent of the nursing staff and perform some of the most difficult and strenuous work done in nursing homes. They must complete a state-approved training and competency evaluation program. Colorado requires certified nurse aides to have at least 75 hours of training. It is not unusual to see temporary or agency-certified nurse aides or

licensed practical nurses at nursing homes. Nursing homes should strive to have consistent staffing with minimal use of agency or temporary staff. CNAs provide the majority of direct care to the resident; thus, it is important that residents and their families become familiar and comfortable with their care providers.

21-3. Six Key Steps to Selecting a Good Assisted Living Residence or Nursing Home

In this section, we discuss how to select the right community that will be the best fit for you or your loved one. These issues include identifying the individual's needs, knowing what to look for in a community, observing and talking with residents and staff, becoming informed about the community's management, understanding the payment schedule, and reviewing the contract or admission agreement.

We suggest that you contact your local Ombudsman Program when starting your community search; contact information is provided at the end of this chapter. Ombudsmen are required to visit assisted living residences quarterly and nursing homes monthly, so your local ombudsman will be able to assist you in finding a community that best fits your or your loved one's needs.

Step 1: Identify your needs or the needs of your loved one.

How old are you or your loved one?

When contacting communities, it is important to ask up front if they have an age requirement. Some assisted living residences only accept people who are 65 or older. However, there are communities that serve a younger disabled population as well. Most nursing homes accept residents regardless of age if the community can meet their care needs.

What size community is appropriate for you or your loved one?

Assisted living residences can range from 3 to 274 residents. Nursing homes range from 30 to 240 residents. Generally, larger communities offer more amenities and services to the resident.

What geographical area would you or your loved one prefer?

For some individuals, the location can be the determining factor when selecting a long-term care community.

What level of care do you or your loved one require?

This is vital in determining whether a person is appropriate for an assisted living residence or nursing home. Ask yourself the following questions: Are you or your loved one incontinent of bladder or bowel? Can you get in and out of bed without assistance (transfer)? Are you able to walk without assistance (ambulate)? Do you require a special or therapeutic diet (usually ordered by a doctor)? Does your loved one have a history of wandering or become physically or verbally combative?

Do you or your loved one have special needs?

Ask yourself: Is your loved one in a motorized wheelchair? Does your loved one have a gastric feeding tube (G-tube)? Does your loved one require bariatric care (obesity)? Nursing homes typically provide a special/therapeutic diet; however, assisted livings are

not required by regulation to provide this service. Similarly, some nursing homes do not have the wide door openings, lifts, or beds required to care for morbidly obese residents. If your loved one is insulin dependent, verify that the assisted living community will manage and administer the insulin injections.

What community is going to be the best fit for you or your loved one?

Some communities specialize in caring for a specific population, such as individuals with Alzheimer's disease or dementia, multiple sclerosis, mental illness, or brain injury. If a person has been diagnosed with Alzheimer's disease or dementia, it sometimes is necessary to place the individual in a secured assisted living residence or a secured unit in a nursing home. This is determined with the guidance of a physician.

How will you or your loved one pay for the long-term care needs?

Both assisted livings and nursing homes accept a variety of payment sources, including Medicaid, Medicare, long-term care insurance, and private pay. It is important to note that Medicare pays for long-term care only under specific circumstances. (See Chapter 2, "Medicare.") Medicaid assisted livings are referred to as alternative care facilities (ACF).

Step 2: Know what to look for when you visit the prospective community.

We advise that you visit prospective communities at least twice. The first visit should be scheduled with the admissions office. The second visit should be unannounced, perhaps in the evening. You need to know what to look for when you make your visits. Here are a few things to consider:

Is the community clean?

Does the community appear to be clean? Do you smell any odors? You should not smell urine in any long-term care community. This indicates a lack of attentiveness from the staff.

Get permission to view a resident's room, bathroom, and shower.

Is the room clean, comfortable, and home-like? Do you observe personal photos, mementos, or furniture? Are the closets adequate? Will you or your loved one share a room? Is there space for toiletries and personal items? Does the bathroom have grab bars and an easily accessible shower?

Do the residents have privacy?

Is there access to a telephone in a private area? Is there space to meet with family and friends?

Can you easily find posted instructions on how to contact the local ombudsman, the state health department, adult protection services, and the Medicaid office (if applicable)?

Step 3: Observe and talk with residents and staff members.

Are the residents clean and well groomed?

Are the residents up and active during the day?

Are residents engaged in activities and interacting with one another? Ask to see the activities scheduled for the month. Pay attention to the number of activities that are

offered during the weekends. Residents often comment that there is not enough to keep them busy over the weekend.

How is transportation provided?

Does the community provide transportation to and from medical appointments? Does the community provide transportation to outside activities?

Visit with the residents.

Ask the residents about the care they receive. Ask if they would recommend the community to others.

Try to visit during a meal and look at the dining area.

Does the posted menu reflect what the residents are eating? Are the residents served their meals promptly? Are staff attentive and offering residents assistance?

Observe interaction between residents and staff.

Do residents respond well to the staff members? Do staff members seem to respect and enjoy the residents? Are staff members wearing their identification badges?

Ask if the nursing home or assisted living community participates in culture change principles of resident-centered care. This should be reflected in resident-staff interaction. Do staff members appear hurried or rushed? Does the nursing home appear to have adequate staffing? Nursing homes are required to post in a public place the number of certified nurse aides, licensed practical nurses, and registered nurses on duty for every shift. During your visit, verify that the posting is accurate.

How do the staff members address the residents?

Does the staff address the residents with respect? It is usually not appropriate to address adults as “honey” or “sweetie.”

Do staff members respect the residents’ privacy?

Are the staff members knocking on the resident’s door and waiting for a response before entering? Are privacy curtains pulled and/or doors closed when providing personal care to the resident?

Is water available at the residents’ bedsides?

Are cups available and can residents easily get a drink of water?

Does the staff respond promptly to requests for assistance?

A request for assistance should be responded to within a few minutes. Are call lights within the resident’s reach? Some assisted livings do not have a call light system; however, staff must respond promptly to residents’ needs.

Ask about the staff training.

How much training does each staff member receive? Who provides the training? Does the staff receive training specific to the needs of the community it serves, such as multiple sclerosis, Alzheimer’s disease or dementia, or mentally ill residents? Ask about the staff turnover rate. Ask if the community utilizes a consistent staffing method. Consistent staffing is a scheduling practice where the same care providers work with the same residents so that the staff can anticipate the residents’ needs. If an assisted living community, ask if the staff is up to date on their CPR and first aid training.

Do the staff members acknowledge your presence?

If you are visiting without a tour guide, someone should tactfully inquire about your presence at the community. This is an informal, yet effective, security measure.

What does the community do to promote resident-directed care or culture change?

Do residents get up and go to bed when they want to? Are residents involved in their own care planning? Are there open dining hours? Is the facility Eden-certified?

Step 4: Become informed about the community's management and administration.

Is the long-term care community licensed?

If you are considering an assisted living, it is important to know if the community is licensed. Any community providing care to three or more unrelated adults must be licensed by the state. All nursing homes are licensed by the state and federal government. Licensing information is available on the CDPHE website, listed in section 21-6, "Resources."

Read the most recent state survey.

The comprehensive inspection is known as a survey and is conducted by the CDPHE. Communities are required to make the survey available to residents and visitors, and it is also available online at the CDPHE's website (see section 21-6, "Resources"). Contact your local Ombudsman Program to help explain the community's survey.

Is the community locally owned or part of a large national organization?

It is useful to understand the ownership of the community. This could reflect how responsive the community will be to your concerns or complaints.

How long has the administrator been at the community?

Beware of frequent changes in key administrative positions or ownership, including the administrator or executive director, director of nursing, and social worker. Contact your local ombudsman for information regarding staff changes.

Step 5: Understand the payment system.

Understand the daily rate.

Some assisted livings offer a "menu" of services that detail costs associated with each service provided. Other assisted living residences will assess residents and assign them a "rating" and base the cost of services on where they fall in a spectrum. For nursing homes, ask to see an itemized list of the daily charges and clarify the billing procedures for additional items such as incontinence pads, toothpaste, rubber gloves, and tissues.

What types of payments are accepted?

The most common types of payment are Medicaid, Medicare, long-term care insurance, and private pay. It is crucial to know that Medicare will cover rehabilitation only. (See Chapter 2, "Medicare.")

Can you use your own pharmacy?

Some assisted living residences will charge an extra monthly fee if the resident chooses to use a different pharmacy. This should be explained at the resident's admission. Nursing home residents have the right to purchase pharmaceuticals from the pharmacy of their choice, but they must ensure that they are delivered in a timely manner.

Step 6: Read the contract or admission agreement completely and thoroughly.

Remember: this is a binding legal document. Arbitration clauses are becoming more common in admission agreements. By signing an arbitration agreement, you are waiving your right to sue the community if you are not satisfied with the care your loved one receives. Consult with an attorney if you have questions.

Review the community admission policy.

It is very important to review the community's admission criteria/policy. This policy should include what resident care a community can and cannot accommodate. Prior to admission, the community should conduct an admission assessment to identify the care needs of the future resident.

Understand the community discharge policy.

Just like the admission policy, it is vital to understand the community discharge policy. Discharge practices are regulated by state and federal regulations. This policy should explain how and why discharge notices are issued and clearly state that the notice must be in writing. Ask the question: Under what circumstances could my loved one be asked to leave?

Read and understand all community policies and procedures.

These may include a bed-hold policy, termination clause, the type of transportation that will be provided and at what rate, therapeutic diets that are offered and at what rate, emergency protocols, and evacuation plans. Some communities will ask relatives of potential residents to assume responsibility for expenses that are not paid in full by the resident. Before agreeing to be held financially liable, you should consult an elder law attorney.

21-4. Conclusion

Selecting a long-term care community is a challenging process. In conjunction with the steps outlined here, the Ombudsman Program is an important resource available to assist you and your loved one in the selection process. The service is free to residents and their families. Ombudsmen help ensure the health, safety, welfare, and rights of residents living in long-term care communities, and all complaints are kept confidential. If a problem does develop after admission, you can contact your local ombudsman for assistance and information.

21-5. Common Acronyms

AAA. Area Agency on Aging.

ACF. Alternative Care Facility.

ADL. Activities of Daily Living.

ALR. Assisted Living Residence.

CNA. Certified Nurse Aide.

DON. Director of Nursing.

LPN. Licensed Practical Nurse.

PCBH. Personal Care Boarding Home.

QMAP. Qualified Medication Administration Persons.

RN. Registered Nurse.

SNF. Skilled Nursing Facility.

21-6. Resources

State Ombudsman

Colorado State Ombudsman Disability Law Colorado
455 Sherman St., Ste. 130
Denver, CO 80203-4403
(303) 722-0300
(800) 288-1376
<https://disabilitylawco.org/ombudsman-program-seniors>

Denver Regional Council of Governments — Area Agency on Aging (DRCOG)

*Ombudsman Program for Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin,
and Jefferson counties*
1001 17th St., Ste. 700
Denver, CO 80202
(303) 455-1000
www.drcog.org

Colorado Department of Public Health and Environment (CDPHE)

Health Facilities and Emergency Medical Services Divisions
4300 Cherry Creek Dr. S.
Denver, CO 80246-1530
(303) 692-2000
(800) 866-7689
(303) 691-7700 (TDD)
cdphe.healthfacilities@state.co.us
<https://cdphe.colorado.gov/health-facilities>

The Pioneer Network

(585) 287-6436
www.pioneernetwork.net

Nursing Home Compare

www.medicare.gov/nursinghomecompare/search.html

Alzheimer's Association — Colorado Chapter

455 Sherman St., Ste. 500
Denver, CO 80203
(303) 813-1669
(800) 272-3900 (24-hour Helpline)
(866) 403-3073 (TDD)
www.alz.org/co

The National Consumer Voice for Quality Long-Term Care

1001 Connecticut Ave. NW, Ste. 632
Washington, DC 20036
(202) 332-2275
info@theconsumervoice.org
www.theconsumervoice.org

* This chapter was previously written by Ayodele Labode, J.D., M.S., and Heather M. Porreca.

Exhibit 21A. Residents' Rights

When it becomes necessary for a person to enter a long-term care facility, it shall be the responsibility of all the staff at the facility to promote and protect the following rights of the person.

- (A) The right to privacy and confidentiality, including:
 - (1) The right to have private and unrestricted communications with any person of choice;
 - (2) The right to private telephone calls or use of electronic communication;
 - (3) The right to receive mail unopened;
 - (4) The right to have visitors at any time; and
 - (5) The right to private, consensual sexual activity.
- (B) The right to civil and religious liberties, including:
 - (1) The right to be treated with dignity and respect;
 - (2) The right to be free from sexual, verbal, physical or emotional abuse, humiliation, intimidation, or punishment;
 - (3) The right to be free from neglect;
 - (4) The right to live free from financial exploitation, restraint . . . , and involuntary confinement except as allowed [for a secure environment];
 - (5) The right to vote;
 - (6) The right to exercise choice in attending and participating in religious activities;
 - (7) The right to wear clothing of choice unless otherwise indicated in the care plan; and
 - (8) The right to care and services that are not conditioned or limited because of a resident's disability, sexual orientation, ethnicity, and/or personal preferences.
- (C) The right to personal and community engagement, including:
 - (1) The right to socialize with other residents and participate in assisted living residence activities, in accordance with the applicable care plan;
 - (2) The right to full use of the assisted living residence common areas in compliance with written house rules;
 - (3) The right to participate in resident meetings, voice grievances, and recommend changes in policies and services without fear of reprisal;
 - (4) The right to participate in activities outside the assisted living residence and request assistance with transportation; and
 - (5) The right to use of the telephone including access to operator assistance for placing collect telephone calls.
 - (a) At least one telephone accessible to residents utilizing an auxiliary aid shall be available if the assisted living residence is occupied by one or more residents utilizing such an aid.

(D) The right to choice and personal involvement regarding care and services, including:

(1) The right to be informed and participate in decision making regarding care and services, in coordination with family members who may have different opinions;

(2) The right to be informed about and formulate advance directives;

(3) The right to freedom of choice in selecting a health care service or provider;

(4) The right to expect the cooperation of the assisted living residence in achieving the maximum degree of benefit from those services which are made available by the assisted living residence;

(a) For residents with limited English proficiency or impairments that inhibit communication, the assisted living residence shall find a way to facilitate communication of care needs.

(5) The right to make decisions and choices in the management of personal affairs, funds, and property in accordance with resident ability;

(6) The right to refuse to perform tasks requested by the assisted living residence or staff in exchange for room, board, other goods or services;

(7) The right to have advocates, including members of community organizations whose purposes include rendering assistance to the residents;

(8) The right to receive services in accordance with the resident agreement and the care plan; and

(9) The right to thirty (30) calendar days written notice of changes in services provided by the assisted living residence including, but not limited to, involuntarily change of room or changes in charges for a service.

Exceptions to this notice are:

(a) Changes in the resident's medical acuity that result in a documented decline in condition and that constitute an increase in care necessary to protect the health and safety of the resident; and

(b) Requests by the resident or the family for additional services to be added to the care plan.

6 C.C.R. 1011-1, ch. 7, § 13.

Exhibit 21B.

Assisted Living and Nursing Home Checklist

Step 1: Identify your needs or the needs of your loved one.

- How old are you or your loved one?
- What size community is appropriate for you or your loved one?
- What geographical area would you or your loved one prefer?
- What level of care do you or your loved one require?
- Do you or your loved one have special needs?
- What community is going to be the best fit for you or your loved one?
- How will you or your loved one pay for the long-term care needs?

Step 2: Know what to look for when you visit the prospective community.

- Is the community clean? Are there odors?
- Get permission to view a resident's room, bathroom, and shower.
- Do the residents have privacy?
- Can you easily find posted instructions on how to contact the local ombudsman, the state health department, the adult protection services, and the Medicaid office (if applicable)?

Step 3: Observe and talk with residents and staff members.

- Are the residents clean and well groomed?
- Are the residents up and active during the day?
- How is transportation provided?
- Visit with the residents.
- Try to visit during a meal and look at the dining area.
- Observe interaction between residents and staff.
- How do the staff members address the residents?
- Do staff members respect the residents' privacy?
- Is water available at the residents' bedside?
- Does staff respond promptly to requests for assistance?
- Ask about staff training.
- Do the staff members acknowledge your presence?
- Does the community promote resident-centered care or culture change?

Step 4: Become informed about the community's management and administration.

- Is the long-term care community licensed?
- Read the most recent state survey.
- Is the community locally owned or part of a large national organization?
- How long has the administrator been at the community?

Step 5: Understand the payment system.

- Understand the daily rate.
- What types of payments are accepted?
- Can you use your own pharmacy?

Step 6: Read the contract or admission agreement completely and thoroughly.

- Review the community admission policy.
- Understand the community discharge policy.
- Read and understand all community policies and procedures.

**Exhibit 21C.
Colorado Area Agencies on Aging Regions**

STATE OF COLORADO AREA AGENCIES ON AGING (AAA)		UPDATED 12/02/2022 PUBLIC USE ONLY
Region 1 Northeastern Colorado Assoc. of Local Gov. Bev Dobner, AAA Director 970.867.9409 Logan, Morgan, Phillips, Sedgwick, Washington, Yuma	Region 2A Larimer County Office on Aging Erin Alt, AAA Program Manager 970.498.7750 Larimer	
Region 2B Weld County AAA Kelly Morrison, AAA Director 970.346.6950 Weld	Region 3A DRCOG AAA Jayla Sanchez-Warren, AAA Director 303.455.1000 Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Glipin, Jefferson	
Region 3B Boulder County Area Agency on Aging Christine Vogel, AAA Director 303.441.3570 Boulder	Region 4 PPACG Area Agency on Aging Jody Barker, AAA Director 719.471.2096 El Paso, Park, Teller	
Region 5 East Central Council of Governments Sean Vanous, AAA Director 719.348.5562 Ext. 5 Cheyenne, Elbert, Kit Carson, Lincoln	Region 6 Lower Arkansas Valley AAA Jim Collins, AAA Director 719.383.3166 Baca, Bent, Crowley, Kiowa, Otero, Prowers	
Region 7 Pueblo AAA Rejan Ricoltone, Adult Program Administrator 719.583.6849 Pueblo	Region 8 South-Central Colorado Seniors Inc. Monica Wolfe, AAA Director 719.589.4511 Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache	
Region 9 San Juan AAA Christina Knoeli, AAA Director 970.264.0501 Archuleta, Dolores, La Plata, Montezuma, San Juan	Region 10 League for Economic Assistance & Planning Eva Veitch, AAA Director 970.249.2436 Delta, Gunnison, Hinsdale, Montrose, Ouray, San Miguel	
Region 11 Assoc. Governments of Northwest Colorado Heather Jones, AAA Director 970.248.2717 Garfield, Mesa, Moffat, Rio Blanco	Region 12 Northwest Colorado Council of Gov. Erin Fisher, AAA Director 970.468.0295 Eagle, Grand, Jackson, Pitkin, Routt, Summit	
Region 13 Upper Arkansas AAA Tom McConaghy, AAA Director 719.539.3341 Chaffee, Custer, Fremont, Lake	Region 14 Huerfano/Las Animas Area COG Veronica Maes, AAA Director 719.845.1133 Huerfano, Las Animas	

COLORADO AREA AGENCIES ON AGING REGIONS

1 Bev Dobner, AAA Director
 Northeastern Colorado Association of Local Governments
 231 Main Street, Suite 211
 Fort Morgan, CO 80701
 Phone: 970.867.9409
 Fax: 970.425.3553
 Email: beverlv.dobner@necalg.org
 Website: www.necalg.com
 Northeastern Region
 Counties: Logan, Morgan, Phillips, Sedgwick, Washington, Yuma

2-A Erin Alt, AAA Program Manager
 Larimer County Human Services
 Larimer County Office on Aging
 1501 Blue Spruce
 Fort Collins, CO 80524
 Phone: 970.498.7750
 Fax: 970.498.6304
 Email: altec@co.larimer.co.us
 Website: www.larimer.org/seniors
 Northeastern Region
 County: Larimer

2-B Kelly Morrison, AAA Director
 Weld County Area Agency On Aging
 P.O. Box 1805
 315 C. N. 11th Ave.
 Greeley, CO 80631
 Phone: 970.346.6950
 Fax: 970.346.6951
 Email: kmorrison@weldgov.com
 Website: www.weldgov.com
 Northeastern Region
 County: Weld

3-A Jayla Sanchez-Warren, AAA Director
 DRCOG Area Agency on Aging
 1001 17th St., Suite 700
 Denver, CO 80202
 Phone: 303.455.1000
 Fax: 303.480.6790
 Email: jswarren@drcog.org
 Website: www.drcog.org
 Northeastern Region
 Counties: Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, Jefferson

3-B Christine Vogel, AAA Director
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 Boulder, CO 80306
 Phone: 303.441.3570
 Fax: 303.441.4550
 Email: cvogel@bouldercounty.org
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 Northeastern Region
 County: Boulder

4 Jody Barker, AAA Director
 PPACG Area Agency on Aging
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 Colorado Springs, CO 80905
 Phone: 719.471.2096
 Fax: 719.471.1226
 Email: jbarker@ppacg.org
 Website: www.ppacg.org
 Southern Region
 Counties: El Paso, Park, Teller

5 Sean Vanous, AAA Director
 East Central Council of Governments
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 128 Colorado Avenue
 Stratton, CO 80836
 Phone: 719.348.5562, ext. 5
 Fax: 719.348.5887
 Email: svanousr@prairiedevelopment.com
 Website: www.eccog.com
 Northeastern Region
 Counties: Cheyenne, Elbert, Kit Carson, Lincoln

6 Jim Collins, AAA Director
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 13 West Third St Room 110
 La Junta, CO 81050
 Phone: 719.383.3166
 Fax: 719.383.4607
 Email: jim.collins@state.co.us
 Website: <https://oteroCOUNTY.colorado.gov/>
 Southern Region
 Counties: Baca, Bent, Crowley, Kiowa, Otero, Prowers

7 Rejan Ricottone, Adult Prog Admin.
 Pueblo Area Agency on Aging
 320 West 10th Street
 Pueblo, CO 81003
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 Fax: 719.583.6323
 Email: rejan.ricottone@pueblocountv.us
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 Southern Region
 County: Pueblo

8 Monica Wolfe, AAA Director
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 1116 3rd Street
 Alamosa, CO 81101
 Phone: 719.589.4511
 Fax: 719.589.2343
 Email: monicaw@slvaaa.org
 Website: <https://www.facebook.com/slvaaa.org/>
 Southern Region
 Counties: Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache

9 Christina Knoell, AAA Director
 San Juan Basin Area Agency on Aging
 10 Burnett, Suite A-302
 Durango, CO 81301
 Phone: 970.264.0501
 Fax: 1.888.290.3566
 Email: christina@sjbaaa.org
 Website: www.sjbaaa.org
 Western Region
 Counties: Archuleta, Dolores, La Plata, Montezuma, San Juan

10 Eva Veitch, AAA Director
 Region 10 League for Economic Assistance & Planning
 145 S. Cascade Ave.
 Montrose, CO 81401
 Phone: 970.249.2436
 Fax: 970.249.2488
 Email: evetch@region10.net
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 Western Region
 Counties: Delta, Gunnison, Hinsdale, Montrose, Ouray, San Miguel

11 Heather Jones, AAA Director
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 P.O. Box 20000-5035
 510 29 1/2 Road
 Grand Junction, CO 81502
 Phone: 970.248.2717
 Fax: 970.248.2702 or 970.248.2849/2883
 Email: heather.jones@mesacounty.us
 Website: www.mesacounty.us
 Western Region
 Counties: Garfield, Mesa, Moffat, Rio Blanco

12 Erin Fisher, AAA Director
 Northwest Colorado Council of Governments
 P.O. Box 2308, 249 Warren Ave.
 Silverthorne, CO 80498
 Phone: 970.468.0295
 Fax: 970.468.1208
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 Website: www.nwccog.org
 Western Region
 Counties: Eagle, Grand, Jackson, Pitkin, Routt, Summit

13 Tom McConaghy, AAA Director
 Upper Arkansas AAA
 139 East 3rd Street
 Salida, CO 81201-2612
 Phone: 719.539.3341
 Fax: 719.539.7431
 Email: tom.mcconaghy@uaacog.com
 Website: www.uaaaa.org
 Southern Region
 Counties: Chaffee, Custer, Fremont, Lake

14 Veronica Maes, AAA Director
 Huerfano/Las Animas Area Council of Governments
 d/b/a South Central Council of Governments AAA
 300 South Bonaventure Avenue
 Trinidad, CO 81082
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 Email: vmaes@scog.net
 Website: www.scog.net
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Chapter 22

Hospital Discharge Planning: Advocating for Aging Adults' Medicare Rehabilitation Benefits

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SYNOPSIS

- 22-1. Discharge Planning
 - 22-2. Patient Discharge Planning Factors
 - 22-3. Discharge Options
 - 22-4. Rehabilitation
 - 22-5. Appeals
 - 22-6. Conclusion
 - 22-7. Resources
-

22-1. Discharge Planning

Aging adults can best advocate for their rights to Medicare Parts A and B rehabilitation benefits by understanding the Medicare guidelines and healthcare systems, knowing the appropriate rehabilitation admission criteria, and then making an informed choice regarding all the available rehabilitation options. Aging adults, their families, and their healthcare advocates also need to be willing to appeal any adverse decision that inappropriately terminates rehabilitation benefits or seeks to deny reimbursement for Medicare Parts A and B benefits. An excellent Medicare resource organization is the Center for Medicare Advocacy, Inc., at <https://medicareadvocacy.org>.

Acute-care hospital discharge planning begins almost *immediately* upon your admission to the hospital. Medicare defines “discharge planning” and states the requirements for conducting discharge planning. Its purpose is “to ensure a timely and smooth transition to the most appropriate type of setting for post-hospital or rehabilitation care.” Aging adults and their healthcare advocates need to communicate as soon as appropriate with the discharge planner, so the aging adults’ needs and concerns are considered in discharge plans.

Discharge planning usually is conducted with a multi-disciplinary team approach and includes discharge recommendations from the patient’s physicians; nurses; and physical, occupational, and speech therapists which are given to the aging adult’s hospital discharge planner

(who usually is a nurse or social worker), to arrive at reasonable options for safe discharge. These options are then discussed with the aging adult and family or healthcare advocate. It is *highly* recommended that the aging adult have an advocate assist with discharge planning and that person is present during all discharge planning discussions.

The discharge plan provides recommendations regarding an aging adult's medical and rehabilitation needs post-hospital discharge. Its purpose is to ensure aging adults receive continuity of medical care and all needed services pursuant to "Health Insurance for the Aged and Disabled," Title 42, Chapter 7, Subchapter XVIII of the Social Security Act.

There are many variables in insurance coverage that an aging adult 65 years old or older may have. See Chapter 3, "Health Insurance Beyond Medicare." Many Colorado aging adults choose to assign their Medicare Part A and Part B benefits to a private organization or insurance company and obtain benefits under Medicare Part C, or "Medicare Advantage." These Medicare Advantage plans may or may not afford aging adults their legally entitled rehabilitation benefits, in spite of the obligation for Medicare Advantage plans to provide, at a minimum, the same coverage for rehabilitation services as are provided under original Medicare Parts A and B.

This chapter is limited to discussing original Medicare Parts A and B fee-for-service coverage and encourages Medicare Advantage beneficiaries to investigate their plan rehabilitation benefits before these benefits are needed, including the appeal process if benefits are denied.

22-2. Patient Discharge Planning Factors

The discharge planner and the discharge planning team consider numerous patient risks and factors in making their recommendations. These include, but are not limited to:

- ▶ Insurance coverage and Medicare eligibility. To trigger Medicare Part A rehabilitation benefits, the aging adult *must be admitted* as an in-patient and be *hospitalized for three consecutive calendar days*, not kept on "observation" status. If an aging adult is on observation and meets the "in-patient criteria," his or her status must be changed to "in-patient admission" in order to trigger eligibility. Clarify admission status **immediately** and the date of admission with the hospital in order to determine that this threshold criteria is met.

However, due to the declaration of the COVID-19 public health emergency (PHE), CMS issued a waiver of this 3-day inpatient hospital stay requirement and provides that beneficiaries can access SNF (Skilled Nursing Facility) services without it if the beneficiary's medical record documentation justifies "medical necessity" for SNF admission. This waiver was renewed by the Secretary of Health and Human Services on January 11, 2023, and is effective until April 11, 2023. The national and PHE declarations are set to expire on or before May 11, 2023.

Thus, a Medicare beneficiary can be admitted directly to SNF from: the ER; a doctor's office; a hospital observation stay; a hospital stay without a qualifying 3-day inpatient stay; or directly from the community.

- ▶ Cognitive status, especially his or her judgment and safety awareness abilities;
- ▶ Fall history and risk for future falls;
- ▶ Age;

- ▶ Level of independence and safety in walking and ADLs (activities of daily living) prior to this hospital admission;
- ▶ Living situation (*i.e.*, lives alone or lives with a family member, spouse, or friend);
- ▶ Where he or she lives (*i.e.*, in a house, condominium, mobile home, assisted living facility, aging adult independent apartment (with or without meal availability), or skilled nursing facility);
- ▶ Ease of egress/ingress into home(*i.e.*, stairs, elevator, ramp, hand railings);
- ▶ Support and resources available to the aging adult from family, friends, and community;
- ▶ Wound and skin care needs (*i.e.*, decubitus ulcers or potential for development);
- ▶ Infectious disease processes (*i.e.*, need for intravenous antibiotics);
- ▶ Nutritional needs, and availability of meal service;
- ▶ History of being medically and medication compliant or non-compliant; and
- ▶ Medical diagnosis and complexity, including, but not limited to: mental health concerns; having cancer and receiving chemotherapy and/or radiation; end-stage renal disease and receiving dialysis; pulmonary disease and needing supplemental oxygen; stroke (cerebral vascular accident), closed-head injury, or subdural hematoma with extensive rehabilitation needs; morbid obesity; multiple sclerosis; cardiac complexity, including coronary artery bypass grafts, pacemaker, myocardial infarction (heart attack), congestive heart failure, and atrial fibrillation (a-fib); total joint replacements; and fractures, including location and weight-bearing status (amount of weight allowed) on legs and arms.

22-3. Discharge Options

Options for discharge from the acute care hospital include:

- ▶ Skilled nursing facility (SNF);
- ▶ In-patient rehabilitation facility (IRF);
- ▶ Long-term acute care hospital (LTAC), also known as critical access hospital;
- ▶ Home with home health services;
- ▶ Hospice care in the home or in a facility;
- ▶ Home with outpatient rehabilitation facility services;
- ▶ Home or SNF with Medicare Part B skilled rehabilitation services; or
- ▶ Home without rehabilitation services.

SNF Rehabilitation Facility

Skilled Nursing Facility (SNF) or Post-Hospital Extended Care Services

Medicare Part A hospital insurance benefits provide up to 100 days of in-patient extended care benefit coverage. Days 1 to 20 are covered at 100 percent for all costs. This includes all skilled nursing expenses; all physical, occupational, and speech therapies; durable medical equipment such as wheelchairs, walkers, and special beds; and all other ancillary services such as supplemental oxygen. Days 21 to 100 require a 2023 daily co-insurance charge of \$200.00. Most

supplemental or Medigap insurance plans cover this co-insurance charge and aging adults are urged to purchase this insurance.

A beneficiary does not have an absolute right to payment for 100 days of skilled nursing or skilled rehabilitation services. Rather, skilled rehabilitation services are reimbursed if they are deemed “reasonable” and “medically necessary” and require the skills, knowledge, and judgment of a professional therapist. Additionally, an aging adult needs to cooperate with and actively participate in rehabilitation in order to achieve his or her prior level of function and maintain Medicare coverage for the rehab services.

The criteria necessary to be eligible for Medicare Part A benefits for an SNF are:

- ▶ **A three-day minimum, medically necessary, in-patient hospitalization is required as an admitted patient and not on observation status.** This is the most important triggering event for Medicare Part A rehabilitation benefits eligibility. Days are counted from midnight forward, must be consecutive, and the day of discharge does not count. For example, if an aging adult is admitted to the hospital at 11:50 p.m. (2350), these 10 minutes count as one required day (However, CMS has issued a Covid-19 waiver of this requirement in certain situations and this 3-day qualifying hospitalization waiver presently is in effect until April 11, 2023. See “COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers,” www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf, at page 16.);
- ▶ Admission to the SNF is within 30 days of hospital discharge (though there are a few exceptions to this rule);
- ▶ The aging adult must require skilled nursing care or skilled rehabilitation services, or both, on a daily basis. The “daily” skilled rehabilitation services or therapy requirement is met if skilled services are provided for five days per week;
- ▶ The skilled services are for treatment of a condition that was treated in the hospital or that arose while in the SNF for treatment of a condition for which the aging adult was hospitalized in the qualifying stay;
- ▶ The SNF must be a Medicare-certified facility, and the “bed” must be deemed a Medicare-certified bed; and
- ▶ A physician must certify the need for skilled rehabilitation services.

Discharge Planning

Discharge planning also is done at the SNF, to determine appropriate and safe placement for the aging adult after skilled nursing and rehabilitation services are no longer deemed reasonable and medically necessary.

The aging adult and his or her health-care advocates need to maintain communication with the SNF rehabilitation personnel so that they know the aging adult’s progress and expected discharge date and plan. SNFs are required to develop a post-discharge plan of care to ensure an orderly and safe discharge. Frequently, a physical or occupational therapist performs a home safety assessment in advance of the aging adult’s discharge to determine the person’s discharge and DME (Durable Medical Equipment) needs, home accessibility, and home mobility and safety concerns.

If the SNF determines that the aging adult no longer qualifies for skilled services and the facility wants to transfer the aging adult to a non-Medicare certified bed (*i.e.*, end Medicare Part A benefits and/or change rooms), the aging adult must be given a two-day notice of transfer that outlines his or her appeal rights.

The Medicare Benefit Policy Manual states that beneficiaries receiving Medicare Part A in an SNF will not lose their coverage and may leave the facility with an outside pass for the purpose of attending a special religious service, holiday meal, family event, car ride, or for a trial visit home. It is not, by itself, evidence that the individual no longer needs SNF skilled services. However, the beneficiary needs to have his or her physician order this pass.

Note: Reimbursement for SNF rehabilitation significantly changed effective October 1, 2019, with the Patient-Driven Payment Model (PDPM). What this means is a Medicare beneficiary's rehabilitation benefit delivery of services and overall benefit has probably been decreased significantly.

In-Patient Rehabilitation Facility

Patients who have Medicare Part A benefits and meet the in-patient rehabilitation facility (IRF) admission criteria may be transferred to or admitted directly to an IRF which provides three hours per day rehabilitation services in an in-patient setting.

The criteria for admission to an IRF is the aging adult must:

- ▶ Be able to tolerate three hours per day, five days per week (15 hours), of skilled rehabilitation services, including physical, occupational, and speech and language therapy; be able to benefit from rehab; and agree to participate in the rehab program. The aging adult is allowed three days to increase up to a tolerance of three hours per day of therapy (However, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) waives this requirement during the PHE.);
- ▶ Need at least two skilled therapy services;
- ▶ Have good rehabilitation potential to achieve a higher functional level;
- ▶ Have the physical and cognitive capacity to benefit from the rehab program;
- ▶ Presently have or be in need of skilled rehabilitation services;
- ▶ Have a physician who agrees with transfer to acute rehab when medically stable;
- ▶ Have no scheduled surgery or procedure that would require a readmission to an acute care hospital prior to his or her rehabilitation program completion;
- ▶ Have documentation of his or her pre-admission status and living situation;
- ▶ Require 24 hours per day of skilled nursing and physician care; and
- ▶ Have received a rehabilitation diagnosis that is one of the 60 Percent Rule categories, or the IRF has beds to take the patient if outside of the Centers for Medicare and Medicaid Services (CMS) rehabilitation impairment categories (the 60 Percent Rule requires IRFs to fill 60 percent of their beds with patients having one of the 13 diagnoses listed below as either a primary or secondary diagnosis).

CMS 60 Percent Rule Impairment Categories for IRF Admission Eligibility

An in-patient rehabilitation facility must fill 60 percent of its beds with only these 13 patient diagnosis and impairment categories in order to be in compliance and maintain its IRF status. However, there has been a waiver of this 60% rule during the COVID-19 PHE which is set to expire on May 11, 2023:

- ▶ Cerebrovascular accident (stroke);
- ▶ Spinal cord injury;
- ▶ Congenital deformity;
- ▶ Amputation;
- ▶ Major multiple trauma (multiple fractures, fracture with internal injury);
- ▶ Hip fracture;
- ▶ Brain injury;
- ▶ Neurological disorder (*i.e.*, multiple sclerosis, muscular dystrophy, amyotrophic lateral sclerosis (ALS), Huntington’s disease, Guillian-Barré, Parkinson’s disease, post-polio syndrome, motor neuron diseases, polyneuropathy);
- ▶ Burns;
- ▶ Active polyarticular rheumatoid arthritis, psoriatic arthritis, and seronegative arthropathies;
- ▶ Systemic vasculidities with joint inflammation;
- ▶ Severe or advanced osteoarthritis (osteoarthritis or degenerative joint disease):
 - Must involve two or more major weight-bearing joints with joint deformity and substantial loss of range of motion (elbow, shoulders, hips, or knees and cannot count a joint with a prosthesis);
 - Atrophy of muscles surrounding the joint;
 - Significant functional impairment of walking and ADLs;
- ▶ Knee and hip joint replacement if:
 - Bilateral (both sides);
 - The person is morbidly obese and has a Body Mass Index (BMI) over 50; and/or
 - The person is age 85 or older.

Beneficiaries with cardiac and respiratory diagnoses and medically complex patients may be precluded from the availability of medically necessary intensive in-patient rehabilitation under this 60 Percent Rule. However, CMS waived this 60 percent requirement if an IRF admits a patient solely to respond to the emergency and the patient’s medical record identifies the patient as such. See “COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers,” at page 14.

Otherwise, aging adults with these types of impairments can be included only in the “other 40 percent” of admissions to IRFs. As health care insurances generally follow Medicare guidelines, this rule may adversely affect people of all ages in obtaining intensive rehabilitation in an in-patient rehabilitation hospital. The trend is towards the use of skilled nursing facilities for all adult rehabilitation.

Discharge Planning

This is very similar to that of discharge from a skilled nursing facility. Also, like discharge from an SNF, an expedited appeal process may apply. See section 2-3, "Appeal Rights," in Chapter 2, "Medicare."

Long-Term Acute Care Hospital (LTAC)

LTACs generally accept patients who are very medically complex and are expected to need acute care in-patient hospitalization for at least 25 days. LTACs are in the same Medicare Part A payment category as acute care in-patient hospitals and in-patient rehabilitation facilities. The benefit period is 60 days without a co-insurance charge, an additional 30 days with the \$400 per day co-insurance, and the possibility to tap into the lifetime reserve of 60 days at \$800 per day.

Home Health Care Services

Either Medicare Part A or Part B can reimburse post-hospital home health care skilled services. If the threshold three-day in-patient hospitalization has occurred to trigger Medicare Part A benefits and the aging adult has Part A, it will reimburse for services.

Reimbursement is under Medicare Part B if the aging adult has this insurance coverage and has not met the three-day hospitalization requirement. Home care services must start within 14 days of discharge from the in-patient hospital or SNF and the patient must be "homebound" or "confined to home" to be eligible for home health skilled services, which are limited to reasonable and necessary intermittent skilled nursing care; physical, occupational, and speech therapy; and home health aide services. "Homebound" is defined as follows:

An individual shall be considered to be "confined to his home" if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. . . . [T]he condition of the individual should be such that there exists a normal inability to leave home and that leaving home requires a considerable and taxing effort by the individual.

Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State . . . shall not disqualify an individual from being considered to be "confined to his home." Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of a relatively short duration. . . . [A]ny absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.

Skilled rehabilitation services must be provided by a Medicare-certified home care agency, following the patient's care plan and ordered by the patient's physician. After the initial assessment, home therapy visits are usually scheduled one to three times per week.

Home health care agencies must provide a Medicare beneficiary a pre-deprivation written notice of its intent to terminate services. This mandatory two-day Notice of Medicare Non-Coverage (NOMNC) must explain the procedure for seeking review of the termination of

services. If you do not agree with this termination of services, call the Quality Improvement Organization (QIO), Kepro, at (888) 317-0891 to file an expedited appeal.

Note: Reimbursement for home health services significantly changed effective January 1, 2020, with the Patient-Driven Groupings Model (PDGM). It changes the unit of home health care payment from a 60-day to a 30-day episode, eliminates payment based upon the number of therapy visits, and relies heavily on clinical characteristics and medical diagnoses to place Medicare beneficiaries into payment categories.

Overall, it may decrease the number and availability of home health visits a beneficiary receives. Refer to the Center for Medicare Advocacy article, “Potential Impacts of New Medicare Payment Models on Skilled Nursing Facility and Home Health Care,” at www.medicareadvocacy.org/potential-impacts-of-new-medicare-payment-models-on-skilled-nursing-facility-and-home-health-care.

Hospice Care

Hospice care benefits are covered under the Medicare Part A hospital insurance benefit if the patient has Medicare Part A and has chosen to elect this benefit. Patients are entitled to two 90-day election periods, followed by an unlimited number of 60-day periods. Hospice care is concerned about maintaining the patient’s quality of life as he or she approaches death.

Medicare will pay for a consultation visit with the hospice medical director or other hospice physician if the patient is terminally ill and has not yet elected the hospice benefit. Eligibility for hospice care includes situations where:

- ▶ The patient’s attending physician and the hospice medical director or other hospice physician certify that the patient is terminally ill and has six months to live if the terminal illness runs its normal course. For any subsequent 90- or 60-day periods, only one physician needs to do the certification;
- ▶ The patient signs a hospice benefit election form with the hospice of choice, choosing hospice care over regular Medicare Part A–covered benefits for the terminal illness; and
- ▶ A Medicare-approved hospice program provides hospice care.

It is important to note that a “Do Not Resuscitate” (DNR) order is not required in order to receive hospice care, nor must the patient be “homebound” to receive hospice.

The following services are provided by hospice care:

- ▶ Physical, occupational, and speech therapy skilled services for purposes of symptom control or to enable the aging adult to maintain functional skills;
- ▶ Physician services and nursing care;
- ▶ Durable medical equipment (DME) such as hospital bed and wheelchair rental, commode chair, raised toilet seat, or walkers;
- ▶ Pain-relieving and all other medications (*Note:* Medicare Part D changes some of these reimbursements). See “Hospice and Part D Prescription Medications” chart by National Council on Aging in Chapter 2, “Medicare”;

- ▶ Home health aides for personal care services and homemaker services such as light cleaning or laundry;
- ▶ Medical social worker and case manager services;
- ▶ Spiritual, grief, and loss counseling;
- ▶ General in-patient hospital care, not for treatment of the terminal illness;
- ▶ Respite care covered for five consecutive days; and
- ▶ Bereavement care.

Room and board costs in a hospice facility (or an SNF) generally are not a covered benefit unless the beneficiary requires general in-patient or respite care. However, Medicaid covers these costs for Medicaid beneficiaries.

Discharge Planning

Hospice Medicare regulations require that, prior to “any termination of services, the provider of the service must deliver valid written notice to the beneficiary of the provider’s decision to terminate services.” This notice triggers the right to request an expedited appeal.

An aging adult (hospice beneficiary) can be discharged by his or her hospice provider under only three circumstances:

- 1) The aging adult moves out of the hospice provider’s service area or transfers to another hospice provider;
- 2) The hospice provider determines that the aging adult is no longer terminally ill; or
- 3) The hospice provider determines, pursuant to its policy of discharge for cause, that the aging adult’s behavior (or the behavior of other people in the aging adult’s home) is disruptive, abusive, or uncooperative to the extent that delivery of care to the aging adult or ability of the hospice to operate effectively is seriously impaired.

The regulations regarding discharge for cause require the hospice provider to:

- ▶ Advise the aging adult that it is considering a discharge for cause;
- ▶ Make efforts to resolve the issues caused by the aging adult’s behavior or home situation; and
- ▶ Show that this proposed discharge is not based upon the aging adult’s use of hospice services nor his or her medical record.

Medicare Part B Rehabilitation Benefits

Medicare Part B rehabilitation benefits are available to the beneficiary for skilled therapy rehabilitation services as follows:

- ▶ When the patient does not have a medically necessary, three-day in-patient hospitalization to trigger Medicare Part A benefits and he or she needs home health or outpatient rehabilitation therapy services (*e.g.*, the aging adult fell at home and sustained injuries, was seen in the emergency room, and then sent home with an order for home health or outpatient physical therapy);

- ▶ While the patient is a resident of an SNF or an assisted living facility or lives in the community, and skilled rehabilitation services are deemed medically necessary, as there has been a change in functional status; and
- ▶ After a SNF patient exhausts his or her Medicare Part A rehabilitation benefits of 100 days, and skilled rehabilitation services continue to be considered reasonable and necessary (for example: for stroke rehab).

The Balanced Budget Act of 1997 changed reimbursement for Medicare Part B outpatient rehabilitation benefits to an original total benefit of \$1,500 for occupational therapy skilled services per year and a \$1,500 total benefit for both physical and speech therapies per year. The 2023 maximum yearly capped reimbursement is now \$2,230 for occupational therapy skilled services, and \$2,230 for combined physical and speech therapy skilled services. There are some medical diagnoses that are exceptions to these caps.

When \$2,230 is reached, a special code (KX Modifier) must be added to a beneficiary's therapy claim. Claims exceeding \$3,000 for physical therapy and speech therapy services combined, and \$3,000 for occupational therapy services, may be subject to a medical review process to determine if therapy services are "medically necessary."

22-4. Rehabilitation

Rehabilitation skilled services include physical, occupational, and speech therapy. Therapy's primary goal is to facilitate the aging adult's return to his or her previous level of independent living and functioning.

Assuming the aging adult's medical status remains stable, there usually is a direct correlation between the amount, frequency, duration, and type of therapy services received post-hospitalization and the patient's potential to (1) stay as independent as possible, and (2) live in the least restrictive environment in his or her community. All therapy disciplines overlap in some manner, and they operate in a multi-faceted approach.

The emphases of the individual therapy disciplines include, but are not limited to:

Physical Therapy

- ▶ Evaluates and facilitates the aging adult's ability to achieve safe, independent mobility in his or her home;
- ▶ Assesses the aging adult's safety, judgment, and problem-solving skills. Facilitates the person's learning and use of appropriate skills during the performance of all functional tasks;
- ▶ Assesses the aging adult's need for DME such as a wheelchair, cane, or walker; tub/shower bench; raised toilet seat; transfer devices; and other adaptive equipment such as grab bars and home ramps and facilitates their getting needed DME;
- ▶ Facilitates the aging adult's development of independently and safely performed functional skills, which include, but are not limited to:
 - Safely being able to get in and out of bed;
 - Safe transfers to all surfaces, including to toilet, bed, and wheelchair;

- Walking without risk of falls, with or without an assistive device; and
- Independent mobility outdoors in his or her community;
- ▶ Evaluates the aging adult for use of pain management modalities; and
- ▶ Conducts pre- and post- discharge home safety evaluations and home assessments for need of modifications and adaptive equipment.

Occupational Therapy

- ▶ Evaluates and facilitates the aging adult's ability to perform independent activities of daily living (ADLs), which include, but are not limited to:
 - Feeding with or without adaptive equipment;
 - Hygiene and care of teeth, mouth, and hair;
 - Toileting and bathing;
 - Safe toilet, bed, tub/shower bench, and wheelchair transfers;
 - Dressing, with or without adaptive equipment; and
 - Safely done household skills such as cooking and cleaning.
- ▶ Occupational therapy, like physical therapy, facilitates the aging adult's development and use of appropriate safety and judgment during the performance of ADLs and all functional skills;
- ▶ Administers the Allen Cognitive Assessment tool to assess and predict the appropriate level of post-discharge care needed;
- ▶ Assesses the aging adult's need for DME and adaptive equipment;
- ▶ Facilitates the achievement of functional sitting and standing balance; and
- ▶ Conducts pre- and post-discharge home safety evaluations and home assessments for need of modifications and adaptive equipment.

Speech and Language Therapy

- ▶ Evaluates and facilitates the aging adult's cognitive development, including judgment, safety, processing skills, and executive functioning skills;
- ▶ Evaluates and facilitates the aging adult's ability to regain language and communication skills;
- ▶ Facilitates the aging adult's use of communication devices such as the telephone, signboards, white boards, and computer-assisted communication;
- ▶ Evaluates the aging adult's ability to swallow liquids and food safely, without risk of aspiration, and makes dietary recommendations for eating;
- ▶ Facilitates the aging adult's ability to regain independent swallowing and eating abilities; and
- ▶ Conducts specialized swallow tests, such as modified barium swallow.

22-5. Appeals

Beneficiaries are required to receive written notice of termination of services, non-coverage, and cutbacks in coverage pursuant to Medicare Parts A and B. This notice should set forth the appeal procedure. Appeals are time sensitive. See Section 2-3 in Chapter 2, "Medicare," for the discussion on appeals of adverse decisions. Beneficiaries are *strongly* encouraged to file an appeal on any denied and terminated services pursuant to Medicare Parts A and B, and to submit physicians' supporting documentation of "medical necessity" for these services.

22-6. Conclusion

Negotiating the Medicare maze of rules and regulations, with its constantly changing legislative landscape of operating policies, is indeed a challenge. However, by knowing the rules and especially the critical triggering eligibility criteria for beneficiaries' rights to Medicare Parts A and B rehabilitation benefits, aging adults will obtain them. Vigilant advocacy by the aging adult and his or her healthcare advocate, and the aging adult's active participation in his or her rehabilitation, will increase the aging adult's probability of success at returning to his or her previous level of independent functioning and living situation.

22-7. Resources

The Center for Medicare Advocacy, Inc.

National non-profit organization and excellent Medicare resource.

National office:

P.O. Box 350

Willimantic, CT 06226

(860) 456-7790

<https://medicareadvocacy.org>

Centers for Medicare and Medicaid Services

7500 Security Blvd.

Baltimore, MD 21244

(800) 633-4227 (answered 24/7)

www.cms.gov

Colorado Senior Health Insurance Assistance Program (SHIP)

Offers aging adults appeal-filing assistance.

1560 Broadway, Ste. 850

Denver, CO 80202

(888) 696-7213

(303) 894-7490

<https://doi.colorado.gov/Health-insurance>

Colorado Gerontological Society and Senior Answers and Services

Provides counseling regarding health insurance issues, Medicare, etc.

1129 Pennsylvania St.

Denver, CO 80203

(303) 333-3482

(855) 293-6911 (Toll free)

(855) 880-4777 (Spanish)

www.senioranswers.org

Kepro

5201 W. Kennedy Blvd., Ste. 900

Tampa, FL 33609

(888) 317-0891 (toll free)

(844) 878-7921 (Fax)

(855) 843-4776 (TTY)

www.keproqio.com

Medicare Claims and Helpline

(800) 633-4227 (1-800-MEDICARE) (Answered 24/7)

(877) 486-2048 (TTY)

www.medicare.gov

“COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers”

www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf

(updated 10/13/22)

Chapter 23

Powers of Attorney

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SYNOPSIS

- 23-1. Introduction to Powers of Attorney
 - 23-2. Financial Powers of Attorney
 - 23-3. Medical Powers of Attorney
 - Exhibit 23A. Sample Colorado Statutory Form Power of Attorney for Property
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23-1. Introduction to Powers of Attorney

Whether young or old, you should decide who will make medical and financial decisions for you in case you become incapacitated by a debilitating physical disease or mental impairment, whether permanent or temporary. In order to give legal effect to your decision, you should prepare a document granting someone the legal ability to act on your behalf. The legal document is called a durable power of attorney.

What is a power of attorney?

Essentially, a power of attorney is a legal document that grants legal rights and powers by a person (the “principal”) to another (the “agent” or “attorney-in-fact”) to make decisions on behalf of the principal. The agent has the obligation to make decisions based upon the preferences of the principal and the authority granted in the document. An agent may not override the wishes of the principal.

What is a durable power of attorney?

A “durable” power of attorney permits an agent to make decisions even if the principal becomes incapacitated. Powers of attorney signed after January 1, 2010, are durable unless the document provides that it is terminated by the incapacity of the principal. Documents signed before January 1, 2010, must contain language stating “this power of attorney shall not be affected by disability of the principal,” “this power of attorney shall become effective upon the disability of the principal,” or similar words to confirm the intent for the power of attorney to continue despite the principal’s subsequent disability or illness.

Why should I have a durable power of attorney?

If you become incapacitated because of an accident or illness, your agent can immediately step in and make decisions for you without going to court to obtain a guardianship and/or

conservatorship. Guardianship and conservatorship proceedings may be expensive, public, and time consuming. By preparing a durable power of attorney in advance, you decide who will make your decisions and, by doing so, you may save your family the stress and expense of petitioning the court.

How do I create a power of attorney?

Any adult who understands what he or she is doing can create a power of attorney by writing down exactly what he or she wants the agent to do. Once the document has been prepared, it should be signed and notarized.

Because a power of attorney should be tailored to your particular circumstances, it should be written by an attorney to ensure that your intentions are clearly expressed. If you choose not to hire an attorney, the Colorado “Statutory Form Power of Attorney” is probably the best form to use. This form is provided as Exhibit 23A of this chapter.

When does a power of attorney take effect?

When a power of attorney takes effect depends on what the document directs. There are two primary ways a power of attorney takes effect. The first is referred to as a “springing power,” which means the document will take effect only when an event described in the instrument takes place. Typically, this is when the principal is incapacitated as determined by a licensed physician. The second type is a “standing power,” which takes effect as soon as it is signed by the principal. Some powers of attorney may blend these two concepts. For example, a principal may direct that a power of attorney is “standing” if the principal’s spouse is acting as agent; however, if the spouse cannot act, the successor agent’s power may be “springing.” All powers of attorney signed after January 1, 2010, are considered “standing” powers if they are silent as to the effective date.

Does a power of attorney take away a principal’s rights?

A power of attorney does not take away a principal’s right to make decisions. An agent simply has the power to act along with the principal in accordance with the authorization set forth in the document. Only a court, through a guardianship and/or conservatorship proceeding, can take away a principal’s rights.

Can a principal change his or her mind?

A principal may change his or her mind and revoke a power of attorney at any time, so long as the principal has capacity. All a principal needs to do to revoke a power of attorney is send a letter to the agent notifying the agent that his or her appointment has been revoked. From the moment the agent receives a revocation letter, he or she can no longer act under the power of attorney. The principal should also send a copy of the revocation to any institution or person that may have received notice of the original power of attorney, such as doctors or banks. Otherwise, those individuals or institutions may continue to rely on the power of attorney until given notice of the revocation.

State law automatically revokes the principal’s appointment of a spouse as an agent when a petition for divorce, legal separation, or annulment is filed, unless the power of attorney provides otherwise. However, if a successor agent is named in the document, the power of attorney would remain in effect for the principal with the successor agent.

Whom should I name as my agent or attorney-in-fact?

The agent selected to act under a power of attorney should be a trusted individual. Common choices for agents are a spouse, an adult child, a sibling, or a trusted friend. Some principals choose professional fiduciaries to serve as agent. Either way, it is always recommended to ask the person you want to name for permission to name them as an agent to ensure that they are willing to accept the appointment.

When does an agent accept appointment?

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent, or by any other assertion or conduct indicating acceptance.

What are an agent's duties?

Unless otherwise stated in the power of attorney, an agent that has accepted appointment must act in accordance with the principal's reasonable expectations to the extent that they are actually known, and must otherwise act in the principal's best interest. The agent must act within the scope of authority granted in the power of attorney, in good faith, with care, competence, and diligence. The agent must also keep detailed records of all receipts, disbursements, and significant transactions taken under the power of attorney.

Can a principal hold an agent liable for the agent's actions?

An agent is a "fiduciary," meaning the agent must act with the highest degree of good faith on behalf of the principal. The agent must follow any and all instructions given by the principal. If the principal's wishes are not specific, then the agent is free to do what is in the best interest of the principal. The agent must act in accordance with the principal's best interest, not the agent's interests. If an agent fails to act in accordance with the principal's wishes or in the principal's best interest, the agent can be held liable for his or her actions.

Can the agent be reimbursed for expenses and compensated for work?

Unless otherwise stated in the power of attorney document, an agent may be reimbursed for reasonable expenses and compensated for his or her work. If a principal would like to ensure that his or her agent will be reimbursed for expenses and compensated for work, especially an agent who is a close family member, the principal should include this direction in the power of attorney.

What if a principal appoints multiple agents?

A principal may appoint more than one agent, but this is not usually recommended. Having more than one agent as a decision-maker can create a circumstance in which the agents do not agree on a particular course of action. When agents do not agree, a court may have to resolve the dispute. It is usually better to appoint only one person to be the decision-maker or to provide a tiebreaking mechanism in the document. Nonetheless, if multiple agents are appointed, the principal can allow them to act independently or require them to act in unison, depending upon how the power of attorney is worded. Unless the document provides otherwise, each co-agent may exercise its authority independently. In either case, multiple agents should regularly communicate to make sure their actions are consistent.

What is a successor agent?

A successor agent is the person named to serve as your agent if your first choice for agent cannot serve due to death, incapacity, resignation, or refusal to accept the office of agent. Unless the document provides otherwise, if a named agent is unable or unwilling to serve as agent, the next person in line under the document becomes agent.

No one can take over as agent under a power of attorney unless the principal names a successor agent (or agents) in the document or if the principal authorizes the agent to appoint a successor agent. If neither is possible, and the principal has become incapacitated, it may be necessary to petition the court for appointment of a guardian and/or conservator. Therefore, it is always best to name at least one successor agent in your power of attorney.

What do I do with my power of attorney document?

You should give your original power of attorney to the agent you appoint and keep a copy of the document for yourself with your other important papers. Additionally, you may want to provide banks or doctors with copies of the power of attorney to keep for their files.

What if I think someone is misusing a power of attorney?

Although having a power of attorney has many advantages, the primary disadvantage is that it gives an agent the opportunity to take advantage of the principal. Financial exploitation, which includes the illegal or unauthorized use of an individual's funds, property, or resources for profit or advantage, is not uncommon and requires prompt reporting. If you suspect that an agent is misusing a power of attorney, you should take immediate action.

If you suspect your agent is misusing your power of attorney, you should immediately request an accounting, revoke the power of attorney, and notify any people or institutions that may have been given a copy of the document. If you suspect someone else's agent is misusing a power of attorney or if you suspect that a principal was coerced to sign a power of attorney the principal did not (or could not) understand, you should contact Adult Protective Services to report your concerns.

Any interested person can also go to court in the county where the principal resides (or in the county where the guardian and/or conservator resides if one has been appointed) to control the agent or to request that the court replace the agent with a guardian or conservator or both. If an agent has misused a power of attorney, the court can force the agent to return any stolen assets.

What if my agent wants to resign?

An agent may resign according to the terms and conditions stated in the power of attorney. The agent must notify, in writing, the principal, the guardian and/or conservator (if any), any successor agent named in the document, and all reasonably ascertainable third parties who might be affected by the resignation. However, if the principal is incapacitated and there is no guardian, conservator, co-agent, or successor agent, the agent may resign by giving notice to the principal's caregiver, another person the agent reasonably believes has sufficient interest in the welfare of the principal, or to a government agency that has the authority to protect the principal.

When does a power of attorney terminate?

A power of attorney terminates when: (1) the principal dies (and the agent has knowledge of the death); (2) the principal becomes incapacitated, if the power of attorney is not durable; (3) the principal revokes the power of attorney; (4) the power of attorney provides that it terminates; (5) the express purpose of the power of attorney is accomplished; or (6) the principal revokes the agent's authority, or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

When does an agent's authority terminate?

An agent's authority terminates when: (1) the principal revokes the authority; (2) the agent dies, becomes incapacitated, or resigns; (3) an action is filed for the dissolution or annulment of the agent's marriage to the principal or for their legal separation, unless the power of attorney otherwise provides; or (4) the power of attorney terminates. Termination of an agent's authority is not effective until the agent has actual knowledge of the termination.

Is my power of attorney valid in other states?

A power of attorney is valid in any state, regardless of where the individual lived when the power of attorney was created. However, laws regarding powers of attorney vary from state to state.

What is a limited power of attorney?

A Limited Power of Attorney, also known as a Special Power of Attorney, grants an agent the legal authority, in writing, to perform a specific act or acts on behalf of the principal. For example, if you do not want to grant an agent full control over your financial matters, but would like an agent to cash your checks, you can limit the agent's powers by preparing a Limited Power of Attorney.

What is the difference between a medical and a financial power of attorney?

A Medical Power of Attorney generally gives an agent the authority to make medical and personal decisions. A Financial Power of Attorney gives an agent authority to manage the principal's finances and property and to transact business on behalf of the principal. The following sections describe these two types of powers of attorney in greater detail.

23-2. Financial Powers of Attorney

A Financial Power of Attorney, also known as a General Power of Attorney or General Power of Attorney for Property, is a very flexible and inexpensive method of giving another person the legal authority to manage some or all of your financial affairs. The agent can do whatever the principal may do — withdraw funds from bank accounts, trade stock, pay bills, cash checks — except as limited in the power of attorney. When transacting business on behalf of the principal, the agent must use the principal's finances as the principal would for the principal's own benefit.

When an agent manages the finances for a principal, the most important rule for the agent is to maintain separate accounts. An agent should never commingle the agent's own funds with those of the principal. The easiest way for an agent to keep track of the basic financial records is to establish a separate checking account because the checks will act as receipts and the checkbook register as a running account. Likewise, the agent should avoid cash transactions whenever

possible because such transactions are more difficult to account for and may be more heavily scrutinized. A principal should ensure that the agent understands that the agent has a legal obligation to furnish the principal, or his or her designee, with information about the agent's activities.

When an agent acts for the principal's benefit under a Financial Power of Attorney, the law holds the agent to the "prudent man rule," which means that the agent must exercise "due care" and manage the principal's funds not as if they were the funds of the agent, but with the care needed for managing funds of another. The agent should avoid speculative investments even if the agent would be willing to take more risk with his or her personal funds.

For all Financial Powers of Attorney signed after January 1, 2010, the principal must state that the agent has certain powers, casually referred to as "hot powers." These "hot powers" include the power of an agent to create, amend, revoke, or terminate a trust; make a gift; create or change rights of survivorship; create or change a beneficiary designation; delegate authority granted under a power of attorney; waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; exercise various powers held by the principal in a fiduciary capacity; and disclaim or release property or a power of appointment. If the power of attorney does not include these "hot powers," then the agent lacks the authority to exercise any of these powers for the principal. The "hot powers" are listed as options in the statutory power of attorney form, Exhibit 23A.

As a word of caution, as previously mentioned, financial exploitation is not uncommon. The principal should be careful when empowering an agent through a Financial Power of Attorney. These documents are helpful tools and people should be encouraged to use them. However, a principal needs to carefully consider his or her choice of agent, monitor the agent, and consider other appropriate safeguards, such as including language in the document that allows successor agents or other family members to have some oversight of the agent currently serving.

23-3. Medical Powers of Attorney

A Medical Power of Attorney, also known as a Power of Attorney for Health Care, allows you to name an agent who will make health care decisions for you when you are not able to do so. In the document, you can give specific instructions to your agent about various issues like surgery, medical treatment, or the need for nursing home care. Unlike a living will, a Medical Power of Attorney's use is not limited to terminal illness or persistent vegetative state situations. Instead, the agent under a Medical Power of Attorney is authorized to make any health care decisions that the principal could make, with certain limitations, if the principal had capacity to do so. Although an agent acting under a Medical Power of Attorney may direct medical treatment while the principal is still medically capable of making his or her own medical decisions, it is uncommon. Typically, medical providers will look to the principal to make decisions relative to medical courses of action so long as the principal is able to provide informed consent. Nevertheless, no agent may consent to or refuse any proposed medical treatment for a principal over the principal's objection.

A Medical Power of Attorney can be as simple or as sophisticated as the principal and the principal's attorney wish to make it. In addition to the authority to make health care decisions, the principal can consider adding language that permits the agent to complete the documentation necessary for insurance, Medicare, Medicaid, and medical facility admissions. The document should also include language sufficient to satisfy the requirement of the Health Insurance Portability and Accountability Act of 1996, commonly known as "HIPAA." HIPAA is intended

to ensure the privacy of medical information. Although an agent legally is entitled to access the medical records of the principal, by including specific HIPAA language that authorizes an agent to be considered a “personal representative” (the HIPAA term for an agent), the principal will ensure that the agent can discuss medical issues and access medical records so he or she can make informed decisions when the principal is unable to do so.

It is recommended that the principal discuss all medical issues and beliefs concerning medical treatment with his or her doctor and the agent under a Medical Power of Attorney, since the agent is required to follow the principal’s wishes and intent as to medical care and treatment. If the principal’s specific wishes are not known to the agent, the agent must act in accordance with the best interests of the principal as determined by the agent.

* Ms. Caton would like to thank the former authors of the *Senior Law Handbook* and the Colorado Bar Association power of attorney pamphlet authors for providing the basis for the chapter. Ms. Caton would also like to thank Letitia Maxfield for her prior contributions to this chapter.

Exhibit 23A.
Sample Colorado Statutory Form
Power of Attorney for Property

STATE OF COLORADO
STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the “Uniform Power of Attorney Act”, part 7 of article 14 of title 15, Colorado Revised Statutes.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent’s authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the special instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the special instructions. Coagents are not required to act together unless you include that requirement in the special instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the special instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I _____(name of principal) name the following person as my agent:

Name of agent: _____

Agent's address: _____

Agent's telephonenumber: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of successor agent: _____

Successor agent's address: _____

Successor agent's telephone number: _____

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of second successor agent: _____

Second successor agent's address: _____

Second successor agent's telephone number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All preceding subjects" instead of initialing each subject.)

- Real property
- Tangible personal property
- Stocks and bonds
- Commodities and options
- Banks and other financial institutions
- Operation of entity or business
- Insurance and annuities

- Estates, trusts, and other beneficial interests
- Claims and litigation
- Personal and family maintenance
- Benefits from governmental programs or civil or military service
- Retirement plans
- Taxes
- All preceding subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- Create, amend, revoke, or terminate an inter vivos trust
- Make a gift, subject to the limitations of the "Uniform Power of Attorney Act" set forth in section 15-14-740, Colorado Revised Statutes, and any special instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate, including powers to participate in the designation or changing of a fiduciary and powers to participate in the direction of a fiduciary in the exercise of the fiduciary's powers
- Disclaim, refuse, or release an interest in property or a power of appointment
- Exercise a power of appointment other than: (1) The exercise of a general power of appointment for the benefit of the principal which may, if the subject of estates, trusts, and other beneficial interests is authorized above, be exercised as provided under the subject of estates, trusts, and other beneficial interests; or (2) the exercise of a general power of appointment for the benefit of persons other than the principal which may, if the making of a gift is specifically authorized above, be exercised under the specific authorization to make gifts

- () Exercise powers, rights, or authority as a partner, member, or manager of a partnership, limited liability company, or other entity that the principal may exercise on behalf of the entity and has authority to delegate excluding the exercise of such powers, rights, and authority with respect to an entity owned solely by the principal which may, if operation of entity or business is authorized above, be exercised as provided under the subject of operation of the entity or business

LIMITATION ON AGENT’S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the special instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

**NOMINATION OF CONSERVATOR
OR GUARDIAN (OPTIONAL)**

If it becomes necessary for a court to appoint a conservator of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of nominee for conservator of my estate: _____

Nominee's address: _____

Nominee's telephone number: _____

Name of nominee for guardian of my person: _____

Nominee's address: _____

Nominee's telephone number: _____

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your signature

Date

Your name printed

Your address

Your telephone number

State of _____)
) ss.
County of _____)

This document was acknowledged before me on _____, (Date) by
_____. (Name of principal)

(Seal, if any)

Signature of notary

My commission expires: _____

This document was prepared by:

IMPORTANT INFORMATION FOR AGENT

Agent's duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney; and
- (4) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's name) by (Your signature) as agent

Unless the special instructions in this power of attorney state otherwise, you must also:

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) Act with care, competence, and diligence;

- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (6) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of agent's authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) Death of the principal;
- (2) The principal's revocation of the power of attorney or your authority;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished; or
- (5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the special instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes. If you violate the "Uniform Power of Attorney Act", part 7 of article 14 of title 15, Colorado Revised Statutes, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

Chapter 24

Medical Advance Directives

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Kirtland & Seal, L.L.C.

SYNOPSIS

- 24-1. Living Wills
 - 24-2. CPR Directives and DNR Orders
 - 24-3. Medical Orders for Scope of Treatment
 - 24-4. Medical Power of Attorney
 - 24-5. Organ and Tissue Donation
 - 24-6. Disposition of Last Remains
 - 24-7. Aid in Dying
 - 24-8. Resources
-

Medical advance directives are legal documents that tell medical professionals and others about your desires concerning your medical treatment for use in the event you can no longer speak for yourself. The term “medical advance directive” most commonly refers to a living will, but the term may also include medical durable powers of attorney, cardiopulmonary resuscitation (CPR) directives, Do Not Resuscitate (DNR) orders, Medical Orders for Scope of Treatment (MOST), and other directives concerning your care and disposition in the event your medical condition is terminal, and at or after the time of your death.

24-1. Living Wills

A living will, correctly titled an “Advance Directive for Medical/Surgical Treatment” but commonly known in Colorado as a “living will,” is a document in which you express your preferences as to how you wish to be treated in the event you are in a terminal condition or a persistent vegetative state and are also incapable of speaking for yourself concerning how you wish to be treated medically.

In 2010, the Colorado General Assembly passed a major update to Colorado’s advance directive statutes. The purpose of the update was to modernize the 1989 statute, to recognize medical advances that have occurred since that time, and to allow for more flexibility in drafting living wills in Colorado. The law does not change the basic philosophy of advance directives in Colorado, which is based upon the premise that competent adults should be permitted to accept

or reject medical treatment in end-of-life situations, and to express those preferences in advance, in writing.

The basic living will covers two end-of-life situations. The first of these is a terminal condition. A terminal condition means an incurable or irreversible condition for which the administration of life-sustaining procedures will serve only to postpone the moment of death. In other words, the medical professionals have determined they can take no other actions that will cure or improve your medical condition, and life-sustaining procedures may prolong your life somewhat, but not overcome your impending death. Life-sustaining procedures are medications, surgeries, or other medical therapies that would lengthen your remaining lifetime somewhat, but not reverse your medical condition. The second medical condition is a persistent vegetative state. The law recognizes that the determination of whether a person is in a persistent vegetative state should be made by medical professionals, and not by attorneys and courts. As a result, the term is not defined in Colorado law, except to say that determination is based upon prevailing medical standards.

In either of these two end-of-life situations, a Colorado living will permits the individual to select one of three choices. The first is to forego life-sustaining treatment. The second is to accept life-sustaining treatment, but only for a limited period of time. At the end of this period of time, determined by the individual in the living will, the individual's doctors will re-evaluate the individual, and if it is determined the individual remains in a terminal condition or a persistent vegetative state (which should always happen if the individual was correctly diagnosed previously), the life-sustaining treatment will be terminated. The third choice is to continue life-sustaining treatment as long as medically feasible.

In addition to expressing one's preference regarding life-sustaining treatment, Colorado law permits the individual to express the desire to accept or withhold nutrition and hydration in a terminal condition or a persistent vegetative state. Under Colorado law, nutrition and hydration are treated separately from any other form of medical treatment. As with life-sustaining treatments, when determining one's preferences for provision of nutrition and hydration, the individual can express one of three preferences, as defined above.

The law also permits a person to express individual medical instructions concerning other medical issues that he or she might face. The law now permits a person to list individuals with whom the person's doctor may discuss the person's medical situation, and provides language permitting the doctor to openly discuss the medical situation in light of the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Finally, the law includes language permitting an organ and tissue donation preference to be expressed in the living will. Organ and tissue donation is discussed more fully later in this chapter.

Under previous Colorado law, a sample living will was included in the statutes. The new law removes this sample form. This was done to permit more flexibility in using the various living will forms that have been developed in the last two decades. A sample living will form is available on the Colorado Bar Association website (see section 24-8, "Resources," for details). A sample living will can also be obtained from the Colorado Medical Society.

Any competent adult may execute a living will. Under the statute, the individual may also indicate whether an agent under a medical power of attorney may override the preferences expressed by the individual in the living will, or whether the agent under the medical power of attorney should be required to follow the directions contained within the living will.

Many people worry that if life-sustaining treatment, including nutrition and hydration, is withheld or withdrawn, they will suffer pain and discomfort as a result. The law in Colorado, and every other state, requires medical professionals to provide whatever medications or other treatments are necessary in order to make you as comfortable and pain free as is practical.

After you have executed your living will, you should provide a copy of the living will to any medical professional who keeps regular medical records on you. If you have multiple doctors, such as an internist, an orthopedic doctor, and so on, you should give a copy of your living will to each of these medical professionals. In all cases, provide them a copy of your living will to be placed in your medical files, but keep the original living will yourself, or provide it to your agent under your medical power of attorney.

Federal law requires that, upon admission to a hospital, the hospital must ask you if you have a living will. You should bring your living will with you to the admissions process and let them make a copy for your medical file at the hospital. If you enter an assisted living facility or a nursing home, you should also provide a copy of the living will to the facility at the time of your admission.

Remember, so long as you are capable of making your own medical decisions, you can determine what treatments you will or will not receive. The purpose of the living will is for you to express in advance what your wishes are, so that in the event you are unable to express your wishes, there is a written document telling the medical professionals and your family what your preferences are on the subject of terminal illness and persistent vegetative state situations.

Perhaps most important of all is for you to discuss with your loved ones your feelings, beliefs, and desires with regard to end-of-life treatment. The more your loved ones know about your desires, the more likely you are to receive the kind of medical treatment you wish to receive at the end of your life. Lawyers and doctors can provide support and expertise, but only you can provide your preferences. Take the time to speak with your loved ones and be open with them about how you feel about end-of-life treatment, life-sustaining procedures, and other issues concerning end-of-life matters.

You do not have to execute a new living will if you travel to or move to another state. However, as medical professionals are most comfortable with the living will form(s) commonly found in their state, if you stay for an extended period of time in another state (such as individuals who have a winter home in a warmer climate) or move to another state, it is a good idea to execute a new living will in a form that is commonly found in that state. For people who have two residences, it is a good idea to have two living wills, each in the format commonly found in that state. **HOWEVER:** Be careful to ensure that the information in those two living wills is not in any way contradictory, or a court may invalidate both documents.

24-2. CPR Directives and DNR Orders

Cardiopulmonary resuscitation (CPR) directives and Do Not Resuscitate (DNR) orders are directives, signed by a doctor, that direct that in the event your heart stops or you stop breathing, you do not wish to have CPR or other methods of restarting your heart and breathing. These directives must be issued by a doctor. As such, you need to speak with your physician to obtain such a directive. Unless you have a signed CPR or DNR directive or a living will stating you do not want CPR, the law in Colorado and the standards of medical practice will require medical professionals to make all reasonable efforts to restart your heart in the event it stops.

24-3. Medical Orders for Scope of Treatment

In 2010, the Colorado General Assembly passed a law creating authority for a Medical Orders for Scope of Treatment (MOST) form. This law recognizes a growing trend in the various states to permit medical professionals to capture your wishes concerning end-of-life treatment preferences, and to allow that information to follow the patient from one health care facility to another, rather than requiring the information to be recreated and recompiled once the patient is admitted to the new facility. As with living wills and other advance directives, the purpose is to better ensure, in a written advance directive, that the wishes of the individual concerning his or her end-of-life medical treatment are known and followed.

The MOST statute does not make substantive changes to Colorado law or provide new alternatives for medical treatment. Rather, it simply places your wishes on one document, clearly identified in your medical records (because of the bright green color of the form). The document is signed by you and your physician, thus making it a medical order in your medical records. It does not replace the living will; instead, the two documents work together to more fully capture your intentions concerning end-of-life treatment. Consistent with the living will statutes, the MOST statutes specifically say that nothing contained in the MOST form changes the accepted standards of medical practice and ethics.

The MOST form provides identifying information about the patient and expresses the patient's preferences concerning end-of-life treatment, cardiopulmonary resuscitation (CPR), transfer to hospital facilities, and other end-of-life issues.

To account for differences in moral or religious beliefs between the patient and the medical professionals treating the patient, the law provides that in the event the medical provider's moral convictions or religious beliefs conflict with the patient's instructions, the medical provider is required to effect the transfer of the patient to a medical provider or facility that is willing to comply with the MOST form.

Any competent person may execute a MOST form in conjunction with his or her doctor. Where a person is not competent to complete the form, an authorized agent under the person's medical power of attorney or a proxy under the medical surrogate statutes may complete the form on behalf of the incompetent person. The form may be revoked at any time and in any way that clearly indicates the executing person's intention to revoke the form.

Where the person has previously executed a living will, medical power of attorney, or other advance directives, those documents are to be kept with the MOST form in the patient's medical records. If there is an inconsistency between the documents, the most recently executed document will prevail.

24-4. Medical Power of Attorney

A medical power of attorney, sometimes known as a "Durable Medical Power of Attorney" or a "Power of Attorney for Health Care," is a legal document in which you appoint an "agent" to speak for you on the subject of medical treatment in the event you are unable to speak for yourself. Unlike the living will, the medical power of attorney's use is not limited to a terminal condition or persistent vegetative state situations. The agent under the medical power of attorney is authorized to make any medical decision that you could make for yourself, with certain limitations, if you were mentally competent to do so. However, nothing in the medical

power of attorney permits the agent to direct your medical treatment while you are still mentally capable of making your own medical decisions.

The medical power of attorney is called “durable” because it contains language within the document that directs that its authority should continue to be effective even in the event that you become legally or medically incompetent. Medical powers of attorney can be as simple or as sophisticated as you and your attorney wish to make them. However, at a minimum, the medical power of attorney needs to appoint an adult (defined in Colorado as a person 18 years of age or older) as your agent under the medical power of attorney. It is a good idea to include in the medical power of attorney an alternate or successor agent, in the event your primary named agent is deceased, unwilling, or otherwise unable to make medical decisions for you. It is not a good idea to appoint, and the medical community discourages appointing, co-agents, that is, two or more people who must act together to make medical decisions. The medical professionals much prefer to have one person with the authority to act. This does not mean you cannot appoint successor agents in the event your primary agent is unavailable to act. Appointing successor agents is encouraged, but like the primary agent, appoint only one successor to act at any given point in time.

Any properly written medical power of attorney today should include in it language sufficient to satisfy the requirements of the Health Insurance Portability and Accountability Act of 1996, commonly known as “HIPAA” (pronounced “HIP-ah”). HIPAA is intended to ensure the privacy of your medical information and to ensure that you have access to any medical information that medical professionals keep concerning you. Your medical power of attorney should include language that permits your agent to be considered a “personal representative” (the HIPAA term for an agent) for the purpose of discussing your medical records, conditions, and possible courses of medical treatment with the medical professionals. By including HIPAA language in the appointment of an agent under medical power of attorney, your agent can discuss your medical issues with the medical professionals, can make medical decisions when you are unable to do so, and can do such things as pick up medications for you at a pharmacy.

In addition to the basic elements of a medical power of attorney, you should consider adding language to your medical power of attorney to permit your agent to complete admission applications to medical facilities, assisted living facilities, and nursing homes; make applications for Medicare, Medicaid, and other medical insurance forms; and nominate and appoint a guardian.

Like the living will, you should provide a copy of your medical power of attorney to any medical professionals who keep medical records on you and provide a copy to any hospital, assisted living facility, nursing home, or other medical facility upon admission. You should keep the original of the medical power of attorney, or provide it to your agent. Additionally, as with the living will, it is an excellent idea to discuss your medical issues, your feelings and beliefs concerning medical treatment, and other related issues with your agent under the medical power of attorney and with your loved ones. It is the purpose of appointing an agent under the medical power of attorney that your agent should follow your wishes and intent as to medical treatment. The agent can only do so if he or she knows what you want.

You do not need to execute a new medical power of attorney in the event you travel or move to another state, unless you wish to make changes to your medical power of attorney. To be safe, and to ensure your medical power of attorney meets the execution requirements of each state, you should have your medical power of attorney witnessed by two individuals unrelated to you who are not in any way responsible for your medical care and medical bills, and have the medical power of attorney notarized.

Finally, authority to act under a medical power of attorney ceases upon the death of the principal, that is, the person who executed the medical power of attorney appointing the agent to act.

24-5. Organ and Tissue Donation

Under Colorado law, if you choose to, you may decide to donate your organs and/or tissue at the time of your death. This declaration to donate your organs or tissue may be done in a variety of methods, including making such a statement in your will, by making a direction on your driver's license, by declaration in a living will or a medical power of attorney, or by declaration in another written instrument. Be careful, however. While legally you can donate your organs and tissues through a statement in your last will and testament, there is a distinct possibility that no one will look at the terms and directions of your last will and testament until well after your death, including not until after your burial or cremation. So, while you can legally use a will to do this, it may not be the best choice available.

If you do not have a written declaration to donate your organs and tissue, or a written direction not to make such donation, then certain persons who survive you may make such donation of your organs and tissues. The authority to make such donation is in the following order of persons:

- 1) An agent of the decedent;
- 2) The spouse or partner in a civil union of the decedent;
- 3) Adult children of the decedent;
- 4) Parents of the decedent;
- 5) Adult siblings of the decedent;
- 6) Adult grandchildren of the decedent;
- 7) Grandparents of the decedent;
- 8) An adult who exhibited special care and concern for the decedent;
- 9) The persons who were acting as the guardians of the person of the decedent at the time of death; or
- 10) Any other person having the authority to dispose of the decedent's body.

As with all of these advance directive documents, it is a good idea to discuss your desires and beliefs with your loved ones so that they will know what you want done at the time of your death.

24-6. Disposition of Last Remains

We would all like to think that our relatives and loved ones will be in agreement as to what is to happen to our last remains at the time of our death. Unfortunately, it is quite possible that this will not be the case. As a result, Colorado has what is known as the Disposition of Last Remains Act.

Under this Act, you have the right to direct in writing who should control what happens to your last remains after your death. This direction must be in writing. If there is no such writing, your verbal directions do not have legal standing.

This written declaration may direct your wishes regarding your last remains, that is, whether you wish to be buried, cremated, or have your remains donated to medical science. The declaration may also direct what funeral, religious, or other ceremonies you wish to have after your death.

If you do not have a declaration as to disposition of last remains, the individual who has authority to determine how to dispose of your last remains will be decided in the following order:

- ▶ The appointed personal representative or special administrator of your estate;
- ▶ The nominated personal representative under your last will and testament;
- ▶ Your surviving spouse or partner in a civil union;
- ▶ The majority decision of your adult children;
- ▶ The decision of your surviving parents or legal guardians;
- ▶ Any person assuming legal and financial responsibility for the final disposition of your last remains; or
- ▶ The Office of the Public Administrator in your judicial district.

24-7. Aid in Dying

The subject of aid in dying is a controversial one. This issue is more commonly known as “assisted suicide”; however, this is not a correct use of the term. No one, not even a doctor or close relative, is permitted to assist you in ending your life. However, under a 2016 law, Colorado now recognizes that a competent individual has the right, if he or she meets certain medical criteria, to end his or her own life and to obtain medications from a physician that will cause his or her life to end.

Under the law, if a person is terminally ill and mentally competent, that person may make a request of the doctor for a prescription for life-ending drugs. To do this, the person must make two oral requests of the doctor, which must be made at least 14 days apart, and a written request for the prescription. To be considered terminally ill, a person must be determined by two medical professionals, including the person’s attending physician, to be expected to die, without aid in dying, within the next six months. A person would not be terminally ill if other medical procedures would result in the person being expected to live more than six months.

To qualify for aid in dying, the person must be a Colorado resident and be terminally ill. The doctor consulted must inform the person of alternatives to aid in dying, the consequences of taking the medication, and that even if he or she obtains the medications, he or she does not have to take the medications. In addition, the person must be capable, both physically and mentally, of self-administering the medication.

Under the law, physicians and medical institutions may opt out of participating in the aid in dying law. Many Colorado hospitals have done so, and many individual physicians have decided not to participate as well. It appears the most difficult part of the new law may be in finding a physician who is willing to prescribe the medication.

24-8. Resources

Aging With Dignity

Distributor of "Five Wishes"

P.O. Box 1661

Tallahassee, FL 32302-1661

(850) 681-2010

info@fivewishes.org <https://fivewishes.org/Home>

American Bar Association

Provides the "Toolkit for Health Care Advance Planning."

www.americanbar.org/groups/law_aging/resources/health_care_decision_making/consumer_s_toolkit_for_health_care_advance_planning.html

Caring Connections

National Hospice and Palliative Care Organization

Advocates for the rights of dying patients, provides legal information about end-of-life decisions, and offers counseling. State-specific, free forms and instructions are available online.

(800) 658-8898

www.caringinfo.org

Colorado Hospital Association

(720) 489-1630

https://cha.com/wp-content/uploads/2017/03/medicaldecisions_2011-02.pdf

UC Health — End of Life Decisions Act

<http://uchealth.org/colorado-end-life-options-act>

Colorado Department of Public Health and Environment — Medical Aid in Dying information

www.colorado.gov/pacific/cdphe/medical-aid-dying

Colorado Bar Association — Living Will Form

www.cobar.org/portals/cobar/repository/livingwill1003.pdf

Chapter 25

Conservatorship of Adults

M. Carl Glatstein, Esq.
Glatstein & O'Brien LLP

SYNOPSIS

- 25-1. Introduction
 - 25-2. Alternatives to Conservatorship
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25-1. Introduction

What is a conservator? You may have heard the term, but do you understand what it means? A conservator is a type of trustee or fiduciary who is appointed by the court for an individual who is unable to manage his or her own financial affairs. Confusion arises because in some states, such as California, the term “conservator” is used interchangeably with the term “guardian.” Other states, such as Texas and Florida, use the term “guardian” to also mean a conservator.

Colorado distinguishes between these two terms. Here, a conservator is placed in charge of a person’s financial matters, while a guardian is placed in charge of the care and custody of a person and is responsible for making health care and placement decisions. Guardianship requires a determination of incapacity for an adult. (Minors need a guardian appointed because they are not legally competent until they reach age 18 — the age of majority.) Conservatorship, on the other hand, does not require that the person be found incapacitated or incompetent, although the two proceedings often go hand-in-hand.

It is important to understand that the appointment of a conservator affects a person’s property rights, while the appointment of a guardian affects a person’s civil liberties and personal

freedoms. Since these are all constitutionally protected interests, they can only be taken away or limited by a court of competent jurisdiction, and only after due process is provided, which requires notice and a hearing. Certain safeguards are built into the law and the procedures required for imposing a conservatorship. The court retains jurisdiction over these matters and requires conservators to report on the finances of the protected person at least annually.

If the conservator is not acting in the best interest of the protected person, or is mismanaging the assets, the court may suspend or remove the conservator. The court may also impose a fine or surcharge, which means the conservator will have to repay the funds that were misappropriated. In some cases, the conservator may even be charged with a crime for taking advantage of an at-risk adult. Assuming the role and duties of a conservator is serious business and should not be done lightly.

25-2. Alternatives to Conservatorship

There are alternatives to conservatorship that should be considered first. Financial powers of attorney are very flexible and inexpensive. A power of attorney can give an agent the legal authority to manage the finances and act on behalf of the principal, who is the person granting the authority. However, at the time the principal signs the power of attorney, the principal must have sufficient capacity to know and understand what the document authorizes. If an individual is already incapacitated, or subject to undue influence, it may be too late to rely upon powers of attorney.

Forms for financial powers of attorney can be found in office supply stores, and many versions are available in software packages and on the internet. However, relying upon powers of attorney without fully understanding their uses and potential for abuse can be penny-wise and pound foolish. While powers of attorney can be simple and useful tools, they can also wreak devastating results. An agent with a duly signed power of attorney can empty out your bank accounts, sell your investments, and even sell your house.

For limited purposes, a joint bank account may also be a simple alternative. With joint bank accounts, either party named on the title to the account may write checks, regardless of what the funds are used for. However, joint bank accounts, just like powers of attorney, may be abused. On top of that, when adding someone else's name to your account as a joint tenant, that person is entitled to ownership of everything in the account upon your death — regardless of what your will says.

With both financial powers of attorney and joint bank accounts, there is no court involvement and therefore no court oversight. It is very important to make sure that your agent or joint tenant understands the legal obligation to furnish you with information about his or her activities. It is also wise to make sure that a trusted friend or family member has the right to this information in the event of your incapacity or disability. Studies have consistently found that financial abuse of the elderly happens under the guise of a power of attorney. Unfortunately, most of this exploitation happens at the hands of family members. This suggests that it may be wise to have several sets of eyes watching your financial affairs when you are no longer able to do so. You may also wish to consider turning to a professional fiduciary to take on this role. Often lawyers are needed to fix the damage done by trying to do things the easy way. By then it may be too late for the courts to do anything but preserve what's left of your assets.

Finally, one other alternative to conservatorship is the use of trusts. When creating a trust, you may designate who will be your trustee. You may even be your own trustee while you have the capacity and ability to manage your own assets. Upon your incapacity, a successor trustee can take over managing your assets. Trusts are also very flexible and can be used to hold specific assets or everything you own. Unlike conservatorships, trusts are private and generally only require court involvement if there are problems. However, there may also be significant tax ramifications in using a trust. Transferring your assets into trust may jeopardize your ability to qualify for Medicaid. Since there are often complex legal and tax matters involved, it is generally advisable to have an attorney work with you in the drafting and administration of the trust.

25-3. Court Process

A conservatorship is a legal proceeding, which is started by filing a petition for the appointment of a conservator. The filing fee with the court is \$199. The person filing this pleading is the “petitioner” and is responsible for paying the filing fee. The person who is alleged to need the protection of a conservator is the “respondent” or “protected person.” The petition is filed in the county where the respondent lives. A supporting doctor’s letter should be attached to the petition. If the respondent is also incapacitated and no one has legal authority to make medical decisions for the respondent, a guardianship petition should be filed at the same time. This saves having to pay another filing fee later on. (See Chapter 26, “Guardianship of Adults,” for more information.)

Many courts have packets of information with instructions for simple and uncontested conservatorships. More detailed information is also available on the internet from the Colorado State Judicial Branch website at www.courts.state.co.us and by clicking on “Self Help/Forms” then “Conservatorship.” Most courts now have Self-help Centers staffed by Self-represented Litigant Coordinators (“Sherlocks”) who are trained to provide limited assistance. (See Exhibit 25A for a list of the Self-help Centers.) Court staff are often very helpful, but remember, they cannot give legal advice. Often, family or friends may be able to follow the rules and file the pleadings without the assistance of counsel. However, if the respondent is objecting to the imposition of a conservator, an attorney must be appointed by the court to represent the respondent.

To further protect due process, the court will appoint a court visitor, who is required to meet personally with the respondent. The court visitor serves as eyes and ears for the court and files a written report. The court visitor tries to inform the respondent about the nature of the proceedings and interviews the respondent as to his or her wishes. The court visitor advises the respondent about the right to be present at the hearing, to cross-examine witnesses, to introduce testimony, and to have a medical or psychological evaluation performed. The court visitor also advises that the respondent has the right to be represented by counsel at his or her own expense. If the assets are insufficient, the representation is at the state’s expense. If the respondent tells the court visitor that he or she wants an attorney, the court must appoint one. The fees charged by the court visitor must be paid by the petitioner prior to the hearing. In Denver, the court visitor charges a flat fee of \$200. In other counties, an hourly fee may be charged.

Due process requires reasonable advance notice of the hearing. The respondent must be personally served with the notice of hearing and the petition for appointment of a conservator. Other interested parties must also be given advance notice, but this may be mailed. Interested persons include the respondent’s spouse and all adult children, agents under powers of attorney, representative payees and other legal representatives, anyone the respondent has nominated to serve as conservator, and the respondent’s primary care physician. If there is no spouse but the

respondent has lived with someone during the previous six months, that person should be given notice as well. In the absence of immediate family, notice may have to be given to the closest relative by degree of kinship.

Without going into all the technicalities, at the hearing, the petitioner has the burden of proof to establish by clear and convincing evidence that the respondent is unable to manage his or her property due to some form of incapacity or deficit. The petitioner must also show that the respondent has assets that will be wasted or dissipated without proper management, or that the respondent or the respondent's dependents need funds for support, and that the appointment of a conservator will facilitate getting those funds.

25-4. Acceptance of Office

An individual nominated to serve as the conservator generally must submit an Acceptance of Office form. This requires the nominee to sign an affidavit disclosing any criminal history and judgments against him or her, among other things. The nominee is also required to submit a credit report, a name-based Colorado Bureau of Investigation criminal background check, and a copy of his or her driver's license or passport.

25-5. Responsibilities

Once an order of appointment is entered, the conservator has many duties and responsibilities. The court often requires the conservator to first obtain a fiduciary bond from an insurance company. The cost of the bond is payable out of the conservatorship assets. The purpose of the bond is to ensure that the conservator faithfully carries out his or her duties and to preserve the assets covered by the bond. The bond company often reviews the accountings and reports that the conservator files more carefully than a court's staff has time to allow.

The conservator is required to file an inventory and financial plan within 90 days of appointment. The inventory is a snapshot of all the assets under the conservator's control as of the date of appointment. The financial plan is a budget that describes the protected person's monthly income and expenses, as well as how the assets under the conservator's control will be managed. Once this information is gathered, it should be possible to determine whether the protected person's income is sufficient to cover expenses, or whether assets will need to be sold to pay for his or her care. The financial plan should be reviewed and approved by the court, and should be followed faithfully. Failure to do so may create significant problems for the conservator, including removal or surcharge. If the protected person's situation changes, the financial plan should be amended and again approved by the court.

At least once a year, the conservator is required to file a conservator's report, detailing the income and expenditures over the past accounting period. The conservator's report provides a comparison between actual expenditures and the court-approved financial plan. It should be easy to determine at a glance whether the financial plan has been carefully followed and whether there have been extraordinary expenditures. The conservator's report should also indicate whether the financial plan is adequate to meet the protected person's needs or whether it should be amended. In recent years, each court in Colorado has added staff whose job it is to review the conservator reports. These Protected Proceedings Monitors closely scrutinize the reports and alert the court if problems are seen.

25-6. Duties

A conservator is a type of fiduciary and has power and authority much like that of a trustee. Fiduciary duties include that of undivided loyalty to the person whose interests the conservator protects. The conservator may not engage in “self-dealing,” which means profiting off the assets controlled. Although a conservator is entitled to reasonable compensation, family members often serve without pay. In any event, compensation paid to the conservator must first be authorized and approved by the court.

The conservator has a duty to exercise due care. The conservator must handle the conservatorship assets prudently, using reasonable care and caution in investing and managing the assets under the conservator’s care. If there are sufficient assets to warrant investments, it may be prudent to rely upon a financial advisor to diversify and structure an investment portfolio, balancing risk and return. Sometimes it may be necessary to liquidate investments or even to sell the protected person’s house. Any time there is a significant change in financial matters, it is advisable to seek court approval. This will limit the conservator’s liability to the protected person and those who may inherit his or her estate.

25-7. Terminating Conservatorship

A conservatorship may need to terminate for various reasons: (1) the protected person may have regained capacity and no longer require assistance and oversight; (2) the protected person may have died; (3) the assets may have been depleted; or (4) if the conservatorship was for a minor, it is no longer needed when the minor becomes 21 years old. When such an event arises, the conservator is then required to prepare and file a final report and petition for the termination of the conservatorship. The final report covers the period since the last accounting and indicates what assets remain in the conservatorship to be distributed. After the death of the protected person, the conservator generally should take no action, other than to pay for funeral expenses and to preserve and protect the assets remaining, without obtaining a court order.

If the conservatorship terminated because the protected person is no longer incapacitated, then the assets should be transferred back into the name of the individual. If the conservatorship terminated because the protected person has died, then the assets are turned over to the personal representative of the individual’s estate or as directed by the court. The conservator should ask the court to approve the final report, and then provide the court with proof that the assets have been distributed in accordance with the court’s order. Once this is accomplished and the court is satisfied that the conservator has fulfilled all of the duties and obligations required, a decree of discharge will be entered, relieving the conservator of any further liability.

25-8. New Developments

Additional Background Checks

Effective beginning January 1, 2022, new legislation requires all petitions for appointment of a guardian or conservator for an adult to be accompanied by a written authorization to request a CAPS check. CAPS is the Colorado Adult Protection Services database system. The court will forward the CAPS authorization to the state agency which promptly provides an additional background check to determine whether the person nominated as guardian or conservator has

any substantiated findings of involvement in mistreatment, physical or sexual abuse, caretaker neglect, exploitation, or other harmful acts. The report is sealed and is only available to the court.

Supported Decision Making

Another new requirement since the last publication of the *Senior Law Handbook* recognizes the importance of supported decision making. “Supported decision-making” is the informal way an adult with a disability or diminished capacity makes their own decisions by relying upon friends, family members, professionals, and other trusted persons.

This new requirement only applies in limited situations when appointment of an emergency guardian or special conservator is requested, without the normal advance notice and hearing required by statute. This is further limited to cases in which the petitioning party is asking the court to appoint a professional guardian or the county department of human services as the emergency guardian. For conservatorships, it is limited to cases where the petitioning party is asking for appointment of a professional conservator or the judicial district’s public administrator.

In these limited situations, the court must immediately appoint a visitor to investigate and report back to the court within 14 days. The report should inform the court whether there are members of the individual’s supported decision making community who may have relevant information about the individual’s wishes and personal values and who should be involved in the proceedings.

The visitor should also report on the respondent’s view of any such members and interview those people as well. The court must review this visitor’s report within seven days of filing and enter an order determining whether it is in the best interest of the person to include those additional people and whether there should be limits on the authority of the emergency guardian or special conservator.

This process is designed to better ensure that people with a connection to the respondent are involved in the process. However, it also increases the costs as a second visitor’s report is required once the emergency situation subsides. The petitioning party is usually responsible for the visitor’s fees.

25-9. Resources

Colorado State Judicial Branch

Office of the State Court Administrator
1300 Broadway, Ste. 1200
Denver, CO 80203
(720) 625-5000
www.courts.state.co.us

**Exhibit 25A.
Colorado Self-help Centers**

Colorado Courts Self-Help Centers

Additional information can be found at https://www.courts.state.co.us/Self_Help/resources.cfm

County	Address	Self-Represented Litigant Coordinator (Sherlock)
<u>Adams</u>	Adams Combined Court 1100 Judicial Center Drive Brighton, CO 80601	Geneva DeHoyos, Alicia Diaz 17shrc@judicial.state.co.us 303-654-3213
<u>Alamosa</u>	Alamosa Combined Court 8955 Independence Way Alamosa, CO 81101	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Arapahoe</u> <u>Littleton</u>	Arapahoe Combined Court Courthouse II 7325 S. Potomac St. Centennial, CO 80112	Maria (Arapahoe) Blake (Arapahoe) Bradly (Littleton) 18selfhelp@judicial.state.co.us 303-645-6845
<u>Archuleta</u>	Archuleta Combined Court 46 Eaton Dr., Ste 1 Pagosa Springs, CO 81147	Miriah Sandoval Miriah.sandoval@judicial.state.co.us 970-385-6179
<u>Baca</u>	Baca Combined Court 301 S Main, Suite 300 Lamar, CO 81052	Richard Chandler 719-336-8928
<u>Bent</u>	Bent Combined Court 13 W Third St., Room 207 La Junta, CO 81050	Katherine Tompkins 16selfhelp@judicial.state.co.us 719-383-7152
<u>Boulder</u>	Boulder Combined Court 1777 Sixth St. Boulder, CO 80302	Luck Kaewmuang, Cal Feller BoulderCourtSelfHelp@judicial.state.co.us 720-664-1505
<u>Broomfield</u>	Broomfield Combined Court 17 Descombes Dr. Broomfield, CO 80020	Theresa Lopez 17shrc@judicial.state.co.us 303-654-3213
<u>Chaffee</u>	Chaffee Combined Court 142 Crestone Ave. Salida, CO 81201	VACANT
<u>Cheyenne</u>	Cheyenne Combined Court 301 S Main, Suite 300 Lamar, CO 81052	Richard Chandler 719-336-7424
<u>Clear Creek</u>	Clear Creek Combined Court 405 Argentine, P.O. Box 367 Georgetown, CO 80444	Marie Toyama 05SelfHelp@judicial.state.co.us 970-547-2635
<u>Conejos</u>	Conejos Combined Court 6683 County Road 13, P.O. Box 128 Conejos, Colorado 81129	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Costilla</u>	Costilla Combined Court 304 Main St., P.O. Box 301 San Luis, Colorado 81152	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Crowley</u>	Crowley Combined Court 13 W Third St., Room 207	Katherine Tompkins 16selfhelp@judicial.state.co.us

Colorado Courts Self-Help Centers

Additional information can be found at https://www.courts.state.co.us/Self_Help/resources.cfm

	La Junta, CO 81050	719-267-4468
<u>Custer</u>	Custer Combined Court 205 S 6 th St. Westcliffe, CO 81252	VACANT
<u>Delta</u>	Delta Combined Court 501 Palmer St. Delta, CO 81616	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Denver County Court</u>	Denver County Court 1437 Bannock St., Room 281 Denver, CO 80203	dccselfhelp@denvercountycourt.org Evictions, small claims, protection orders & name changes 720-865-7819
<u>Denver District Court</u>	1437 Bannock St., Room 281 Denver, Colorado 80202	denverdistrictselfhelp@judicial.state.co.us 303-606-2442 Domestic, Sealing cases
<u>Denver Probate Court</u>	1437 Bannock Street, Rm 281 Denver, Colorado 80202	303-606-2502 Guardianships, Conservatorships & Decedents Estates
<u>Denver Juvenile Court</u>	520 W. Colfax, Rm 125 Denver, CO 80202	02juvenileselfhelp@judicial.state.co.us 303-606-2849
<u>Dolores</u>	Montezuma Combined Court 865 N. Park St. Cortez, CO 81321	Amelia (Amy) Harris Amelia.harris@judicial.state.co.us 970 565-1355
<u>Douglas</u>	Douglas Combined Court 4000 Justice Way, Ste. 2546 Castle Rock, CO 80109	Selena Cassiday 23selfhelp@judicial.state.co.us 720-437-6112
<u>Eagle</u>	Eagle Combined Court 885 Chambers Ave. Eagle, CO 81631	Marie Toyama 05SelfHelp@judicial.state.co.us 970-547-2635
<u>Elbert</u>	Elbert Combined Court 751 Ute Ave. Kiowa, CO 80117	Selena Cassiday 23selfhelp@judicial.state.co.us 720-437-6112
<u>El Paso</u>	El Paso Combined Court 270 S. Tejon Colorado Springs, CO 80901	Lisa & Daphne 04SelfHelp@judicial.state.co.us 719-452-5560
<u>Fremont</u>	Fremont Combined Court 136 Justice Center Rd Canon City, CO 81212	Robyn McPherson 719-204-2222
<u>Garfield</u>	Garfield Combined Court 109 8 th St., Ste 104 Glenwood Springs, CO 81601	09selfhelp@judicial.state.co.us 970-928-3061
<u>Gilpin</u>	Gilpin Combined Court 100 Jefferson County Pkwy Golden, CO 80401	01selfhelp@judicial.state.co.us 720-772-2501
<u>Grand</u>	Grand Combined Court	Linda Manguso linda.manguso@judicial.state.co.us

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Colorado Courts Self-Help Centers

Additional information can be found at https://www.courts.state.co.us/Self_Help/resources.cfm

	307 Moffat Ave, PO Box 192 Hot Sulphur Springs, CO 80451	970-725-3357 www.courts.state.co.us/14SelfHelp
<u>Gunnison</u>	Gunnison Combined Court 200 E. Virginia Avenue Gunnison, CO 81230	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Hinsdale</u>	Hinsdale Combined Court 317 Henson Lake City, CO 81235	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Huerfano</u>	Huerfano Combined Court 200 West 5 th St., Suite 107 Walsenburg, CO 81080	Michelle Kendall & Kerry Gabrielson Michelle.kendall@judicial.state.co.us Kerry.gabrielson@judicial.state.co.us 719-793-7113
<u>Jackson</u>	Jackson Combined Court 396 Lafever St. Walden, CO 80480	Ian Bonner 08selfhelp@judicial.state.co.us 970-494-3500
<u>Jefferson</u>	Jefferson Combined Court 100 Jefferson County Pkwy Golden, CO 80401	Melissa, Andy, Zac 01selfhelp@judicial.state.co.us 720-772-2501
<u>Kiowa</u>	Kiowa Combined Court 1305 Goff St. Eads, CO 81036	Richard Chandler 719-336-8928
<u>Kit Carson</u>	Kit Carson Combined Court 251 16 th St. Suite 301 Burlington, CO 80807	13selfhelp@judicial.state.co.us 970-526-3978
<u>Lake</u>	Lake Combined Court 505 Harrison Ave., P.O. Box 55 Leadville, CO 80461	Marie Toyama 05SelfHelp@judicial.state.co.us 970-547-2635
<u>La Plata</u>	La Plata Combined Court 1060 E. 2nd Ave. Durango, CO 81301	Mariah Sandoval 6thSelfHelp@judicial.state.co.us 970-385-6179
<u>Larimer</u>	Larimer Combined Court 201 La Porte Ave. Ft Collins, CO 80521	Ian Bonner 08courtresourcecenter@judicial.state.co.us 970-494-3500
<u>Las Animas</u>	Las Animas Combined Court 200 E 1 st St., Suite 304 Trinidad, CO 81082	Kerry Gabrielson & Michelle Kendall Kerry.gabrielson@judicial.state.co.us Michelle.kendall@judicial.state.co.us (719) 497-8282
<u>Lincoln</u>	Lincoln Combined Court 103 Third Ave., P.O. Box 128 Hugo, CO 80821	Selena Cassidy 23selfhelp@judicial.state.co.us 720-437-6112
<u>Logan</u>	Logan Combined Court 110 N Riverview Road Sterling, CO 80751	13selfhelp@judicial.state.co.us 970-526-3978
<u>Mesa</u>	Mesa Combined Court 125 North Spruce St. Grand Junction, CO 81501	Cyndi Mcdaniel & Lourdes Galvan 21selfhelp@judicial.state.co.us

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<u>Mineral</u>	Alamosa Combined Court 702 Fourth St. Alamosa, Colorado 81101	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Moffat</u>	Moffat Combined Court 221 W. Victory Way, Suite 300 Craig CO 81625	Evgeneia Dolos Evgeneia.dolos@judicial.state.co.us 970-824-8254
<u>Montezuma</u>	Montezuma Combined Court 865 N. Park Cortez, CO 81321	Amelia (Amy) Harris Amelia.harris@judicial.state.co.us 970 565-1355
<u>Montrose</u>	Montrose Combined Court 1200 N. Grand Ave. Montrose, CO 81401	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Morgan</u>	Morgan Combined Court 400 Warner St. Fort Morgan, CO 80701	13selfhelp@judicial.state.co.us 970-526-3978
<u>Otero</u>	Otero Combined Court 13 W. 3 rd St. La Junta, CO 81050	Katherine Tompkins 16selfhelp@judicial.state.co.us 719-383-7152
<u>Ouray</u>	Ouray Combined Court 541 S. 5 th St. Ouray, CO 81427	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Park</u>	Park Combined Court 300 4 th St. Fairplay, CO 80440	VACANT
<u>Phillips</u>	Phillips Combined Court 221 S. Interocean Holyoke, CO 80734	13selfhelp@judicial.state.co.us 970-526-3978
<u>Pitkin</u>	Pitkin Combined Court 506 E. Main, Suite 300 Aspen, CO 81611	Amy Davis 09selfhelp@judicial.state.co.us 970-928-3061
<u>Prowers</u>	Prowers Combined Court 301 S. Main, Suite 300 Lamar, CO 81052	Richard Chandler 719-336-8928
<u>Pueblo</u>	Pueblo Combined Court 501 N. Elizabeth Pueblo, CO 81003	Andrea Valdez & Michala Barnett 10jdselfhelp@judicial.state.co.us 719-404-8752
<u>Rio Blanco</u>	Rio Blanco Combined Court 455 Main St. Meeker, CO 81641	Amy Davis 09selfhelp@judicial.state.co.us 970-928-3061
<u>Rio Grande</u>	Rio Grande Combined Court 925 Sixth St., Room 204 Del Norte, Colorado 81132	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Routt</u>	Routt Combined Court 1955 Shield Drive, #200 Steamboat Springs, CO 80487	Evgeneia Dolos 970-879-5020 Evgeneia.dolos@judicial.state.co.us

Colorado Courts Self-Help Centers

Additional information can be found at https://www.courts.state.co.us/Self_Help/resources.cfm

<u>Saguache</u>	Saguache Combined Court 501 Christy Avenue Saguache, Colorado 81149	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>San Juan</u>	San Juan Combined Court 1557 Greene St. Silverton, CO 81433	Miriah Sandoval 6thSelfHelp@judicial.state.co.us 970-385-6179
<u>San Miguel</u>	San Miguel Combined Court 305 W. Colorado Ave. Telluride, CO 81435	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Sedgwick</u>	Sedgwick Combined Court 315 Cedar St. Julesburg, CO 80737	13selfhelp@judicial.state.co.us 970-526-3978
<u>Summit</u>	501 N. Park Avenue P.O. Box 269 Breckenridge, CO 80424	Marie Toyama 05SelfHelp@judicial.state.co.us 970-547-2635
<u>Teller</u>	Teller Combined Court 101 W. Bennett Ave. Cripple Creek, CO 80813	Lori McLeod Lori.mcleod@judicial.state.co.us 719-689-6925
<u>Washington</u>	Washington Combined Court 26861 Hwy 34 Akron, CO 80720	13selfhelp@judicial.state.co.us 970-526-3978
<u>Weld</u>	Weld Combined Court 915 10 th St. Greeley, CO 80631 First Floor, Centennial Building	Miriam Sifuentes & Shea Schneider 19selfhelp@judicial.state.co.us 970-475-2410
<u>Yuma</u>	Yuma Combined Court 310 Ash St., Suite L Wray, CO 80758	13selfhelp@judicial.state.co.us 970-526-3978
<u>Court of Appeals and Supreme Court</u>	Court of Appeals 2 East 14 th Ave. Denver, CO 80203	Orathay (Ty) Khiem Appeals.SelfHelp@judicial.state.co.us 720-625-5107
<u>State Court Administrators Office</u>	1300 Broadway Suite 1200 Denver, CO 80203	Penny Wagner, Program Coordinator Penny.wagner@judicial.state.co.us 720-625-5612

Don't know what district you are in? Go to https://www.courts.state.co.us/Self_Help/center.cfm

Chapter 26

Guardianship of Adults

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Glatstein & O'Brien LLP

SYNOPSIS

- 26-1. Guardianship Under Colorado Law
 - 26-2. When Does a Guardian Need to Be Appointed?
 - 26-3. Who Can Serve As a Guardian in Colorado?
 - 26-4. Types of Guardianships
 - 26-5. Duties and Responsibilities of a Guardian
 - 26-6. The Appointment Process in Colorado
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26-1. Guardianship Under Colorado Law

In Colorado, the court can appoint a guardian for either a minor or an adult who is deemed incapacitated. The person for whom a guardian is appointed is called the “ward.” Different rules apply depending upon whether the ward is a minor or an incapacitated adult.

Each state has its own laws regarding guardianships and uses its own terminology, so do not be confused if you hear the term “guardian” used differently elsewhere. For example, in a number of states a guardian manages an individual’s finances and makes decisions regarding his or her ward’s physical health, safety, or self-care. That is not the case in Colorado, where a conservator is appointed to manage finances and property for a minor or an adult, unless there are limited assets and the ward does not have a conservator.

In Colorado, a person who is the subject of either a guardianship or a conservatorship proceeding is referred to as the “respondent.” A person for whom a guardian is appointed is called a “ward,” after the court determines that person to be incapacitated. A person for whom a

conservator is appointed is referred to as a “protected person,” who is unable to manage his or her finances; however, the court does not make a finding of incapacity. It is possible for a court to appoint a guardian, a conservator, or both. For a more complete discussion of conservatorships, see Chapter 25, “Conservatorship of Adults.”

26-2. When Does a Guardian Need to Be Appointed?

An incapacitated adult is defined in the Colorado Probate Code as an adult “who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.”

This statute requires that a functional analysis be used in determining incapacity. The determination should not be based upon a particular diagnosis, although the court will want to know that information. Rather, the issue is whether the person can make decisions that are in that individual’s best interest regarding his or her personal affairs. For example, if an adult is diagnosed with mild dementia but retains the ability to make decisions regarding his or her personal affairs that are in his or her best interest, that individual does not require a guardianship and a guardian will not be appointed.

The other important aspect of the definition of an incapacitated adult is its encouragement of the use of appropriate, reasonably available technological assistance. If such technological assistance enables an otherwise incapacitated adult to receive the information necessary to make decisions regarding his or her personal affairs that are in his or her best interests and/or to communicate such decisions, then a guardianship is unnecessary. For example, missing eyeglasses or hearing aids may make all the difference in whether a person can function independently.

26-3. Who Can Serve As a Guardian in Colorado?

Any person age 21 or older may be appointed as a guardian, regardless of whether that person is a resident of Colorado. Family members, professional guardians, volunteers, or in some counties, the Department of Human Services may serve as guardians. However, the nominated guardian must first submit for the court’s review an Acceptance of Office form to which is attached a name-based criminal history check and current credit report.

There is a statutory priority for appointment as guardian, which sets forth that the court shall consider persons otherwise qualified in the following order of priority: (1) a currently acting guardian; (2) a person nominated as guardian by the respondent; (3) an agent under a medical durable power of attorney; (4) an agent under a general durable power of attorney; (5) the spouse of the respondent or a person nominated by a will or other signed writing of a deceased spouse; (6) an adult child of the respondent; (7) a parent of the respondent or an individual nominated by a will or other signed writing of a deceased parent; and (8) an adult with whom the respondent has resided for more than six months immediately before the filing of the petition. If good cause is shown, the court can appoint as guardian someone who has lower priority or no priority at all.

Under Colorado law, long-term care providers are prohibited from serving as guardian or conservator of a person for whom they provide care unless related by blood, marriage, or adoption. In addition, a professional guardian ordinarily will not be allowed to serve as both guardian and conservator, or as guardian and direct service provider, unless the court determines that good cause exists to allow the professional to serve in dual roles.

26-4. Types of Guardianships

Limited Guardianships

A limited guardianship restricts the guardian's authority to certain specified matters only. The underlying philosophy is that the guardian's powers should be no greater than necessary to see to the needs of that particular ward. If an unlimited guardianship is believed necessary, the petitioner (the person bringing a guardianship petition) will have to explain to the court's satisfaction why an unlimited guardianship is necessary. Otherwise, a limited guardianship will be ordered.

In fact, all guardianships are limited to the extent that a guardian may not initiate the commitment of a ward to a mental health care institution or facility except in accordance with the state's procedure for involuntary civil commitment. In essence, this means that the guardian has to follow Colorado mental health statutes when seeking psychiatric treatment or substance abuse treatment for the ward.

Emergency Guardianships

The court will appoint a guardian on an emergency basis only if it finds that substantial harm to a person's health, safety, or welfare is likely to result if an emergency guardian is not appointed, and no other person has authority to act under the circumstances. This means that there must be an imminent threat to the respondent.

26-5. Duties and Responsibilities of a Guardian

A guardian may make decisions for the ward as allowed within the scope of the guardian's authority, as set forth in the order of appointment issued by the court. The limitations on the guardian's authority should also be stated in the letters of guardianship that the court issues. The guardian is required to see that the basic daily personal needs of the ward for food, clothing, and shelter are met; however, the guardian is not personally responsible for paying for the ward's care.

Frequently, the scope of a guardian's authority includes determining where the ward should live, and arranging for and making decisions regarding the ward's care, medical treatment, and other services. However, if the ward has an agent under a medical durable power of attorney, the guardian may not revoke the medical durable power of attorney without an order of the court. The agent still has the legal authority to make medical decisions unless the court rules otherwise and revokes the power of attorney.

If no conservator is appointed and the ward has limited assets, the guardian may also need to address basic financial management issues for the ward. This is the exception to the general rule that a guardian does not manage the financial affairs for the ward. A guardian usually is allowed to manage the ward's government benefits if there is no conservator.

The guardian should make decisions after consulting with the ward, taking into account the ward's wishes and personal values, to the extent that it is reasonably possible to do so. The guardian should encourage the ward to participate in decision-making. The guardian's scope of duties and responsibilities should be crafted to reflect the ward's limitations. In addition to encouraging the ward to participate in decisions, the guardian should encourage the ward to act on his or her own behalf and to develop or regain the capacity to manage his or her own personal

affairs. However, the guardian is ultimately responsible for making the decisions on behalf of the ward.

Within 60 days after appointment, a guardian's report must be filed with the court, which includes a personal care plan for the ward. A guardian's report form can be obtained online at www.courts.state.co.us and by clicking on "Self Help/Forms" then "Guardianship." All guardian reports must be sent to the interested persons identified in the Order Appointing Guardian form who are to receive pleadings. The guardian's report addresses the ward's health, including his or her physical and mental condition, diagnosis, and prognosis; a personal care plan for the ward; plans for any therapies or treatments or other services; plans for future care; and any other issues that should be brought to the court's attention. Thereafter, the guardian must file annual reports with the court and interested persons as directed by the court.

The guardian must obtain prior permission from the court to move the ward out of Colorado. If the ward is to move permanently, consideration should be given to whether it would be in the ward's best interest to transfer the guardianship to the state where the ward plans to permanently reside. Likewise, if a ward is moving to Colorado from another state, it may be appropriate to transfer the guardianship to Colorado. A guardian residing out-of-state can hire a local case manager to assist in carrying out the guardian's duties. If there is a significant change in the ward's condition, the guardian should file a status report with the court, sending a copy to all persons who are to receive pleadings as listed on the order of appointment.

26-6. The Appointment Process in Colorado

Most courts now have Self-help Centers staffed by Self-represented Litigant Coordinators ("Sherlocks") who are trained to provide limited assistance. (See Exhibit 26A for a list of the Self-help Centers.) If you are going to petition for guardianship on your own, they can provide you with the forms and instructions.

A petition for the appointment of a guardian is filed in the district court for the county in which the respondent lives. However, in the City and County of Denver, you will file in the Denver Probate Court. A petition can be filed by any person who is interested in the welfare of the respondent. There is a filing fee of \$199, which is payable when the petition is filed. There is also a fee for the court visitor, which the petitioner is required to pay. This fee varies by county. In Denver, the court visitor charges a flat fee of \$200. Where neither the petitioner nor respondent has the ability to pay the fees, the court may order that the fees be waived. To request such a waiver, ask the court staff for the appropriate forms.

The petition for the appointment of a guardian should have attached to it an evaluation from a physician, psychologist, or other professional qualified to evaluate the respondent's alleged impairment. The evaluation should contain:

- ▶ A description of the nature, type, and extent of the respondent's specific cognitive and functional limitations;
- ▶ An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
- ▶ A prognosis for improvement and a recommendation as to the appropriate treatment or rehabilitation plan; and
- ▶ The date of any assessment or examination upon which the report is based.

If such a report is unavailable because the respondent refuses to be evaluated, the petitioner can file a request for an order that the respondent undergo an evaluation by an appropriately trained professional. Likewise, the respondent always has the right to request an evaluation through the court, or to obtain an evaluation by professionals whom the respondent selects.

The nominated guardian must file a name-based criminal history check, a current credit report, and a copy of his or her driver's license or passport, along with an Acceptance of Office form. If the nominated guardian lives out-of-state, an irrevocable power of attorney form also must be filed to allow the clerk of the court to accept service on behalf of an out-of-state resident.

When seeking the appointment of a guardian, there are specific notice requirements that must be followed. The respondent must be personally served and must appear at the hearing on the petition, unless the court excuses the respondent for good cause. Likewise, persons interested in the ward's welfare must receive notice of the guardianship hearing. You must carefully follow the notice requirements. As with any other important legal matter, if you do not understand the notice requirements, you should seek legal advice.

Once a petition has been filed with the court, the court will appoint a court visitor. The court visitor will meet with the respondent, the petitioner, the proposed guardian, and anyone else deemed necessary. The role of the court visitor is to act as the eyes and ears of the court, investigating whether a guardian should be appointed. The court visitor files a written report with the court, including a recommendation regarding whether a guardianship is necessary.

Every respondent has the right to legal representation. This is because the appointment of a guardian takes away some of the ward's legal rights, such as making decisions regarding the ward's personal affairs, medical care, and place of abode. One of the questions the court visitor asks the respondent is whether the respondent has a lawyer and, if not, whether the respondent wishes to have legal representation. The court must appoint a lawyer to represent the respondent if legal representation is requested by the respondent or recommended by the court visitor, or if the court determines that the respondent needs representation.

The respondent and the petitioner are required to attend the hearing, unless excused by the court for good cause. At the hearing, the respondent has the right to cross-examine witnesses and to call witnesses on his or her behalf. The petitioning party must establish by clear and convincing evidence the respondent's need for a guardianship. At the conclusion of the hearing, the court generally rules from the bench, announcing whether a guardian will be appointed for the respondent and the limitations applicable to the guardianship.

26-7. Compensation and Reimbursement of Expenses

A guardian is entitled to reasonable compensation for his or her services and reimbursement of expenses, payable from the ward's funds. Compensation paid to the guardian is treated as taxable income to the guardian and as a tax-deductible expense for the ward. Family members frequently serve without compensation, accepting only reimbursement of expenses for mileage, parking, and similar costs. There is no statutory schedule or criteria for a guardian's fee. Rather, the Colorado Probate Code in the Colorado Revised Statutes simply mandates that these fees must be fair and reasonable, leaving compensation to be determined on a case-by-case basis.

If family members receive compensation, it should be less than what professionals would receive. Professionals should seek compensation based upon their hourly rate for performing guardian services, which should be reasonable for the area. Contemporaneous time records,

describing the services provided and time taken to perform those services, must be kept by all who seek compensation for their services as a guardian. A guardian is entitled to have legal representation, paid for with the ward's funds.

A guardianship may be modified by the court either to expand or to restrict the scope of authority of the guardian to reflect the ward's then-current condition. Before a modification will be granted, it must be established that the requested modification is in the ward's best interest. Through the use of a power of attorney, a guardian may delegate to another person, for a period not exceeding 12 months, any power regarding care, custody, or property of a ward, except the power to consent to marriage or adoption. This procedure should be utilized when a guardian is going out of town on vacation or otherwise may be unavailable.

26-8. A Guardian May Be Removed or Resign

A ward, or person interested in the welfare of a ward, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward or for other good cause. A guardian may petition to resign. Either a petition to resign or a petition for removal may include a request for appointment of a successor guardian.

26-9. Termination of a Guardianship

A permanent guardianship most frequently terminates upon the death of the ward. At that time, the guardian should file a pleading advising the court that the ward has died. The court may also terminate the guardianship if the ward no longer meets the standard for establishing a guardianship.

In order to cut off the guardian's potential liability once a guardianship has terminated, the guardian should file with the court a petition for decree of discharge. Seeking a decree of discharge most commonly occurs in conservatorships, but the procedure is also available in guardianships. It is a prudent step where the guardianship was contested, issues were encountered that caused dissension, or there are disgruntled family members or other interested persons.

26-10. New Developments

Additional Background Checks

Effective beginning January 1, 2022, new legislation requires all petitions for appointment of a guardian or conservator for an adult to be accompanied by a written authorization to request a CAPS check. CAPS is the Colorado Adult Protection Services database system. The court will forward the CAPS authorization to the state agency which promptly provides an additional background check to determine whether the person nominated as guardian or conservator has any substantiated findings of involvement in mistreatment, physical or sexual abuse, caretaker neglect, exploitation, or other harmful acts. The report is sealed and is only available to the court.

Supported Decision Making

Another new requirement since the last publication of the *Senior Law Handbook* recognizes the importance of supported decision making. "Supported decision-making" is the informal way

an adult with a disability or diminished capacity makes their own decisions by relying upon friends, family members, professionals, and other trusted persons.

This new requirement only applies in limited situations when appointment of an emergency guardian or special conservator is requested, without the normal advance notice and hearing required by statute. This is further limited to cases in which the petitioning party is asking the court to appoint a professional guardian or the county department of human services as the emergency guardian. For conservatorships, it is limited to cases where the petitioning party is asking for appointment of a professional conservator or the judicial district's public administrator.

In these limited situations, the court must immediately appoint a visitor to investigate and report back to the court within 14 days. The report should inform the court whether there are members of the individual's supported decision making community who may have relevant information about the individual's wishes and personal values and who should be involved in the proceedings.

The visitor should also report on the respondent's view of any such members and interview those people as well. The court must review this visitor's report within seven days of filing and enter an order determining whether it is in the best interest of the person to include those additional people and whether there should be limits on the authority of the emergency guardian or special conservator.

This process is designed to better ensure that people with a connection to the respondent are involved in the process. However, it also increases the costs as a second visitor's report is required once the emergency situation subsides. The petitioning party is usually responsible for the visitor's fees.

26-11. Resources

Colorado State Judicial Branch

Office of the State Court Administrator
1300 Broadway, Ste. 1200
Denver, CO 80203
(720) 625-5000
www.courts.state.co.us

Department of Human Services

1575 Sherman St., 8th Fl.
Denver, CO 80203
(303) 866-5700
<https://cdhs.colorado.gov>

* This chapter was originally authored by Marcia G. O'Brien of O'Brien & Glatstein and was updated by Carl Glatstein for the current edition.

**Exhibit 26A.
Colorado Self-help Centers**

Colorado Courts Self-Help Centers

Additional information can be found at https://www.courts.state.co.us/Self_Help/resources.cfm

County	Address	Self-Represented Litigant Coordinator (Sherlock)
<u>Adams</u>	Adams Combined Court 1100 Judicial Center Drive Brighton, CO 80601	Geneva DeHoyos, Alicia Diaz 17shrc@judicial.state.co.us 303-654-3213
<u>Alamosa</u>	Alamosa Combined Court 8955 Independence Way Alamosa, CO 81101	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Arapahoe</u> <u>Littleton</u>	Arapahoe Combined Court Courthouse II 7325 S. Potomac St. Centennial, CO 80112	Maria (Arapahoe) Blake (Arapahoe) Bradly (Littleton) 18selfhelp@judicial.state.co.us 303-645-6845
<u>Archuleta</u>	Archuleta Combined Court 46 Eaton Dr., Ste 1 Pagosa Springs, CO 81147	Miriah Sandoval Miriah.sandoval@judicial.state.co.us 970-385-6179
<u>Baca</u>	Baca Combined Court 301 S Main, Suite 300 Lamar, CO 81052	Richard Chandler 719-336-8928
<u>Bent</u>	Bent Combined Court 13 W Third St., Room 207 La Junta, CO 81050	Katherine Tompkins 16selfhelp@judicial.state.co.us 719-383-7152
<u>Boulder</u>	Boulder Combined Court 1777 Sixth St. Boulder, CO 80302	Luck Kaewmuang, Cal Feller BoulderCourtSelfHelp@judicial.state.co.us 720-664-1505
<u>Broomfield</u>	Broomfield Combined Court 17 Descombes Dr. Broomfield, CO 80020	Theresa Lopez 17shrc@judicial.state.co.us 303-654-3213
<u>Chaffee</u>	Chaffee Combined Court 142 Crestone Ave. Salida, CO 81201	VACANT
<u>Cheyenne</u>	Cheyenne Combined Court 301 S Main, Suite 300 Lamar, CO 81052	Richard Chandler 719-336-7424
<u>Clear Creek</u>	Clear Creek Combined Court 405 Argentine, P.O. Box 367 Georgetown, CO 80444	Marie Toyama 05SelfHelp@judicial.state.co.us 970-547-2635
<u>Conejos</u>	Conejos Combined Court 6683 County Road 13, P.O. Box 128 Conejos, Colorado 81129	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Costilla</u>	Costilla Combined Court 304 Main St., P.O. Box 301 San Luis, Colorado 81152	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Crowley</u>	Crowley Combined Court 13 W Third St., Room 207	Katherine Tompkins 16selfhelp@judicial.state.co.us

Colorado Courts Self-Help Centers

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	La Junta, CO 81050	719-267-4468
<u>Custer</u>	Custer Combined Court 205 S 6 th St. Westcliffe, CO 81252	VACANT
<u>Delta</u>	Delta Combined Court 501 Palmer St. Delta, CO 81616	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Denver County Court</u>	Denver County Court 1437 Bannock St., Room 281 Denver, CO 80203	dccselfhelp@denvercountycourt.org Evictions, small claims, protection orders & name changes 720-865-7819
<u>Denver District Court</u>	1437 Bannock St., Room 281 Denver, Colorado 80202	denverdistrictselfhelp@judicial.state.co.us 303-606-2442 Domestic, Sealing cases
<u>Denver Probate Court</u>	1437 Bannock Street, Rm 281 Denver, Colorado 80202	303-606-2502 Guardianships, Conservatorships & Decedents Estates
<u>Denver Juvenile Court</u>	520 W. Colfax, Rm 125 Denver, CO 80202	02juvenileselfhelp@judicial.state.co.us 303-606-2849
<u>Dolores</u>	Montezuma Combined Court 865 N. Park St. Cortez, CO 81321	Amelia (Amy) Harris Amelia.harris@judicial.state.co.us 970 565-1355
<u>Douglas</u>	Douglas Combined Court 4000 Justice Way, Ste. 2546 Castle Rock, CO 80109	Selena Cassidy 23selfhelp@judicial.state.co.us 720-437-6112
<u>Eagle</u>	Eagle Combined Court 885 Chambers Ave. Eagle, CO 81631	Marie Toyama 05SelfHelp@judicial.state.co.us 970-547-2635
<u>Elbert</u>	Elbert Combined Court 751 Ute Ave. Kiowa, CO 80117	Selena Cassidy 23selfhelp@judicial.state.co.us 720-437-6112
<u>El Paso</u>	El Paso Combined Court 270 S. Tejon Colorado Springs, CO 80901	Lisa & Daphne 04SelfHelp@judicial.state.co.us 719-452-5560
<u>Fremont</u>	Fremont Combined Court 136 Justice Center Rd Canon City, CO 81212	Robyn McPherson 719-204-2222
<u>Garfield</u>	Garfield Combined Court 109 8 th St., Ste 104 Glenwood Springs, CO 81601	09selfhelp@judicial.state.co.us 970-928-3061
<u>Gilpin</u>	Gilpin Combined Court 100 Jefferson County Pkwy Golden, CO 80401	01selfhelp@judicial.state.co.us 720-772-2501
<u>Grand</u>	Grand Combined Court	Linda Manguso linda.manguso@judicial.state.co.us

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	307 Moffat Ave, PO Box 192 Hot Sulphur Springs, CO 80451	970-725-3357 www.courts.state.co.us/14SelfHelp
<u>Gunnison</u>	Gunnison Combined Court 200 E. Virginia Avenue Gunnison, CO 81230	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Hinsdale</u>	Hinsdale Combined Court 317 Henson Lake City, CO 81235	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Huerfano</u>	Huerfano Combined Court 200 West 5 th St., Suite 107 Walsenburg, CO 81080	Michelle Kendall & Kerry Gabrielson Michelle.kendall@judicial.state.co.us Kerry.gabrielson@judicial.state.co.us 719-793-7113
<u>Jackson</u>	Jackson Combined Court 396 Lafever St. Walden, CO 80480	Ian Bonner 08selfhelp@judicial.state.co.us 970-494-3500
<u>Jefferson</u>	Jefferson Combined Court 100 Jefferson County Pkwy Golden, CO 80401	Melissa, Andy, Zac 01selfhelp@judicial.state.co.us 720-772-2501
<u>Kiowa</u>	Kiowa Combined Court 1305 Goff St. Eads, CO 81036	Richard Chandler 719-336-8928
<u>Kit Carson</u>	Kit Carson Combined Court 251 16 th St. Suite 301 Burlington, CO 80807	13selfhelp@judicial.state.co.us 970-526-3978
<u>Lake</u>	Lake Combined Court 505 Harrison Ave., P.O. Box 55 Leadville, CO 80461	Marie Toyama 05SelfHelp@judicial.state.co.us 970-547-2635
<u>La Plata</u>	La Plata Combined Court 1060 E. 2nd Ave. Durango, CO 81301	Mariah Sandoval 6thSelfHelp@judicial.state.co.us 970-385-6179
<u>Larimer</u>	Larimer Combined Court 201 La Porte Ave. Ft Collins, CO 80521	Ian Bonner 08courtresourcecenter@judicial.state.co.us 970-494-3500
<u>Las Animas</u>	Las Animas Combined Court 200 E 1 st St., Suite 304 Trinidad, CO 81082	Kerry Gabrielson & Michelle Kendall Kerry.gabrielson@judicial.state.co.us Michelle.kendall@judicial.state.co.us (719) 497-8282
<u>Lincoln</u>	Lincoln Combined Court 103 Third Ave., P.O. Box 128 Hugo, CO 80821	Selena Cassidy 23selfhelp@judicial.state.co.us 720-437-6112
<u>Logan</u>	Logan Combined Court 110 N Riverview Road Sterling, CO 80751	13selfhelp@judicial.state.co.us 970-526-3978
<u>Mesa</u>	Mesa Combined Court 125 North Spruce St. Grand Junction, CO 81501	Cyndi Mcdaniel & Lourdes Galvan 21selfhelp@judicial.state.co.us

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<u>Mineral</u>	Alamosa Combined Court 702 Fourth St. Alamosa, Colorado 81101	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Moffat</u>	Moffat Combined Court 221 W. Victory Way, Suite 300 Craig CO 81625	Evgeneia Dolos Evgeneia.dolos@judicial.state.co.us 970-824-8254
<u>Montezuma</u>	Montezuma Combined Court 865 N. Park Cortez, CO 81321	Amelia (Amy) Harris Amelia.harris@judicial.state.co.us 970 565-1355
<u>Montrose</u>	Montrose Combined Court 1200 N. Grand Ave. Montrose, CO 81401	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Morgan</u>	Morgan Combined Court 400 Warner St. Fort Morgan, CO 80701	13selfhelp@judicial.state.co.us 970-526-3978
<u>Otero</u>	Otero Combined Court 13 W. 3 rd St. La Junta, CO 81050	Katherine Tompkins 16selfhelp@judicial.state.co.us 719-383-7152
<u>Ouray</u>	Ouray Combined Court 541 S. 5 th St. Ouray, CO 81427	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Park</u>	Park Combined Court 300 4 th St. Fairplay, CO 80440	VACANT
<u>Phillips</u>	Phillips Combined Court 221 S. Interocean Holyoke, CO 80734	13selfhelp@judicial.state.co.us 970-526-3978
<u>Pitkin</u>	Pitkin Combined Court 506 E. Main, Suite 300 Aspen, CO 81611	Amy Davis 09selfhelp@judicial.state.co.us 970-928-3061
<u>Prowers</u>	Prowers Combined Court 301 S. Main, Suite 300 Lamar, CO 81052	Richard Chandler 719-336-8928
<u>Pueblo</u>	Pueblo Combined Court 501 N. Elizabeth Pueblo, CO 81003	Andrea Valdez & Michala Barnett 10jdselfhelp@judicial.state.co.us 719-404-8752
<u>Rio Blanco</u>	Rio Blanco Combined Court 455 Main St. Meeker, CO 81641	Amy Davis 09selfhelp@judicial.state.co.us 970-928-3061
<u>Rio Grande</u>	Rio Grande Combined Court 925 Sixth St., Room 204 Del Norte, Colorado 81132	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>Routt</u>	Routt Combined Court 1955 Shield Drive, #200 Steamboat Springs, CO 80487	Evgeneia Dolos 970-879-5020 Evgeneia.dolos@judicial.state.co.us

Colorado Courts Self-Help Centers

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<u>Saguache</u>	Saguache Combined Court 501 Christy Avenue Saguache, Colorado 81149	Caitlin (Lisa) Mizell 12selfhelp@judicial.state.co.us 719-589-7621
<u>San Juan</u>	San Juan Combined Court 1557 Greene St. Silverton, CO 81433	Miriah Sandoval 6thSelfHelp@judicial.state.co.us 970-385-6179
<u>San Miguel</u>	San Miguel Combined Court 305 W. Colorado Ave. Telluride, CO 81435	Heather Bryan D07_Courts_SRLC@judicial.state.co.us 970-252-4312
<u>Sedgwick</u>	Sedgwick Combined Court 315 Cedar St. Julesburg, CO 80737	13selfhelp@judicial.state.co.us 970-526-3978
<u>Summit</u>	501 N. Park Avenue P.O. Box 269 Breckenridge, CO 80424	Marie Toyama 05SelfHelp@judicial.state.co.us 970-547-2635
<u>Teller</u>	Teller Combined Court 101 W. Bennett Ave. Cripple Creek, CO 80813	Lori McLeod Lori.mcleod@judicial.state.co.us 719-689-6925
<u>Washington</u>	Washington Combined Court 26861 Hwy 34 Akron, CO 80720	13selfhelp@judicial.state.co.us 970-526-3978
<u>Weld</u>	Weld Combined Court 915 10 th St. Greeley, CO 80631 First Floor, Centennial Building	Miriam Sifuentes & Shea Schneider 19selfhelp@judicial.state.co.us 970-475-2410
<u>Yuma</u>	Yuma Combined Court 310 Ash St., Suite L Wray, CO 80758	13selfhelp@judicial.state.co.us 970-526-3978
<u>Court of Appeals and Supreme Court</u>	Court of Appeals 2 East 14 th Ave. Denver, CO 80203	Orathay (Ty) Khiem Appeals.SelfHelp@judicial.state.co.us 720-625-5107
<u>State Court Administrators Office</u>	1300 Broadway Suite 1200 Denver, CO 80203	Penny Wagner, Program Coordinator Penny.wagner@judicial.state.co.us 720-625-5612

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Chapter 27

Hospice and Palliative Care: Options for Care at the End of Life

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SYNOPSIS

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Exhibit 27A. Hospitals, Hospice Agencies, and Others Offering Palliative Care

- “Hospice was great for my husband, but quite frankly, it saved my life.”
- “I’ve never met such caring people — they made a tough time almost a pleasure.”
- “Honestly, I think Mom lived longer with hospice than she would have without it!”

These are the kinds of comments we hear every day from people who have experienced hospice care. Ask around, and you are likely to hear the same. After all, in 2021 approximately half of Americans (44.9 percent) and Coloradans (47.2 percent) received hospice care when

they died.¹ According to Medicare’s Care Compare tool,² 90 percent of patients appreciated the emotional and spiritual support provided by hospice.

Even so, many people and their families who could benefit from hospice care don’t receive it — because they don’t know about it or have inaccurate ideas about it; because they don’t know it’s fully covered by Medicare Part A, Medicaid, and most private insurance plans; or because they wait too long and, in the crisis, don’t have the information they need.

What exactly is “hospice,” and how does it work? How is it paid for, and how can you get it? And what is “palliative care,” and how is it different from hospice? This chapter answers these questions and more.

27-1. What Is Hospice?

“Hospice” is not a place, like a nursing home or hospital. It is a way of caring for persons with terminal, or “end-stage,” illness and supporting their families, provided by a specially trained team of professionals. The team works together and with the patient and family to maximize comfort and quality of life. The hospice approach emphasizes care for the whole person: body, mind, feelings, spirit, and relationships. In hospice, you are not “the gallbladder in Room 232,” but a person with a history, complex and important feelings, goals and dreams, family and friends — and, by the way, an advanced illness.

Most hospice patients receive care in whatever setting they call home. This includes nursing homes and assisted living residences. The idea is to maintain independence, familiar surroundings, and meaningful relationships for as long as possible. Hospice is not focused on curing the disease, but easing its distressing effects: pain, fatigue, nausea, dry mouth and skin, breathing difficulty, anxiety, sleeplessness, depression, and so on.

Hospice care is just as “aggressive” as curative care. Vigorous attention and sophisticated treatments and medications are used to maintain quality of life and comfort. Many people enrolling in hospice experience a kind of “hospice bounce.” One study showed that, on average, persons enrolled in hospice *actually lived longer* — some by weeks — than persons with the same diagnoses receiving curative treatment.³ And — like comic columnist Art Buchwald — about 15 percent of persons enrolled in hospice actually “graduate” and are discharged alive,⁴ in many cases because their condition has so improved, they are no longer considered “terminal.”

¹ Hospice Analytics analysis of Medicare Hospice claims, private communication (April 14, 2021).

² www.medicare.gov/care-compare/, per Hospice Compare 2022 Q3 results.

³ S.R. Connor et al., “Comparing Hospice and Nonhospice Patient Survival Among Patients Who Die Within a Three-Year Window,” 33 *J. Pain Symptom Mgmt.* 238 (March 2007), www.ncbi.nlm.nih.gov/pubmed/17349493; J.S. Temel et al., “Early Palliative Care for Patients with Metastatic Non–Small-Cell Lung Cancer,” 363 *New Eng. J. Med.* 733 (Aug. 2010), www.nejm.org/doi/full/10.1056/NEJMoa1000678.

⁴ Medicare Payment Advisory Commission (MedPAC) March 2022 Report to the Congress: Medicare Payment Policy, p. 385, <http://www.medpac.gov/-documents-/reports/>.

27-2. How Can I Get Hospice Care?

Enrollment Criteria

In order to enroll in hospice, you must have a “terminal” illness and a life expectancy of six months or less, as certified by two physicians. This means that your attending or primary physician or any specialist involved in your care and a hospice medical director say that in their best professional judgment, your illness, if allowed to proceed without intervention, is likely to result in your death within six months. You must also agree to forego treatments that are intended for cure and not for comfort.

Note: The enrollment criteria and other information about duration of care and coverage of costs in this chapter are specific to the Medicare Hospice Benefit. If you are covered by private insurance, criteria may differ. Be sure to check with the insurance agent or ask the hospice social worker to confirm your coverage.

If you do not have a primary or attending physician or encounter resistance to a hospice referral, you can still request an evaluation directly from a hospice agency. The hospice medical director can, in some circumstances, certify your eligibility for hospice care.

Also, many hospices have “open access” policies that offer a great deal of flexibility to allow and cover treatments that have traditionally been considered curative but can be “palliative” — that is, increase comfort or relieve pain. For instance, a hospice patient might receive “palliative radiation” to reduce the size of a tumor that is pressing on his or her spine in order to relieve pain or prevent paralysis.

Many hospices are now working to provide earlier access to hospice services by providing pre-hospice palliative care or transition programs. These programs allow patients and families to receive some of the services and symptom-management benefits of hospice care without formal hospice enrollment. Palliative care is discussed in more depth in the second half of this chapter.

Duration of Care

Once you are enrolled in hospice, your condition is closely monitored. If your condition is progressing as expected, you may stay enrolled in hospice as long as needed. Initial coverage extends for 90 days from enrollment, at the end of which your condition and eligibility are assessed. If you continue to be eligible for care, your situation is assessed again after another 90 days and then after each additional 60 days. Your enrollment is “recertified” as long as the basic hospice criteria are met — even long past six months. Sadly, less than 15 percent of hospice patients receive a full six months of care or more.⁵ Currently, half of all hospice patients are enrolled for just over three weeks before death, more than a quarter for less than a week, and some only for hours.⁶ This is not long enough to obtain the full benefit of the program of care, and many, many families find themselves saying, “I wish we’d gotten into hospice sooner!”

Note: Hospice enrollment is not a one-way street. If you don’t like hospice care, wish to resume curative treatments, or get better, you can check out of hospice care (or “revoke”) at any time. As long as criteria are met, you may also re-enroll.

⁵ Hospice Analytics analysis of Medicare Hospice claims, private communication (February 20, 2023).

⁶ *Id.*

Getting a Referral to Hospice

There are many paths to hospice care. Each person's circumstances are unique. In general, however, the starting point for hospice care is the recognition that your illness cannot be cured or effectively managed. This may be a new diagnosis, coming as a shock after a brief period of illness or mildly worrisome symptoms. Or it could be a further development of an illness that has been controlled but not getting any better for some months or years. Or it could be that the disease has just outpaced available treatments. Most people these days do not die of classically "terminal" illnesses; rather, they suffer from long-standing chronic illnesses, sometimes several at once, that just gradually get worse over an unpredictable period of time.

This can make it difficult to get a hospice referral at the right time. Doctors may resist stating clearly that an illness has reached this "terminal" phase, or "end stage." In today's health care world, it seems there is always something more to try in search of a cure, and doctors are rightly committed to their patients' survival. However, even when an illness is clearly terminal, doctors can be very reluctant to answer the question, "How long do you think Mom has?" Honestly, they just don't know. An important research study showed that when asked to make predictions about their patients' likely survival time, doctors typically *overestimated* by a factor of 5; that means they thought, in all good faith, that their patients would live 5 times longer than they actually did. And the better the doctor knew the patient, the more he or she overestimated.⁷

Tip: If you have any question about whether hospice might be the right choice for you or your loved one, here's a good way to ask the question: "Would you be surprised if (Mom) were alive in a year?" If the answer is yes, a good follow-up question would be, "Would hospice be a good option for (Mom) now?" If the answer is yes, or even maybe, you now have a hospice referral.

If your illness has reached this stage, and if your own doctor is resisting the idea of hospice for whatever reason, you can ask for an evaluation by a hospice doctor or nurse as a first step. This evaluation can be done in the hospital, nursing home, or at home.

27-3. How Does Hospice Work?

During the evaluation or admissions interview, the doctor or nurse can explain how hospice works. Here's an outline:

The Hospice Care Team

Hospice care is provided by a team of professionals:

A *physician*, who supervises the care, meeting regularly with the other members of the team to discuss the care plan and how things are going. Visits from the physician are likely to be infrequent, but he or she is closely monitoring your care and available for consultation at any time.

Note: You don't have to give up your current doctor when you enter hospice. He or she can continue to supervise your care along with the hospice team. However,

⁷ N.A. Christakis & E.B. Lamont, "Extent and Determinants of Error in Doctors' Prognoses in Terminally Ill Patients: Prospective Cohort Study," 320 *BMJ* 469 (Feb. 2000), www.ncbi.nlm.nih.gov/pmc/articles/PMC27288/.

hospice doctors are specially trained in pain and symptom management and may have skills and “tools” other doctors lack.

A registered nurse, who visits you regularly, supervises the nurse’s aide, and reports to the doctor and other team members. Just how often the nurse visits will depend on a lot of factors, but typically it’s once or twice a week. The nurse, in consultation with the doctor, will work to relieve pain and other symptoms, including nausea, anxiety and depression, fatigue, shortness of breath, skin irritations, problems with bowel and bladder function, and so on. Nurses keep a close eye on your mental and emotional health as well and will alert other team members if difficulties arise.

A certified nursing assistant, who provides help with personal care, if needed. This includes bathing, dressing, hygiene, light food preparation (snacks), and so on.

A social worker, who can address social, emotional, practical, and financial challenges. For instance, social workers can help organize extra caregiving help; complete important financial or practical preparations for death; mediate family disputes; interpret insurance policies and obtain benefits; or provide support to your spouse or life partner, children, or other family members in distress.

A chaplain, who is specially trained to respond to the spiritual aspect of facing advanced illness and the end of life. While chaplains may be ordained in or members of a particular religious tradition, they do not preach or promote any particular belief or faith. More than anything, they are expert listeners.

A volunteer, who can spend a few hours a week with you to give your family a break, do errands or laundry, prepare light meals, help with projects or tasks, or just visit.

Other specialists such as physical therapists or dieticians may be included, if needed. Some hospices even offer pet, aroma-, music, art, or massage therapy. All hospices have team members available 24 hours a day, seven days a week, 52 weeks of the year. Help is only a phone call away at any time of the day or night.

Note: The nurse and certified nursing assistant (CNA) will probably be the most frequent visitors. In fact, the nurse is the only team member that you must consent to see. The services of all the other team members are entirely optional and scheduled only as needed or desired. Everything is carefully tailored to individual needs and desires.

Hospice Care at Home and Other Options

As previously noted, most hospice care is delivered to the person at home, including nursing homes and assisted living residences (ALRs). If or when a person cannot remain at home, the hospice can arrange a care-facility placement — typically a nursing home — and continue to provide care there. For these patients and for long-time nursing home residents needing hospice care, the nursing home staff and the hospice team work together to coordinate the best combination of skilled nursing and hospice care. Likewise, hospices offer brief “respite stays” in care facilities for patients to give family caregivers a break or if they must go out of town or become ill themselves. Some hospices have dedicated, stand-alone residences to provide this inpatient care. Nationally, about 20 percent of hospices have their own inpatient residences. In Colorado, only nine of the 72 hospices (serving from 101 locations) have inpatient residences:

three in the Denver metro area and one each in Boulder, Colorado Springs, Fort Collins, Grand Junction, Greeley, and Pueblo.⁸

Hospice Care for the Family

Hospice considers the patient *and the family* to be under their care: all immediate family members, companions/life partners, and caregivers may ask for and receive attention and advice from members of the team. Family members are offered free grief counseling and bereavement care for up to 13 months after the patient's death. Many hospice agencies also offer grief education and support groups to the wider community.

Note: While all hospices must offer some form of bereavement support, programs vary widely. Some hospices call or send periodic letters or newsletters; others offer group support meetings or individual counseling. Some offer educational programs on various aspects of grief, bereavement, and coping. A few offer special programs for children and teenagers, including summer camps. If grief support will be important to you or your family, be sure to ask about these services when you are making your choice of hospice.

Quality of Hospice Care

The hospice field has grown tremendously since 2000. Between 2000 and 2019, the number of hospice agencies has increased by 94 percent, and the number of patients served has nearly tripled.⁹

In 2021, more than 1.6 million Medicare beneficiaries were cared for by 4,750 hospices.¹⁰ In many ways, this growth is a good thing, signaling broader acceptance of the hospice model and increased access to services for more patients and families. However, growth has also created some concerns about quality and standards. For complicated historical reasons, hospice care has not been subject to the same level of supervision and consumer critique that other sectors of health care have experienced. However, with recent crackdowns on waste, fraud, and abuse in health care generally, along with increasing emphasis on quality and outcomes, hospice is attracting much closer attention. The vast majority of hospices are providing excellent care with the best interests of patients, families, and communities at heart, but some cautions are worth noting.

Quality Indicators and Consumer Information. Agencies are now asked to collect and report to regulators a certain set of quality measures, which will be used to offer comparative information to the public. In order to help patients and family make informed decisions, the Centers for Medicare and Medicaid Services launched Care Compare (including Hospice Compare),¹¹ a website that includes seven categories of data about approximately 5,000 hospices around the country. Categories include percentages of successful patient/family education and support around critical issues such as pain assessments and symptom management. Some information is reported directly by the hospice, while other information is reported by family members about six months following the death of a loved one. Hospice Compare continues to evolve to better address public concerns and questions.

⁸ Hospice Analytics' National Hospice Locator, www.NationalHospiceLocator.com.

⁹ *Id.*; Medicare Payment Advisory Commission (MedPAC) March 2022 Report to the Congress, *supra* n. 4.

¹⁰ *Id.*

¹¹ Care Compare, www.medicare.gov/care-compare/.

Many state and national hospice organizations offer hospice provider directories so consumers can locate agencies, but most do not provide much information beyond hospice name, location, service area, and maybe areas of specialty. However, the National Hospice Locator,¹² hosted by Hospice Analytics, is a database of every known hospice in the country, including abundant comparative criteria about services and some quality measures.

Certification and Accreditation. All hospices must be licensed by the state and adhere to state regulations for health care facilities. Licensure in Colorado requires an application and “attestation” that the hospice meets the state regulations for operation. Hospices must be certified by Medicare or accredited by a Medicare-approved organization (e.g., Community Health Accreditation Partner,¹³ Joint Commission,¹⁴ or Accreditation Commission for Health Care¹⁵) in order to receive payment from Medicare for services to Medicare beneficiaries. Certification or accreditation requires a survey, conducted either by the state health department or the accrediting organization, to ensure that the hospice is operating according to the Medicare standards and state regulations. Certification ensures that the agency is meeting minimum standards; accreditation often requires a higher standard of performance.

Hospices without a license cannot legally serve patients. An operating hospice that is licensed but not certified or accredited, however, requires closer scrutiny. It is possible that the hospice is very new. In order to be certified or accredited, the hospice must be serving at least a few patients at the time of survey in order to demonstrate competencies. Care from a brand-new hospice may be excellent, even superior, or it may be deficient. Before enrolling in an uncertified hospice, ask a lot of questions and make sure you are satisfied with the answers (see “Locating and Evaluating a Hospice” in section 27-5). Volunteer or government-owned hospices (such as prison hospices or those operated by states, cities, or counties) might not be certified because they do not receive payment from Medicare. Again, caution is advised.

Surveys and Deficiencies. Hospices, like all health care facilities, are subject to periodic surveys in order to retain their certification or in response to a complaint. Hospices are required to be surveyed for Medicare compliance at least every three years. Complaint surveys may occur at any time.

When hospices are surveyed, any problem or failure to meet regulations is termed a “deficiency.” Deficiencies can be very minor or have no impact on patient care (e.g., unclear documentation or lightbulbs of the wrong wattage) or very serious indeed (e.g., medication errors or failure to respond to a pain crisis). A perfect survey is very rare; almost every survey turns up a few deficiencies. The raw number of deficiencies incurred by a hospice does not, by itself, tell much about the hospice’s quality of patient care. What matters is the seriousness of the deficiencies and how well they have been corrected. Survey results, deficiencies, and plans of correction are available online from the Colorado Department of Public Health and Environment once the case has been closed.¹⁶

¹² Hospice Analytics’ National Hospice Locator, www.NationalHospiceLocator.com.

¹³ Community Health Accreditation Partner, <https://chapinc.org>.

¹⁴ The Joint Commission, www.jointcommission.org.

¹⁵ Accreditation Commission for Health Care, www.achc.org.

¹⁶ Colorado Department of Public Health & Environment, Hospice Consumer Resources, www.colorado.gov/pacific/cdphe/hospice-consumer-resources.

Fraud and Abuse in Hospice. It's a terrible thing and many hospice professionals are uncomfortable admitting it, but hospice is not exempt from fraud and abuse. Fraudulent practices include admitting patients who are not eligible (*e.g.*, their condition is not terminal) or who do not understand they are signing up for comfort care only; keeping patients on service when they no longer meet strict criteria; bumping patients up to a more intensive level of care (for which the hospice is paid a higher amount); "cherry picking" patients according to diagnosis in order to minimize expense or maximize profitability; or providing extra services or equipment to nursing facilities in order to gain preference in referrals. Patient abuse can result from promising services the agency can't deliver; maintaining patients on a routine level of care when they require more intensive interventions; not providing adequate after-hours or weekend/holiday coverage; providing inadequate screening, training, or supervision to clinical personnel resulting in harm to patients; or misusing potent medications.

While occurrences of these kinds have been reported, fortunately they are extremely rare. *A very small percentage of hospices are identifiably practicing outside the norms* in a way that signals possible fraud. Cases of patient harm are harder to quantify, but they are by no means common, despite occasional distressing stories in the media. Still, any occurrence is one too many, and numerous organizations in the industry are working closely with regulators to eliminate them.

Note: Much of the growth in hospice care since 2000 has been in for-profit hospices, and concerns have been raised by journalists and watchdog groups that the pressure to increase profits is at the root of problems in hospice care. Data does show that for-profit hospices, as a group, spend less on patient care, provide less of the more intensive levels of care, have a higher rate of discharge of live patients, and frequently keep patients on service much longer than typical. However, the for-profit/nonprofit status of a given agency is not, by itself, an indicator of quality. In Colorado, the only three hospices closed for reasons of fraud and abuse were for-profit agencies (one each in 1997, 2008, and 2016), although numerous for-profits across the state provide excellent care. Each hospice should be evaluated on its own merits, not its corporate tax status.

27-4. How Is Hospice Care Paid For?

Options for Coverage for Care

Hospice care is a fully covered Medicare Part A benefit for Medicare beneficiaries, and most private insurance plans have a comparable hospice benefit. If you or your family member are not covered by Medicare or private insurance, Medicaid also has a hospice benefit in Colorado and many other states. Also, many hospices have a commitment to provide care regardless of a person's ability to pay, supported by community fundraising, donations, and grants.

The Medicare Hospice Benefit

For persons receiving hospice care under Medicare, the Medicare Hospice Benefit covers all services of the team and all medications, equipment and supplies, and care related to the terminal illness. There may be a modest copay for some drugs. Items and services not related to the terminal illness remain your responsibility. For instance, if you are enrolled in hospice due to cancer and have a fall and break your hip, the costs of treating the broken hip will not be covered by the Hospice Benefit, but likely will be covered by other parts of Medicare or your private insurance plan.

In some cases, room and board — whether in a nursing home, hospice residence, or hospital — are covered by the Medicare Hospice Benefit or private insurance. In other cases, these costs must be paid by you. Just when room and board is covered depends on the level of care you are receiving and the reason for your stay in the facility. Even over the course of a single stay, some days might be covered and some not. Most rooms in stand-alone hospice residences are private; some hospices offer shared rooms to reduce costs. Rates vary depending on location and level of care, but they tend to range between \$500 and \$700 per day.

Prior to enrollment in hospice, it's a good idea to have a thorough conversation with the admissions nurse or social worker on financial matters. Ask questions and get clear answers from the individual hospice agency about what benefits apply, what they cover and don't cover, room and board rates and charges, and any other resources that might be available.

Note: If you or a loved one are a veteran of the United States Armed Forces or National Guard, be sure to ask about Veterans Administration benefits and services. There is good information on the VA website about their palliative care services and death and burial benefits. Go to www.va.gov/geriatrics.

27-5. How Can I Find Care and Choose a Hospice?

Hospice in Colorado

As of 2021, in Colorado, there were 72 hospice agencies providing care out of 101 locations and nearly 25,000 Coloradans received hospice care. Nine hospice agencies now have dedicated inpatient residences. Since 2015, the number of for-profit hospices has exceeded the number of nonprofit hospices in Colorado. A handful of hospices are run by the state or federal government.

About two-thirds of Colorado's hospices are in urban areas and about a third are in rural regions. In urban areas, there may be several hospices from which to choose, while some rural areas are served by one agency. In 2021, at least one person received care under the Medicare Hospice Benefit from each of Colorado's 64 counties. Each hospice organization has its own "flavor," admissions policies, and range of offerings beyond the core, mandated services.

Locating and Evaluating a Hospice

Just like any important decision in life, your choice of hospice should be made carefully, based on up-to-date and reliable information, and after several deep breaths. Your doctor, hospital, or nursing home may recommend a particular hospice, but unless you live in an area served by only one agency, you do have a choice. Your top concerns should be quality and a good "fit" between you and the hospice staff and style.

A good first step in locating a hospice is to ask around. Chances are good you will know friends, colleagues, neighbors, and others who have had a family member in hospice. Even with a glowing recommendation, though, it is good to look closer.

There are two comprehensive resources for locating hospices in your area: Hospice Analytics' National Hospice Locator¹⁷ and the Colorado Department of Public Health and

¹⁷ Hospice Analytics' National Hospice Locator, www.NationalHospiceLocator.com.

Environment (CDPHE).¹⁸ The National Hospice Locator allows you to search by hospice, state, or zip code. You can compare agencies on several criteria: ownership type (nonprofit, for-profit), agency type (free-standing, in a nursing facility, affiliated with a hospital), size (based on number of patients served daily), innovative or special services, inpatient unit, state and national organization memberships, accreditation, certification, and a set of utilization measures that can be used as indications of quality. The results provide contact information and direct links to agency websites. The CDPHE online directory lists all the hospices in the state and survey results but does not provide any comparative criteria. Be aware that hospices tend to serve several counties, so if you do not find a hospice with an office in your city or town, there may be one nearby that serves your area.

Note: Hospice programs are very sensitive to how racial, ethnic, cultural, and religious factors can influence a person's approach to death, funeral preferences, and the family's style of coping. Some agencies have gained special certifications in caring for members of particular cultural or religious communities; some have Spanish-speaking patient and family assistance or care teams and other non-English language interpreters; some have particular affinities with or historical ties to religious traditions. If these factors are important to you, be sure to ask about them when you talk to the hospice representative.

As noted earlier, hospice enrollment has some requirements, but a meeting with a hospice representative to get acquainted and discuss their services can be arranged at any time. If the hospice has a stand-alone residence, you may tour the facility. When you contact a hospice to discuss their services, here are some key questions you should ask:

► **Are you certified by Medicare and/or accredited?**

See "Quality of Hospice Care" in section 27-3 for comments regarding certification and accreditation. If the hospice is not certified or accredited, determine why and consider carefully whether this hospice is right for you.

► **How long have you been operating? Are you for-profit or nonprofit?**

Older hospices are likely to be better established and better resourced, with more history of patient experience and survey results. Newer hospices can still be very good but might require extra evaluation.

As noted, for-profit or nonprofit status does not, by itself, say anything about the quality of care the hospice provides, but it is an important feature to be aware of.

► **What services do you provide?**

Services should match the description of hospice care provided in this chapter. Make sure social work, chaplain, and volunteer services are mentioned; they are important aspects of the hospice model even if you don't think you will need them. If it is important to you, ask if your doctor can stay involved in your care.

¹⁸ Colorado Department of Public Health & Environment, Hospice Consumer | Resources, www.colorado.gov/pacific/cdphe/hospice-consumer-resources.

If you or your family member might benefit from specialty services — such as those designed for children/teens, veterans, or particular ethnic or cultural groups — be sure to ask specifically about these programs.

► **What are our options if I or my loved one can't stay at home, or our family needs a break?**

Every hospice should have an option to care for patients in a facility (nursing home or stand-alone residence) if home care is not possible. Likewise, respite care should be available to give families a break.

If you or your loved one already reside in a nursing home, ensure the hospice can provide care in that facility. Also ask how a hospice enrollment will change your financial arrangements with the facility.

In rare cases, hospice patients may need “continuous” care in the home, for instance if symptoms get out of control or when they are very near death. This level of care may not be needed but should be available.

► **Do you have your own hospice unit for inpatient care? Under what circumstances are patients admitted to the unit? What are your room and board rates? When are these charges not covered by Medicare or my private insurance?**

Most inpatient hospice residence rooms are reserved for patients with intensive care needs — out-of-control symptoms, pain crisis, or “active dying.” However, some residences admit routine level of care patients who do not have caregivers at home or nearby. Make sure you understand how the hospice operates its facility, what it charges, and when.

► **Is everything covered by Medicare/my insurance? What services are not?**

Items not covered might include some drug copays; non-medical caregiving/house-keeping; one-on-one grief counseling; and care for conditions or events not related to the terminal illness (*e.g.*, broken bones or infectious illness).

► **How can we pay for care if I or my family member is not on Medicare?**

The hospice social worker can review your private insurance and determine what your benefits cover.

If you lack insurance, payment assistance might be available from Medicaid, veteran benefits, or other programs for uninsured patients. The hospice should provide every assistance to address your financial questions.

► **How do you respond to needs after hours or on weekends or holidays?**

Be sure the hospice has adequate coverage from its own staff for care in these situations. At a minimum, an after-hours phone number should be available and, if needed, a visit from a nurse.

► **What is your average length of stay for patients and rate of live discharge?**

Significant deviations from national averages (currently 68 days mean/23 days median for length of stay and 15 percent live discharge) might be cause for concern. *All other factors being equal*, a hospice that operates closer to the norm may be a better choice.

► **Have you had any recent complaints or patient care deficiencies?**

This information is publicly available from the state health department website. It's worthwhile to scan the information on the website first and then ask about particular instances that concern you. The hospice may not be able to discuss specifics due to patient privacy limitations, but they should confidently communicate that they take all complaints and deficiencies seriously and ensure that any problems are addressed and corrected. Defensiveness, evasion, denial, or referral to legal representatives should be red flags.

► **What kind of support is available to the family/caregiver?**

At a minimum, this should include education and emotional/spiritual support throughout the hospice patient's stay; assistance with practical, financial, and logistical challenges; visits from a volunteer; and bereavement counseling.

► **What kind of bereavement/grief support or counseling do you offer?**

At a minimum, this should include regular contact from the hospice following the death of the patient for 13 months by phone or mail. More robust services might include support groups, grief education sessions, one-on-one counseling, retreats for adults or camps for children and teens, regular memorial services, and so on.

Hospice is a wonderful service to persons with end-stage illness and their families, but it's not for everyone. Some people don't "qualify" for hospice care, and some just aren't ready or never get the opportunity to shift from curative treatment to hospice care. Fortunately, there is an alternative: palliative care.

Medical Aid in Dying

The Colorado End-of-Life Options Act was passed in November 2016 by 64 percent of Colorado voters. The eligibility requirements to become qualified to use the law are similar to those in ten jurisdictions that have instituted Medical Aid in Dying (MAID) laws to date. There are slight variations in how the law is operationalized in each state. In Colorado, a resident adult with mental capacity must be certified as terminally ill by two physicians. The person then must make two oral requests at least 15 days apart and must also submit one written, witnessed request.

Comprehensive measures are taken to educate the person about other alternative or additional treatment opportunities, such as palliative care and hospice. The person must understand clearly what their prognosis is and must understand both the risks and results of taking the medication. They must also be able to self-administer the medication.

Developmental issues in Colorado continue to be like those in other states: Although physicians are immune from prosecution or professional disciplinary action, many are reluctant to engage in a practice as controversial as this. Although it is per se illegal to forbid a physician to prescribe the medication, many still fear conflict or retribution within their organizations or from their employers. Patient abandonment is a significant concern for medical providers — am I abandoning my patient if I help him or her to end his or her life, or am I abandoning my patient if I refuse to support his or her desire to use MAID?

At this time, locating an attending physician or the second (consulting) physician who will assist their process has fallen primarily to patients, families, and advocates. The Compassion &

Choices website provides a Find Care Tool¹⁹ that guides those interested to local medical practices, hospitals, and organizations that have supportive practices. The American Clinicians Academy on Medical Aid in Dying²⁰ has a referral tool where interested people can ask for referrals to physicians near them. There is no charge for either of these services, and there is no guarantee that the connections will result in the implementation of MAID.

There are several health systems in Colorado that are currently in full compliance with the law and provide complete supportive services to their patients (including UC Health, Kaiser Permanente, Denver Health, and Boulder Community Health). Services may include sophisticated education to help in navigating the process, obtaining the medication, and supporting the patient and family during ingestion and afterward. Colorado hospices have developed policies ranging from refusal to engage in dialogue with patients at all to providing full support, with many hospices “in the middle” providing education and family support, including voluntary staff presence in the house at the time of ingestion. Only two hospices will act as prescribing physicians to initiate the process; their participation depends on the disposition of the current medical director.

The Colorado Department of Public Health and Environment website includes information about the Colorado End-of-Life Options Act and an annual statistical report.²¹ According to the 2021 report, 188 Coloradans were prescribed aid-in-dying medication in 2020, and 171 prescriptions were written in 2019. A controversial issue in Colorado is the lack of comparative and robust publicly available reporting requirements.²²

27-6. What Is Palliative Care?

Palliative (PAH-lee-uh-tiv) care is a relatively new kid on the block of American health care. It began growing rapidly in the mid-1990s and was granted official “sub-specialty” status by the American Board of Medical Specialties in 2006. Like hospice care, palliative care focuses on comfort and quality of life; aggressive treatment of distressing symptoms; and emotional, social, and spiritual support for patients and families. It involves a team of professionals addressing the needs and concerns of the whole person and family members.

Unlike hospice, palliative care does not require a doctor’s certification of terminal disease or life expectancy. It can be offered along with curative treatment, and it is not limited to “end-stage” or “terminal” illness. Conditions that can benefit greatly from palliative care include Alzheimer’s disease and other dementias; heart, lung, kidney, and liver diseases; chronic cancer; multiple sclerosis; cystic fibrosis; Parkinson’s and Huntington’s diseases; traumatic brain injury; frailty of old age; and other chronic conditions.

Other big differences between hospice and palliative care are that, right now, there is limited insurance coverage for palliative care services and only very generally accepted standards and regulations governing them. Both of these issues are discussed below.

¹⁹ Compassion & Choices, Find Care Tool, <https://compassionandchoices.org/find-care>.

²⁰ American Clinicians Academy on Medical Aid in Dying, <https://www.acamaid.org/>.

²¹ Colorado Department of Public Health & Environment, Medical Aid in Dying, www.colorado.gov/pacific/cdphe/medical-aid-dying.

²² J.T. Abbott et al., “Accepting Professional Accountability: A Call for Uniform National Data Collection on Medical Aid-in-Dying,” *Health Affairs* (Nov. 11, 2017), www.healthaffairs.org/doi/10.1377/hblog.20171109.33370/full.

27-7. How Can I Get Palliative Care?

Palliative care can begin at any point in the course of a serious illness and be provided side-by-side with treatment oriented toward cure. Right now, it is most commonly used when a person's illness has become advanced, not curable, and difficult to manage, but is not yet at the terminal stage, such as those listed above.

If you think you might benefit from palliative care, you should first talk to your primary physician, the hospitalist (the doctor overseeing your care in a hospital), the nursing home medical director, or the specialist treating your illness to discuss what services might be helpful and available. A list of Colorado hospices and hospitals offering palliative care is included as Exhibit 27A to this chapter.

27-8. How Does Palliative Care Work?

Palliative care is a rapidly growing field: Consistent models of care, standards, or even criteria defining in detail what it is and is not and what it does and does not provide have not yet been consistently adopted. As a result, there can be big variations in palliative care services and quality. In 2011, the Colorado Center for Hospice and Palliative Care, along with the Center to Improve Value in Health Care and Life Quality Institute, developed a set of guidelines to assist state surveyors in evaluating whether so-called "palliative care" services really offer what they should in the way that they should.

In January 2014, Colorado became the first state in the nation to adopt a regulatory definition and standards for palliative care.²³ The definition and standards (see box, below), approved by the Colorado Board of Health, went into effect in March 2014, and are applicable to any health care facility or setting offering "palliative care," "comfort care," "supportive care," or other substantially similar services. The Colorado Department of Public Health & Environment has developed a webpage specifically for palliative care information, including a comprehensive survey of Colorado palliative care providers in 2020.²⁴

Palliative Care Definition and Standards Approved by the Colorado Board of Health for Inclusion in the Colorado Health Care Facilities Regulations as of March 2014

Definition:

"Palliative care" means specialized medical care for people with serious illnesses. This type of care is focused on providing patients with relief from the symptoms, pain, and stress of serious illness, whatever the diagnosis. The goal is to improve the quality of life for both the patient and the family. Palliative care is provided by a team of physicians, nurses, and other specialists who work with a patient's other health care providers to provide an extra layer of support. Palliative care is appropriate at any age and at any stage in a serious illness and can be provided together with curative treatment. Unless otherwise indicated, the term "palliative care" is synonymous with the terms "comfort care," "supportive care," and similar designations.

²³ For additional detail, refer the provider to Sections 2.2.12 and 3.3 of the Colorado Code of Regulations for health care facilities, "Chapter II General Licensure Standards."

²⁴ Colorado Department of Public Health & Environment, Palliative Care, <https://cdphe.colorado.gov/palliative-care>.

Standards:

If palliative care is provided within a licensed health care entity, the licensee shall have written policies and procedures for the comprehensive delivery of these services. For each patient receiving palliative care, there shall be documentation in the plan of care regarding evaluation of the patient and what services will be provided. The licensee's policies and procedures shall address the following elements of palliative care and how they will be provided and documented:

- 1) Assessment and management of the patient's pain and other distressing symptoms; and
- 2) Goals of care and advance care planning; and
- 3) Provision of, or access to, services to meet the psychosocial and spiritual needs of the patient and family; and
- 4) Provision of, or access to, a support system to help the family cope during the patient's illnesses; and
- 5) As indicated, the need for bereavement support for families by providing resources or referral.

When you contact a provider for palliative care, be sure to get a clear and thorough explanation of just what is being offered. At its most basic, a palliative care service provides consultation with a specially trained doctor or advance practice nurse to develop a plan of care to enhance comfort and quality of life rather than cure, and to address any areas of distress. More developed programs involve consultation with a full palliative care team and perhaps some limited follow up with or ongoing care of the person at home or in a health care facility.

In general, palliative care programs come in four styles from four different provider types: hospitals, hospice agencies, nursing homes, and most recently, specialty outpatient clinics.

Hospital-Based Palliative Care

About 28 hospitals around the state offer palliative care services of some kind, though the scope of service may vary. A list of Colorado hospitals reporting palliative care services can be found in Exhibit 27A. Typically, palliative care in the hospital setting is offered to patients with serious, advanced illness for which they are receiving continued curative treatment but are "wiped out" by the side effects, or the treatments are not working as well, fewer options are available, and a shift in goals of care might be warranted. A consultation team comprises a specially trained doctor or advance practice nurse — and, ideally, a social worker and chaplain — who identify physical and psychosocial-spiritual suffering that can be eased by palliative treatment. Beyond this, they help clarify the patient's goals for care and work with the patient's other doctors to develop a plan that matches or meets those goals. In most hospital-based programs, however, there is no ongoing follow-up after the patient is discharged.

"Pre-Hospice" Palliative Care

Another type of palliative care program, often called "pre-hospice" or "transition," is offered by hospice agencies. About 29 hospices across Colorado offer palliative care services. A list of Colorado hospices providing palliative care services can be found in Exhibit 27A. In these programs, you can receive a palliative care consultation and a limited amount of follow-up without enrolling in hospice. Some of these programs are led by nurse practitioners, some by social workers. The programs focus on pain and symptom management and clarifying goals

of care. They provide a real option for persons who are not quite ready for hospice from the standpoint of their personal goals or the progress of their illness.

Palliative Care in Long-Term Care

For better or for worse, many of us will likely spend some part of our final days in nursing facilities — for rehabilitation, skilled nursing, or long-term residence. Most elders who enter nursing homes for long-term residence die within two to three years of admission, and they suffer from an average of five concurrent chronic illnesses. Typically, nursing homes have worked closely with hospices to provide high-quality palliative and end-of-life care.

Note: The Center for Improving Value in Health Care (CIVHC), in collaboration with other organizations, has developed a set of “Best Practice” guidelines for palliative care in the long-term care setting. If your nursing home is not yet following these guidelines, they are available from CIVHC (www.civhc.org; (720) 583-2095).

Palliative Care in Specialty Outpatient Clinics

For the first time ever, a 2020 study of palliative care across Colorado²⁵ identified one non-hospital, non-hospice palliative care provider. This provider, Kaiser Permanente, provides palliative care in a specialty outpatient clinic setting. Additionally, two other providers in similar settings were identified as “emerging palliative care providers”, meaning they didn’t quite meet the study definition of palliative care provider but were close. Exhibit 27A identifies and details contact information for all Colorado palliative care providers, including emerging palliative care providers.

Even more than in the hospice or hospital setting, palliative care programs in long-term care facilities are subject to wide variation. In some cases, palliative or “comfort” care here simply means pain and symptom management performed under the guidance of a doctor who may or may not be specifically trained in palliative or end-of-life care. In other cases, it is very high-quality and full-spectrum end-of-life care up to and including the hospice phase. As of March 2014, any nursing facility offering palliative or “comfort care” must meet the new standards. If you or a loved one reside in a nursing home and are a good candidate for palliative care, be sure you get a thorough explanation of just what this means at that facility and be sure your needs will be appropriately addressed.

Caution: Some nursing homes will offer what they call a “comfort-care benefit.” **There is no specific benefit offered by Medicare or Medicaid for “comfort care”!** If the nursing facility offers “comfort care” for you or your loved one, instead of arranging a hospice or palliative care consultation, you should ask very probing questions about exactly how their “comfort care” will be different from their standard care, who will be supervising it, what the plan of care will entail, whether it will meet the new standards, and why hospice or palliative care is not the best course. If comfort care is recommended, it is best to ensure involvement from a hospice or specifically trained palliative care provider.

²⁵ Colorado Department of Public Health & Environment, Palliative Care in Colorado: Trends, Gaps, and Opportunities to Improve Care, <https://drive.google.com/file/d/1cm2OivJ3GKCBYGqCCK9u-SeqJ0V8pf5NS/view>.

27-9. How Is Palliative Care Paid For?

The other big difference between hospice and palliative care is that there is no Medicare Palliative Care Benefit. At this writing, Medicare will cover one visit from a hospice or hospital-based palliative care doctor, nurse practitioner (NP), and sometimes a licensed clinical social worker for palliative care consultation. Additional visits may be billable by physicians and NPs under some circumstances, but visits by social workers are rarely covered, and no visits by chaplains are reimbursed. Some private insurers and managed care organizations (notably, Kaiser Permanente) are adding palliative care benefits.

Hospice agencies offering palliative care programs often do so at their own loss, out of charitable monies, or through private-pay arrangements. The Veterans Health Administration offers palliative care services at no extra charge to qualified persons. Palliative care can also be obtained through a few private practice doctors, advanced practice nurses, and nurse practitioners on a fee-for-service basis. When you are offered or evaluating palliative care services, be sure to ask about payment.

27-10. How Can I Find Palliative Care?

First, ask your physician. You can also ask your hospital or local hospice agencies about their palliative care programs. For a list of Colorado hospitals, hospices, and others offering palliative care services in Colorado, see Exhibit 27A. An interactive map of current palliative care providers can be found on the Center for Improving Value in Health Care website.²⁶ For services and programs outside Colorado, you can visit the National Hospice Locator,²⁷ the National Hospice and Palliative Care Organization,²⁸ or the American Academy of Hospice and Palliative Medicine.²⁹ Phone numbers for these organizations may be found in the resources section of this chapter.

27-11. How Can I Learn More?

If you would like to know more about hospice or palliative care, most hospice agencies are happy to answer your questions. The Center to Advance Palliative Care offers consumer-oriented information and resources on its website.³⁰

27-12. Conclusion

Hospice and palliative care are relative newcomers to the health care system, but they are actually new and improved forms of what medicine and health care has been about for thousands of years: caring for the sick, comforting the hurt, and supporting those who love them. Their shared goal is to help all people live well at the end of life and never suffer needlessly.

²⁶ Center for Improving Value in Health Care, Palliative Care Map and Report, <https://www.civhc.org/programs-and-services/palliative-care/palliative-care-in-colorado/>.

²⁷ Hospice Analytics' National Hospice Locator, www.NationalHospiceLocator.com.

²⁸ National Hospice and Palliative Care Organization, www.nhpco.org.

²⁹ American Academy of Hospice and Palliative Medicine, www.aahpm.org.

³⁰ Center to Advance Palliative Care, www.getpalliativecare.org.

27-13. Resources

National Hospice Locator

Offers a comprehensive directory of hospice agencies by state; also offers several comparative criteria, with contact information and direct links to agency websites.

www.NationalHospiceLocator.com; www.HospiceAnalytics.com

Practically Dying

Offers community and professional education as well as private consultation on end-of-life care options, advance care planning, advance directives, grief and loss support, and more.

(720) 434-5942

www.Practically-Dying.com

Colorado Department of Public Health and Environment

Offers listings for all nursing and assisted living facilities and hospices in the state. To view detailed profiles, including survey results, go to www.colorado.gov/pacific/cdphe/categories/services-and-information/health/health-facilities.

(303) 692-2836

www.colorado.gov/cdphe; <https://cdphe.colorado.gov/palliative-care>

National Hospice & Palliative Care Organization

Primarily geared toward professionals, but offers a toll-free help line, a Spanish-language help line, and a searchable database of hospice agencies nationwide (organization members only).

(800) 658-8898 (toll-free help line)

(877) 658-8896 (Spanish-language help line)

www.nhpco.org

American Academy of Hospice & Palliative Medicine

Primarily geared toward professionals, although offers multiple helpful resources.

<http://aahpm.org>

GetPalliativeCare.org

An online resource for the public on palliative care nationwide, including a quick quiz to determine if palliative care is right for you and easily printed informational handouts. Information on Colorado-based providers is limited to hospitals, and only contact addresses and phone numbers are provided — no details on the services offered. Confirm any information with the facility itself.

www.getpalliativecare.org

The Colorado Advance Directives Consortium

Offers information on advance care planning and advance directives, including the Medical Orders for Scope of Treatment (MOST) program in Colorado. Template forms for medical durable power of attorney appointments, living wills, CPR directives, and MOST forms are available, along with clear explanations of each tool and how to use it. Links to other resources and education are also provided.

www.coloradoadvancedirectives.com

Hospice & Palliative Care Association of the Rockies

Provides information on hospice in Colorado and education for hospice staff.

(303) 848-2522

info@hpcar.org; www.hpcar.org

Colorado Health Care Association

The statewide association supporting nursing homes and assisted living residences. Can provide information on hospice and palliative care in the long-term care setting or specific information on skilled nursing facilities and assisted living residences.

(303) 861-8228

www.cohca.org

Center for Medicare & Medicaid Services

Offers a free booklet, "Medicare Hospice Benefits," which explains in detail coverage provided by Medicare and Medicaid for the costs of hospice care.

1-800-MEDICARE

www.medicare.gov

Caring Connections

A national consumer-focused information source on all things end-of-life: state-by-state advance medical directives (living wills, etc.), caregiver resources, grief and bereavement support, information for businesses supporting employees involved in caregiving or grieving, and more.

(800) 658-8898 (toll-free help line)

caringinfo@nhpco.org; www.caringinfo.org

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Exhibit 27A. Hospitals, Hospice Agencies, and Others Offering Palliative Care

Hospitals, Hospice Agencies, and Others Offering Palliative Care (as distinct from hospice services)*

Geography	Hospitals Offering Palliative Care	Hospice Agencies and Others Offering Palliative Care
Denver Metro	<ul style="list-style-type: none"> • Centura Castle Rock Adventist Hospital*, 303-738-2605 • Centura Littleton Adventist Hospital, 303-738-2605 • Centura Parker Adventist Hospital, 303-269-2452 • Centura Porter Adventist Hospital, 303-778-5699 • Centura St. Anthony Hospital (Lakewood), 720-321-1590 • Centura St. Anthony's North Health Campus (Westminster), 720-627-0036 • Children's Hospital Anschutz, 303-204-0912 • Denver Health*, 303-436-6000 • Lutheran Medical Center Hospital (Wheat Ridge), 303-425-8000 • Medical Center of Aurora, 303-944-9500 • National Jewish Health*, 303-475-2841 • North Suburban Medical Center (Thornton), 303-450-3551 • Presbyterian St. Luke's Medical Center, 303-944-9500 • Rocky Mountain Hospital for Children • Saint Joseph Hospital, 303-746-9197 • Sky Ridge Medical Center (Lone Tree), 303-263-3647 • Swedish Medical Center, 303-788-4475 • UCH University of Colorado Anschutz Hospital, 720-848-8530 • VA Eastern Colorado Healthcare System, 303-907-7132 	<ul style="list-style-type: none"> • Agape Hospice & Palliative Care (Greenwood Village), 720-482-1988 • Aspire Health Care^*, 303-692-2507 • Berkley Palliative Care & Hospice (Aurora), 303-758-2000 • Bridges Hospice & Palliative Care (Wheat Ridge), 720-900-3505 • Colorado Palliative Care & Hospice – Denver, 303-727-5709 • Colorado VNA Hospice & Palliative Care (Arvada), 303-698-6386 • Compassus – Denver, 720-808-5373 • Complete Hospice & Palliative Care of Denver, 720-425-3135 • Divine Hospice & Palliative Care, 303-357-2540 • Hospice Care of the Rockies (Cherry Hills Village), 303-284-6846 • Kaiser Permanente Palliative Care Clinics^, 720-518-6158 • Lutheran Medical Center Hospice & Palliative Care (Wheat Ridge), 303-425-8000 • Mission Healthcare Services* (Centennial), 303-708-1122 • Mount Evans Hospice & Palliative Care (Evergreen), 303-674-6400 • Namaste Home Health & Hospice, 720-532-3686 • Porter Hospice* (Greenwood Village), 303-561-5000 • Suncrest Hospice of Colorado (Greenwood Village), 720-941-5580 • The Denver Hospice, 303-321-2929 x6229 • The Holding Group^*, 720-295-1844
Northern Colorado (e.g., Boulder, Greeley, Fort Collins)	<ul style="list-style-type: none"> • Centura Longmont United Hospital, 303-485-4391 • Foothills Hospital (formerly Boulder Community Hospital), 303-415-7543 • Good Samaritan Medical Center (Lafayette), 303-689-5236 • Northern Colorado Medical Center (Greeley), 970-810-4288 • UCH Medical Center of the Rockies (Loveland), 970-495-8369 	<ul style="list-style-type: none"> • Front Range Hospice & Palliative Care (Frederick), 303-957-3101 • Halcyon Hospice & Palliative Care (Mead), 303-329-0870 x301 • Pathways Hospice & Palliative Care, 970-889-0272 • Trailwinds Hospice & Palliative Care (Boulder), 303-442-5683 • TRU Community Care (Lafayette), 303-449-7740
Western Colorado (e.g., Grand Junction, Glenwood Springs, Durango)	<ul style="list-style-type: none"> • Aspen Valley Hospital, 970-544-1147 • Centura Mercy Regional Medical Center (Durango), 970-764-3534 • St. Mary's Hospital & Medical Center, 970-298-2288 • VA Western Colorado Healthcare System, 970-242-0731 x2737 • Valley View Hospital, 970-745-6535 	<ul style="list-style-type: none"> • HopeWest, 970-683-4902 • Hospice of Mercy – Durango, 970-764-3534 • Hospice of the Valley (Glenwood Springs), 970-930-6008
Colorado Springs	<ul style="list-style-type: none"> • Centura Penrose St. Francis, 719-776-7148 • UCH Memorial Hospital Central, 719-365-2567 	<ul style="list-style-type: none"> • Abode Hospice & Home Health of Colorado – Colorado Springs, 719-505-2057 • Bridges Hospice & Palliative Care – Colorado Springs, 719-596-5001 • Colorado Palliative Care & Hospice – Colorado Springs, 719-419-5595 • Compassus – Colorado Springs, 719-226-0091 • Interim Healthcare Hospice & Palliative Care, 719-314-4868 • Pikes Peak Hospice & Palliative Care, 719-457-8147
Southern Colorado (e.g., Pueblo)	<ul style="list-style-type: none"> • Parkview Medical Center*, 719-595-7704 	<ul style="list-style-type: none"> • Arkansas Valley Hospice (La Junta), 719-384-8827 • Fremont Regional Hospice (Canon City), 719-275-4315 • Frontier Hospice (Pueblo), 719-544-5891 x121 • Hospice Del Valle (Alamosa), 719-589-9019

		<ul style="list-style-type: none"> • Lamar Area Hospice Association, 719-336-2100 • Mt Rose Health Center Palliative Care & Hospice (Trinidad), 719-846-8478 • Sangre de Cristo Hospice & Palliative Care (Pueblo), 719-251-8111
<p>*Palliative care programs were considered “emerging” for the purposes of this survey if any of the following criteria existed:</p> <ol style="list-style-type: none"> 1. Entity unable to capture patients served or consults; 2. Entity unable to respond to the survey in the requested timeline; 3. Entity did not see patients during the captured timeframe; or 4. Entity did not meet the state’s regulatory definition of palliative care <p>^ Other (non-hospital and non-hospice) palliative care provider.</p> <p>Adapted with permission from <i>Palliative Care in Colorado: Trends, Gaps, and Opportunities to Improve Care in Colorado</i>, Appendix 3: 2020 Directory of Colorado Palliative Care Providers; Colorado Department of Public Health & Environment (https://cdphe.colorado.gov/palliative-care), based on research provided by Hospice Analytics (www.hospiceanalytics.com).</p>		

Chapter 28

What to Do When Someone Dies: Responsibilities of the Personal Representative and Trustee Under Probate

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SYNOPSIS

- 28-1. Pronouncement of Death
 - 28-2. What to Do One to Three Days After Death
 - 28-3. What to Do One to Ten Days After Death
 - 28-4. Personal Representative Duties Under the Probate Code
 - 28-5. Trustee Responsibilities
 - 28-6. Resources
-

Dealing with the loss of a loved one is difficult. It is our goal through this chapter to provide you with some important information that may hopefully make the days and weeks after the passing a little easier.

This chapter cannot relate everything you need to know. You should establish a relationship with your attorney early to ensure that all matters and questions are properly addressed. Seeking your attorney's advice before you act may help you avoid more costly legal fees later, and can ensure that you are protected from any liability. Your attorney should be able to provide you with very helpful information and explain the probate process to you.

28-1. Pronouncement of Death

Colorado requires a qualified medical professional to be notified and to make the official pronouncement of death. If your loved one dies at home:

- ▶ Call your physician or local hospital so they can come to certify the cause and approximate time of death.
- ▶ Follow any religious observances that your family member requested.
- ▶ Call family members who may wish to spend private time with your loved one before the mortuary removes the body.

- ▶ Turn off any electrical equipment attached to your loved one's body, but leave any tubes, etc., in place.
- ▶ Call your funeral director. He or she will remove the syringes, catheters, or tubes and transport the body to the mortuary.
- ▶ If it exists, find your family member's final arrangements plan to follow his or her final wishes with respect to whether a funeral, memorial service, cremation, organ donation, or whole body donation was desired. As much as possible, try to follow your loved one's plans. This will relieve you of the burden of making these decisions and will honor his or her last requests.

If your loved one dies in a hospital:

- ▶ The medical staff will assist you with paperwork if the body or organs are to be donated, or if there will be an autopsy performed.
- ▶ The medical staff can make the official pronouncement of death.
- ▶ The medical staff will coordinate with the mortuary or crematory for the arrangements to transport the body.

Call the Coroner or Hospice Provider

If the death occurs at home, you must call the coroner's office for the county in which the death occurs, or dial 911 if you want the support of emergency personnel. Paramedics will attempt resuscitation.

If you are using hospice care, do not contact the coroner's office or 911. Instead, call the hospice provider and they will handle these matters for you.

Notify Family and Friends

Ask family and friends to help you with some tasks, including notification of other family and friends.

The Red Cross will help you notify family members if the deceased was in the military or if the relative to be notified is in the military. The Red Cross will need the following information:

- ▶ Service member's full name;
- ▶ Rank/rating;
- ▶ Branch of service;
- ▶ Social Security number;
- ▶ Military address; and
- ▶ Information about the deployed unit and home base unit (applies to deployed service members only).

Follow the Deceased's Instructions

Look through the deceased's papers to find if he or she:

- ▶ Had a prepaid burial policy;
- ▶ Belonged to a memorial society; or

- ▶ Had written instructions regarding arrangements for burial, cremation, and ceremonies the deceased did or did not want.

Note that these instructions could be legally binding even though they might be contrary to the wishes of others. If you have any questions about whether to follow them, contact a probate attorney or your mortuary.

Make Arrangements for the Deceased Person's Body

Arrange for the body to be picked up according to the coroner's instructions. Your funeral home or crematory will assist with this process.

28-2. What to Do One to Three Days After Death

Complete the Funeral and Burial Arrangements

Ask a trusted friend or family member to accompany you to the mortuary to advise and support you in making the funeral and burial arrangements. You may ask a clergy member to assist you.

Arrangements may include transfer to another location, burial, or cremation. If the deceased was a member of the Funeral Consumer Society of Colorado, you can obtain a lower rate on cremation or funeral services. Contact the Funeral Consumer Society of Colorado at (720) 432-5379. This also could be true for those who shop around. Cremation prices range from about \$900 to \$2,400 or more in the Denver metro area. Those prices should include the cost of the urn and other related services.

Note: Federal law requires price information to be given over the phone. Prices range a great deal, so you may want to compare prices.

Financial Assistance

If the deceased was on public assistance, burial assistance may be available. Contact your local county Department of Social Services as soon as possible and ask for the Burial Assistance Department. There are strict spending limitations, so you must meet with Social Services prior to meeting with the mortuary. Total expenses of burial will be limited to qualify for the benefit.

If the deceased was in the military or is the spouse or dependent child of a person in the military, contact the VA cemetery or VA office. There may be burial benefits. The mortuary will call the VA at your request. Typically, unless the deceased was disabled due to service-related injuries, the only benefit a veteran receives is burial at a national cemetery.

Family Assistance

Choose someone to:

- ▶ Answer the phone calls from family members and friends and collect mail;
- ▶ Care for pets and plants, and tend to other household chores;
- ▶ Assist with lawn care or snow removal;

- ▶ Stay at home during the funeral and visit the home to guard against break-ins occurring when the family is at the funeral; and
- ▶ Prepare food for family and friends after the funeral.

Also, to reduce the likelihood of vandalism to the home or condominium, gather two or three electronic light timers so that lights, a radio, or a TV will go on and off at appropriate times.

28-3. What to Do One to Ten Days After Death

Obtain Death Certificates

The most common and quickest way to obtain death certificates is through the funeral director for a fee. In order to estimate how many to order, you should estimate the number of different assets held by the deceased or institutions that will require a death certificate. Some examples of assets that will require an original death certificate are homes held in joint tenancy, stocks, bonds, and bank accounts.

If you do not order enough, you can get more death certificates later through the Vital Statistics Department for the county in which the death occurred or through the Colorado State Department of Public Health and Environment's Vital Records Office. The cost of a death certificate is \$20 for the first copy and \$13 for each additional copy. Many people waste money by ordering too many death certificates: six to eight copies are usually adequate. Remember, you can always obtain more death certificates later, if needed.

In General

Contact the following persons or institutions:

- ▶ Police, to inform them that the house of the deceased will be vacant and to request that they occasionally check the house;
- ▶ Probate attorney, to set up a meeting to discuss the probate process, such as how to transfer assets, how to deal with heirs or devisees, and how to report taxes;
- ▶ Accountant or tax preparer, to assist with gathering information as to the deceased's assets owned and to determine what returns should be filed;
- ▶ Banks, to locate accounts and safe deposit boxes;
- ▶ Investment professionals, to obtain information as to assets owned by the deceased;
- ▶ Insurance agents, to discuss insuring the decedent's assets and to obtain necessary death claim forms for life insurance or other assets;
- ▶ Social Security at (800) 772-1213, to stop monthly deposits and learn about benefits;
- ▶ Veterans Affairs, to stop monthly checks and learn about benefits;
- ▶ Agencies providing pension services, to stop monthly checks and obtain claim forms;
- ▶ Guardian, conservator, or agent under a power of attorney, to notify of the death and the end of their responsibilities;
- ▶ Utility companies, to alter or discontinue service;
- ▶ Employer, to notify of death and learn about benefits;

- ▶ Newspapers and magazines, to stop subscriptions (you may consider asking for refunds of the unused portions of the subscriptions); and
- ▶ Post office, to forward mail (if necessary).

Avoid Unscrupulous People

In the period following the loss of a loved one, be careful before accepting any telephone solicitations, and be careful about volunteering personal information about the deceased to strangers over the phone. You may receive fraudulent invoices, so be sure to review invoices carefully for validity. Thieves read death notices and obituaries, so avoid stating the address and other private information about the deceased. Avoid any major lifestyle changes for a period to allow for reflection on how the loss will affect the surviving family and friends.

Veterans Benefits

The mortuary may assist you with the paperwork for VA benefits. For information on VA benefits, call the nearest VA office for benefits information and assistance.

Be prepared to identify the deceased's:

- ▶ Relationship to you;
- ▶ VA claim number;
- ▶ Date of birth;
- ▶ Date of death;
- ▶ Place of death;
- ▶ Surviving spouse or next of kin; and
- ▶ Medical history that bears on whether the death is service-related or not.

If you do not know the deceased's VA claim number, provide the service number and dates of active service.

Veteran's benefits may be available to the surviving spouse. Benefits may include a lump-sum death benefit, if the death was service-related; a continuing monthly payment; financial assistance with funeral expenses and cemetery plot; or burial of the deceased in a national cemetery. Ask for the "Federal Benefits for Veterans and Dependents" publication, or review the VA website at www.va.gov/opa/persona/dependent_survivor.asp for more information about survivor benefits.

Social Security Benefits

For Social Security benefits, call the Social Security Administration immediately at (800) 772-1213. Your call will stop the monthly payments currently being received by the deceased. You must return the funds received for the month of death. If the deceased was receiving benefits by direct deposit (which is most likely the case), excess payments will, in time, be electronically withdrawn from the account.

Social Security monthly benefits are available to the surviving spouse, children under 18, and certain disabled children. Benefits include a one-time death benefit (currently at \$255 for a surviving spouse) if certain requirements are met. Ask for the "Survivors Benefits" brochure or

review the Social Security Administration's website at www.ssa.gov for more information about what to do when a beneficiary dies and what benefits may be available.

28-4. Personal Representative Duties Under the Probate Code

Your Duties in General

You have a duty to act impartially in regard to all parties to the estate. You have to treat each person the same. You have a duty to administer the estate with care, making sure to put the interests of the estate in front of your own interests in the estate.

As a personal representative, you are responsible for:

- ▶ Collecting and inventorying the assets of the estate;
- ▶ Managing the assets of the estate during the probate process;
- ▶ Paying the bills of the estate;
- ▶ Making distributions to the heirs or beneficiaries of the estate; and
- ▶ Closing the estate after all of the above responsibilities have been completed.

Prior to Appointment as Personal Representative

If you are nominated as the personal representative (also known as "executor") in a will, you have the power (before you are appointed by the court) to carry out written instructions of the deceased relating to the body, funeral, and burial arrangements. You may begin to protect the deceased's assets. Do not remove or distribute assets before opening the estate. Brochures are available from the Colorado Bar Association that explain the duties and responsibilities of a personal representative and how a personal representative is appointed when there is no will.

Search for the Will

The original will is usually in a safe place in the deceased's home, a safe deposit box, or an attorney's office. It is also possible that the will was lodged with the court for safe-keeping during the lifetime of the deceased. When the original signed will is found, lodge it within 10 days with the probate court in the county where the deceased lived. If you are only able to find a copy of the signed will, it may be possible to offer it for probate. However, the signed original will is preferred. If a will cannot be found, an attorney can help guide you through the intestate probate process. Also look for a handwritten list of instructions, a letter to family, or other similar documents. In Colorado, these documents may constitute a will.

Entering the Safe Deposit Box

Any person whose name is on the box may enter it at any time. An heir or beneficiary in a will can ask the bank to search for the will, a deed to a burial plot, or burial instructions. A representative of the bank will open the box in the presence of the heir or beneficiary and remove any will that is found. The bank will deliver the will to the court by certified mail, registered mail, or hand delivery, but first you should ask for a copy. After the will is filed with the court, the nominated personal representative can file a petition or application with the court to appoint him or her.

Search for Other Documents

The personal representative is the court representative who has the authority to search for any important documents. The search should include the home, office, place of business, and any safe deposit boxes. Meeting with advisors such as accountants, investment professionals, insurance agents, and attorneys is advised. Any information indicating that an asset exists or that bills are unpaid should be kept for use in the administration of the estate.

Items to look for:

- ▶ Funeral and burial plans;
- ▶ Safe deposit rental agreements and keys;
- ▶ Trust agreements;
- ▶ Nuptial agreements;
- ▶ Life insurance policies or statements;
- ▶ Pension, IRA, or retirement statements;
- ▶ Income tax returns for the past several years;
- ▶ Gift tax returns;
- ▶ Marriage, civil union, birth, and death certificates;
- ▶ Divorce papers;
- ▶ Military records and discharge papers;
- ▶ Certificates of deposit, bank statements, checkbooks, and check registers;
- ▶ Notes receivable and payable;
- ▶ Motor vehicle titles;
- ▶ Deeds, deeds of trust, mortgages, leases, and title policies;
- ▶ Stock and bond certificates and account statements;
- ▶ Bankruptcy filings;
- ▶ Partnership, LLC, or corporate agreements;
- ▶ Unpaid bills;
- ▶ Health insurance papers; and
- ▶ Papers regarding fraternal organizations or professional societies (some of these may offer benefits upon the death of their member).

Informal Versus Formal Probate

There are two types of probate: informal and formal. You should consult your attorney to decide which type of probate is right for your situation.

Informal probate happens when there is an uncontested will or, if there was no will, if all of the potential heirs of the estate agree on who should be personal representative and who the beneficiaries of the estate are. Filing an application for informal probate is usually less expensive than formal probate and takes less time. This is true because there is less court involvement. There is no advance notice to parties and no binding order from the court.

Formal probate applies if the heirs and/or beneficiaries cannot agree on all the issues and need the court to decide for them. Formal probate is also necessary if the original will cannot be found. Notice of actions and court proceedings is sent to interested persons (for example, beneficiaries and creditors) in formal probate proceedings, and the court issues final and binding orders.

Your Authority and Specific Duties

You will be issued “letters” from the court to indicate that you have been appointed as the personal representative. These letters are evidence that you have authority to act on behalf of the estate. You will need to show or send them to various third parties, such as banks, insurance companies, etc., when you are administering the estate.

Promptly after your appointment as personal representative, you should:

- ▶ Prepare a Notice of Appointment form, which is probably in the packet of forms you received from the court; send this to all who are interested in the estate, such as beneficiaries and unpaid creditors; and file proof with the court that this notice was sent. The notice form must be sent to all interested persons within 30 days of appointment to let them know the facts and ground rules regarding administration of the estate, including your name and address and the court in which the papers are filed.
- ▶ Set up an estate accounting system. This should be done at the beginning of your administration of the estate. For your protection, keep records of all financial transactions of the estate, and provide written accountings to the beneficiaries. This information will also be required for tax purposes. Keeping accounting records is very important and is often done incorrectly. In a supervised administration or with a formal closing, the accounting forms are also filed with the court.
- ▶ Prepare a written inventory within three months to include the estate assets on a court-approved form. If you decide to close the estate formally, the inventory must be filed with the court. Otherwise, you can just give copies to interested parties. Maintain all documentation to support the values reported in the inventory. The value of the assets should be the fair market value as of the date of death.

Potential Liability as Personal Representative

As a personal representative, you may be liable to the beneficiaries for any loss to the estate and for any gain the estate should have realized but did not.

Situations in which a personal representative may be found liable include:

- ▶ You, for any reason, failed to exercise reasonable care and skill in managing the property of another;
- ▶ You negligently or intentionally did something that you *should not* have done, such as took funds from the estate, failed to follow the will, or committed other actions that breached your fiduciary duty as personal representative; or
- ▶ You negligently or intentionally failed to do something that you *should* have done, such as properly inventoried the assets or failed to pay the heirs or beneficiaries of the estate.

This list is not exhaustive. It merely demonstrates some ways a personal representative can potentially incur liability. You should contact a probate attorney and seek his or her advice as to any potential problems that may arise.

Creditors

Following a death, certain creditors may be very aggressive. An important purpose of the probate administration is to provide an orderly process for dealing with all of the deceased's creditors. Try to avoid depleting the available cash on the first "squeaky wheels," because doing so can cause bigger problems later in the estate administration, and it can also expose the personal representative to a charge that he or she showed preference for a specific creditor over others.

28-5. Trustee Responsibilities

Your Duties in General

Once you have been named trustee, co-trustee, or successor trustee of a trust, there are certain duties to perform and rules to follow. Your authority as trustee comes from the trust itself, and your duties and powers should be described in the trust. Read the trust in detail, as it should answer many of your initial questions.

Your three basic duties to the trust and its beneficiaries are:

- 1) A duty of impartiality, not to favor the interest of one party over another;
- 2) A duty of undivided loyalty, not to put your own interest in a conflict with those of the trust; and
- 3) A duty to administer the trust with care and prudence.

You should consult your probate attorney or accountant as to any potential tax filings and other questions you may have regarding your duties as trustee.

Accounting

As trustee, you must set up and keep a set of trustee's books. These records must make a clear distinction between assets you handle as trustee and assets that are your own. Any mixing of the two is strictly prohibited. The frequency with which you must provide an accounting to the beneficiaries should be stated in the trust. If it does not say how often, then an accounting should be provided at least annually.

Trust Registration Statement

Under the Colorado Uniform Trust Code (C.R.S. §§ 15-5-101, *et seq.*) a trust may, but need not, be registered in the State of Colorado in the district court where the trust has its principal place of administration. However, failure to register a trust subjects the trustee to the personal jurisdiction of any court in which the trust could have been registered. Further, if a settlor or qualified beneficiary demands registration, the trustee must register the trust within 30 days or be subject to sanctions, including removal or surcharge. Trusts created to facilitate qualification for medical or other public assistance under the federal Social Security Act, or that are otherwise not subject to the Colorado Uniform Trust Code, must also be registered. A trust may not be registered if doing so would be inconsistent with the jurisdiction of, or registration in, a foreign

jurisdiction. There are no deadlines for registration, other than those created following a demand for registration from a settlor or qualified beneficiary. There are court-approved forms for trust registration and amendments.

Potential Liability as Trustee

As the trustee, you may be liable to the beneficiaries for any loss to the trust and for any gain the trust should have realized but did not. The following are examples of ways in which a trustee may be found liable:

- ▶ If, for any reason, you failed to exercise the care and skill of a person of ordinary prudence in managing the assets of another;
- ▶ You negligently or intentionally did something that you should not have done, such as took funds from the estate, did not follow the will, or took other actions that breached your fiduciary duty as trustee; or
- ▶ You negligently or intentionally failed to do something that you should have done, such as failed to properly inventory the assets or pay the heirs or beneficiaries of the estate.

Again, this list is not all inclusive. It merely demonstrates some of the ways in which liability potentially may be incurred. Contact a probate attorney to seek his or her advice as to any potential problems that may arise.

28-6. Resources

Colorado Bar Association

(303) 860-1115 or toll-free (800) 332-6736
www.cobar.org

Colorado Department of Public Health and Environment

Vital Records Section
4300 Cherry Creek Dr. S.
Denver, CO 80246-1530
(303) 692-2200
<https://cdphe.colorado.gov/vitalrecords>

Colorado Judicial Branch

www.courts.state.co.us/Self_Help/Index.cfm

Funeral Consumer Society of Colorado

(720) 432-5379
www.funeralconsumercolorado.org

Social Security Administration

(800) 772-1213
www.ssa.gov

Department of Veteran Affairs

(800) 827-1000

TDD: Dial 711

www.va.gov

* Based on a chapter originally written by Mark Masters, Esq.

Chapter 29

Family Discussions, Decisions, and Dispute Resolution

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SYNOPSIS

- 29-1. Family Decisions
- 29-2. The People Involved in the Decision
- 29-3. Types of Alternate Dispute Resolution (ADR)
- 29-4. Use of Mediation in Estate Planning
- 29-5. For More Information

Difficult decisions must often be made as family members age. Because these decisions impact several generations and may require resources and expertise available only outside the family, they should not be put off until there is a crisis.

These decisions are usually not about legal matters and the discussions may be highly emotional. If the family cannot make decisions together or postpones the discussions until there is a crisis, legal issues can arise based on misunderstandings and the lack of communication. When should a person stop driving? How will the family pay for a family member with special needs? When should you sell the family home? Surely, these decisions should not be left to the court. Family discussions are likely to be more productive if led by a professional who can ensure that everyone can be heard and can help the family identify important legal, financial, and medical questions, and help guide the decisions to be discussed.

29-1. Family Decisions

Families can use professional mediators to help them avoid court for many reasons, both for legal disputes such as probate of wills and for non-legal matters. Some of the non-legal issues that might be resolved through alternate dispute resolution are:

- ▶ Onset of dementia — Who will care for the family member? When is it time for full-time care?

- ▶ Caregiver burdens — How will the family handle respite care for the caregiver? Is the caregiver responsible for medical, personal, and financial decisions?
- ▶ Lifestyle changes — Is it time for Mom or Dad to move? Where? Can the family hire a caregiver and allow Mom or Dad to stay at home?
- ▶ Resident disputes — What to do if the care is not what was promised? What should the family do if there is a problem with a neighbor?
- ▶ Driving — When should Mom or Dad give up the keys? How is the family going to handle the loss of independence for the family member?
- ▶ Care disputes — The care provider will not listen to the family. Now what?
- ▶ Guardianship — Is Mom or Dad incompetent, or does she or he just need some help? Who is best suited to make decisions?
- ▶ End-of-life decisions — When is it time to let Mom or Dad go? Should we use hospice? What about the hospital?
- ▶ Financial decisions — Should we use an accountant to handle the checkbook? Is there a need for a family member to account for the decisions made? Whose money is it, anyway? Could Mom or Dad be a victim of financial exploitation?
- ▶ Estate matters — What if Mom or Dad has no will or power of attorney? What should the family do if there is a dispute about the estate?

29-2. The People Involved in the Decision

All of the family members should be present at the alternate dispute resolution sessions, even if they will not be providing care. Open discussions prevent misunderstandings.

Remember that only a court can take away a person's right to make his or her own decisions. A power of attorney does not allow a person to take away an elderly or disabled person's right to decide to leave a facility, fire a caregiver, or handle financial matters. Therefore, the elderly or disabled person has to be involved in the decision-making process. Even a person with dementia is able to make some decisions at times of lucidity, and the family should not assume that the person with dementia is not capable of participating or cannot participate.

If there are decisions to be made regarding residence, health, medication, or end-of-life issues, the family should choose a doctor or health care consultant with whom they all feel comfortable. This person would be involved in the decision-making process to provide information so that everyone would be able to make an informed decision.

The family may wish to enlist the aid of a financial advisor or a geriatric care manager to provide information to the family concerning options and alternative sources of assistance for the family member in need of care.

29-3. Types of Alternate Dispute Resolution (ADR)

Disputes in elder law cases, like other cases that are filed in court, can be time-consuming and costly. In addition, the emotional toll on everyone involved often causes problems that last long after the trial, and possible appeal, have concluded.

Fortunately, you can use some well-respected services before you involve the courts or hire a lawyer. These services can spare considerable anxiety and challenges to family harmony. The general term for this process is alternate dispute resolution (ADR). There are many types of ADR available, some of which are explained below.

Arbitration

Arbitration resembles a trial before a judge, without a jury. Generally, either a single arbitrator or a panel of three arbitrators is selected to resolve a dispute.

Arbitration usually occurs when a contract or other agreement contains a provision or clause requiring this approach. Unless one of these circumstances exists, you cannot be forced to engage in arbitration.

In elder law cases, arbitration agreements may be found in trust documents. Contracts that address a wide number of issues may contain these clauses, including contracts for the admission into assisted-living communities or long-term care facilities. If this is the case, the clause is almost always enforceable.

However, the parties may voluntarily agree to use either arbitration or to hire a retired district court judge to resolve their disputes without a contract clause or a court order (*see* C.R.S. § 13-3-111). In either situation, the parties generally pay the arbitrator or the retired judge for his or her services.

The courts have ruled that arbitration is “a favored means of dispute resolution.” Colorado’s version of the Uniform Arbitration Act (C.R.S. §§ 13-22-201, *et seq.*) provides that arbitration agreements are presumed to be “valid, enforceable and irrevocable.”

If the document requires arbitration, it may specify whether there will be one or three arbitrators. If one arbitrator is to preside, the parties must agree as to who will serve as arbitrator.

If the arbitration is to be heard by three arbitrators, each party selects one arbitrator. Those two people then select the third arbitrator. That person serves as the chairperson of the “arbitration panel.” Arbitrators are neutrals and cannot automatically vote in favor of the party who selected her or him.

Although arbitration hearings occur in a more relaxed setting than a courtroom, those who testify are placed under oath. Each side is permitted to ask questions of each witness. Exhibits are presented to the arbitrator(s) for consideration just as they would be in court.

Arbitrators’ decisions are called “awards.” The award may require someone to pay another person money, may direct that no money be paid at all, or may require one or all parties to perform certain acts. Even if no money is to be paid, the ruling is entitled an “arbitration award.”

Arbitration awards are generally final. Once the arbitrators complete their award, they usually cannot change any part of it, except for typographical or calculation errors.

If the loser at arbitration does not comply with the award, the prevailing party can file a motion in court to have the award “confirmed.” Once the award is confirmed, it has essentially the same effect as a court judgment. Unlike a court judgment, however, an arbitration award can be appealed in very limited circumstances.

If you and the other parties agree to hire a retired district court judge to resolve your dispute, the Chief Justice of the Colorado Supreme Court must approve the appointment. If that happens, you cannot change your mind and ask to return to the court to which your case had been assigned. Decisions by a retired district judge, hired by the parties, can be appealed in the same way as the decision of any judge in Colorado, although there are some limitations.

Why would you want to arbitrate if you were not required to do so, or why would you hire a judge when you have full access to the courts?

If you use arbitration or a retired state court judge, you can be confident that the person you selected has fewer cases to decide than a currently serving state court judge. If your case is heard before a retired Colorado state court judge, it probably will be heard in that judge's offices. It might also be heard in a courtroom. In any event, the law provides that cases heard before a retired Colorado state court judge can be open to the public.

Family matters, such as elder law cases, tend to include some very personal matters. Arbitrators and judges are sensitive people and provide a professional and considerate environment for all cases.

There are a number of individuals and organizations that offer arbitration services in Colorado and throughout the country. Arbitrators in those organizations who are retired Colorado state court judges can be appointed as statutory (retired) judges. Usually, the arbitration award is issued rapidly, often within 30 days after the arbitrator closes the hearing or receives the last written argument from a party.

Arbitration is a streamlined and effective way to resolve disputes. Hearings usually are set within a few months of the parties' submitting their documents to the arbitrator. The case often ends very quickly. As a result, the cost of arbitration or service by a retired Colorado state court judge can be less than the cost of a trial.

Arbitration agreements contain very specific language. If you face the prospect of arbitration, be sure to ask an attorney to review the document and explain the specific procedures you can utilize and those that you may be required to follow.

Mediation

Mediation occurs when parties to a dispute agree to ask a neutral person to consider the case and help them reach their own settlement. If you go to court, a judge or jury will decide who prevails and, in some instances, who will have to pay for some of the costs of the case. In mediation, you have a hand in negotiating an agreement.

Mediation sessions are confidential. This means that, if your efforts at settlement are not successful, neither the judge nor the jury will know anything that was said or happened during your negotiations. This is a rule of law. It permits everyone to be completely open and candid without having to worry about what will happen in court if you do not reach an agreement. There are only four exceptions to complete confidentiality. These exceptions to confidentiality arise when (1) all parties and the mediator consent to disclosure in writing; (2) communications during mediation reveal the intent to commit a felony, inflict bodily harm, or threaten the safety of a minor; (3) a statute requires public disclosure; or (4) disclosure is necessary to address claims of misconduct of a mediator (*see* C.R.S. § 13-22-307).

Mediation is usually voluntary. In Colorado, courts may order the parties in probate matters to participate in mediation prior to setting a date for a hearing or trial. Such orders provide the opportunity to explore settlement discussions prior to incurring the financial as well as emotional costs of further litigation.

Usually, the mediator asks each party to send her or him a “confidential settlement statement” about a week before the session. If you are not represented by an attorney and you are preparing this document, you should tell the mediator about the family member (whether living or deceased) as well as everyone else in your family. Explain how the dispute arose and what is at stake. Tell the mediator what your preferred result is. And help the mediator understand how you and those with whom you disagree reached the point of going to court.

Prior to the COVID-19 pandemic, mediations were held in-person, with all parties and the mediator physically present for the session. As a result of the pandemic, mediations now may be held in-person, virtually, or a mix of the two.

At the conference, the mediator may ask all parties and their attorneys to meet in one room to review the procedures and to tell everyone there what is important to him or her. This can be an emotional time for everyone. It also lets you “get things off your chest” and move on to problem-solving with the air cleared.

After this initial meeting, the mediator may ask the parties to gather in separate rooms. She or he then will meet with each party to discuss her or his confidential statement and the comments at the joint meeting, and to learn more about the people with whom the mediator is then speaking.

Mediators may be “facilitative” or “evaluative.” Facilitative mediators often hold more joint meetings, ask each party to consider the other’s point of view in his or her presence, and try to help them move toward common ground. The mediator facilitates an agreement reached by all of the parties without evaluating the strength or weakness of the case in court.

Evaluative mediators will meet with the parties separately and offer their candid views about the “pluses and minuses” of each party’s position, the potential risks of going to trial, and the mediator’s experience with cases that are at least somewhat similar to the matter at hand. The mediator will also talk about the applicable law.

Neither facilitative nor evaluative mediation is a “better” approach. Some mediators may choose which technique is appropriate for the unique circumstances of the case. When selecting a mediator, you can ask the office where the mediator works what technique(s) the mediator uses, and request that a mediator evaluate the case after facilitating a meeting.

You and the other parties in the case have to agree who or what service will provide mediation. Usually, the mediator charges an hourly fee and asks the parties to share that cost equally. Some offices charge a non-refundable case-processing fee.

Enter mediation with an open mind. An experienced elder law mediator will be sensitive to the dynamics of a family dispute. While the mediator will not be a passive person, she or he should be respectful toward you and the dispute.

If a settlement is reached, the mediator will prepare a document often referred to as “Basic Terms of Settlement” or a “Memorandum of Understanding.” You will be asked to sign this agreement. Upon doing so, it is binding and enforceable in court in the same way that a contract

would be. If an attorney is involved and/or the matter has already gone to court, the attorney will draft a formal settlement document to be filed with the court.

As discussed earlier, mediation permits people to resolve their disputes with a great deal of input. No one “wins” or “loses” every issue. In the final analysis, having a hand in the settlement process usually makes each party feel better and permits them and their family members to move on with their lives, free from the expense and uncertainty of the courtroom.

Early Neutral Evaluation

This type of ADR involves two neutral evaluators who listen to both sides of the case, gather information, and then give their assessment of the case from a practical perspective.

The goals of Early Neutral Evaluation (ENE) are to:

- ▶ Enhance direct communication between the parties about their claims and supporting evidence;
- ▶ Provide an assessment of the merits of the case by a neutral expert;
- ▶ Provide a “reality check” for clients and lawyers;
- ▶ Identify and clarify the central issues in dispute; and
- ▶ Facilitate settlement discussions, when requested by the parties.

ENE aims to position the case for early resolution, if possible. The evaluators, a team of professionals experienced in family dispute resolution, host an informal meeting of clients and counsel at which the following occurs:

- ▶ Each side presents the arguments supporting their case (without regard to the rules of evidence and without direct or cross-examination of witnesses).
- ▶ There is time for rebuttal and additional information if needed.
- ▶ The ENE team identifies areas of agreement, gathers additional information, clarifies and focuses the issues, and encourages the parties to enter procedural and substantive stipulations.
- ▶ The ENE team meets without the parties and their attorneys present to evaluate the case and recommendations regarding further information and settlement options.
- ▶ While the ENE team is in caucus, the attorneys and parties have the opportunity to discuss settlement of any issues.
- ▶ The ENE team then presents feedback and recommendations to the parties and their attorneys.
- ▶ The parties and their attorneys caucus to discuss the recommendations.
- ▶ The parties and their attorneys provide feedback to the ENE team regarding acceptance or rejection of recommendations.
- ▶ If the parties and their attorneys request further settlement discussion, they engage in settlement discussions facilitated by the ENE team, often in separate meetings with each side. This process follows the procedure for mediation as outlined above. ENE teams are often specially trained in the ENE process.

The ENE team has no power to impose settlement and does not attempt to coerce a party to accept any proposed terms. The parties may agree to a binding settlement. If no settlement is reached, the case remains on the court's docket. Teams usually include a man and a woman, and may be comprised of two mental health professionals or one mental health professional and one attorney.

Communications made in connection with an ENE session are treated in the same way as mediation and cannot be disclosed to anyone else not involved in the litigation, unless otherwise agreed to by all parties.

Family Group Conference

Often, families need to meet to make decisions that do not involve the elderly/ disabled person's legal rights. Family members frequently become so entrenched in their positions that they talk "at" each other rather than "with" each other. When this happens, no one is listening.

A neutral third person can usually break the stalemate by providing an informal setting in which to discuss the problem. The neutral person can be anyone who is trusted by all of the family members — a religious leader, a mental health professional, a lawyer, or anyone other than a family member. A mental health professional can help the family distinguish current problems to be solved from past family conflicts. A lawyer can help the family, without representing any one family member, to distinguish what is truly a legal problem from what is a family spat. Mental health and legal professionals alike can suggest other solutions to be considered, help the family find outside referrals or sources of information, and move the dispute past the communication block.

A family group conference is a concept that developed in cultures that encourage families to work together to preserve the family unit and culture. A Family Group Conference (FGC) is a formal meeting that involves extended family members in a decision-making process when it is determined that a family member is in need of care and protection. The family member is still involved in the process, just as in all of the other forms of ADR. FGCs are used in many countries. In the United States, the process is also known as Family Guided Decision-Making. In Canada, the term Family Group Conference is used. In the Netherlands and Flanders, they are known as *Eigen Kracht Conferenties* ("Own Power Conferences").

The process that is normally followed is:

Information Sharing

- ▶ Begin the FGC with a ritual; for example, a prayer or song chosen by the family.
- ▶ The specific reason for meeting is stated and the purpose of the FGC is agreed upon.
- ▶ The agenda and procedure are agreed upon by the family.
- ▶ All invited participants (family and professionals) voice their understanding of the family's strengths and major concerns.
- ▶ Any legal issues are addressed, along with "non-negotiable" concerns regarding health or the law.
- ▶ The goal of this phase is to provide the participants with a complete picture of the family and the immediate safety needs of the specific family member.

Private Family Time

- ▶ All professionals attending the conference leave the room at this time.
- ▶ The family chooses a family member to continue the meeting and enforce the rules.
- ▶ The family addresses the non-negotiable concerns first, then addresses the most serious concerns shared by the group.
- ▶ A meal is shared among the family members.
- ▶ The goal of this part is for the family to use the strengths and resources they have to make decisions about the listed concerns.

Presentation of the Plan

- ▶ The family invites the professionals back into the room and presents the plan that was developed during private family time.
- ▶ The professionals review the pros and cons of the plan with the family, who will either accept the plan as it stands or modify the plan. If more information is needed to form an informed decision, the family will decide who will provide the information.
- ▶ If changes to the plan are needed, the facilitator can help guide the group through the process.
- ▶ Once the plan provides a safe, permanent, and caring environment, the family will then figure out a way to help support the family's plan.

29-4. Use of Mediation in Estate Planning

While mediation is usually a tool used when a family is in court, it can also be a very effective tool in estate planning to avoid court involvement. For instance, in your will, you may want to empower your personal representative to require mediation if there is a dispute about your estate. You may want to include a clause requiring mediation before any court objection or dispute is filed with the court.

As discussed, many courts in Colorado now require mediation before a permanent hearing will be scheduled in a probate matter or a disputed guardianship. Denver Probate Court uses the Court Mediation Services for both paid and free mediation. Arapahoe, Adams, and Jefferson County all have free or low-cost mediation services available to the public.

Before you litigate — mediate!

29-5. For More Information

If your family needs more information regarding alternate dispute resolution, you may want to consult one of the following resources:

Mediate.com — Everything Mediation

This site has lists of mediators, both attorneys and mental health professionals, who are trained and experienced in various forms of mediation, including elder mediation, as well as articles on mediation and what you can expect.

www.mediate.com

Colorado Bar Association

The Colorado Bar Association maintains lists of lawyers who conduct alternate dispute resolution.

(303) 860-1115

www.cobar.org

Colorado Office of Alternate Dispute Resolution

(720) 625-5940 (statewide referral coordinator)

www.coloradoODR.org

Court Mediation Services

A committee of the Denver Bar Association, serving the Denver district courts, Denver county courts, and the Denver Probate Court.

1437 Bannock St., Rm. 167

Denver, CO 80202

(303) 322-6750, ext. 103

<https://courtmediationservices.org/>

Assistance Mediation Program (CAMP)

5600 Flatirons Pkwy.

Boulder, CO 80301

(303) 441-1752

www.bouldercounty.org/safety/victim/restorative-justice/community-assistance-mediation-program/

City of Fort Collins Community Mediation Program

112 N. Howes St.

Fort Collins, CO 80524

(970) 224-6022

www.fcgov.com/mediation

City of Boulder Community Mediation and Resolution Center

1777 Broadway

Boulder, CO 80302

(303) 441-4364

www.bouldercolorado.gov/community-mediation-and-resolution-center

Longmont Mediation/Facilitation Services

350 Kimbark St.

Longmont, CO 80501

(303) 776-6050

www.longmontcolorado.gov/departments/departments-a-d/community-and-neighborhood-resources/mediation-facilitation-services

The Conflict Center

4140 Tejon St.

Denver, CO 80211

(303) 433-4983

<http://conflictcenter.org>

The Mediation Association of Colorado

(303) 322-9275

<http://coloradomediation.org>

The State of Colorado 4th Judicial District Mediation Program

El Paso County Combined Courts

270 S. Tejon Street

Colorado Springs, CO 80903

(719) 452-5005

<https://www.courts.state.co.us/Administration/Unit.cfm?Unit=odr>

Chapter 30

Programs, Services, and Resources for Older Adults*

Gina Brown

Disability Law Colorado

SYNOPSIS

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30-1. Where to Start— Area Agencies on Aging (AAA)

Older adults in Colorado have access to a variety of services to protect or enhance their health, provide meals and nutrition, maintain safety and independence in their own homes, and protect their legal rights.

A great place to start when you are looking for resources for yourself or a loved one, is with the local Area Agency on Aging (AAA). Every older adult in the state is served by an Area Agency on Aging. In Colorado, there are 16 Area Agencies on Aging (See Exhibit A for the names and service areas for all AAAs in Colorado). The AAAs serve all adults 60 and older. All AAAs provide a set of core services and have programs that serve the specific needs of older adults in their geographic area. If the AAA does not provide a service, they likely know of other organizations in their geographic area that can help.

Most AAAs provide the following types of services:

- ▶ **Information and Access Services:** includes information and referral, health insurance counseling, client assessment, care management, transportation, caregiver support, retirement planning, and education.

- ▶ **Community-Based Services:** includes employment services, senior centers, adult day services, volunteer opportunities, and meals (often provided in group settings).
- ▶ **In-Home Services:** includes Meals on Wheels, homemakers, chore services, telephone reassurance, friendly visiting, energy assistance and weatherization, emergency response systems, home health services, personal care services, and respite care.
- ▶ **Housing:** includes senior housing for independent living and alternative living facilities, such as assisted living.
- ▶ **Elder Rights:** such as legal help for older adults with high social and economic needs, elder abuse prevention programs, and the long-term care ombudsman services for residents of nursing homes and assisted living facilities.

The services provided by AAAs reflect the needs of their local communities. Transportation and in-home care may be a priority in rural areas. Meals on Wheels and adult day services may be more of a priority in urban areas. AAAs regularly assess the needs of older adults in their communities and adapt to meet changing needs.

30-2. Adult Protective Services

Adult Protective Services (APS) assist at-risk adults whose health and well-being may be compromised or in danger due to abuse, neglect, or exploitation. In the Colorado Adult Protective Services statute, an at-risk adult is defined as

an individual eighteen years of age or older who is susceptible to mistreatment or self-neglect because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare, or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.

Mistreatment of an at-risk adult can include physical abuse, self-abuse, sexual abuse, neglect, confinement, financial exploitation, and other forms of exploitation. Abuse includes nonaccidental infliction of pain or injury (such as bruising, malnutrition, or dehydration), unreasonable restraint, and unlawful sexual behavior.

Self-neglect is what happens when an at-risk adult does not seek services needed to meet his or her own essential human needs. Examples include suicide attempts, self-inflicted wounds, and pulling out hair.

Mandatory Reporting

Specific professionals in Colorado are “Mandatory Reporters.” This means they must report suspected mistreatment, self-neglect, or exploitation of at-risk adults to a law enforcement agency within 24 hours of the reporter witnessing, learning about, or suspecting the mistreatment.

An at-risk elder is any person aged 70 or older. Mandatory reporters must report suspected abuse to the local law enforcement agency.

Urged Reporting

Adults who are not defined by Colorado law as “at-risk” elders may be at risk because of factors other than age, including a traumatic brain injury or Alzheimer's. If a professional

or any other person suspects maltreatment of an at-risk adult, they are urged to report the concerns to the Department of Human or Social Services in the county where the at-risk adult lives. Adult Protective Services evaluates all reports, shares the report with law enforcement, and determines the next actions. APS actions may include investigations, joint investigations with law enforcement, and protective services for the at-risk adult.

To report suspected abuse, neglect, or exploitation: Call the county department of social services where the at-risk individual lives and ask for Adult Protection intake. Have as many facts together as possible when you make the call, including names, addresses, phone numbers, dates, times, and the reasons you are making the call on this individual's behalf. If you are concerned about the welfare of an at-risk adult, you may also contact local police with your concerns and ask them to do a wellness check. They can then assess the situation and make a referral, if necessary, to Adult Protective Services (APS). If the individual is in immediate danger, call 911.

Adult Protective Services Steps

APS staff will assess the individual's ability to make appropriate decisions for himself or herself and decide whether to open a case and make interventions on the individual's behalf. All at-risk adults have the right of self-determination and may refuse or reject protective services. A court must sometimes decide whether the individual is competent to make decisions for himself or herself. When given consent or appointed by the court, APS staff will investigate reports of abuse, neglect, and exploitation; remove at-risk adults from danger; and make arrangements for appropriate programs and services. Interventions are provided in ways that cause minimal disruption to the at-risk adult's life and ensure that his or her dignity and confidentiality are protected.

30-3. Ombudsmen Programs

Residents of licensed nursing homes and assisted living facilities, as well as PACE (Program of All-Inclusive Care for the Elderly) program participants often need advocacy services to protect their rights.

Long-Term Care Ombudsman

The Colorado Long-term Care Ombudsman program advocates for residents of licensed nursing homes and licensed assisted living residences. The primary purpose of the Long-Term Care Ombudsman Program is to promote and protect the residents' rights guaranteed under federal and state law.

The State Long-Term Care Ombudsman provides coordination and oversight of the statewide ombudsmen representatives. The program has a network of local offices across the state, which recruit, train, and manage teams of long-term care certified ombudsmen. Certified ombudsmen visit long-term care facilities throughout the state to monitor conditions and care and provide a voice for residents.

Long-term Care Ombudsmen work to resolve individual resident complaints and to bring about changes at the local, state, and national level to improve long-term care. Contact your local long-term care ombudsman at <https://www.coombudsman.org/> to locate the name and phone number of the long-term care ombudsman in your area.

PACE Ombudsman

PACE offers comprehensive medical care and social services to people who are 55 years and older and who meet the nursing home level of care. Directed by the State PACE Ombudsman, the PACE Ombudsman Program advocates for PACE Participants residing in their community of choice in Colorado. The PACE Ombudsman Program provides critical and independent advocacy to help individuals attempting to enroll in PACE, PACE participants, and those who have disenrolled in PACE navigate the complex service delivery system within PACE and ensure quality care. PACE Ombudsmen provide assistance to resolve issues related to care, health, safety, and participant rights. PACE Ombudsman services are free, confidential, and *directed by the PACE participant*. You can contact the PACE Ombudsman Program at <https://www.coombudsman.org/pace-ombudsman/>.

30-4. Elder Rights and Legal Help

There are a variety of services and resources for older adults seeking information about their legal rights.

Colorado Bar Association Find-A-Lawyer

The Colorado Bar Association has an online database of attorneys who practice in different geographic areas of the state and have different practice area expertise. You can search the database by name, legal category, or use the guided search feature. <https://www.cobar.org/Licensed-Lawyer>

Colorado Courts Self Represented Litigant Coordinators

Every Judicial district in Colorado has a self-help desk that provides assistance to people needing help navigating through the court system. The Colorado Courts' self-help website lists helpful information for individuals dealing with a variety of legal concerns.

Colorado Legal Services

Colorado Legal Services provides legal services to low-income individuals in Colorado and older adults who need help with civil legal issues. The Colorado Legal Services web site also has educational available about common legal issues, including consumer and housing. More information is available on the Colorado Legal Services web site: <https://www.coloradolegalservices.org>.

The Colorado Legal Assistance Program

The Colorado Legal Assistance Program provides legal advocacy to protect critical needs of older Coloradans, such as preserving housing, assuring access to medical care, and preventing abuse and neglect. The Colorado Legal Assistance Program is established and funded by the federal Older Americans Act and the state Department of Human Services Division on Adult Services and Aging. Contact the local Area Agency on Aging for more information about the legal assistance program in your region of the state.

30-5. Tax Assistance and Counseling

There are many programs throughout the state that provide tax assistance or counseling to older adults.

Disabled Veteran Exemption: This is available to applicants who sustained a permanent disability while serving on active duty in the United States Armed Forces and surviving spouses of previously qualified disabled veterans. Other eligibility requirements apply. Applications must be submitted to the Colorado Department of Military and Veterans Affairs by July 1 each year. Visit <https://vets.colorado.gov/> or call (303) 914-5832 for more information.

Property Tax Assistance: The Colorado Senior Property Tax Exemption is available to seniors aged 65 and older who have lived in their homes for at least 10 years or are the surviving spouse of someone who meets this requirement. The program reduces the amount of taxes they pay on their primary residence. Apply for the Senior Property Tax exemption with your county assessor's office.

Property Tax Deferral: This program is for Colorado residents who are 65 years of age or older or are in active military service. As of January 2023, it was also expanded to those who do not qualify under the senior or disabled veteran exemption if they exceed the property tax cap of 4 percent, averaged from the previous two years. The tax deferrals programs allow eligible individuals to defer or postpone payment of their property taxes. The state treasury pays the taxes directly to the county for the taxes due that year. This loan (with interest) will be logged as a lien against the property, which is recovered when repaid or when the owner dies or the property changes hands. Applications for this program are available from the county assessor and should be submitted between January 1 and April 1 each year.

Property Tax/Rent/Heat Rebate: This program is for full-year Colorado residents who are aged 65 or older, surviving spouses who are 58 years of age or older, or persons with disabilities, regardless of their age. Income limits apply. Eligible individuals can receive this rebate even if they normally do not file any other income taxes. Visit <https://tax.colorado.gov/PTC-rebate> or contact the Colorado Department of Revenue taxpayer helpline: (303) 238-7378.

Property Tax Work-Off Program: Some taxing entities offer a property tax work-off program for citizens who are age 60 or over or who are physically or developmentally disabled. As an example, by volunteering in some local school districts, you may be able to work off some portion of your property taxes. Call your county assessor's office or local school district for more information on programs in your area.

Tax Counseling: Many local senior organizations partner with the Internal Revenue Service to provide the Volunteer Income Tax Assistance (VITA) program. Trained volunteers from nonprofit organizations provide free tax counseling and basic income tax return preparation for seniors, the disabled, and lower-income people. Many seniors who do not normally file are often unaware of rebates and refunds for which they may be eligible, such as rent, heat, and property tax rebates. This program is usually conducted at senior and other community centers during tax preparation season. Most locations offer electronic filing. To locate the nearest VITA site, call (800) 906-9887.

30-6. Senior Recreation Centers

Senior Recreation Centers provide a variety of activities and services depending upon the size and characteristics of the local community. Senior recreation centers have opportunities for older adults to participate in social, educational, fitness, and recreational activities.

Most senior centers offer fitness classes, which may include aerobics, pickle ball, dance, yoga, tai chi, and water fitness. They also offer various enjoyment classes, including painting, pottery, jewelry-making, scrapbooking, cooking, computers, and languages. Some offer travel and outdoor recreation programs, as well as groups, clubs, and indoor games such as bingo, poker, pool, and bridge. Some senior centers may offer non-recreational programs, such as transportation services, group meal sites, and information and referral services.

30-7. Senior Service and Resource Organizations

Senior resource organizations offer a variety of programs and services of a non-recreational nature. These services support the health, safety, and well-being of older adults. Senior resource organizations are funded entirely, or in part, by counties, municipalities, private foundations, and local AAAs.

Similar to senior recreation centers, senior resource organizations usually reflect and focus on the most significant needs of older adults in their communities.

30-8. Additional Programs and Services for Seniors

Contact your local AAA to learn more about services and resources available to you. The list of AAAs in the state is provided as Exhibit 30A. In addition, if you have difficulty locating a program, service, senior center, or senior organization in your area, call the United Way Helpline at 211. The 211 Help Center covers all 64 counties in Colorado. It is a confidential and multilingual phone line that can connect anyone in the state to vital resources. You can also text your zip code to 898211. Additionally, you can search the online Help Center database: <https://www.211colorado.org/>.

Aging and Disability Resource Centers: These centers provide information to help older adults and people with disabilities access long-term services and supports (LTSS). Call the ADRC at (844) 265-2372.

Adult Day Services: Provide care, activities, and meals for adults who have functional impairments while their caregivers work or attend to other needs. Participants interact with peers in a social setting during the day and then return to the comfort of their own homes at night when family or other caregivers are present. Adult day services are provided by a range of organizations, including for-profit and nonprofit agencies, and are often covered by insurance, Medicaid, or other public funds.

Benefits Check-Up: The National Council on Aging developed this online tool to connect older adults and people with disabilities to financial benefit programs for which they may be eligible. Seniors with limited incomes may learn for example, they are eligible for programs such as Old Age Pension or programs that pay all or part of their Medicare premiums. Contact NCOA at (800) 794-6559 or <https://benefitscheckup.org/page/about-ncoa>.

Care Management: A care manager can be an important resource to families and caregivers who are attempting to arrange for care or to access resources for their loved ones. A care manager may be fully funded by Older Americans Act funds for seniors aged 60 and over. A care manager meets with the older adult client and interested family members and conducts a full in-home assessment of the individual's strengths and needs. This assessment provides information on how well the individual can perform each of his or her activities of daily living,

such as bathing, dressing, housework, money management, and social activities. A home safety assessment is conducted, and safety devices such as railings and grab bars may be installed for the client. The care manager then creates a care plan that outlines the services needed and identifies providers. Care managers also help with necessary applications for services and benefits. The providers identified in a care plan may include Meals on Wheels, transportation, home health, and volunteers. The care manager carefully monitors the delivery of services and makes changes as needed. Care management reduces the burden on loved ones and ensures the best possible, least-restrictive care for the client.

Caregiver and Homemaker Services: Public funds are sometimes available to provide in-home care and/or homemaker services. AAAs often fund these services in local communities. County Options for Long-Term Care agencies fund programs such as Home and Community Based Services (HCBS), which place caregivers in the homes of persons in need of help with activities of daily living. A Home Care Allowance (HCA) may also be available, which gives those in need of care a monthly allowance with which to pay someone for cleaning or caregiving. Some agencies provide free respite care, in which either a volunteer or paid staff is placed in the home for several hours or more per week to give the primary caregiver a break from his or her duties.

Dental, Vision, and Hearing Services: A number of foundations, clinics, agencies, and service groups help pay for dentures and dental work, vision and glasses, and hearing and hearing aids, or provide services at a greatly reduced rate. Call 211 or your local senior organization for more information.

Employment Programs: Various agencies, such as AARP and county workforce centers, have programs that help seniors find employment. The Senior Community Employment Program assists participants to find a minimum wage position while working at government and non-profit agencies and learning new skills. The program is operated by the U.S. Department of Labor: <https://www.dol.gov/agencies/eta/seniors> or the toll-free help line at (877) US2-JOBS (877) 872-5627.

Fall Prevention Services: Sadly, falls are the leading cause of injury deaths among older adults and the most common cause for hospitalization. Fall prevention includes home safety assessments and modifications, medication reviews, health assessments, hoarding and clutter clean-up services, and vision screenings. A number of free and low-cost programs and services are available to reduce or eliminate falls.

Forms Assistance: Seniors often are reluctant to apply for benefits for which they are eligible because of sometimes lengthy and confusing applications. Many senior resource organizations have staff who help seniors through the maze of paperwork necessary to receive benefits. County social services departments also have staff who help with applications for benefits such as food stamps and Medicaid.

Free 911 Cell Phone: Some senior organizations and law enforcement agencies offer free cell phones for seniors. These cell phones are typically reconditioned used phones that will only dial 911. The phones allow older adults to dial for help in an emergency involving themselves or others. There is no contract or monthly service fee.

Friendly Visiting and Telephone Reassurance: Volunteers are often available in local communities to make visits to homebound seniors who are isolated or in frail health. This provides regular social contact and helps to ensure safety and well-being. Volunteers also provide telephone reassurance, whereby isolated seniors are called on a regular basis for socialization

and to check on their well-being. This is also a great volunteer opportunity, and often connects homebound seniors looking for something to do with similar individuals.

Handyman, Home Rehabilitation, and Weatherization Services: Some senior organizations offer low or no-cost handyman services. Services may be performed by professionals or skilled volunteers. Many counties and municipalities offer housing rehabilitation programs where grants or low-interest loans are given to low-income homeowners to assist in repairing or replacing major housing systems that are potential health or safety concerns. Weatherization programs, which assist low-income homeowners in saving energy dollars by insulating homes, may also be available.

Medical Equipment Lending: Programs are available that loan durable medical equipment, such as walkers, wheelchairs, bath benches, etc., free of charge to older adults recovering from surgery or temporarily in need of these items for health and safety. Call 211 or check with your local senior organization for details.

Nutrition Services: Services to help meet the nutritional needs of seniors include the following programs.

Meals on Wheels: This is a nationwide program that varies in services and scope from community to community. In general, volunteers deliver hot or frozen meals to homebound individuals who are unable to shop or prepare nutritious meals on their own. The regular contact by the volunteer also provides a wellness check and social contact for often frail, at-risk individuals. Costs are usually offset by donations or fees on a sliding scale.

Congregate Meals: Group meals are provided free or at low cost at various sites, including schools, senior centers, and other public sites. Older adults enjoy a nutritious meal in the company of others.

Other Food Programs: Food banks, food stamps, and other programs are available to older adults living on limited, fixed incomes. Food banks usually serve local county and other geographical areas and have various days and hours of operation. Call 211 or your county social services department for a food bank in your area. Food stamp programs provide a regular monthly amount that may be spent on food-only items. Enroll for food stamps through your county department of social services. Government programs, such as the Commodity Supplemental Food Program (CSFP) may also be available on a monthly basis. Seniors are able to pick up government commodities at a site in their community or have them brought to their house if they are homebound.

Medical Alert Systems: A personal emergency response system (PERS) is an electronic device designed to let the user summon help in an emergency. Medical alert systems may be purchased or leased and may have a monthly service fee. As with any major purchase, it is important to check out several systems before you buy to carefully assess the features you need and compare prices. Medical alert systems may be covered by long-term care insurance or Medicaid benefits.

Rent and Utility Assistance: Various nonprofit and faith-based organizations offer rent, utility, and prescription assistance. Funding may come from a number of government and private sources. Call 211 for names and numbers of local agencies.

Resources for Pets: Pets are often vital companions for older adults, many of whom are homebound and have limited social contacts. There are many organizations throughout the state

that offer support for older adults and their pets, including dog-walking and pet-sitting services, as well as help with veterinary care. Some animal shelters and animal rescue organizations offer seniors the opportunity to adopt a pet free of charge. Food banks and other organizations often have pet food and other products available so that low-income seniors can provide for their pets. There are also for-profit businesses that come directly to the home for pet grooming, vaccinations, and other services.

Reverse Mortgages: See Chapter 20, “Reverse Mortgages,” for more information.

Seniors Bluebook: The seniors bluebook has a national database and has print versions in more than 25 metro areas, including the Denver metro area. The Seniors Bluebook lists local resources for older adults.

Senior Liaison Officers: Some law enforcement agencies employ a senior liaison officer, who will answer questions and concerns for seniors and provide information on frauds, scams, and guarding personal safety. They help to prevent seniors from being victims of crime and link them to other resources and agencies for assistance. Senior liaison officers often have a weekly presence in senior centers, shopping malls, and other public places.

Support Groups: In a support group, members give each other support, encouragement, and understanding about a similar problem, whether it be grief, caregiving, addiction, disease, etc. Support groups are usually led by a professional who offers encouragement and resources while allowing members to guide the conversation in a relaxed, non-threatening atmosphere. Most all groups are free of charge and provide a social connection for those experiencing loss or disease. A wide variety of support groups are available for seniors and their caregivers. Contact your local senior organization or mental health department for support groups in your area.

Transportation: Many local transportation districts have programs to serve disabled and frail individuals who are unable to use regular public transportation. Costs are minimal. Some senior organizations have government funding to provide free transportation to doctors, dentists, meal sites, food banks, or grocery stores. Some agencies serving seniors may also have volunteers who will provide free transportation.

Veterans Community Living Centers: Colorado has five veterans community living centers that provide long-term care to honorably discharged veterans, their spouses, and Gold Star parents of children who died while serving in the armed forces. <https://cdhs.colorado.gov/our-services/older-adult-services>.

Volunteer Opportunities: AmeriCorps Seniors RSVP is a nationwide program that connects adults aged 55 and over to a wide variety of volunteer opportunities in their communities. The *Retired and Senior Volunteer Program (RSVP)* connects volunteers aged 55 and over with service opportunities in their communities that match their interests and skills. Volunteers are placed with schools, hospitals, food banks, and many other nonprofit agencies. The *Foster Grandparent Program* connects volunteers aged 60 and over with children and young people with exceptional needs. Volunteers mentor, support, and offer guidance to vulnerable children.

* CBA-CLE would like to thank Lew Forester for his work writing and updating the chapter in prior years.

Exhibit 30A. Area Agencies on Aging By Regions

STATE OF COLORADO AREA AGENCIES ON AGING (AAA)		UPDATED 12/02/2022 PUBLIC USE ONLY
Region 1 Northeastern Colorado Assoc. of Local Gov.	Bev Dobner, AAA Director 970.867.9409 Logan, Morgan, Phillips, Sedgwick, Washington, Yuma	
Region 2A Larimer County Office on Aging	Erin Alt, AAA Program Manager 970.498.7750 Larimer	
Region 2B Weld County AAA	Kelly Morrison, AAA Director 970.346.6950 Weld	
Region 3A DRCOG AAA	Jayla Sanchez-Warren, AAA Director 303.455.1000 Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, Jefferson	
Region 3B Boulder County Area Agency on Aging	Christine Vogel, AAA Director 303.441.3570 Boulder	
Region 4 PPACG Area Agency on Aging	Jody Barker, AAA Director 719.471.2096 El Paso, Park, Teller	
Region 5 East Central Council of Governments	Sean Vanous, AAA Director 719.348.5562 Ext. 5 Cheyenne, Elbert, Kit Carson, Lincoln	
Region 6 Lower Arkansas Valley AAA	Jim Collins, AAA Director 719.383.3166 Baca, Bent, Crowley, Kiowa, Otero, Prowers	
Region 7 Pueblo AAA	Rejan Ricottone, Adult Program Administrator 719.583.6849 Pueblo	
Region 8 South-Central Colorado Seniors Inc.	Monica Wolfe, AAA Director 719.589.4511 Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache	
Region 9 San Juan AAA	Christina Knoeli, AAA Director 970.264.0501 Archuleta, Dolores, La Plata, Montezuma, San Juan	
Region 10 League for Economic Assistance & Planning	Eva Veitch, AAA Director 970.249.2436 Delta, Gunnison, Hinsdale, Montrose, Ouray, San Miguel	
Region 11 Assoc. Governments of Northwest Colorado	Heather Jones, AAA Director 970.248.2717 Garfield, Mesa, Moffat, Rio Blanco	
Region 12 Northwest Colorado Council of Gov.	Erin Fisher, AAA Director 970.468.0295 Eagle, Grand, Jackson, Pitkin, Routt, Summit	
Region 13 Upper Arkansas AAA	Tom McConaghy, AAA Director 719.539.3341 Chaffee, Custer, Fremont, Lake	
Region 14 Huerfano/Las Animas Area COG	Veronica Maes, AAA Director 719.845.1133 Huerfano, Las Animas	

COLORADO AREA AGENCIES ON AGING REGIONS

1 Bev Dobner, AAA Director
 Northeastern Colorado Association of
 Local Governments
 231 Main Street, Suite 211
 Fort Morgan, CO 80701
 Phone: 970.867.9409
 Fax: 970.425.3553
 Email: beverly.dobner@necalg.org
 Website: www.necalg.com
 Northeastern Region
 Counties: Logan, Morgan, Phillips,
 Sedgwick, Washington, Yuma

2-A Erin Alt, AAA Program Manager
 Larimer County Human Services
 Larimer County Office on Aging
 1501 Blue Spruce
 Fort Collins, CO 80524
 Phone: 970.498.7750
 Fax: 970.498.6304
 Email: altec@co.larimer.co.us
 Website: www.larimer.org/seniors
 Northeastern Region
 County: Larimer

2-B Kelly Morrison, AAA Director
 Weld County Area Agency On Aging
 P.O. Box 1805
 315 C. N. 11th Ave.
 Greeley, CO 80631
 Phone: 970.346.6950
 Fax: 970.346.6951
 Email: kmorrison@weldgov.com
 Website: www.weldgov.com
 Northeastern Region
 County: Weld

3-A Jayla Sanchez-Warren, AAA Director
 DRCOG Area Agency on Aging
 1001 17TH St., Suite 700
 Denver, CO 80202
 Phone: 303.455.1000
 Fax: 303.480.6790
 Email: jswarren@drcog.org
 Website: www.drcog.org
 Northeastern Region
 Counties: Adams, Arapahoe, Broomfield,
 Clear Creek, Denver, Douglas, Gilpin, Jefferson

3-B Christine Vogel, AAA Director
 Boulder County Area Agency on Aging
 P. O. Box 471
 3482 North Broadway
 Boulder, CO 80306
 Phone: 303.441.3570
 Fax: 303.441.4550
 Email: cvogel@bouldercounty.org
 Website: www.bouldercountyaging.org
 Northeastern Region
 County: Boulder

4 Jody Barker, AAA Director
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Chapter 31

Aging in Place: Maintaining Your Independence at Home

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SYNOPSIS

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“Aging in place” is a rapidly expanding movement with emphasis on creating a safe and workable alternative to the traditional model of out-of-the-home living and care for aging adults. This model utilizes all available financial resources of the aging adult and all available community resources to create a safe environment for the individual to maintain his or her independence in the least restrictive environment possible. The number one choice of aging adults is to “stay put” and to continue living in their own homes.

This chapter discusses the “aging in place” model, universal design of homes, and suggestions to assist Denver metro area aging adults to remain living independently in their homes. Aging adults in other communities can use this model to explore resources available in their communities.

31-1. Demographics

The State of Colorado had a 14.1 percent increase in its total population from 2010 to 2019, growing 713,644 — from 5.03 million to 5.7 million people with a projected population of 5,763,976. However, during this same time period, the aging adult population (comprised of people 65+ years of age) increased as follows: The 65- to 74-year age group increased 24 percent; the 75- to 84-year age group 69 percent; and the 85+ age group 49 percent. Colorado's 65 and older population, by 2030, is projected to be 25 percent larger than it was in 2010, increasing from 550,000 to 1,250,000. Between 2010 and 2020, 155 Coloradans per day are turning 65 years old.

Colorado ranks 21st in the United States in the number of baby boomers (those born between 1946 and 1964) as a percentage of the state's total population. Colorado ranks third in the United States out of states with the fastest growing senior populations. In 2011, the first baby boomers turned 65, qualifying them for Medicare and full-benefit Social Security Retirement Income. Colorado is ranked fourth in the Best States in America for Aging by *U.S. News & World Report* (9/2019).

Colorado will not realize the full impact of its aging baby boomers for another 15 or 20 years. Currently, 66 percent of Colorado's total senior population is between the ages of 60 and 74. Baby boomers comprised 1.3 million people, or 26 percent of Colorado's total population, in 2010. The 65 and older age group is forecast to increase by 61 percent in the decade from 2010 to 2020, from 549,629 to 891,970.

The Denver metro area presently has 46.7 percent of the state's senior population and will experience higher growth in this age group than the entire rest of the state. Overall, the Denver region has a lower concentration of older adults than the nation as a whole, at 12 percent versus 16 percent. More than one in four people in Denver will be 60 years of age or older by 2030. In 2003, it was one in eight.

Eight counties comprise the Denver Regional Council of Governments (DRCOG): Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson. Adults aged 60 to 74 comprise 66 percent of the DRCOG Denver region's population. Forty-five percent of all Coloradans aged 65 and older live in four front range counties: Arapahoe, Denver, El Paso, and Jefferson. The Denver region will see a 36-40 percent increase in the 60+ population over the next 10 years. (See DRCOG "Boomer Bond Program," <https://drcog.org/services-and-resources/boomer-bond>.)

The DRCOG Denver region statistics include the fact that older women are three times more likely to live alone than older men. Fifty percent of the older adults living alone are ages 75 and older. Also, 77.4 percent of all groups of older adults live in owner-occupied units, with 80 percent of the 60- to 74-year age group, 74.4 percent of the 75- to 84-year age group, and 56.5 percent of the 85+ age group.

As the demographics change, so, too, will the demands of our aging population to challenge the paradigm and the demand for home-based care and aging in place, rather than receiving care and living outside an aging adult's home, such as in an assisted living facility.

31-2. Aging in Place

"Aging in place" is defined by the National Aging in Place Council as the ability to continue to live in the familiar environment of one's home in a safe, independent, and comfortable manner;

regardless of age, income, or ability level. To accomplish this goal, an aging adult's home must have easy access in and out of the primary entrance; be free of clutter; and have safe, non-slip flooring surfaces, wide hallways, good lighting, easy access to bathroom and sleeping areas, and stable furniture. The very best time and way to accomplish this goal is before there is a crisis and a need for barrier-free and easily accessible living.

Aging adults are encouraged to obtain universal design in any new home and to implement these modifications in any existing home. Many good checklists, including HomeFit Guide, are found on the AARP website. See "Resources" in section 31-12.

31-3. Creating an Aging in Place Plan

All of us want to be able to stay in our self-chosen home and age in the best possible environment and manner available to us. I have written and lectured on this topic for over a decade. However, in June 2014, I had a first-hand, eye-opening experience that made me question my own ability to age in place, and changed my thinking about what is most important to all of us baby boomers and aging adults striving to successfully age in place.

First of all, **you have to have a plan!** Successful aging in place does not just happen. You need to facilitate this event. After I wrote this chapter, I found an excellent resource: "Act III: Your Plan for Aging in Place." See "Resources," section 31-12. Start creating or revising your plan now. The Covid-19 pandemic PHE changed and accelerated many aging adults' plans. Take time now to re-evaluate your plan and your priorities.

The following items are critical to having a successful aging in place plan and include:

- 1) **Wear and use a smart watch.** Both Apple and Samsung make excellent and cost-effective devices that allow you to easily make calls and read emails and text messages. They have many available applications, including fall detection, emergency response, medication reminders, and fitness and health trackers. This recommendation is especially important for people who live alone. You will have an increased sense of safety knowing you always have a means to get help, regardless of your situation.
- 2) **Designate an appropriate health care advocate.** This person may or may not also be your agent under a Medical Power of Attorney. Have her or him physically with you 24/7 if you are hospitalized and with you at medical appointments and at your telehealth visits. Your health care advocate can help keep you safe and also will hear medical and other information given to you that you might not hear or understand.
- 3) **Execute current Medical and Financial Powers of Attorney.** I recommend you designate a person who lives locally to be your agent under a Medical Power of Attorney. Medical providers seem not to be able to converse well with out-of-town individuals.
- 4) **Develop and have supportive and kind relationships** with yourself, family members, friends, and neighbors. You cannot successfully age in place in a vacuum. You will need help. Unless you are a person of unlimited financial resources, you may need unpaid assistance. See also Section 31-10, "Home Care," for information about paid assistance.
- 5) **Make all necessary home modifications.** You need a safe and appropriate home environment. This might be your current home or a different home. See Section 31-

5, "Creating a Safe Environment," and Section 31-6, "Seniors Handyman and Home Modification Programs."

- 6) **Install a lock box near the outside of your front door.** I recommend using the type that attaches to the door or house trim versus the type that loops over the doorknob. These lock boxes cost around \$30 and are significantly less expensive than the cost of replacing or repairing your front door if firemen have to break it open to reach you in an emergency.
- 7) **Carry your cell phone.** Always carry your cell phone with you everywhere, or wear a smart watch, especially if you are outdoors in your yard. Also, have an easy-to-reach telephone on each level of your home, especially in your bathrooms, bedroom, and kitchen.
- 8) **Plan for potential functional and physical changes** due to any progressive medical conditions and diseases you have. See also Section 31-9, "Emergency Response Systems."
- 9) **Arrange affordable, easily accessible, and safe transportation.** Your 18- or 85-year-old friend might be "affordable and accessible" but also could be a very unsafe driver. Be smart! Uber and Lyft may be good options.
- 10) **Maintain your health** through proper nutrition, hydration, exercise, and compliance with medication and medical advice. See Section 31-7, "Nutrition."
- 11) **Develop a home safety and evacuation plan.** Prepare for any potential natural disasters, have a home evacuation plan, and have working smoke alarms, carbon monoxide detectors, and a fire extinguisher. See Section 31-8, "Disaster Evacuation Plans," and Section 31-9, "Emergency Response Systems."

31-4. Covid-19 Pandemic Takeaways

There are not enough adjectives to describe the Covid-19 pandemic, the events of 2020, 2021, and 2022, and their effect on everyone, both young and old. However, for so many reasons, this pandemic affected aging adults at a different rate and intensity. I worked as a healthcare professional, doing home health physical therapy during the pandemic. These are my positive takeaways from Covid-19 and how aging adults will see a benefit to their physical, emotional, and spiritual well-being. When creating your successful aging in place plan, think about these suggestions as you look at your home, your lifestyle, and your goals.

- 1) **Telehealth.** It's here to stay. I believe Medicare and other insurances will continue paying for it because it keeps people of all ages, especially aging adults, healthier. No longer will aging adults not obtain prompt medical attention because of lack of transportation, inclement weather, or feeling too sick to leave their homes. Explore getting good technology that allows you to have successful medical provider visits. Also, invest in a blood pressure cuff, thermometer, pulse oximeter, and scale so you have your vital information available for your medical provider.
- 2) **Technology.** Love it or hate it, technology will allow aging adults to safely age in place. We've seen an exponential expansion since March 2020. Assess your preferences. Then invest in reliable computers and other technology to make your home safer and more livable and your life more enjoyable. Invest in a larger monitor or TV to make viewing enjoyable. Technology can include web cameras so someone can monitor your safety,

fall motion sensors, medication boxes with alarm reminders, and you telling “Alexa” to turn on the lights, shut the blinds, play music, or answer your questions.

- 3) **Video conferencing.** As we all have experienced during this pandemic, there are many positive attributes of this technology. The majority of us have heard of or used Zoom, FaceTime, GoToMeeting, Facebook Messenger, or Skype to work, talk with friends, have group meetings and events, take classes, stay connected with family and friends, celebrate life events, and attend legal proceedings. No longer will aging adults miss out on seeing such life events as weddings because they can’t travel. They’ll be able to see it on Zoom. The adverse effects of social isolation have been huge on everyone, especially aging adults. As part of your plan, explore all video conferencing options to maintain your emotional, spiritual, and physical well-being for now and the future. Install your technology in a room you enjoy, that has adequate light and comfortable space.
- 4) **Remote work.** Being able to work remotely or telecommuting significantly benefits aging adults who want to continue working as long as possible. It is a flexible working arrangement that requires a reliable computer and internet connection, time and task management skills, comfort with technology and digital communication, and good written and oral communication skills. Many aging adults have had the ability to make this transition during the pandemic and know the benefits and challenges it can present. The most important requirement is to have a dedicated workspace in which all your needed technology fits and that provides privacy from your household members. If your aging in place plan includes a new home or remodeling your current one, evaluate this need.

31-5. Creating a Safe Environment

Clutter, Lighting, and Rugs

Pick it up and store it, throw it away, or recycle it — but get rid of it now! Clutter, and too much “stuff,” present a very unsafe home environment ripe for causing medical conditions or falls that may result in serious physical injuries or even death. You need to have adequate maneuverability in all your rooms to access them safely, without risk for fall.

Throw rugs of any size are of significant concern for causing falls and injuries. The best advice is to remove them all. Always keep your bath rug off the floor until needed during bathing. If you cannot get rid of the rugs, at least secure the edges with two-sided tape. Carpeting should be in good condition, lay flat, and preferably be pile carpeting having a thickness of one-half inch or less.

As a friend or relative of an aging adult whose home shows safety concerns such as inadequate lighting, loose rugs, and lack of handrails or grab bars, it is your responsibility to express your concerns and assist the aging adult to rectify these safety issues. Faster than the blink of an eye, an aging adult can lose his or her balance, fall, and sustain an injury of some magnitude. Falls often occur because of inadequate lighting or when rushing to answer the phone or use the bathroom.

Frequently, these injuries, such as head injuries and hip, arm, or back fractures, are very serious. If you, the aging adult, sustain a fall accident, the subsequent injuries may, unfortunately, cause you never to be able to return to living in your home. Do not take this chance: the odds are

against you. Maintaining your safety and health is important. All rooms in your home must have good lighting, non-slip flooring, and be uncluttered.

Stairs

Can you safely get into and out of your home? Where would you live if you could not get into your home because of stairs and structural barriers, or if you could get inside your home, but then could not access the bathroom or bedroom because of stairs? Universal design recommends that your exterior entrance be barrier free and that you get rid of any stairs, both outside and inside your home. This may mean exploring the option of modifying your home to make it accessible, getting a stair glider, or moving to a universal design home. While your health is good and stable, explore all of your living options.

Anyone who is over 60 years old ought to live in a single-level home with step-free access. This is especially important for someone who already has challenging medical conditions such as stroke, brain injury, Parkinson's disease, diabetes, lung disease, or severe arthritis. Decide now, without the additional stress of having the necessity to act.

When you either start to modify your home or look for a new one, first examine the entrance. Do you need a ramp? Is there adequate room for one? Can the surface be protected from adverse weather? The majority of folks go in through their attached garage entrance, as it usually affords the fewest number of stairs. Will this work for you?

If you need to install a ramp, the recommended ramp incline is a 12:1 ratio. This means that for every inch of height, the ramp must be 12 inches in length, which keeps the incline safe and manageable for anyone propelling a wheelchair, pushing someone in a wheelchair, or walking up the ramp using a walker or cane. If there is inadequate room for a permanent ramp, explore whether there is adequate room for a portable ramp. Portable ramps tend to be lightweight and durable.

Steps into a home usually do not have handrailings, as most city building codes only require a railing if you have four or more steps. Do some good pre-planning and have stair railings installed on all your stairs, whether they are inside or outside stairs, preferably on both sides. AARP's website has a link to "certified aging in place" (CAPS) professionals who are trained in common remodeling projects and other home modifications that can help people live independently in their own homes. Additionally, rehabilitation professionals — physical and occupational therapists — can do home safety and accessibility assessments.

Once you are inside your home, assess your other stair issues. Do you have a multi-level home? Are your bathrooms only on different levels, and if so, how will you access them? Do you need to remodel your home to add a main floor bathroom or master bedroom suite? Are there any steps to other rooms or areas? If the need arose, are your stairways designed to accommodate a "stair glider" or could you have an elevator installed? Plan your future need for an elevator by having closets built stacked on top of each other; later, they can be used as the elevator shaft.

A stair glider is an adaptive apparatus that has a railing installed on the stairs with a seat attached to it and is electrically powered by the person sitting on it or walking on the stairs next to him or her. The cost of a new stair glider with installation varies depending on load capacity and type of stairway (for example, straight or L shaped).

If you have a flight of stairs with a platform halfway, or have two sets of stairs such as in a tri-level or bi-level, you may need to purchase a stair glider that go around turns to accomplish

safe transit up or down these stairs. The recommended stair width in a new home is four feet, which allows adequate space on the stairs for both the stair glider lift and people walking on the stairs. There are numerous websites for researching stair gliders and good vendors in the Denver metro area.

Hallways and Doors

The minimum recommended hallway width is 36 inches. However, a width of 42 inches or more is optimal. Entrance doorways should be 36 inches. Bathroom doorways often are too narrow, especially in older homes. Homes built prior to the 1970s tend to have a standard width of 24 inches for bathroom doors. The recommended bathroom doorway width is 36 inches, which allows someone to walk in easily using a regular-width walker or crutches or to propel a wheelchair.

You need to be able to access and enter your bathroom easily and safely. Examine all your bathroom doorways to determine if the width can be increased to 36 inches to allow for 32 inches of clear width for passage of most wheelchairs and walkers. If it does not have this clearance, then widen the door as much as possible, and explore all your options. These may include installing a pocket door, which is a sliding door that fits entirely inside the wall, or changing regular door hinges to swing clear hinges that will allow for increased inside space to maneuver and will yield a wider door clearance.

Bathroom

It goes without saying how important this room is to everyone's health and well-being. Yet, the majority of homes have excessively small and inadequately designed bathrooms with narrow doorways. You need at least one fully accessible bathroom on the main floor that has either a shower or tub-shower combination for bathing.

After you have assessed your doorways, next assess your toilet setup. Consider installing an ADA-recommended toilet with 17 or more inches of floor-to-bowl height. Then assess the clearance for installing grab bars on the walls. Frequently, there is inadequate space alongside the toilet because of its location. An excellent option is to purchase a "toilet safety frame" that easily installs on and removes from the toilet. This adaptive equipment allows for grab bars on one or both sides of the toilet and can be purchased from most medical supply companies online for less than \$40.

The main-floor bathroom needs to have a shower or tub-shower combination for bathing. In a new or remodel construction, it is important to brace the walls around the tub, shower, and toilet to prepare for the future installation of grab bars that can support 250 to 300 pounds. All towel bars should be replaced with securely anchored grab bars, which also can be used as towel bars. Frequently, an aging adult will lose her or his balance in the bathroom and grab the towel bar for support, which promptly pulls out of the wall, thus not preventing the fall. Existing tub-shower combinations or showers easily can be adapted for safe use by the installation of a handheld showerhead, grab bars, and a portable bath bench. The side of the tub also can be cut down and capped so you can step in easily. Bathrooms need to have a nightlight, non-slip flooring, and lever-style door handles.

In addition to the traditional medical supply stores, many "big box" stores are rising to the demand of baby boomers and carry adaptive bathroom equipment. Much of this adaptive equipment also may be purchased from online vendors. There are numerous options for bathroom

and adaptive equipment that meets the specific needs of the aging adult and has an aesthetically attractive design. However, the best way to explore all options for this equipment is to work with rehabilitation professionals such as physical and occupational therapists.

Bedroom

When you purchase a new or existing home, always get one that has a main-floor master bedroom suite (*i.e.*, bedroom and full bathroom). The bedroom must have adequate room for you to maneuver around the bed and other furniture, should contain no clutter (including electrical cords on the floor and throw rugs), and should have safe flooring surfaces and good lighting. Your bedside lamp should be close to the bed so you easily can turn it on without falling out of bed. Nightlights and touch lights next to the bed are recommended. Always have an easy-to-reach telephone by your bed.

Assess your bed height for ease of getting on and off the bed. A good height for most people is approximately 22 inches. If your mattress is too tall, you might need to place it directly on the floor to shorten its height. Step stool use is not recommended, as it is too easy to fall while using them.

If the bed is too short, placing blocks under the legs easily raises it. Many stores carry these pre-made blocks, usually four to six inches high. A “bed cane,” which is a grab bar attached to support material that slides between the mattress and box spring, can assist an aging adult in getting into and out of bed. These devices are available at most medical supply stores or online.

Finally, assess your clothing storage. Can you easily reach the clothing and shoes in your closet and dresser drawers? Does your closet need to be redesigned with lower clothing rods for easier reach? Is the clothing you most frequently use placed in the most easily accessible drawers or storage areas? Do you need to get rid of your unused clothing clutter? If you have a short reach or have difficulty bending, consider purchasing adaptive equipment such as a reacher.

Kitchen

Kitchens need to be “user friendly” and reflect adaptations for any limitations you might have, such as bending and lifting. Frequently used items need to be stored in easily reached cabinets, drawers, and shelves. The microwave should be placed at a safe height and a safe, reachable distance from the table or countertop edge. Does your kitchen have adequate usable counter space next to the refrigerator? Again, the clutter issue arises: Can you store countertop items that are not frequently used? Do you have a side-by-side refrigerator to provide easier food access?

If you use an assistive device such as a walker, does it have a tray so you can transport items such as food and dishes? Does your kitchen have a usable, seated workspace for you at the kitchen table or countertops? Do you have safe chairs to use that do not have rolling casters? Did you remove all throw rugs? Do you have a safe, non-slip flooring surface? If you have lifting concerns or tire easily, do you have a cart to transport food and other items around your kitchen?

Laundry Room

Many homes have a washer and dryer located in the basement. Safe independent living requires that these be located on the main floor of your home. A good option is to purchase a stackable washer and dryer, which can be placed in an existing retrofitted closet. Front-loading

machines are preferred because they are easy to use for anyone, with or without compromised mobility, and they are energy efficient.

31-6. Seniors Handyman and Home Modification Programs

Volunteers of America has a “Safety of Seniors Handyman Program,” which provides life enhancement services for limited-income senior homeowners aged 60 and older who reside in Adams, Arapahoe, Denver, Jefferson, Clear Creek, Gilpin, and Larimer counties. The Denver metro program can be reached at (303) 297-0408 ((970) 472-9630 for Larimer County).

This program’s goal is to help aging adults live safely and independently in their own homes. Skilled volunteer handymen and women can perform minor home repairs and safety modifications, conduct home safety assessments, and provide fall and fire prevention education. The labor cost is free and the charge for materials is income dependent.

The handyman program focuses on reducing falls and preventing fires. It includes, but is not limited to, providing installation of bathroom grab bars, handheld showerheads, non-slip surfaces in the tub or shower, stairway handrails, carbon monoxide and smoke detectors, and plug-in night lights. Minor electrical and plumbing repairs; replacement of furnace filters, thermostats, light bulbs, and batteries in smoke detectors; and conducting home safety assessments are also services provided.

Brothers Redevelopment, Inc., a 501(c)(3) nonprofit corporation, has been in the home repair business for over 40 years. It has several programs in the Denver metropolitan area to assist low- and moderate-income residents with exterior maintenance, repair, and painting, as well as internal repairs. It has a “Ramps and Rails” program, which is designed to help people with disabilities or physical limitations remain safely in their own homes. This remodel work can include, but is not limited to, shower conversion, wheelchair ramp construction, widening doorways for wheelchair and walker access, wide tread exterior stair installation to allow walker access into the home, and installation of grab bars and hand-held shower heads.

Brothers also partners with many Front Range cities and counties to help homeowners who have financial or physical limitations get home repairs and improvements. This “Home Modifications & Repair” program is generally supported with federal community development block grant funds, although the availability of these funds may be decreasing. There seems to be no age restrictions for this program. Homeowners applying for the “Home Modifications & Repair” program must be legal residents of the United States. Prior to the pandemic, the program was limited to applicants who lived in specific cities and counties. Call for information at (303)685-4225 (Denver metro) and (719) 666-7181 (Colorado Springs).

Additionally, Brothers has an annual “Paint-A-Thon” program to paint low- to moderate-income seniors’ homes in the Denver metropolitan area. To qualify, you must be: age 60 or older; own and live in your home and plan to stay there at least a year; and must be unable to afford to hire a painting contractor. Your home must be no taller than 1 1/2 stories and must need painting. The application deadline is usually May 31 each year, and the form is available at www.brothersredevelopment.org; click on “Paint-A-Thon.” The Brothers Redevelopment office can be contacted to obtain information on all its programs, including the income requirements of each, by calling (303) 202-6340, or by emailing info@brothersredevelopment.org.

Home Builders Foundation of Metro Denver (HBF) was established in 1993. It serves homeowners with financial needs in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Elbert, and Jefferson counties who need home modifications for mobility. These repairs and modifications can include doorway widening, carpet removal and replacement with hard flooring for easier walker or wheelchair mobility, grab bar and handrail installation, exterior ramp installation, bathroom modification (usually tub removal and roll-in shower installation), and lift installation. You can contact HBF at (303) 551-6721 for more information or fill out the online application available at www.hbfdenver.org.

Rebuilding Together Metro Denver (RTMD) provides home repairs, safety modifications, and energy efficiency upgrade services to qualified low- to moderate-income homeowners in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson counties. In order to qualify for assistance, you must be: age 60 or older, a veteran, and disabled or supporting someone who is disabled. An online application form is available at www.rebuildingdenver.org. For more information on its programs and income requirements, contact RTMD at (720) 524-0840. There is also a Rebuilding Together Colorado Springs.

Cultivate, formerly Boulder County CareConnect (BCCC), provides numerous services to Boulder County seniors. These programs include, but are not limited to: Fix-It Home Repair for minor home repairs, YardBusters yard cleanup program, SnowBusters snow shoveling program, Carry-out Caravan (grocery shopping), and Medical Mobility transportation program, all staffed by volunteers. There seem to be no income restrictions and the age criteria is 60 or disabled for receipt of services. Seniors are responsible for cost of home repair supplies and donations are accepted for all services. Cultivate can be contacted at <https://cultivate.ngo> or (303) 443-1933.

31-7. Nutrition

Statistics show that 85 percent of aging adults have some nutritional concerns. The options for meals, if you do not live in a community that provides meal service, are to buy your groceries (with online grocery ordering, delivery, curbside pickup, or in-store purchase) and cook; order take out, with or without delivery; eat out; or sign up for Meals on Wheels through Volunteers of America, Project Angel Heart, or an online prepared meal service. Frequently, use of paid home care assistance for grocery shopping and/or meal preparation is an excellent choice for the aging adult. The Covid-19 pandemic exponentially expanded everyone's options for human and pet food purchases and delivery. There's also been a significant increase in our ability to purchase ready-made meals.

Grocery Shopping

The optimal manner for aging adults who are unable to grocery shop themselves is to order groceries online with delivery or curbside pickup. Prior to the Covid-19 pandemic, there were a limited number of grocery stores that offered these services. Now, there are very few stores that do not offer online ordering with delivery or pickup options. Most businesses charge a fee for this service. King Soopers has the longest-established program for grocery ordering and delivery services in Denver metro and Colorado. Many grocery stores use Instacart and numerous restaurants and businesses use DoorDash delivery services.

Volunteers of America — Northern Colorado

The grocery shopping program is for Larimer County seniors and disabled adults, and is done through select King Soopers and Albertson's stores. Contact the program coordinator at (970) 472-9630 for information, to determine availability and program intake.

Instacart

This online grocery buying service has delivery services throughout Colorado. See www.instacart.com/grocery-delivery/near-me-in-colorado. You can shop for grocery items from stores including, but not limited to, King Soopers, Safeway, Costco, Target, Sprouts Farmers Market, Natural Grocers, Walgreens, CVS Pharmacy, and Petco (for pet food and supplies). **WARNING:** Be sure to type the web address correctly for Instacart — it is www.instacart.com. There was a look-alike website at instacart.org that would install a virus onto your computer if you clicked on the page.

Meals on Wheels

The Volunteers of America Meals on Wheels Program has operated since 1973 and serves adults aged 60 years and older in Adams, Arapahoe, Clear Creek, Denver, Douglas, Gilpin, Jefferson, and Larimer counties. Eligibility requirements for the program are being homebound and at least 60 years of age. Participants or disabled household dependents can determine their eligibility for meals by calling the Meals on Wheels program at (303) 294-0111 or (970) 472-9630 and larimer@voacolorado.org for Larimer County.

Participants' meals are free of charge, with a current suggested contribution of \$3.00 per meal. However, no aging adult is denied meal service due to an inability to contribute. Additionally, Meals on Wheels provides nutrition education and assistance to help home-bound, aging adults access other available services.

This program also has "Dining Center Services" in the eight counties it serves and operates 25 dining centers that serve hot meals in the Denver metro area, three in mountain communities, and three in Larimer County. The suggested contribution per meal also is \$3.00. Participants in this program must be 60 years of age or older, and may include an eligible participant's spouse and residents who live in the facility where a dining center is located. Contact this program at (303) 297-0408 (Denver metro and mountain counties) or at (970) 472-9630 and 970-786-6414 (Larimer County) for information and to determine whether the dining centers are open.

Volunteers of America also offers the "Market Meal Program" for homebound seniors who do not require daily home delivered meals. The baskets are available for pickup monthly from the Michael J. Kern Meals on Wheels Kitchen at 2620 Larimer St. in Denver. They include 10 frozen meals and may include non-perishable foods, fresh produce, low-fat dairy products, and whole grain breads. Call (303) 294-0111 to determine availability.

Boulder County Meals on Wheels

Meals on Wheels Boulder services residents of Boulder, Gunbarrel, and Eldorado Springs and its phone number is (720) 780-3380, <https://mowboulder.org>. Longmont Meals on Wheels services residents of Longmont, Niwot, and Lyons and its phone number is (303) 772-0540, <http://longmontmeals.org>. Coal Creek Meals on Wheels services the residents of Lafayette, Louisville, Superior, and Erie and its phone number is (303) 665-0566, <https://coalcreekmow.org>. There are no age or income requirements for meal delivery and meal prices are on a sliding scale based

on the person's monthly income. Boulder Meals on Wheels also has a program called "Project Homecoming," which provides five free-of-charge meals to any resident who is discharged from a hospital for any health reason. Coal Creek Meals on Wheels also has a pet food delivery program, "Plates for Pets," in partnership with Colorado Pet Pantry (www.coloradopetpantry.org).

Cultivate, formerly Boulder County CareConnect

Cultivate has numerous services, including its "Carry-out Caravan" grocery shopping program. Volunteers do grocery shopping for seniors and also deliver the groceries. Cultivate does not charge for its services, but a donation is suggested. Contact it at (303) 443-1933 or <https://cultivate.ngo>.

Silver Key Senior Services (Colorado Springs)

Silver Key provides Meals on Wheels service to residents of the greater Colorado Springs and El Paso County areas. Silver Key's website is www.silverkey.org, and they can be contacted via email at info@silverkey.org or by phone at (719) 884-2300 for meal prices. Silver Key also has a Commodities Supplemental Food Program, an Emergency Food Assistance Program for low-income seniors and disabled individuals, and an Emergency Food Pantry. It also offers transportation services.

Other Colorado Meals on Wheels Programs

- ▶ **Pueblo:** SRDA (Senior Resource Development Agency), www.srda.org, (719) 545-8900.
- ▶ **Grand Junction:** Meals on Wheels Mesa County, <http://mealsonwheelsmesacounty.org>, (970) 298-9844, Amanda.debock@imail.org.
- ▶ **Durango:** La Plata County, www.co.laplata.co.us/services/health_and_human_services/senior_services/meals_on_wheels.php, (970) 382-6435.
- ▶ **Garfield County:** Congregate meals held at seven locations in Carbondale, Glenwood Springs, New Castle, Silt, Rifle, and Parachute. Reservation line: (970) 665-0041, www.garfield-county.com.
- ▶ **Meals on Wheels Grand River Health:** Service area: New Castle, Silt, Rifle, Parachute, and Battlement Mesa. Contact Dee Warwick, (970) 625-6215, dwarwick@grhd.org. It also offers "Portions for Pets" monthly cat or dog food delivery.

31-8. Disaster Evacuation Plans

If you live in an area prone to natural disasters such as fires or flooding, you *must* have a disaster evacuation plan in place. This includes, at a minimum, a list of all your medications and a one-month supply; a list of and contact information for all your health care providers; your medical, home, and automobile insurance information and policies; copies of your medical and financial powers of attorney, your will, and other estate planning documents; a list of all necessary medical equipment for check off as you pack to leave; your credit cards; banking information; any personal property and valuables secured or taken with you; and, most important, your ICE (In Case of Emergency) contact information.

If you have animals, you need to pre-plan for their care, including their lodging and food needs. Since there frequently is little warning before disasters, especially flash floods and wildfires, you need to prepare in advance, so that you quickly and safely can evacuate your home

and have all your vital information and property with you. If you have any advance warning, assume that the disaster will affect you, and prepare to safely leave if so ordered. It is far better to plan and prepare in advance than to risk your safety trying to remember to do everything while in crisis mode.

31-9. Emergency Response Systems

Any aging adult who lives alone is strongly encouraged to have an emergency response system and an emergency evacuation plan in place. At a minimum, an aging adult, especially someone who is mobility challenged, always needs to carry either a cell or cordless phone and have “911” programmed into it. Wearing a smart watch is recommended. Also needed are working smoke and carbon monoxide detectors and a kitchen fire extinguisher. Additionally, you must plan for the possibility of power and/or heat outage, including having battery powered lights in each room and hallway.

A highly recommended option is to obtain a 24-hour, corporate emergency response system. These systems require the aging adult to wear either a waterproof wristband or necklace that contains an alert mechanism, which easily can be pushed and used in an emergency situation such as a fall. Many also have medication reminder systems.

These systems may require installation into a telephone line. However, many companies offer wireless devices. There are numerous companies that provide this and additional services such as medication reminders and fall alerts. Check the Seniors Blue Book (www.seniorsbluebook.com or www.seniorsresourceguide.com). Listings vary between the published guides and the website. The website also has links for many other Colorado cities.

Most companies have an initial installation and activation fee and a monthly charge of \$25 to \$50. They operate on a month-to-month basis and do not require a contract. Some have installation and activation discounts, including from AARP and Seniors Blue Book.

Prior to choosing an emergency response company, check out the products, service, and company in the same manner as you choose any service provider: carefully and after being fully informed. Finally, get one that has wireless coverage if you are out in your yard or the community.

31-10. Home Care

Home health care benefits under Medicare Parts A and B, including eligibility requirements, are extensively discussed in Chapter 2, “Medicare,” and Chapter 22, “Hospital Discharge Planning.” Skilled services through a home health agency may, in many cases, be enough in-home care to facilitate the aging adult to improve, transition to a higher functional level, and regain his or her independence. However, unskilled home care also may be needed. This may be obtained from friends or family or through many agencies, which increases the cost of independent living.

The *Seniors Blue Book*, available at www.seniorsbluebook.com or www.seniorsresourceguide.com, has an extensive list of both skilled home health care (“medically necessary” and covered by health insurance) and unskilled home care providers, as well as an excellent tool for making your search specific to your needs. The listings vary between the published guides and those listed on the website. There are numerous home care providers who can provide unskilled care such as companion or respite care, light cleaning, cooking, transportation to medical appointments,

bathing, dressing assistance, shopping, and doing laundry. Hourly rates and services provided vary.

Home care rates average around \$32 per hour. Most companies charge the lowest rate for basic companion care and hourly rates tend to be lower for a longer shift. If the aging adult needs round-the-clock care from an in-home care provider, the monthly cost can easily run \$7,500 to \$10,000. In comparison, the average monthly cost of an assisted living facility is between \$3,800 and \$5,500 and a skilled nursing facility (shared room) is \$8,700.

Most companies require a two four-hour minimum commitment per visit and have various cancellation policies. Some require a refundable deposit prior to starting services. The majority of home care companies provide workers who are their employees, with all the benefits that go with being an employee, such as workers' compensation and liability insurance. However, some companies act only as a referral service and send "independent contractors" to work with you.

A word of caution if you hire an independent contractor and that person is injured while working for you: you may be financially responsible for any workers' compensation claims. This means you will have to pay all of the injured person's medical bills, his or her lost wages, and any other claim costs. Most liability coverage on a person's home is inadequate to cover a workers' compensation claim, so be very careful in these hirings. It is well worth the extra \$5 per hour to hire someone who is fully bonded, insured, and employed by a company.

Finally, many home care companies will bill your long-term care insurance for you or accept Medicaid home and community-based services (HCBS) for your home care services. However, you are ultimately responsible for these costs if you pay privately and not through HCBS.

31-11. Funding Your Home Care Needs and Home Modifications

The cost of maintaining independent living in your own home can become very expensive depending on your care requirements and need for home modifications. See Section 31-6, "Seniors Handyman and Home Modification Programs," for possible home modification resources. The optimal time to explore your options is in advance of these needs. Long-term care insurance is the very best option for future funding of unskilled home care services. However, this insurance only can be purchased while you are healthy and eligible for this insurance. See Chapter 7, "Long-Term Care Insurance".

Another option for funding your home care is to explore a reverse mortgage on your home. See Chapter 20, "Reverse Mortgages," for more information. Talk to an elder law attorney prior to finalizing the reverse mortgage option, if you think you may ever need to apply for Medicaid to fund your unskilled home care and any future skilled nursing care. Medicaid will fund HCBS to help you be as independent as possible in your own home. It may also cover significant costs for home modification. See Chapter 4, "Medicaid," for more information. However, pulling cash out from your home may adversely affect your eligibility.

Veterans may be eligible for home care assistance and should explore this possibility. There are many programs available to eligible veterans for financial assistance with home modifications. The eligibility for each program varies. Veterans are strongly encouraged to explore all possible VA assistance, including: HISA (Home Improvement and Structural Alterations) grants of up

to \$6,800 (use VA Form 10-0103); SHA (Special Home Adaptation) grants of up to \$22,036 (for FY 2023) for home adaptations (use VA Form 26-4555); and SAH (Specially Adapted Housing) grants of up to \$109,986 (FY 2023) for specific service-related injuries (use VA Form 26-4555). For more information, call the Veterans Administration at (800) 827-1000. For further information, see Chapter 6, “Veterans’ Benefits.”

Finally, there might be some community resources, such as faith-based and charitable organizations, that can provide assistance. Explore all your options, plan well, and then enjoy life!

31-12. Resources

National Aging in Place Council

1400 16th St. NW, Ste. 420
Washington, D.C. 20036
(202) 939-1770
www.ageinplace.org

This organization has good information. Go to home page “For the Family” link to download: *The Costs of Aging* handbook. See also *Act III: Your Plan for Aging in Place* at <https://naipc.memberclicks.net/assets/ACT%20III%20Planning%20Guide%20for%202022.pdf>.

AARP

601 E St. NW
Washington, D.C. 20049
(888) 687-2277
<https://www.aarp.org>

Go to the AARP website and search “universal design,” “livable communities,” or “home improvements” for housing information. This website has numerous excellent articles on universal design and aging in place, including checklists for bathrooms, bedrooms, kitchens, entrances, lighting, stairways, and hallways. Suggestions include:

“My Room-by-Room Home Fit List”

www.aarp.org/content/dam/aarp/livable-communities/housing/2020/homefit/AARP%20HomeFit%20Worksheets-English-2021-2.pdf

“How to Hire a Home Improvement Contractor”

www.aarp.org/livable-communities/info-2014/7-steps-to-hiring-a-contractor.html

“30 Safety Tips for 30 Days”

www.aarp.org/home-garden/housing/info-06-2010/30_safety_tips.html

Home safety checklists for rooms and areas in the home, including bathroom, bedroom, kitchen, hallways, and entrances include:

“The AARP Home Fit Guide” (D18959)

www.aarp.org/livable-communities/housing/info-2020/homefit-guide.html

AARP Livable Communities Library

Topics included: Disaster Resilience, Community Gardens, Accessory Dwelling Units, Housing for a Changing America

www.aarp.org/livable-communities/tool-kits-resources/library/

Denver Regional Council of Governments (DRCOG)

1001 17th St., Ste. 700

Denver, CO 80202

(303) 455-1000

www.drcog.org

The link to “Area Agency on Aging” (under “Programs”) has good information on aging in our community, especially in the “Area Plan on Aging.” This website also has an excellent list of links to other websites of interest to aging adults.

State of Colorado Demography Office

Department of Local Affairs

1313 Sherman St., Rm. 521

Denver, CO 80203

(303) 864-7750

<https://demography.dola.Colorado.gov/>

Volunteers of America (VOA) Meals on Wheels Program

Denver metro:

2660 Larimer St.

Denver, CO 80205

(303) 297-0408

www.voacolorado.org/gethelp-denvermetro-foodnutrition-mow

Northern Colorado:

405 Canyon Ave.

Fort Collins, CO 80521

(970) 472-9630

mclift@voacolorado.org

www.voacolorado.org/gethelp-northernco-mow

The Safety of Seniors Handyman Program through VOA Colorado

Denver metro: (303) 297-0408

www.voacolorado.org/gethelp-denvermetro-clientservices-handyman

Larimer County: (970) 472-9630 kscholes@voacolorado.org

www.voacolorado.org/gethelp-northernco-handyman

Brothers Redevelopment, Inc.

2250 Eaton St. Garden Level, Ste. B

Denver, CO 80214

(303) 202-6340

www.brothersredevelopment.org

Home Modification and Repair: (303) 685-4225 (Denver metro)

(719) 666-7181 (Colorado Springs) or email Kathryn@brothersredevelopment.org

Home Builders Foundation of Metro Denver

88 Inverness Cir. E., Ste. E104
Centennial, CO 80112
(303) 551-6721
www.hbfdenver.org

Rebuilding Together Metro Denver

2839 W. 44th Ave.
Denver, CO 80211
(720) 524-0840
www.rebuildingdenver.org

Cultivate

6325 Gunpark Drive, #F
Boulder, CO 80301
(303) 443-1933
<https://cultivate.ngo>

Exhibit 31A. What is Your "Aging in Place" IQ? Are You Ready?

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Name: _____	Age: _____
1. Do you have a friend, family, or professional fiduciary who LIVES IN TOWN and can/will be your medical advocate if/when you ever need one?	YES NO
2. Do you have a supportive relationship with yourself, family members, friends, care takers, and neighbors?	YES NO
3. Do you have up-to-date executed financial and medical Powers of Attorney?	YES NO
4. How many steps to access your home?	0 1 2 3 4+
5. How many levels of living space is your home (not counting a basement)?	1 2 3 4
6. Do you have any medical conditions which might get worse? These could include: Diabetes, MS, Parkinson's Disease, Stroke, Traumatic Brain Injury, TIAs, Emphysema, COPD, Heart issues, Obesity, Amputations, Arthritis, Joint issues, Back or leg issues, Kidney disease, Cancer, and declining cognitive abilities.	YES NO
7. Do you need to go up or down stairs/steps to get into your home?	YES NO
8. Once inside your home, do you need to go up/down stairs to access a bathroom?	YES NO
9. Do you need to go up/down stairs to get to a bathroom to shower and bathe?	YES NO
10. Do you have to use stairs to get to your washer/dryer?	YES NO
11. Is your bathroom door too narrow for you to walk straight through it without turning sideways, using a walker (24") or to fit an average width wheelchair (26" total)?	YES NO
12. Is the bathroom where you bathe too small to manage a wheelchair inside of it?	YES NO
13. Once inside your home, do you need to go up/down stairs to get to the bedroom?	YES NO
14. Are you unable to use your kitchen if you are using a walker or wheelchair?	YES NO
15. Would you have a better "quality of life" living in a different home?	YES NO
16. Has anyone EVER suggested you make changes or modifications to your home to improve your safety for living there?	YES NO
17. Has anyone EVER suggested you move to a different home?	YES NO
18. During the next year, are you planning to make changes to your home or move?	YES NO
THE MORE NO's for # 1-3 & YES's for # 6-18 MEAN YOU NEED TO WORK ON YOUR PLAN TO CREATE SUCCESSFUL AGING IN PLACE	

Chapter 32

Lifelong Learning and the Aging Brain

Zane Robertson
Active Minds

SYNOPSIS

- 32-1. Introduction
 - 32-2. Brain Basics
 - 32-3. The Old Paradigm
 - 32-4. The New Paradigm
 - 32-5. The Older Brain
 - 32-6. Neuroplasticity
 - 32-7. Lifelong Learning and Healthy Aging
 - 32-8. What Brain Exercise Is Best?
 - 32-9. Resources
-

32-1. Introduction

The human brain is the largest muscle in the human body. At roughly three pounds, it is also easily the most impressive. The source of the Mona Lisa, the atomic bomb, and rap music, the workings of the human brain have both mystified and inspired us since the beginning of time. While its functioning is still a mystery on many levels, we have learned more about how the human brain works in the past five to 10 years than in any other period of history. Advances in brain imagery technology have allowed us to “peer inside” and observe neural circuitry in ways previously only imagined.

As our understanding of the brain has increased, many old beliefs have fallen by the wayside. A new model of the brain is emerging — one that embraces self-determination, flexibility, growth, and optimism. It is a whole new way of looking at how our brain works and what the future holds for us as we age. And it is filled with amazing hope.

32-2. Brain Basics

Let's begin with some basics regarding the brain. It might be helpful to define a few key terms:

- ▶ **Neurons** — These are your “brain cells.” They function electrochemically to relay signals throughout your brain.
- ▶ **Synapse** — This is the gap between neurons. Synaptic firing represents one brain cell communicating with another one.
- ▶ **Brain regions** — These are the areas of the brain that we typically associate with certain types of cognitive functioning. Examples include the auditory cortex, the visual cortex, and the frontal lobe.
- ▶ **Hemispheres** — The brain is divided into left and right hemispheres, and different brain regions are located in different hemispheres.

32-3. The Old Paradigm

Prior to the 1990s, the conventional model of the brain can reasonably be summarized as follows:

- ▶ **The brain is fixed and finite.** You are born with a finite number of brain cells with fixed pathways and you cannot grow your brain at a cellular level.
- ▶ **Brain regions are dedicated to specific functions.** Certain parts of the brain have certain functions that can only be processed in that region. For example, visual signals must always be processed by only the visual cortex.
- ▶ **Once mature, the brain declines steadily.** Brain functioning peaks sometime in early adulthood, then begins a slow, inexorable decline.

This was the model of the brain that scientists firmly believed for decades, if not centuries. One implication of this paradigm was to focus research efforts on medical or surgical solutions for treating brain-related afflictions. Unfortunately, this focus neglected many potential avenues that have subsequently shown promise.

32-4. The New Paradigm

With the advent of technologies such as MRIs and CAT scans, scientists began to explore new realms of brain research and revise old theories about how the brain works. While still evolving, a new paradigm has emerged. Key components of the new understanding of the brain include:

- ▶ **The brain grows new neurons.** The old notion that growing new brain cells was impossible has been proven wrong. In a landmark study in 1998, scientists proved conclusively that the human brain grows new brain cells. Even 70-year-old (and older) brains produce new neurons and new neural pathways. Important factors in brain cell growth are exercise and mental stimulation.
- ▶ **Brain regions are flexible.** Studies have demonstrated that while regions do tend to specialize in dedicated ways, this is *not* absolute. The human brain is capable of

rewiring and reallocating its “real estate” in ways that the old paradigm believed were impossible.

- ▶ **As the brain ages, functionality may decline, maintain, or even improve.** While it is true that processing speed generally slows with age, one-third of older brains in one study had functioning characteristics that closely resembled those of younger brains. Furthermore, certain types of functioning (integrated thinking, flexible problem solving) appear to improve with age.
- ▶ **We can have an impact on how our brain ages.** Perhaps the most profound conclusion in recent years is the notion that there are things we can do to maintain our brain and potentially protect it from certain types of cognitive decline.

32-5. The Older Brain

As our understanding of the brain has increased, it has been clear that the older brain has been underestimated on a number of dimensions.

Cognitive Processing

- ▶ **Bilateral (or multi-region) activation.** Older brains frequently use multiple parts of the brain to perform tasks that younger brains accomplish with a single region. This may be a way of compensating for lost processing speed, but it may also be a superior approach for certain types of tasks that require more integrated or flexible thinking.
- ▶ **Expert knowledge.** Knowledge that has been accumulated over 10 years or more appears to be far more resistant to the effects of aging than previously thought.
- ▶ **Managing information.** The ability to manage information and extract meaning generally increases with age.
- ▶ **Focus and attention.** The ability of the brain to focus on a task without getting distracted by other input increases with age.
- ▶ **Vocabulary.** Verbal abilities, including vocabulary and facility with synonyms and antonyms, increase with age.

Emotional Maturity

Studies have shown that, *on average*, older adults exhibit:

- ▶ **Less:** Impulsiveness, fear, impatience, anger, frustration, irritability, and hatred.
- ▶ **More:** Empathy, comfort with ambiguity, sense of peace, and ability to judge character.

Scientists are able to measure the frequency of these emotions in older adults by using brain imaging technology along with the knowledge of where in the brain certain types of emotions are located.

32-6. Neuroplasticity

One of the key shifts in our understanding of the brain has been the change from the old paradigm view that the brain is fixed and finite to the new paradigm understanding that we can rewire our brain in a wide variety of ways. The seminal study in this area was done

by renowned neuroscientist Michael Merzenich in 1993 at the University of California at San Francisco. Dr. Merzenich designed an experiment in which a group of monkeys was exposed to two types of stimuli: (1) auditory (listening), and (2) somatosensory (touch). Half the monkeys were trained (through rewards) to pay attention to changes in the auditory signals, while the other half were trained to pay attention to changes in the somatosensory signals. After six weeks, the brain region dedicated to the stimuli that was being rewarded was two to three times larger than that same region for the monkeys that were not paying attention to that stimulus. This clearly established that *our very thoughts affect the physical structure of our brain*.

This ability of the brain to rewire itself is called *neuroplasticity* or *cortical remapping*. Scientists have discovered evidence of neuroplasticity in a wide variety of situations, including:

- ▶ Blind individuals have reallocated the visual brain regions to touch and hearing, resulting in the ability to read Braille (a feat beyond most sighted people) and make sense of complex auditory signals that most sighted people cannot.
- ▶ Deaf individuals have reallocated the auditory cortex to visual processing and are frequently reported to have superior peripheral vision than hearing individuals.
- ▶ Concert violinists have more space in their brains dedicated to controlling the fingers used to play the violin.
- ▶ Stroke victims have been successfully treated using a form of physical therapy that forces the brain to rebuild damaged circuitry.
- ▶ Psychiatric diseases such as depression and obsessive-compulsive disorder have been successfully treated using techniques that encourage the brain to construct alternative synaptic pathways.

The implications of neuroplasticity are vast and are just beginning to be understood. Some developments to watch include:

- ▶ **Alternative brain inputs.** A new frontier is developing in which scientists may be able to artificially supply the brain with missing inputs. The best example of this is a device known as a cochlear implant. Cochlear implants allow deaf individuals to potentially “hear” by translating sound waves into electrical signals that the brain can learn to interpret in a way that substitutes for actual hearing.
- ▶ **Alternative brain outputs.** Similarly, computer chips have been successfully implanted in the brains of physically handicapped individuals which, through training (read: neuroplastic brain rewiring), can then be used to control external devices such as a computer, TV, or a robotic arm.
- ▶ **Emotional transformations.** The potential for us to rewire our brain in ways that positively affect our emotional well-being or overall happiness is an area of research that is just beginning, but seems to hold considerable promise.

Bottom Line: *The aging brain is not necessarily a fading brain.* As Dr. Merzenich stated, “Under optimal environmental conditions, almost every physical aspect of the brain can recover from age-related losses.”

32-7. Lifelong Learning and Healthy Aging

Against this backdrop of new understanding of the human brain, the role of lifelong learning takes on new importance. Indeed, for a variety of reasons, most experts would agree that *lifelong learning is a key part of healthy aging*.

If one were to attempt to establish the four cornerstones of healthy aging, they would most likely be:

- ▶ Nutrition;
- ▶ Exercise;
- ▶ Social interaction; and
- ▶ Lifelong learning/purpose/meaning.

A number of recent studies have shown a positive correlation between pursuing mental stimulation and brain health. These show up in a number of areas, including:

- ▶ Global cognition;
- ▶ Working memory;
- ▶ Perceptual speed;
- ▶ Likelihood of Alzheimer's disease;
- ▶ Likelihood of dementia;
- ▶ Psychological/emotional health; and
- ▶ Physical health/mortality rates.

One study found a 33 percent lower likelihood of Alzheimer's disease among those who engaged in as little as one additional cognitive activity per week.

"Enriched environments" (more cognitive stimulation) are associated with a 5 to 9 percent increase in brain size and 25 percent more neuron branches. Many scientists believe that this represents a "cognitive reserve" that better prepares an aging brain for the potential challenges it may face as it grows older.

32-8. What Brain Exercise Is Best?

If your goal is to improve your brain health, the key element in selecting your form of brain exercise is *newness*. That which is new stretches your brain. Stretching your brain makes it stronger. The brain has a chemical called acetylcholine that is increased by exposure to new challenges. Acetylcholine increases our ability to pay attention, which results in the cognitive improvements we want to encourage.

Recommended activities include:

- ▶ Attending lectures and seminars;
- ▶ Doing crossword puzzles;
- ▶ Participating in discussion groups;
- ▶ Reading a book or the newspaper;

- ▶ Learning a foreign language;
- ▶ Playing a musical instrument;
- ▶ Learning to dance the tango; and
- ▶ Traveling.

Activities that have proven not to be particularly helpful for the brain include bowling, babysitting, golfing, and watching TV.

An important component to consider is the level of social interaction. While solitary activities are beneficial, social activities are even more so. Declining social interaction predicts declining cognitive function and higher mortality rates. A recent study found that chronic loneliness is associated with a twofold increase in the likelihood of developing dementia.

Recently, a whole host of software programs have hit the market designed to provide the equivalent of a gym workout for your brain. Feel free to give these a try. Many individuals have reported noticeable changes working with these programs. Unless, however, you find these programs to be highly entertaining (most are not), it probably makes sense to also seek activities that you really enjoy and can do with other people. Your best bet is to develop a variety of interests that stimulate your brain in different, enjoyable ways.

Bottom Line: Find activities that are new, challenging, and fun. You and your brain will thrive.

32-9. Resources

Below are a variety of resources for further information or programs to stimulate your brain.

Organizations

Active Minds

Courses, lectures, and seminars on a wide variety of topics.

(303) 320-7652

info@ActiveMinds.com www.ActiveMinds.com

Alzheimer's Disease Education and Referral Center

Information and programs relating to Alzheimer's disease.

(800) 438-4380

www.nia.nih.gov/health/alzheimers

Colorado Academy for Lifelong Learning

Courses on a wide variety of topics.

(303) 770-0786

info@AcademyLL.org www.academyLL.org

Osher Lifelong Learning Institute University of Denver

Courses on a wide variety of topics.

(303) 871-3090

www.universitycollege.du.edu/olli/index.cfm

Internet Resources

Society for Neuroscience: www.sfn.org

Books for Further Reading

Begley, Sharon. *Train Your Mind, Change Your Brain: How a New Science Reveals Our Extraordinary Potential to Transform Ourselves* (Ballantine Books, 2007).

Doidge, Norman, M.D. *The Brain That Changes Itself* (Viking, 2007).

Chapter 33

Mandatory Reporting of Elder Abuse or Exploitation

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SYNOPSIS

- 33-1. Mandatory Reporting of Abuse or Exploitation
 - 33-2. How Do We Define Abuse and Exploitation?
 - 33-3. Who Is a Mandatory Reporter?
 - 33-4. How Do I Make a Report?
 - 33-5. What Happens if Abuses Are Not Reported?
 - 33-6. Resources
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Over the last two decades there have been major advances in federal and state legislation to safeguard the health and well-being of our older adult population. Colorado law now requires certain professionals who observe the abuse or exploitation of anyone over the age of 70 to report their observations to a law enforcement agency. This chapter contains information on the mandatory reporting of abuse or exploitation, how abuse and exploitation are defined in Colorado, who must report abuse or exploitation they observe, and a list of resources for further assistance.

33-1. Mandatory Reporting of Abuse or Exploitation

In Colorado, any person over the age of 70 is defined as an “at-risk elder.” The person does not need to have any other risk factors or disability to be considered an at-risk elder under Colorado’s mandatory reporting law. The law requires that care givers, health care providers, financial institution personnel, law enforcement members, and others must report the abuse or exploitation of an at-risk elder. **These service providers are required to report abuse or exploitation that they have observed, or have reasonable cause to believe has occurred, or that they believe is at imminent risk of occurring.** The report must be made to a law enforcement agency within 24 hours after making the observation or discovery.

Colorado’s mandatory reporting requirement also includes the reporting of abuse or exploitation of an at-risk adult with an intellectual and developmental disability (IDD). An at-risk adult with IDD is defined by state law as a person 18 years of age or older who has an established neurological condition and demonstrates impairment of intellectual function and/or adaptive behavior such as social, conceptual, or practical skills. The onset of the intellectual

and developmental disability must have occurred before the person was 22 years old to meet the definition of an at-risk adult with IDD.

For the purposes of this chapter, the term “at-risk adult” will refer to any person over 70 years of age as well as at-risk adults with IDD.

33-2. How Do We Define Abuse and Exploitation?

Abuse takes many forms. Elder abuse can include physical, sexual, psychological, or emotional abuse, neglect, or financial exploitation. Elder abuse can impact your neighbor, your business partner, or your family. It is often hidden, and if no action is taken it can have devastating consequences for the individual and for our communities.

Abusers exert their control so they can gain a benefit for themselves, such as money or a place to stay. Tactics include physical or verbal abuse and intimidation, deprivation of care, or economic control. Often the victim is isolated from others to prevent him or her from talking about the exploitation or abuse.

Colorado law defines abuse of an at-risk elder as the non-accidental infliction of bodily injury or death, unreasonable confinement or restraint, caretaker neglect, exploitation, or subjecting a person over the age of 70 to sexual conduct or contact that is classified as a crime.

Warning signs of elder abuse can include:

- ▶ Not allowing the person to speak for themselves or make decisions;
- ▶ Displays of nervousness or fear around a family member or caretaker;
- ▶ Confusion about funds missing from financial accounts;
- ▶ Isolation from friends and family;
- ▶ Changes in personality, hygiene, or self-care;
- ▶ Withdrawals of money while accompanied by a stranger or a caregiver;
- ▶ Multiple unpaid bills, unusual credit card activity or missing valuables; or
- ▶ Elders who appear dehydrated or malnourished, or have unexplained injuries such as bruises, scratches, or burns.

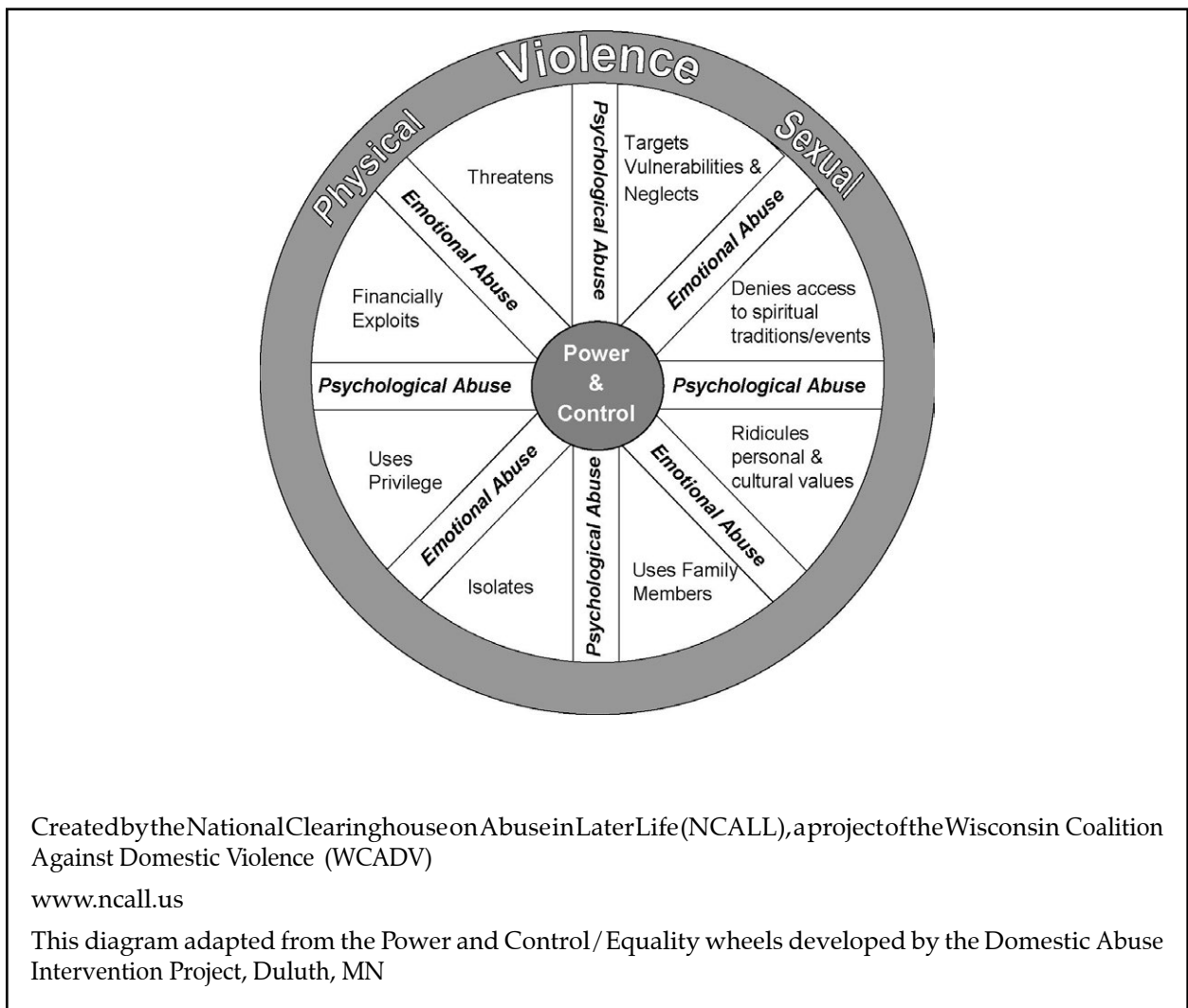
Exploitation is defined in Colorado law as using deception, harassment, intimidation, or undue influence to deprive an at-risk elder of the use, benefit, or possession of anything of value. Undue influence is defined as the use of influence to take advantage of an at-risk adult’s vulnerable state of mind, neediness, pain, or emotional distress.

Financial exploitation is a rapidly growing category of elder abuse. Unsuspecting seniors can be subject to identity theft, scams by unscrupulous contractors, or pressure to make significant gifts of money or valuable property to family members or caretakers. Financial abuse often occurs over periods of time and may involve relatives or friends or others who are in a close relationship with the affected elder. See Chapter 12, “Protecting Yourself from Crime,” for more information about financial exploitation.

These “red flags” could signal financial exploitation:

- ▶ Unusual cash withdrawals from an elder's bank accounts by the elder, the elder's agent under a power of attorney, or another person;
- ▶ A sudden increase in credit card activity or change in banking practice — for example, ATM withdrawals from a home-bound elder's account;
- ▶ Recent changes in the elder's finances or a sudden transfers of assets;
- ▶ Inappropriate fees for service providers or questionable caretaker behavior, including being financially dependent on the elder;
- ▶ An abrupt and unexplained change in the elder's agent under a power of attorney, beneficiaries on a POD account, or new names added to existing accounts;
- ▶ Signatures that appear to be forged, unusual, or suspicious; or
- ▶ The unexplained disappearance of the elder's funds or personal possessions.

Abuse in Later Life Wheel



33-3. Who Is a Mandatory Reporter?

Mandatory reporting is required for anyone who provides services (whether paid or unpaid) to at-risk elders and at-risk adults with IDD, including:

- ▶ Health care providers, including emergency health care providers;
- ▶ Caregivers (including unpaid family members), staff members, employees, or consultants for a home care placement agency;
- ▶ Medical examiners and coroners;
- ▶ Nurses and nurse practitioners;
- ▶ Dental, vision, pharmacy, or chiropractic service providers;
- ▶ Psychologists and other mental health professionals;
- ▶ Social workers;
- ▶ Staff, consultants, or independent contractors of service agencies;
- ▶ Community-centered board staff;
- ▶ Court-appointed guardians and conservators;
- ▶ First responders, including fire protection personnel;
- ▶ Law enforcement officers and victim advocates;
- ▶ Persons performing case management or assistance services;
- ▶ Care facility staff members or consultants;
- ▶ Financial institution personnel; and
- ▶ Members of the clergy, under specific circumstances.

33-4. How Do I Make a Report?

Any person who is required to report must do so within 24 hours after making the observation or discovery of the abuse. **The report should be made to a local law enforcement agency** (the police department or sheriff's office in the county where the abuse took place). Reporting to Adult Protective Services or other agencies does not meet the statutory requirement for reporting by a mandatory reporter.

The reporter does not need to investigate the abuse. You do not need to be certain of the at-risk adult's age or that the adult has an intellectual and developmental disability. When reporting abuse or exploitation of an at-risk adult, the person making the report should have as much of the following information ready as possible:

- ▶ Name, age, and address of the at-risk adult;
- ▶ Name, address, and contact information of the reporter;
- ▶ Name and contact information of the at-risk adult's caretaker, if any;
- ▶ Description of the alleged abuse and the situation the reporter observed, including the nature and extent of the injury;
- ▶ Name or description of the person who is potentially inflicting the abuse; and
- ▶ Any other related information.

Within 24 hours of receiving a report of abuse or exploitation of an at-risk adult, the law enforcement agency must notify the Adult Protective Services (APS) department of the county where the at-risk adult's residence is located or where the abuse or exploitation occurred. The law enforcement agency will also notify the District Attorney of the report to APS, complete a criminal investigation when appropriate, and provide a summary report of the investigation.

If the person who discovers or observes the abuse knows that someone else has already reported the same abuse or exploitation to a law enforcement agency, that person is not required to report his or her observations.

Individuals who report abuse or exploitation of an at-risk adult to a law enforcement agency in good faith are immune from liability for damages in any civil action or criminal prosecution unless the person reporting the abuse is the perpetrator.

The mandatory reporting requirement does not apply in cases where the reporter believes the abuse has been caused by self-neglect. Self-neglect is defined as an act or failure to act whereby an at-risk adult endangers his or her own health, safety, welfare, or life by not seeking or obtaining services necessary to meet his or her essential human needs.

33-5. What Happens if Abuses Are Not Reported?

If a person willfully violates the statute and fails to report, he or she can be charged with a Class 3 misdemeanor. This type of misdemeanor may result in a fine ranging anywhere from \$50 to \$750, or up to six months in the county jail, or both.

Mandatory reporting of abuse by professionals is required only for observations regarding at-risk elders and adults with IDD. There are many vulnerable adults who are under 70 years of age who may be at risk of abuse or exploitation due to other conditions such as dementia, traumatic brain injury, neurological impairment such as a recent stroke, or mental illness that prevents the adult from managing his or her daily needs.

Professionals who are required to report mistreatment of at-risk elders and at-risk adults with IDD are also urged to report mistreatment or exploitation that they observe regarding an adult under 70 years of age who is vulnerable to abuse due to other conditions or factors.

Mandatory reporters have a vital role in helping to end elder abuse or exploitation and preventing further harm to vulnerable adults in our community.

33-6. Resources

To report exploitation or abuse, call your local police department or sheriff's office.

CALL 911 TO REPORT ABUSE IN PROGRESS.

Please remember that contacting any of the following resources does NOT satisfy the reporting requirements of the mandatory reporting law. Mandatory reporters must report the abuse to local law enforcement.

Colorado Attorney General and AARP ElderWatch

AARP ElderWatch is a partnership between the Colorado Attorney General's Office and the AARP Foundation. AARP ElderWatch is a clearinghouse for complaints, educational information, and training materials dealing with the financial exploitation of elderly Coloradans. If you are a senior or caregiver and you believe that you may have been a victim of a fraud or a scam, contact AARP ElderWatch at:

AARP ElderWatch
(800) 222-4444
(303) 222-4444 (metro Denver)
www.aarpelderwatch.org

Colorado Bureau of Investigation

ID Theft/Fraud Investigation Unit
690 Kipling St., Ste. 4000
Lakewood, CO 80215

24-Hour Identity Theft Hotline

(855) 443-3489

(303) 239-4211

<https://cbi.colorado.gov>, click on "Sections," then "Investigations," then "Identity Theft/Cyber-Crimes"

Colorado Coalition for Elder Rights and Abuse Prevention (CCERAP)

www.ccerap.org

Colorado Department of Human Services, Adult Protection Services

This is the state Department of Human Services. You can also call your county Department of Social Services. You may find a list of contact information for these offices in Section 5-6, "Resources," or at <https://cdhs.colorado.gov/> (click on the clickable map under "Find my county" for a list of offices).

(303) 866-2800

The National Center on Elder Abuse

The NCEA provides the latest information regarding research, training, best practices, news and resources on elder abuse, neglect and exploitation to professionals and the public.

<https://www.ncea.aoa.gov>

National Clearinghouse on Abuse in Later Life

Educational website with information on abuse, and nationwide resources.

www.ncall.us

Chapter 34

Simplify Your Life: How to Manage Your Estate and Life – and Benefit You and Your Heirs

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SYNOPSIS

- 34-1. What Is an Estate?
 - 34-2. Organizing Your Financial Affairs and Your Estate
 - 34-3. Keep It Simple
 - 34-4. Enhance Your Income Through Charitable Planning
 - 34-5. Resources
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Over the course of our lifetimes, we accumulate a lot: tangible assets, like furniture, household items, vehicles, homes, retirement accounts, and other things that have a physical form. If we are lucky, we have gained some other intangible assets like wisdom, perspective, patience, integrity, a strong reputation, and more. But what most of us realize is that the personal relationships with friends and family we have made throughout the years are our most treasured assets. As we age, it's important that we start to consider what life might be like for those we leave behind. Of course we want to leave memories of love, appreciation, and solid values, but we also need to be mindful how we will leave behind the physical asset collection of our lifetimes. Often, important questions to ask are, "How can we best do that?" and "Is there a way to make it easier for those who will inherit from us?" This chapter is intended to help you prepare for this eventuality and become aware of the nature of your estate. We will provide information about what makes up your estate, how to organize all of your lifetime accumulations, how to share this knowledge and detail, and how to simplify your ownership of certain assets to make inheritance less stressful to your family and friends.

This chapter will also introduce some planning ideas that can "repurpose" some of your less productive or hard-to-liquidate assets to make them more valuable to you while you are living and possibly easier for surviving spouses, family members, friends, and favorite charities to understand, manage, and benefit from. Finally, we have included some reputable online resources and tools that 1) can help you organize your life and your possessions; and 2) help you gather and consolidate all of your lifetime information into a single document that will be of lasting value to your heirs and those responsible for distribution of your assets. Ultimately, we encourage you to seek the advice of professionals to help you with implementing your personal

estate plan. With the understanding that sometimes getting to that stage can be overwhelming, we hope this chapter will help get you started.

34-1. What Is an Estate?

An estate is a person's net worth in the eyes of the law. It typically refers to what is left in your name and in your possession after you die. That can mean your home, autos, boats, trailers, livestock, farms, ranches, equipment, bank accounts, personal property, artwork, jewelry, musical instruments, collections, land, other real estate, and any smaller assets you have in your name. It also could include any receivable accounts, rights, patent revenue, and licenses you might have on file, loan balances if someone owes you, or even your social media accounts. If you have provided loans to adult children, their repayment obligation is part of your estate. Any outstanding work or business revenue, like stock options, future bonuses, and profit distributions, are also part of your estate.

But an estate is more than everything you own, it's also everything you *owe*, including your mortgage, car loans, unpaid rent, utilities, student loans, hospital bills, taxes, credit card bills, and other debts you might have outstanding. Qualified creditors have a right to liquidated estate assets before distributions to heirs are allowed, so these debts must be considered.

So, what is excluded from your estate? An estate does not include assets a person has transferred to an irrevocable trust during his or her lifetime. If a trust is *irrevocable*, it means the assets cannot be taken back by the grantor or trustor. Once the transfer is made, the person no longer owns or controls those assets, even if the trust continues to benefit that person— those trust assets are not part of his or her estate.

However, property that someone places in a *revocable* trust, such as a living trust, may be considered part of the taxable estate. You still have control over property that you place into a revocable trust, and therefore that property is still subject to death taxes. So, if you can change your mind about the trust and retrieve the property from the trust at any time while you are still alive, the property is really yours and can be considered part of your estate to determine if your estate owes estate taxes. When drafting trusts, it's crucial to fully understand the consequences of asset transfers, ultimate ownership of those assets, and how they will impact your final estate. Be sure to work with your accountant or estate planning attorney to understand any and all tax implications — gift and federal transfer taxes, as well as state transfer taxes — for property transfers to both irrevocable and revocable trusts. Your accountant or attorney can help you set up the right planning mechanisms and avoid tax-related surprises because of some provisions of the tax code of which you were unaware.

Other property is also excluded from an estate when the property passes directly to another on the former owner's death via a beneficiary designation, transfer on death, or payable on death form. For example, insurance policies, pension funds, U.S. savings bonds with named beneficiaries, property owned with a right of survivorship, and bank accounts that pass directly to a named party are not considered part of a decedent's estate but can be included for estate tax purposes.

At the end of all of our lives, we have a pile of assets that belong to us: some that we can freely pass along to others and some that we might have owned jointly with others that passes directly to the co-owner at our deaths. We also might have debts that must be paid in full, if possible. In any probate proceeding, be it by will (if you have created a document during your

lifetime that sets out instructions for how to divide your estate) or intestate (if you do not have a will or trust and the state laws establish how your estate will be distributed and to whom), your estate will be accumulated and valued, debts paid, assets sold or liquidated to cash, and final amounts or items distributed to your heirs or charity.

The experience of sadness and labor of going through the remaining assets and possessions of a loved one or a friend who has passed can be either overwhelming or relatively organized and efficient. How we prepare for this eventuality is extremely important.

34-2. Organizing Your Financial Affairs and Your Estate

Consolidation of Accounts

By the time you reach your 50s or 60s, you likely have your money in more places than you can count or remember. Perhaps you have a mutual fund in one location and a retirement account someplace else, and your spouse has these same issues. Maybe you never got around to rolling over a 401(k) you left at a former employer. Getting these ducks in a row is not only good for your estate administrators, but it is also good for you today. Organizing your financial life is a great way to organize your estate.

How many checking or saving accounts do you really need? It may make sense to just have a few accounts at one bank or credit union. Keeping track of all your resources and accounts can be overwhelming, even if you do not hold large amounts in any one area. One solution may be to consolidate all your investment accounts at a single financial institution, and consolidate your checking or savings account at the same or another institution. Perhaps the bank across town was offering better CD rates than your bank; you definitely do not want to forego getting a better return on your investments, but make sure that you keep written records of where your funds are located. In some worst-case scenarios, money left or forgotten at a bank might be turned over to the state if no one claims it. This could happen if your heirs do not know where your funds are located. *A Caveat:* be aware of the insurance limitations on covered accounts at one institution and make sure, if you have assets that are in excess of Federal Deposit Insurance Corporation (FDIC) coverage, that you DO spread your funds out so that you are never in a position where your deposits may not be fully insured.

The benefits of consolidation are numerous: reducing paper and digital clutter, saving investment fees, having a single point of contact, understanding the complete picture of your required minimum distribution income for your retirement accounts, and helping your loved ones or executor find all of your accounts easily. Perhaps the best thing about consolidating assets is that, unlike many other financial chores, you only have to do it once, and then you are set for life.

Identify and Document Your Estate

Do you have an estate plan? Preparing to make an estate plan can be a lot of work, but that shouldn't create inertia! Do you want to pass on your assets via a will or through a trust? Wills are subject to probate; trusts are not. It is worth your time to properly learn about the advantages and disadvantages of either option. To properly prepare an estate plan, especially a trust-based estate plan, you first need to gather asset information and make a list of everything you own.

Every bank account, investment account, IRA, and retirement account should be itemized, as well as all life insurance policies, annuities, and every parcel of real estate owned. If there are any stocks, bonds, or mutual funds held directly and not in a brokerage account, they too should be listed. Not only do the assets need to be listed, you need to gather documentation showing account numbers, names of institutions, types of accounts, and contact information. A good way to aggregate all of this information is to list it all on an inventory sheet. To help you with this chore, we have included in Section 34-5 web links to resources, tools, and suggestions for collecting all of your financial information. A good estate planning attorney will require you to complete an inventory of all of your assets before they can begin working on an estate plan for you.

Gathering information for all your assets is a lot of work, and it can be highly personal. However, all of the information will have to be gathered eventually. You can do it now when you are alive and well, or it can be done by someone else after you experience an illness or death. Gathering the information at that point is much more difficult and costly, and it often takes more time.

34-3. Keep It Simple

Asset Ownership

On average, a person works more than 40 years to accumulate assets and spends 10 years conserving what has been earned but does not spend even two hours to plan for distribution of those assets or complete an estate plan. The chaos that often occurs following the death of a loved one can be burdensome and confusing. We have all heard stories from families who are overwhelmed with the task of going through their deceased family member's possessions during probate and trying to understand what their loved one's intentions might have been. We all know of individuals who want to simplify their estates for their own peace of mind and also so that a surviving spouse will not be confused by complex ownership structures or be unaware of where assets are located and how to manage them.

We have looked at some ways to better organize assets and valuable financial information. In this section we will discuss ideas to simplify asset ownership, and in the next section, we will highlight charitable planning methods that can assist people, including beneficiary deeds, charitable remainder trusts, charitable gift annuities, bargain sales, retirement account giving, and more.

Joint Ownership

Many ideas exist to simplify your assets and their ownership by you and your family members and partners. One of the easiest ways is to own property in joint tenancy with another person — often a spouse, but property could also be held with a child or business partner. The property automatically passes to the survivor when one of the original owners dies. Real estate, bank accounts, vehicles, and investments can all pass this way. No probate is necessary to transfer ownership of the jointly-held property. Often homes are owned in joint tenancy, as joint tenants with right of survivorship.

Beneficiary Deed

Colorado is one of several states that allow real property to be transferred at death through a beneficiary deed. This type of deed is created during a property owner's lifetime, authorizing

the transfer of the property to another person or to a charity at the death of the creator of the deed, or grantor. The deed is filed with the county clerk where the property is located and does not go into effect until notice of the death of the property owner is provided to the court. At that time, the deed is acknowledged and the property ownership transfers to the beneficiary. The grantor retains ownership, responsibility, and control over the property during his or her life and can revoke the beneficiary deed or file a subsequent deed that inactivates the earlier-filed beneficiary deed. The cost is minimal and usually includes only court filing fees and perhaps the cost to download a Colorado form (check with the county clerk, who may have free forms). The real property is not subject to probate and heirs have immediate ownership after proof of death is supplied to the court. Using a beneficiary deed to transfer property to children or a charity at death is a way to avoid probate of the real property subject to the beneficiary deed.

Payable on Death Accounts

In Colorado, you can add a “payable on death” (POD) designation to bank accounts such as savings accounts or certificates of deposit. The account owner still controls all the money in the account, during which time the POD beneficiary has no rights to the money, and the owner can spend it all if he or she desires. At death, the beneficiary can claim the money directly from the bank, without probate proceedings. There is no cost to create this type of account, however, not all banks offer this option. Naming a child, friend, or charity as a POD beneficiary can be another simple way to plan your estate and get assets to the beneficiary of your choice shortly after your death, without the administrative delay of probate proceedings in court.

Transfer on Death Registration for Securities

The State of Colorado lets you register stocks and bonds in transfer on death (TOD) form. People often hold brokerage accounts in this manner. If registration is made as an account in TOD (also called beneficiary) form, the named beneficiary will inherit the account automatically at the death of the account owner. No probate court proceedings will be necessary. As with POD accounts, there is no cost for registration of TOD accounts, and your brokerage firm will be able to help with the forms.

Other Designated Beneficiary Ideas

There are other types of property that automatically transfer ownership to the beneficiary at the death of the owner because they already have a designated beneficiary. Life insurance policies, annuity contracts, and retirement benefits all fall into this category. Property held in a living trust also falls into this category because the trust instrument provides for a distribution plan of the trust property upon the death of the grantor. A living trust can be funded with a grantor’s assets that produce an income, or other assets can be sold by the trustee and used to purchase other income-generating assets, to support a surviving spouse or a special needs family member. Establishing a testamentary surviving spouse or special needs trust, created when valid instructions are included in the will and the trust is funded after you pass, is a worry-free way to make sure your family is not burdened by confusing estate matters; the trust can pay them an income for their lifetimes, all per your instructions included in your will.

The above examples illustrate ways to structure property ownership so that transfer at death happens easily and without legal complexity, making it simple for your heirs to receive your assets. We would also like to offer some other practical ideas for asset management and proactive distribution planning to help you and your heirs:

- ▶ ***Take a video “walk about” of your personal household property.*** This is a great way to talk about the importance or historical and personal value of your possessions in a casual setting. Perhaps that painting that you have kept all these years (and your kids think is ugly!) has a deep meaning to you and you would like to let them know where you bought it, or maybe you knew the artist. You could also video record your intentions about who is to receive your household items and why you want them to have the item. We recommend making this video presentation upbeat, thoughtful, and intentional; your family members and friends will likely learn something about you and your appreciation of your possessions.
- ▶ ***Allow your family and friends to identify personal possessions that they want to inherit from you when you are gone.*** By proactively engaging your children, family, and friends in this exercise, there may be less conflict after you pass regarding who is to receive your property. Make a list and share it with everyone involved so that there is clear understanding of who is to inherit your property.
- ▶ ***Keep a current inventory of valuables, including antiques, collections, jewelry, artwork, etc.*** Make sure that insurance coverage is kept up to date on possessions that require it. Share your Personal Property Memorandum (PPM) or inventory with your personal representative or trustee, and be sure to include the names of your heirs who should inherit these assets. This list can be presented in probate proceedings if there is any disagreement about who is to receive certain property. If you want your possessions to be distributed via this PPM or inventory, make sure that your will or trust sets this out. Keep the PPM or inventory with all of your estate documents.
- ▶ ***Make a list of charities or other organizations who you would like to receive certain of your assets and include contact information and those possessions you would like to leave to each organization or charity.*** Perhaps you have an antique miniature train collection that would receive pennies on the dollar in an estate auction, but you know of a train museum that would benefit from your generosity. Your children may not want or need the majority of your furniture and you might decide to leave it to a home for disabled adults; your washer and dryer could be donated to the local humane society; your vehicles might be good assets to leave to the public radio station. The idea is to plan appropriately for certain distributions of your property and to provide your personal representative, trustee, or heirs with clear instructions and locations or organizations that will value and utilize what you have collected throughout your lifetime.
- ▶ ***Look into an auction or consignment company to sell some of your assets.*** This option could provide needed cash and help you downsize some of your personal property. The benefit of doing this while you are living is that you can negotiate better prices and provide better information on the property that is purchased.
- ▶ ***Find professional organizations and companies that help people declutter.*** A quick Google search with the terms: Professional Organizer, Home Decluttering Services, Closet Organizers, Declutter Help, Estate Sales - found a wealth of information, too numerous to include here, but available for you if you want to locate help in simplifying your possession.

34-4. Enhance Your Income Through Charitable Planning

This chapter has provided ideas for financial organization, consolidation, simplification of assets, and efficient asset ownership. Hopefully, these concepts can be easily implemented in your life as constructive planning tools. You can now prepare lists of assets and personal property with instructions for your family and heirs. As you are compiling your inventory, perhaps you should take the opportunity to fully assess and evaluate these assets and determine their effectiveness in helping you achieve your goals, especially with regard to income. You may learn in your evaluation that your liquid assets are heavily invested in low-yield money market or certificate of deposit funds, or you have a stock portfolio that is no longer producing the dividends it had in the past. You may have inherited stock from parents long ago and the basis of that stock makes it prohibitively expensive to sell because of capital gains tax. This section will provide some ideas to “repurpose” or reallocate these assets into gift-planning vehicles that will produce a greater income stream for you and your family.

Charitable Gift Annuities

A charitable gift annuity (CGA) is a contract between a donor and an issuing charity. This is often the gift of choice when a guaranteed present income or future income is desired. In this gift option, typically a gift of cash or securities is transferred to the charity of your choice in exchange for a contractual life income paid to the donor or donors annually, or deferred to a later date in the case of a deferred charitable gift annuity. The income is guaranteed by the issuing charity, and the donor can name himself or herself sole annuitant or designate a second annuitant, usually a spouse. A gift annuity can also be purchased on behalf of another party, for example an adult child or other family member. If the CGA is a two-life annuity, the payout will continue until the death of the second annuitant. A portion of the gift is invested by the charity and used to provide income for life, and the remaining portion qualifies as a present-interest gift to the charity, which then entitles the donor to a charitable tax deduction. Some charities require that annuitants be a certain age, say 65, before they can enter into any gift annuity. Current (2023) CGA rates for a single annuitant are:

Age 65	5.4%
Age 70	5.9%
Age 75	6.6%
Age 80	7.6%
Age 85	8.7%
Age 90 and over	9.7%

If your accounts are not producing these kinds of returns, a CGA might be a good choice of investment. CGAs are best suited to donors who have other assets that can become liquid in the event of emergency, because CGAs are irrevocable and cannot be undone. Most charities and community foundations offer these types of annuities and would be happy to help you decide if this is a good option for you.

Charitable Options for Real Estate

There are several good charitable options to help you dispose of real estate that you no longer wish to own. Creating a charitable remainder trust (CRT), engaging in a bargain sale arrangement, or simply gifting real estate might provide you with a better after-gift income or tax

situation. Rental properties can be transferred into a CRT to allow the sale of the properties within the CRT with advantageous capital gains tax treatment and then have the proceeds reinvested in income-producing assets to provide a life-long income stream. Low-basis, low-dividend-paying securities can also be transferred into a CRT, with a sale of these shares creating proceeds that can be used to purchase better yielding assets, even creating tax-free income if desired.

A bargain sale transaction is another creative way to repurpose an asset, allowing part gift, part sale of real estate to charity. A bargain sale takes place when a donor sells a property (usually one that is appreciated, ideally mortgage-free) to a charitable organization and receives less than the fair market value in return. The amount that is less than fair market value is considered a charitable donation and the amount received by the donor is the amount used for taxable gain purposes. The donor benefits from the bypass of taxable gain on the gift portion and receives a charitable deduction on the gift amount. The donor could receive cash outright on the sale portion of the transaction, take an installment note in return to create term income, or the charity could use the gift portion to create a CGA that pays the donor a life income.

There are a lot of creative ways to structure charitable giving that can result in an income stream to a donor and provide advantageous tax savings. Consulting with your advisors, in collaboration with the charity of your choice, could be a beneficial exercise. There are many options that you may not have even considered. You will never know until you start asking questions!

34-5. Resources

Estate Planning Checklists

www.retirementwatch.com/the-ultimate-estate-planning-checklist-and-guide

www.findlaw.com/estate.html

www.schwab.com/estate-planning/estate-planning-checklist

On-Line Document Storage Options

<http://everplans.com>

<http://thetorch.com>

<http://fidsafe.com>

Certified Financial Planners — Let's Make a Plan

www.letsmakeaplan.org/learning-center

AARP

www.aarp.org

National Network of Estate Planning Attorneys

<https://nnepa.com>

The Motley Fool

www.fool.com/retirement/index.aspx

NOLO — Law for All

www.nolo.com/products/wills-trusts/estate-planning-books

Market Watch — Retirement

www.marketwatch.com/retirement

Chapter 35

Supported Decision-Making

Sandra M. Sigler, Esq. *
Sigler & Nelson LLC

SYNOPSIS

- 35-1. What is Supported Decision-Making?
 - 35-2. Advantages of Supported Decision-Making
 - 35-3. Who Is Considered a Member of the Supportive Community?
 - 35-4. How Is Supported Decision-Making Used?
 - 35-5. Supported Decision-Making Agreements
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-

35-1. What is Supported Decision-Making?

Supported decision-making is a voluntary process that enables seniors and adults with disabilities to make decisions with the assistance of personally selected members of their supportive community. The individual identifies a person they trust to assist them with determining the issue that needs to be decided, the choices available, and weighing the pros and cons of the possible outcomes when making such a decision.

Supported decision-making can be adapted to many different situations, enabling adults with disabilities to have more control over their lives and their futures. Supported decision-making can be used either:

- 1) As an alternative to guardianship; or
- 2) As a supplement to an existing guardianship, conservatorship, or power of attorney.

35-2. Advantages of Supported Decision-Making

Supported decision-making is an effective way for seniors and people with disabilities to choose the people they trust to help them understand complex information and make informed medical, financial, or legal decisions. Individuals provided with this type of support have an increased knowledge of the risks and benefits that enable them to make informed decisions consistent with their personal values.

Supported decision-making relationships are based on the concept that being able to make your own choices about your life is critically important for a person's well-being. One advantage is that the process can adapt and change over the course of a person's life depending on their abilities and their support networks.

A recent study found that seniors and individuals with intellectual and developmental disabilities who used supported decision-making demonstrated increased independence, improved decision-making skills, and enhanced quality of life.¹

Using the supported decision-making process can increase an individual's self-confidence and provide an opportunity to practice skills in problem-solving and setting goals. In addition, supported decision-making encourages the creation and maintenance of supportive communities that assist seniors and adults with disabilities in maintaining decision-making authority over their own lives.

35-3. Who Is Considered a Member of the Supportive Community?

A member of the supportive community is a person that the senior or adult with disability has identified that they trust to assist with the supported decision-making process, who understands the individual's desires and personal values, and who will communicate the decision to others if specifically requested to do so by the individual.

Members of the supportive community can include family members, friends, case managers, direct support professionals, or others chosen by the individual.

Becoming a member of the supportive community does not create a fiduciary or contractual relationship with the individual. Members of the supportive community are not authorized to obtain or use personal, financial, or confidential information of the individual for the supportive community's purpose or benefit, or for the purpose or benefit of a third-party.

35-4. How Is Supported Decision-Making Used?

Supported decision-making assists seniors and adults with disabilities to make life decisions, including decisions related to where and with whom the individual wants to live, the services, supports, and medical care the individual wants to receive, and where the individual wants to work, without restricting the self-determination of the individual.

The following is an example of how supported decision-making could be used: Susan is an older adult with cognitive impairment and physical disabilities that cause her speech to be difficult to understand. She has a team of supportive community members that provide communication and decision-making supports for her daily living needs. Her team includes a relative, a close friend, and a volunteer who works at her community disability advocacy organization.

Susan has fallen behind on her credit card payments and the creditor has filed a lawsuit to collect. She was served with notice of the lawsuit, but because Susan had difficulty understanding

¹ Jonathan Martinis & Lucy Beadnell. *"I Learned that I Have a Voice in My Future:"* Summary, Findings, and Recommendations of the Virginia Supported Decision-Making Pilot Project. (2021). Available at: <http://www.supporteddecisionmaking.org/node/488>.

the paperwork, she didn't fully appreciate what might happen until she was able to work with her supported decision-making team. Her supportive community team members were familiar with her communication style, her abilities, and understood her speech well enough to answer the questions Susan had. They used simplified language to help her review and understand the documents to enable Susan to make decisions about appropriate next steps to address the overdue payments and avoid further litigation.

Supported decision-making helps individuals get the information they need to make informed decisions about their life choices and communicate those decisions to the appropriate person.

35-5. Supported Decision-Making Agreements

Supportive arrangements can be formalized into supported decision-making agreements. Seniors and adults with disabilities who are not already protected under an established guardianship or conservatorship may voluntarily enter into a supported decision-making agreement with one or more members of their supportive community. Under the agreement, the individual may request that the member of the supportive community do any or all of the following;

- ▶ Provide assistance with understanding the options, responsibilities, and consequences of the individual's life decisions, without making those decisions on behalf of the individual;
- ▶ Assist the individual in accessing, collecting, obtaining, and understanding information regarding a decision including medical, psychological, financial, educational, occupational, and social decisions; and
- ▶ Assist the individual in communicating the decision to appropriate persons when expressly requested by the individual.

The supported decision-making agreement is in effect until terminated by either the individual or the member of the supportive community, or by the terms of the agreement. Any party may terminate the agreement by providing written or verbal notice of the termination to all parties to the agreement.

A supported decision-making agreement in Colorado is valid only if it contains the following information:

- ▶ The name of the senior or adult with a disability;
- ▶ The name, address, phone number, and email address (if applicable) of the member of the supportive community;
- ▶ A list of decisions that the individual requests the member of the supportive community to advise the individual on;
- ▶ The day, month, and year the agreement was entered into; and
- ▶ A description of the member of the supportive community's agreement terms, including an agreement to:
 - Provide information as requested by the individual;
 - Respect that the final and ultimate decision is the individual's;

- Not coerce or manipulate the individual into making any decision; and
- Provide updated and relevant information to the individual based on the all the available and known information the member of the supportive community has.

A valid supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the individual and the member of the supportive community in the presence of two or more attesting and disinterested witnesses who are eighteen years of age or older, or with a notary public.

In addition, a valid supported decision-making agreement must include a notice that any mandatory reporter who has cause to believe that the individual is being mistreated, as defined in C.R.S. § 18-6.5-102 (10.5), by a member of the supportive community shall report the alleged mistreatment to adult protective services.

In Colorado, seniors and adults with disabilities are presumed to be able to make decisions regarding their day-to-day health, safety, welfare, and financial affairs, unless they are already protected by a guardianship or conservatorship. This includes the ability to enter into a supported decision-making agreement. If a guardianship or conservatorship has already been established, the individual will need to contact their legal representative to discuss adding supported decision-making to the current arrangements.

A supported decision-making agreement cannot be used as evidence of the incapacity of the senior or adult with disability.

35-6. Conclusion

Supported decision-making is a voluntary process for seniors and adults with intellectual and developmental disabilities to use family members, friends, professionals, and others they know and trust to help them understand the situations and choices they face, with the understanding that the final decision is left to the individual.

By supporting the individual's right to choose, the supported decision-making process helps families, friends, and professionals provide needed supports and safeguards without the need for court intervention.

35-7. Resources

The National Resource Center for Supported Decision-Making

Resources, publications, and additional information on supported decision-making including example agreements.

<http://www.supporteddecisionmaking.org>

The National Council on Disability

An independent federal agency committed to disability policy leadership.

<https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives>

The Colorado Developmental Disabilities Council

Information on self-determination, and inclusion for all individuals with developmental disabilities.

<http://www.coddc.org>

Disability Law Colorado

For people living with disabilities and seniors.

<https://www.disabilitylawco.org>

American Bar Association, The Practical Tool

To help attorneys identify and implement decision-making options for persons with disabilities.

https://www.americanbar.org/content/dam/aba/administrative/law_aging/PRACTICALGuide.authcheckdam.pdf

Area Agency on Aging

<https://drcog.org/programs/area-agency-aging>

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Appendix A.

Glossary

Advance Directives. Written instructions that state, in advance, how you want to be medically treated if you cannot speak or decide for yourself. *See* Chapter 24, “Medical Advance Directives.”

Agent or Attorney-in-Fact. The person whom you designate to act and make decisions for you under a power of attorney. *See* Chapter 15, “Estate Planning: Wills, Trusts, and Your Property”; Chapter 23, “Powers of Attorney”; and Chapter 24, “Medical Advance Directives.”

Aid in Dying. Colorado now recognizes that a competent individual has the right, if he or she meets certain medical conditions, to end his or her own life and to obtain medications from a physician that will cause his or her life to end. Certain legal procedures must be followed, and physicians and medical institutions may opt out of participating in the aid in dying law. This issue is more commonly known as “assisted suicide”; however, this is not a correct use of the terms. No one, not even a doctor or close relative, is permitted to assist someone in ending his or her life. *See* Chapter 24, “Medical Advance Directives.”

Asset. An item of real or personal property owned by an individual or by an entity, such as a trust. *See* Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Assisted Suicide. *See* “Aid in Dying” in this Glossary, and Chapter 24, “Medical Advance Directives.”

At-Risk Adult. An individual 18 years or older who is susceptible to mistreatment or self-neglect because the individual is unable to perform or obtain services necessary for the individual’s health, safety, or welfare, or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the individual’s person or affairs. *See* Chapter 12, “Protecting Yourself from Crime.”

Beneficiary. Anyone named to receive money or property, such as from a will, a trust, a life insurance policy, or a retirement account. *See* Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Bereavement Care. A service provided as part of the hospice care program at no charge to family members for 13 months after the patient has died. This can involve grief support groups, occasional phone or mail contact, education classes, or individual counseling. *See* Chapter 27, “Hospice and Palliative Care: Options for Care at the End of Life.”

Capacity. The ability to make and communicate responsible decisions. *See* Chapter 23, “Powers of Attorney.”

Chronic Illness. An illness that cannot be completely cured and persists over time, likely getting gradually worse, but is not considered “terminal” or “end stage.” See Chapter 27, “Hospice and Palliative Care: Options for Care at the End of Life.”

Coinsurance. The portion of the bill that the beneficiary is required to pay, even after the deductible is met. For example, Medicare pays 80 percent of the Medicare-approved rate for a doctor’s visit and the beneficiary is responsible for the other 20 percent coinsurance. See Chapter 2, “Medicare”; and Chapter 3, “Health Insurance Beyond Medicare.”

Comfort Care. Care focused on comfort and relief of suffering rather than cure. It is often used to mean hospice care or palliative care but may indicate pain relief only, without emotional, practical, and spiritual support. See Chapter 27, “Hospice and Palliative Care: Options for Care at the End of Life.”

Conservator. A person at least 21 years of age, resident or non-resident, who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator. See Chapter 12, “Protecting Yourself from Crime”; Chapter 23, “Powers of Attorney”; and Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Countable Resources. In order to be eligible for most public benefit programs, including Supplemental Security Income (SSI), an applicant’s assets must be below a certain level. Only certain kinds of resources are included in determining eligibility. Assets that are taken into account are called countable resources. See Chapter 1, “Social Security Benefits”; and Chapter 5, “Government Programs and Financial Assistance.”

CPR Directives/DNR Orders. Orders signed by a doctor directing that in the event that your breathing or heart stops, you should not be resuscitated by medical professionals. See Chapter 24, “Medical Advance Directives.”

Curative Care. Medical care that is focused on curing disease. See Chapter 27, “Hospice and Palliative Care: Options for Care at the End of Life.”

Declaration as to Medical or Surgical Treatment. The legal name in Colorado for an advance directive, concerning your preferences regarding allowing, withdrawing, or withholding life-sustaining treatment and nutrition and hydration in the event you are declared to be terminally ill or in a persistent vegetative state. Also commonly known as a living will. See Chapter 24, “Medical Advance Directives.”

Deed. A document used to transfer your interest in real property. See Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Disposition of Last Remains Directive. A written statement, signed by you, indicating what you wish done with your last remains at the time of your death. See Chapter 24, “Medical Advance Directives.”

Employer Group Health Plan (EGHP). Health insurance coverage provided through an employer group to workers and/or retirees. *See* Chapter 3, "Health Insurance Beyond Medicare."

End-Stage Illness. An illness that has progressed to the point that curative treatment is not effective and death is likely within months or weeks. *See* Chapter 27, "Hospice and Palliative Care: Options for Care at the End of Life."

Estate. All personal, financial, insurance, and real property owned by the individual. *See* Chapter 15, "Estate Planning: Wills, Trusts, and Your Property."

Estate Recovery. A method by which the state seeks to recover the costs of medical care provided to Medicaid recipients age 55 or older and to all institutionalized individuals, through imposition of a lien on real property, which is acted upon after the person dies and from assets in the probate estate. *See* Chapter 4, "Medicaid."

Exempt Resources. Assets that are not counted in determining eligibility for public benefits. *See* Chapter 5, "Government Programs and Financial Assistance"; and Chapter 9, "Employment Discrimination."

Financial Exploitation. The illegal or unauthorized use of an individual's funds, property, or resources for profit or advantage. *See* Chapter 12, "Protecting Yourself from Crime"; and Chapter 23, "Powers of Attorney."

Gift. A voluntary transfer of real or personal property for nothing in return. *See* Chapter 15, "Estate Planning: Wills, Trusts, and Your Property."

Guardian. An individual at least 21 years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian *ad litem*. *See* Chapter 12, "Protecting Yourself from Crime"; Chapter 23, "Powers of Attorney"; and Chapter 24, "Medical Advance Directives."

Health Maintenance Organization (HMO). An insurance that limits enrollees to a network of physicians and other health professionals who in turn provide a full range of medical care and treatment for a set monthly fee. *See* Chapter 3, "Health Insurance Beyond Medicare."

Heirs. People who, because of their relationship to the decedent, are entitled to the decedent's property if the decedent dies without a will. *See* Chapter 15, "Estate Planning: Wills, Trusts, and Your Property."

HIPAA (Health Insurance Portability and Accountability Act of 1996). A privacy rule that establishes federally protected rights under which an individual can control the uses and disclosure of protected health information. *See* Chapter 23, "Powers of Attorney."

Home and Community Based Services (HCBS). Services paid for by Medicaid that are provided in an individual's home or in a Medicaid certified Alternative Care Facility. HCBS includes personal care, as well as traditional Medicaid (medical) services. *See* Chapter 4, "Medicaid."

Hospice Care. An approach to care for persons with terminal illness and their families, involving a team of professionals — doctor, nurse, nurse's aide, social worker, chaplain — that focuses on quality of life and relief of pain and suffering. *See* Chapter 27, "Hospice and Palliative Care: Options for Care at the End of Life."

Hospice Residence. A specially designed or adapted facility for hospice patients only. Most hospice residences are designed to feel more like home than a health care facility. *See* Chapter 27, "Hospice and Palliative Care: Options for Care at the End of Life."

Incapacity. The inability to make or communicate responsible decisions. *See* Chapter 23, "Powers of Attorney."

Injunction. A court order directing the people named within the order to refrain from doing certain specified acts or to do a particular act. *See* Chapter 12, "Protecting Yourself from Crime."

Intestate Succession. A process in which Colorado law decides how your property will be distributed if the property is not disposed of through your will. *See* Chapter 15, "Estate Planning: Wills, Trusts, and Your Property."

Joint Tenancy with Right of Survivorship. A type of ownership in which you own property with another person with a right of survivorship, which gives each owner the right to receive the property at the death of the co-owner. *See* Chapter 15, "Estate Planning: Wills, Trusts, and Your Property."

Life-Sustaining Procedures. Medications, surgeries, or other medical therapies that would lengthen your remaining lifetime, but not reverse your medical condition. Under Colorado law, this does not include provision of nutrition and hydration. *See* Chapter 24, "Medical Advance Directives."

Marital Agreement. An agreement, in writing, between two people before or during marriage on what rights each of them will keep over certain property if a divorce or death occurs. *See* Chapter 13, "Family Relationships."

Medicaid. A joint federal/state program that pays some health care costs for qualifying individuals with low incomes and assets. It will cover some expenses that Medicare does not (for example, outpatient prescriptions). *See* Chapter 1, "Social Security Benefits"; Chapter 4, "Medicaid"; and Chapter 5, "Government Programs and Financial Assistance."

Medicare. A health insurance program for recipients of Social Security and some other federal programs. “Medicare Hospital Insurance” (also called Medicare Part A) is insurance that covers a necessary hospital stay, skilled nursing care in a nursing facility, and other home health services. “Medicare Medical Insurance” (also called Medicare Part B) is insurance that covers doctors’ and outpatient services, medical supplies, ambulance, and other services. “Medigap Insurance” is private insurance that supplements Medicare, providing coverage for benefits that Medicare does not provide. See Chapter 1, “Social Security Benefits”; Chapter 2, “Medicare”; Chapter 3, “Health Insurance Beyond Medicare”; and Chapter 5, “Government Programs and Financial Assistance.”

Need Standard or Standard of Need. In order for a person to be eligible for some public benefits, such as Supplemental Security Income (SSI) or Old Age Pension (OAP), an applicant’s income must fall below a level called the need standard. See Chapter 1, “Social Security Benefits”; and Chapter 5, “Government Programs and Financial Assistance.”

PACE. Program of All Inclusive Care for the Elderly that provides comprehensive health care and supportive services for frail individuals over the age of 65. This is Secondary Insurance coverage, which is accessed only after the primary insurance benefits are exhausted. See Chapter 4, “Medicaid.”

Palliative Care. Care focused on comfort and relief of suffering rather than cure. Differs from hospice care in that it can be offered along with curative care and is not limited to terminal illnesses. See Chapter 27, “Hospice and Palliative Care: Options for Care at the End of Life.”

Payable on Death Account (POD Account or a Trustee Account). A bank account that, upon the account holder’s death, distributes money to the person or people named by the account holder. See Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Personal Property. Property other than real property, such as stocks, bonds, bank accounts, cars, boats, clothing, and personal items. See Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Personal Representative. The person who handles your affairs after your death. Also sometimes referred to as an executor, executrix, or administrator, this person is either nominated by you in your will or is chosen by a court if you die without a will. See Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Planned Gift. A charitable giving method that allows donors to express their personal values by integrating charitable, family, and financial goals. See Chapter 18, “Philanthropy and Planned Giving.”

Power of Attorney. A written instrument by which one person, called the principal, appoints another as his or her agent (or “attorney in fact”), and gives the agent the authority to perform certain specified acts or kinds of acts on behalf of the principal. A *durable power of attorney* is valid even if the principal becomes incapacitated or unable to manage his or her affairs. A *temporary power of attorney* is limited to a specific amount of time. A *financial power of attorney* is document whereby the principal gives legal authority, in writing, to his or her agent or attorney in fact to handle the financial affairs for the person creating the power of attorney. A *medical power of attorney* is a document whereby the principal gives legal authority, in writing, to his or her agent or attorney in fact to make medical decisions for the person creating the power of attorney in the event the principal is unable to make the principal’s own medical decisions. A *general power of attorney* usually gives legal authority to handle all the financial affairs for the person creating the power of attorney, but a *limited (or special) power of attorney* usually only gives authority to perform a specific act or acts on behalf of another person (for example, the power to cash checks). A *springing power of attorney* becomes effective on the happening of some later event, such as a declaration by a physician that the principal is incapacitated, but a standing power of attorney is effective immediately and is not contingent upon the happening of a later event. *See* Chapter 15, “Estate Planning: Wills, Trusts, and Your Property”; Chapter 23, “Powers of Attorney”; and Chapter 24, “Medical Advance Directives.”

Probate. The legal process by which your property is collected and distributed according to your will or by intestate succession. *See* Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Protected Person. A person subject to a conservatorship. *See* Chapter 23, “Powers of Attorney.”

Prudent Man Rule. An agent must exercise the care a reasonable person would exercise under the circumstances and manage the principal’s funds not as if they were the funds of the agent, but with the care needed for managing funds of another. *See* Chapter 23, “Powers of Attorney.”

Real Property. Land and buildings or structures placed on land, such as houses, commercial buildings, and agricultural buildings. *See* Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Representative Payee. A person chosen by the Social Security Administration to receive and manage the recipient’s Social Security or Supplemental Security Income benefits for a recipient who cannot manage his or her own money. *See* Chapter 5, “Government Programs and Financial Assistance”; Chapter 12, “Protecting Yourself from Crime”; and Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Respite Care. Services provided on a short-term basis to a dependent individual whose usual caregiver is temporarily unavailable or in need of a break. *See* Chapter 21, “Assisted Living and Nursing Home Issues”; and Chapter 27, “Hospice and Palliative Care: Options for Care at the End of Life.”

Right of Survivorship. The right a person has to receive property when a co-owner dies. *See* Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Settlor. The creator of a trust. Settlers often put money or property into a trust. *See* Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Skilled Nursing. The need for daily inpatient skilled care or rehabilitation. It does not include “custodial care,” which is care that could be given by someone without medical training, such as help with dressing or eating. *See* Chapter 3, “Health Insurance Beyond Medicare.”

Social Security Disability Insurance Benefits (SSDIB). Disability benefits based on a worker’s earnings history. *See* Chapter 1, “Social Security Benefits.”

Supplemental Security Income (SSI). Federal income maintenance program for elderly and disabled persons with low income and resources. *See* Chapter 1, “Social Security Benefits.”

Supportive Decision-Making Agreement. The voluntary method of decision-making where an adult with a disability makes decisions by entering into an agreement with friends, family members, professionals, or other people that the adult with the disability trusts to be a part of a supportive community.

Supportive Decision-Making. The way an adult with a disability or diminished capacity has made or is making his or her own decisions by using friends, family members, professionals, and other people he or she trusts to: (a) Help understand the issues and choices; (b) ask questions, (c) receive explanations in language he or she understands, (d) communicate his or her decisions to others if necessary, and/or (e) facilitate the exercise of decisions regarding his or her day-to-day health, safety, welfare, or financial affairs.

Tenancy in Common. A type of ownership in which you own a percentage of the property with another person. If one owner dies, the property does not automatically transfer to the co-owner(s). *See* Chapter 15, “Estate Planning: Wills, Trusts, and Your Property.”

Terminal Condition. An incurable or irreversible condition for which the administration of life-sustaining procedures will serve only to postpone the moment of death. *See* Chapter 24, “Medical Advance Directives”; and Chapter 27, “Hospice and Palliative Care: Options for Care at the End of Life.”

Trust. An arrangement in which one person, the trustee, holds property for the benefit and use of another, the beneficiary. A *living (or inter vivos) trust* is a type of trust in which one party, the settlor, during his or her lifetime, creates a trust for himself or herself and/or for others. Property may be transferred to the trust during the lifetime of the settlor of the trust or after his or her death. Once property is transferred to the trust, it is under the control of a trustee and distributed according to the terms of the trust. A *testamentary trust* is a type of trust that is set up in your will. It only takes effect after your death. An *irrevocable trust* cannot be changed after it is signed, while a *revocable trust* can be amended or changed, which is similar or often the same as a living trust. See Chapter 15, "Estate Planning: Wills, Trusts, and Your Property."

Trustee. The person who manages and distributes the property held in a trust. See Chapter 15, "Estate Planning: Wills, Trusts, and Your Property."

Ward. A person found by a court to be an "incapacitated person" and subject to a guardianship. See Chapter 23, "Powers of Attorney."

Will. A signed, written legal document that describes how you want your estate to be distributed after you die. A *pour-over will* provides that all property administered in probate is distributed to a living trust. See Chapter 15, "Estate Planning: Wills, Trusts, and Your Property."

Work Quarters. In order to be eligible for Social Security benefits, wage earners must have worked for a minimum number of "work quarters." See Chapter 1, "Social Security Benefits."

Appendix B.

Legal Resources*

As noted in the Preface to this *Senior Law Handbook*, this Handbook is for informational purposes only. In addition to the resources listed at the end of many of the chapters of the *Senior Law Handbook*, there are others that you may contact to seek legal representation or advice. Some of these are listed here.

AARP/Elderwatch: AARP Foundation ElderWatch

Answer calls into ElderWatch, a partnership of the AARP Foundation and Colorado Attorney General, from Coloradans age 50+ who are reporting business complaints, fraud, scams, and financial exploitation. ElderWatch provides educational information, assistance, and referrals to appropriate agencies.

(800) 222-4444 and select option 2

www.aarp.org/aarp-foundation/our-work/income/elderwatch/

Colorado Bar Association “For the Public”

The Colorado Bar Association provides information on legal resources, including how to find a lawyer.

www.cobar.org/For-the-Public

Colorado Legal Services

Provides legal representation and advice in civil legal matters such as housing, public benefits, welfare, social security, mental health, and elder law. Also provides a list of self-help resources on civil legal topics. You must apply for representation. CLS serves low-income Coloradans; you must apply and qualify for assistance. Several offices also offer senior legal service in addition to the low-income program. Regional offices are listed on the CLS website.

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www.coloradolegalservices.org

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<http://disabilitylawco.org>

The Guardianship Alliance

Provides information and instruction about guardianships of adults in Colorado.

(303) 691-9339

www.abilityconnectioncolorado.org/guardianshipallianceofcolorado/

Sponsors of the Senior Law Handbook

Many of the sponsors of the Senior Law Handbook are lawyers who may be able to provide representation or information. Each lawyer has their own fee schedule and availability, so please call to inquire. Contact information is listed in Appendix C, "2021 Senior Law Day Sponsors."

Pro Bono Programs

Many pro bono programs provide services to low-income Coloradoans and may also offer a senior legal services program.

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<https://lawyers.justia.com/legalservice/heart-of-the-rockies-bar-association-pro-bono-program-9135>

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(800) 521-6968
www.coloradolegalservices.org/node/327/contact-colorado-legal-services#Dillon%C2%A0

Northwest Colorado Legal Services, a branch of Colorado Legal Services

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Craig, CO 81626
(800) 521-6968
www.coloradolegalservices.org/node/350/northwest-colorado-legal-services-project-nclsp

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www.justicecentercos.org

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www.coloradolegalservices.org/node/327/contact-colorado-legal-services#Pueblo%C2%A0

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www.facebook.com/San-Luis-Valley-Pro-Bono-Project-797970973634391

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www.southwestbarvolunteerlegalaid.wordpress.com

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* CBA-CLE would like to offer special thanks to Kathleen Schoen of the Colorado Bar Association for compiling this legal resource list.

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A very special thank you to the following businesses, nonprofits, governmental agencies, foundations, and individuals, who believe in our mission to educate aging adults, their families and caregivers about the laws and issues that affect their daily lives. The Sponsors' generous financial and in-kind support make it possible for us to provide you with this Handbook, and to hold the many Senior Law Day events throughout Colorado. Please be sure to visit these great organizations and businesses to see how they can help you!



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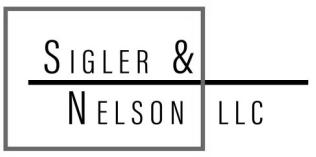
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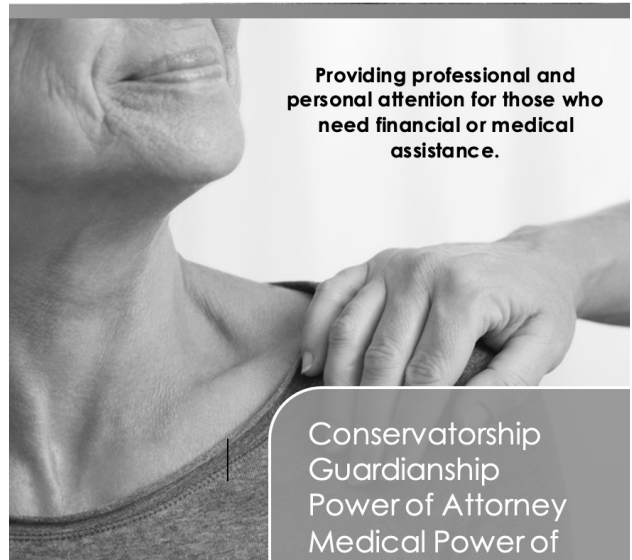
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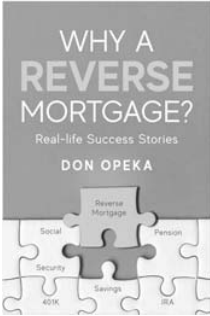
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