



ACA/FAMILY MEDICAID 308-2 Common Law Marriage

Supersedes: FMA 305-1 (01/01/06)

Reference: ARM 37.82.101, .701 - .703, 42 CFR 435.110, .510, .602; PL 104-193; 42 USC 1396b; MCA 40-1-403

Overview: In Montana, a couple may enter into a legally binding common law marriage, even though they have not gone through a formal marriage ceremony.

ASSESSING COMMON LAW MARRIAGE:

A common law marriage is NOT created simply because a couple live together and act as if they were married. The parties must INTEND to enter into marriage. Each individual must be old enough to marry and not married to anyone else to enter into a valid common law marriage. To determine marital status, relationship documentation is needed. A marriage license, divorce decree, separation agreement, or other documentation is provided. For a common law marriage to exist, three elements must be present:

1. Consent and agreement - the man and woman must mutually agree and consent to enter into a marriage relationship;
2. Competency - both are legally competent to enter into a marriage; and
3. Cohabitation and holding themselves out as married. The parties must live together and hold themselves out to relatives, friends, neighbors, co-workers and others as being married. Merely living together or having children together is NOT proof that a common law marriage exists. There must be evidence that the parties hold themselves out as a married couple. Evidence may include:
 - a. Using the same last name;
 - b. Referring to each other as husband and wife when introducing each other or talking to other people;
 - c. Listing each other as spouse on health or life insurance policies, loan or credit applications, tax returns, and other documents.

NOTE: Owning property such as a house or car jointly with another person is NOT evidence that they are holding themselves out as married unless the deed, title or other proof of ownership indicates they own the property as husband and wife.

PROVING COMMON LAW MARRIAGE:

The most important element, and the hardest to prove is that the parties intend at some specific point in time to enter into a marriage. If the Department through the field office suspects that a client has entered into a common law marriage exists, the Department/field that office has the burden to prove the three necessary elements of a common law marriage are present, including intent.

Under Montana law (26-1-602(30) MCA), there is a presumption presumes that a two individuals who behave as if they are married have entered into a lawful marriage contract. However, evidence to the contrary can overcome this presumption. Often there is conflicting evidence as to whether the parties hold themselves out as married. For example, the woman may continue to use her own name in some situations but use the alleged husband's name at other times, or the parties may list each other as the spouse on some documents but not others. In these instances, a court or hearing officer may find that a common law marriage does NOT exist.

DOCUMENTATION REQUIREMENTS:

If the three elements of common law are not present, do not establish common law marriage. Evaluate household members per the appropriate program filing unit policy. **NOTE: If there is any questionable evidence, do not consider the parties to be common law married.** If all three elements are present, request a written statement attesting to these facts. Document action in system case notes.

Effective Date: July 01, 2016