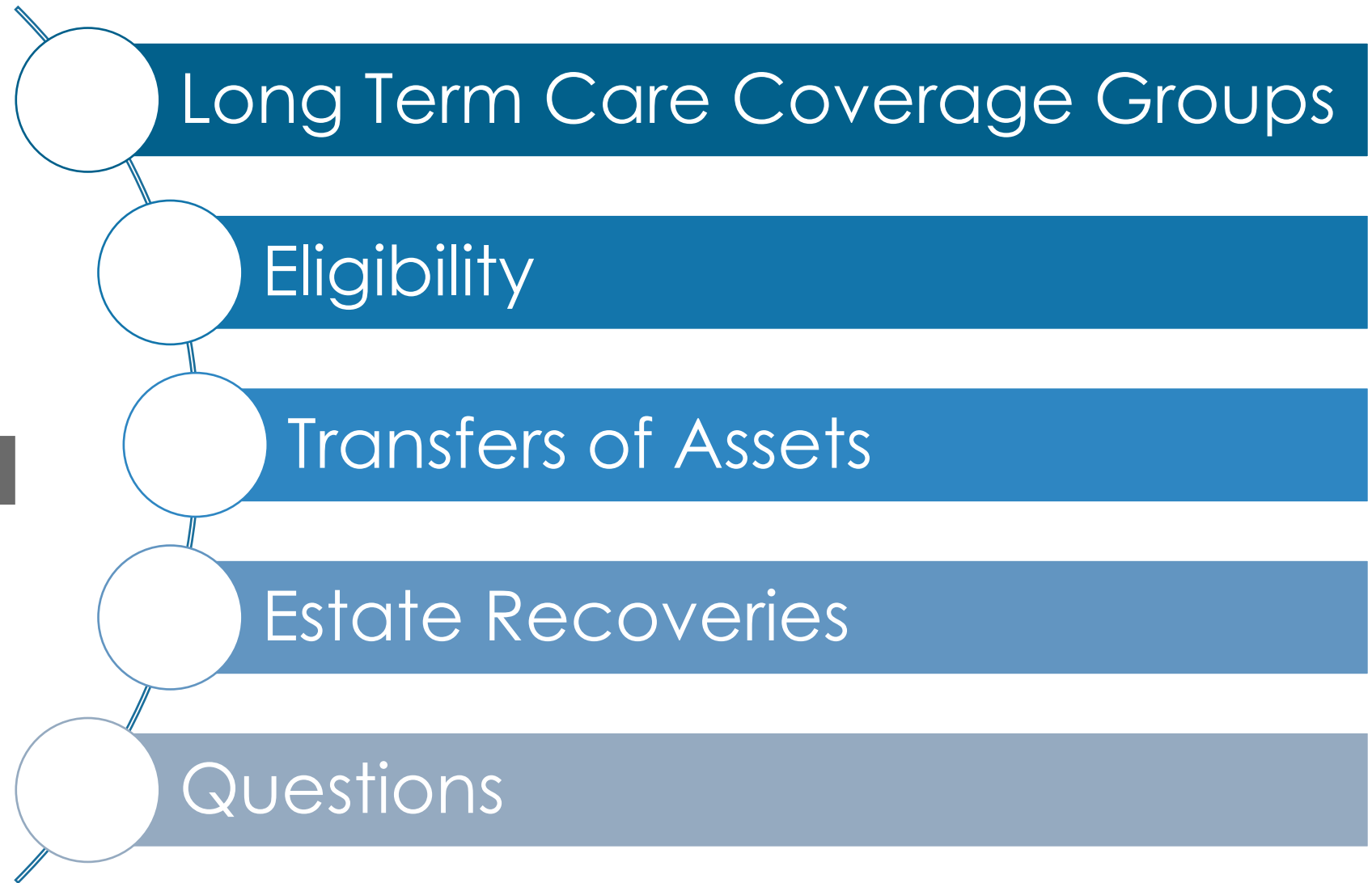




Long Term Care Eligibility



Agenda



Long Term Care Coverage Groups



To be eligible for Medicaid, an individual must also be a member of a coverage group.

In South Dakota, most coverage groups consist of individuals who meet the following descriptions:

- Children under the age of 19;
- A parent or caretaker relative caring for a child under the age of 19;
- A pregnant woman;
- Blind or disabled individuals determined to be disabled by the Social Security Administration or the Department of Social Services; and
- Aged (65 and older).

Long-Term Care Coverage Groups

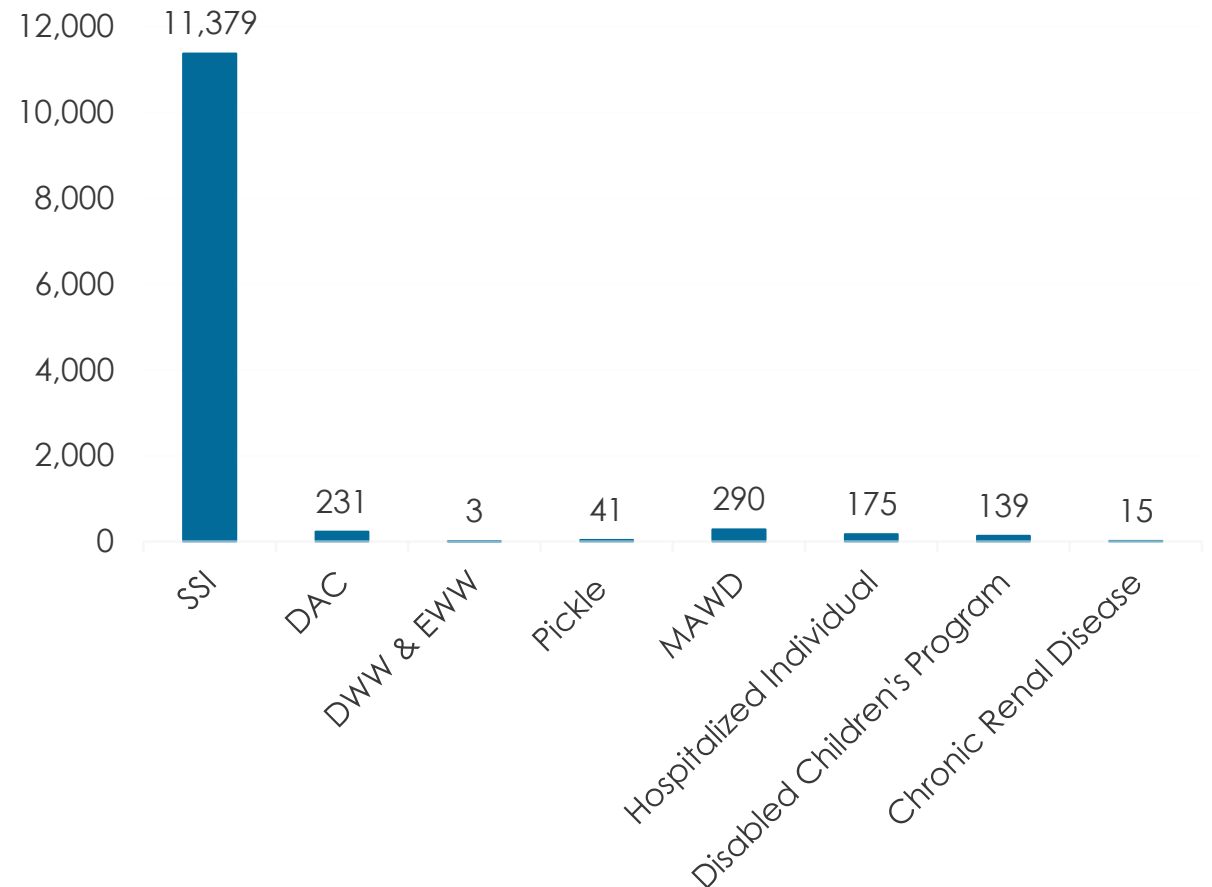
Medicaid-Only Coverage Groups

There are coverage groups for the aged, blind, and disabled that do not require individuals to meet a specific level of care and do not provide institutional or home and community-based services.

- Supplemental Security Income (SSI);
- Disabled Adult Child (DAC);
- Disabled or Early Widow(er)s (DWW and EWW);
- Pickle Amendment Eligible;
- Medical Assistance for Workers with Disabilities (MAWD);
- Hospitalized Individuals;
- Disabled Children's Program (DCP)*; and
- Chronic Renal Disease (*state-funded program, Medicaid is not provided*).

**DCP requires a nursing facility level of care.*

April 2023 Enrollment Numbers



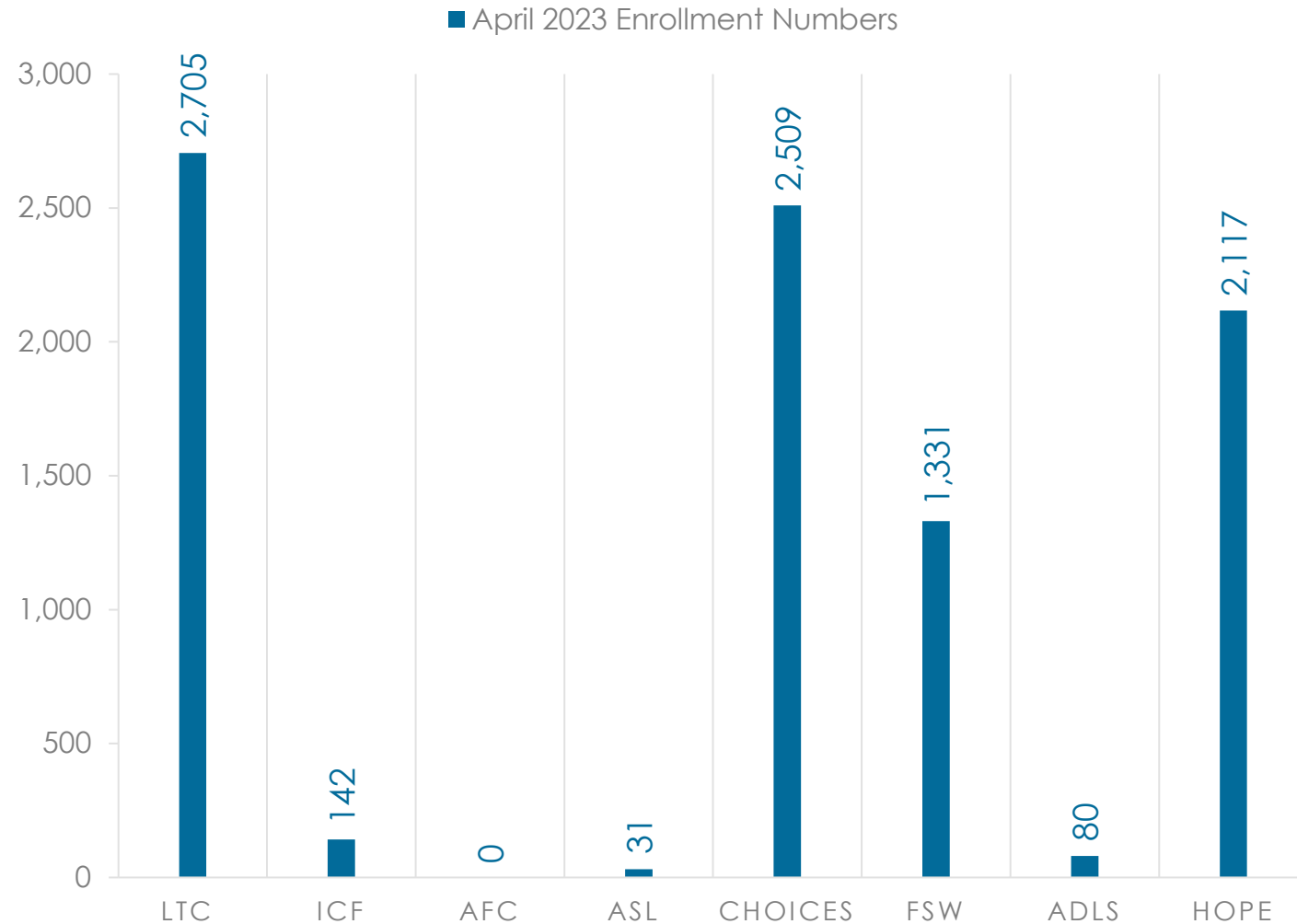
Long-Term Care Coverage Groups

Home and Community Based Service Coverage Groups

These coverage groups for the aged, blind, and disabled require individuals to meet a level of care. They provide institutional and home and community-based services:

- Skilled nursing facility, swing bed, and hospice care (LTC);
- Intermediate Care for the Intellectually Disabled (ICF);
- Adult Foster Care (AFC);
- Regular Assisted Living (ASL); and
- Waivers:
 - CHOICES Waiver;
 - Family Support 360 Waiver (FSW);
 - Assistive Daily Living Services (ADLS) Waiver; and
 - HOPE Waiver.

APRIL 2023 ENROLLMENT NUMBERS



Medicare Savings Programs (MSP)

- Qualified Medicare Beneficiary (QMB);
- Specified Low-Income Medicare Beneficiary (SLMB);
- Qualified Individual (QI); and
- Qualified Disabled & Working Individuals (QDWI).

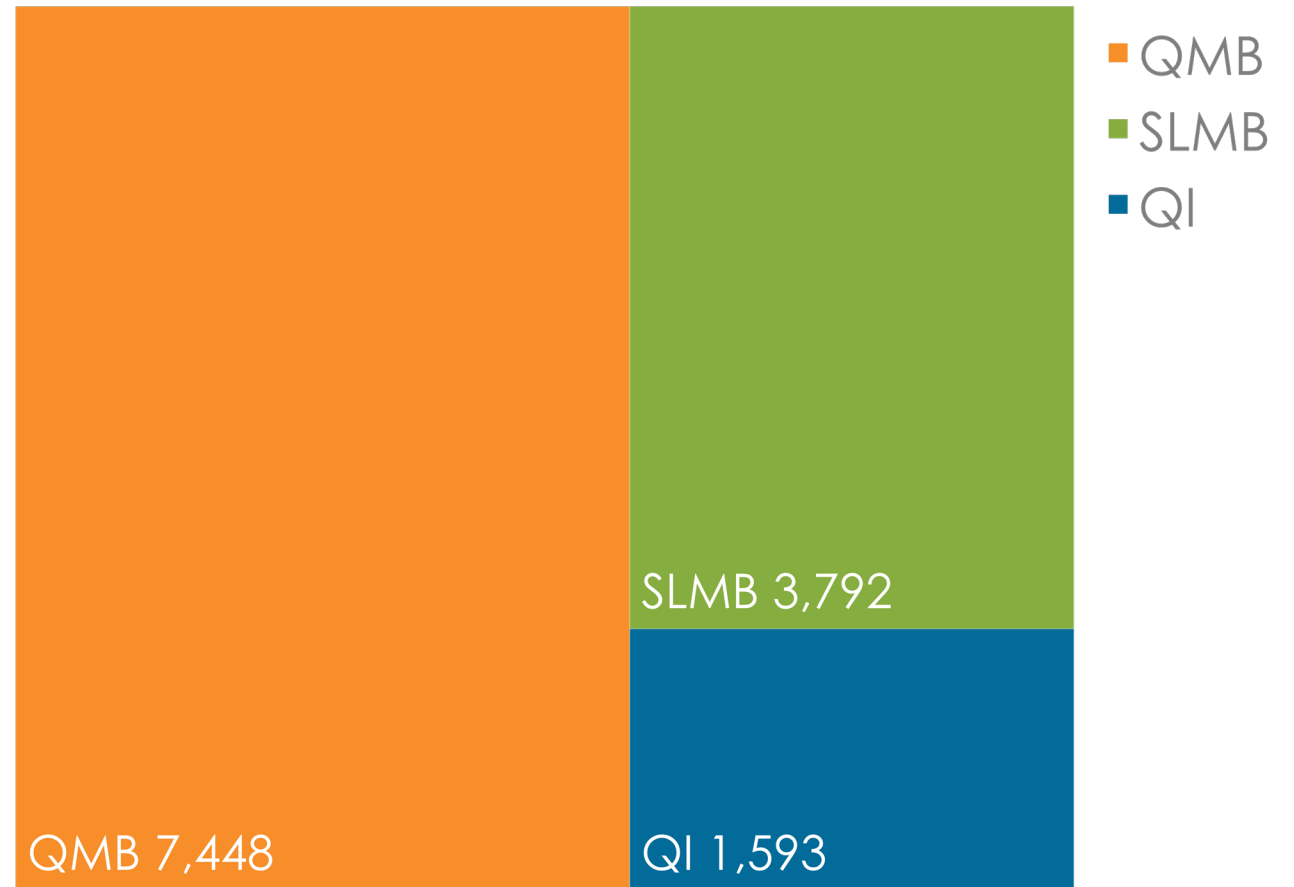
Income thresholds determine the MSP in which the recipient is enrolled.

SLMB and QI cover Part B premiums, while QMB can also cover Part A premiums and Medicare coinsurance and deductibles.

QDWI pays for Part A premiums only. No persons in SD are on this program currently.

Individuals can qualify for MSP and other available programs simultaneously.

MSP Enrollment April 2023



Eligibility

Non-Financial Eligibility Requirements

All Medicaid programs have non-financial and financial requirements.

Non-financial requirements for all Medicaid programs:

- Must be a resident of South Dakota;
- Must be a U.S. citizen or qualified alien;
- Must provide a Social Security Number; and
- Must assign rights to medical support and payment.

There are specific non-financial requirements for long-term care programs:

- Must be aged (age 65+), blind, or disabled; and
- Must have medical needs that require a level of care provided in a long-term care facility.

Disability

Individuals who have not been determined disabled by SSA or whom SSA will not make a determination on (e.g., persons who earn more than the substantial gainful activity threshold) can receive a disability determination by DSS' Disability Review Team (DRT). The DRT uses SSA's criteria to make a determination and cannot override SSA's determinations.

Non-Financial Eligibility Requirements

Time Requirements

Time requirements are written into the Social Security Act and affect eligibility for long-term care programs providing institutional or home and community-based services.

Long-term care is defined as a period of 30 consecutive days or longer in a medical institution or receipt of waiver services for a minimum of 30 consecutive days.

If an individual is already eligible for Medicaid or has income below the SSI Federal Benefit Rate for the calendar year (\$914 in 2023), **or** if the individual passes away before the 30th day, they are considered to have met the 30-day requirement.

Resource Assessments

The 30-day requirement is additionally required in order to establish the date that must be used to determine a couple's combined countable resources. This process, called a Resource Assessment, must occur prior to determining eligibility.

Further information on calculating Resource Assessments and establishing a protected share for the spouse who is not in a medical facility or applying for coverage will be addressed in coming slides.

Financial Eligibility Requirements

Income

Income is any item an individual receives in cash or in-kind that can be used to meet basic needs. Section 1612 of the Social Security Act outlines what is considered income and what is exempt.

Income is primarily split into two categories:

- Earned income (wages, self-employment, salary)

- Unearned income (disability benefits, retirement benefits, unemployment benefits, etc.)

Income is counted in the month it is received. Any income maintained into the next calendar month will be considered a resource.

Resources / Assets

Resources are cash or anything an individual or their spouse owns that can be converted to cash. This includes items they are entitled to receive but do not because of an action or inaction. Not all resources count against the resource limits.

Income Limits and Medicaid Income Trusts

Income Limits

The gross income limit for an individual's eligibility for long-term care is 300% of the SSI Federal Benefit Rate (\$2,742 in 2023). If income is over this amount, a Medicaid Income Trust established for *the sole purpose of paying for care* is required to meet the income eligibility requirements.

Medicaid Income Trusts

A Medicaid Income Trust is used when a Medicaid applicant has too much income to qualify for Medicaid, but not enough to private pay for long-term care costs. The trust is established for the sole benefit of an individual who receives long-term care or HCBS.

Example: Jim is in a nursing facility and was approved for long-term care Medicaid. He is Trustee of his own Medicaid Income Trust and receives \$3,000 in Social Security and \$1,000 in a pension. He must transfer or deposit at least \$1,258, the amount exceeding \$2,742, into the trust. His cost share to his nursing facility is \$2,000. He transfers \$2,000 into the trust and then pays this amount directly from the trust to the nursing facility. The trust returns to a \$0 balance before the start of the next month.

Resources

Resource Limits

The resource limits depend on whether the applicant is not married, married and applying in the same month as the spouse, or married and the spouse is not applying or not in a medical facility.

- Individual limit - \$2,000
- Married and applying in the same month - \$3,000
- Married and spouse is not applying and not in a medical facility – \$2,000 for the applicant. \$29,724 is the minimum protected share and \$148,620* is the maximum protected share for the “community spouse” in 2023.

Resource Eligibility

If resources are more than \$2,000 as of 12:01 AM on the first of the month, individuals have an opportunity to reduce them before the end of the month. If eligible on any one day of the month, coverage would begin as of the first of the month.

Income received in the month is not countable as a resource unless maintained into the next calendar month. It would be deducted from cash or bank accounts for the month when determining countable resources.

Countable Resources

All resources are countable unless expressly identified as excluded in Administrative Rule of South Dakota, or, in the absence of a resource regulation, outlined in current SSI regulations as provided in 42 U.S.C. §§ 1382 and 1383.

Examples of Countable Resources:

- Bank Accounts;
- Stocks;
- Annuities;
- Certificates of Deposit;
- Contracts for Deed;
- Real Property;
- Available trust funds;
- Life estates; and
- Cash values on certain life insurance policies.

Generally, the value of a resource is the amount of an individual's or couple's equity in the resource.

Excluded Resources

Excluded Resources

These resources are not counted against the resource limit for an individual or a couple.

Examples:

- Most home property;
- One vehicle for an individual or a couple if used for transportation;
- Property essential for self-support, if it meets certain requirements;
- Most household goods and personal effects;
- Irrevocable prepaid burial contracts for the applicant and spouse each up to \$15,000;
- Certain burial expenses, if an irrevocable prepaid burial contract is not in place; and
- Certain Native American property, including property with unique Native American significance and property connected to the political relationship between Tribes and the Federal government.

Resources may become countable if a situation changes, such as a Medicaid recipient's home after moving permanently into a nursing facility. The resource would become countable the first of the month after the change in situation.

Transfers of Assets

Transfers of Assets

Transfers of Assets

When an individual or couple apply for long-term care Medicaid, they must report if they gave away or sold an asset for less than what it was worth within 60 months prior to the date the application is received by DSS. Their financial history is assessed by DSS to determine if unreported transfers also occurred.

If resources are transferred without receiving fair market value or given away by the individual, spouse, or anyone acting on their behalf, eligibility for long-term care assistance may be denied or delayed. The period of ineligibility begins once the individual would otherwise be eligible.

ARSD 67:46:05:09 - Calculating period of ineligibility.

The period of ineligibility is determined by dividing the uncompensated value of the transferred assets by the monthly state-wide average of long-term care costs* for private pay individuals for the state's current fiscal year.

The department shall impose a partial month period of ineligibility if the sum arrived at in the above calculation results in a partial month remainder, rounded up to a whole day.

*2023 amount is \$275.02 per day

Allowable Transfers

Some transfers are allowable and do not result in a period of ineligibility.

Allowable Transfers to a Disabled Spouse or Child

Transfers are always allowable to the applicant or recipient's spouse or to their child who has a disability as determined by SSA. Transfers to someone else for the sole benefit of a spouse are allowable. Transfers to trusts are allowable if the trust was established solely for a child or for anyone under age 65 with a disability as determined by SSA.

Home Transfer

Transfer of the home is allowable if transferred to the applicant or recipient's:

- Spouse;
- Child under age 21;
- Child of any age with a disability as determined by SSA;
- Child who lived in the home at least 2 years prior to the parent entering a medical facility **and** who provided care to prevent earlier nursing home care; or
- Brother or sister who has an equity interest in the home **and** who resided in the home at least one year prior to the individual entering a medical facility.

Example Transfers of Assets

Example 1

Ms. Smith entered a nursing home on February 23, 2023. An application for LTC assistance is received in the local Social Services Office on March 29, 2023. Ms. Smith reports on the application that she transferred \$10,000 to her brother on December 20, 2016. She meets all other Medicaid eligibility requirements for February and March 2023. This transfer occurred prior to the 60 month look back period so there is no penalty.

Example 2

Ms. Jones enters a nursing home on May 3, 2023, and an application for LTC assistance is received in the local Social Services Office on June 29, 2023. Ms. Jones reports on the application that she transferred \$10,000 to her brother on February 20, 2020. She meets all other Medicaid eligibility requirements for May and June 2023.

The transfer occurred during the look back period of 60 months. The penalty period calculates to be 37 days and it begins May 3, 2023 - the first day of the month during or after which assets have been transferred or the date the individual is otherwise Medicaid eligible for LTC facility services, whichever is later. The penalty period runs until June 8, 2023. Medicaid coverage for non-nursing home services (for example, doctor visits) begins June 9, 2023.

Undue Hardship Waivers

Fair Hearings

Individuals who disagree with the determination of a transfer penalty may request a fair hearing. A determination will be made by an Administrative Law Judge.

Undue Hardship Waiver Process

Individuals who disagree with the determination of a transfer penalty may also request an Undue Hardship Waiver. This process is only available for individuals who have had a transfer penalty imposed. It is not a process for individuals who are ineligible for other reasons.

When a transfer penalty is imposed, a notice is sent to the recipient advising them of the Undue Hardship Waiver process. The criteria to meet the waiver are outlined at ARSD 67:46:05:10.

Once a hardship waiver request is received by the Benefits Specialist, they send it to Medical Program Staff. A summary and required documentation is sent to the Division Directors for Economic Assistance and the Department of Human Services, who decide if the request meets ARSD criteria.

If the individual meets the criteria, the transfer penalty period can be waived.

Estate Recovery

Estate Recovery

Medicaid agencies are required to establish estate recovery procedures per Section 1917 of the Act. Under South Dakota Law SDCL 28-6-23, recovery may be made for nursing home expenditures regardless of age. In addition, medical payments for home and community-based services, intermediate care for the intellectually disabled, hospitalization, and prescription drugs can be recovered for those 55 and older.

The recipient and their legal representative is informed at the time of application for long-term care services. When the application is signed, the recipient signs the notice of the Estate Recovery Program as well as other acknowledgments.

The Department is authorized to submit its affidavit 30 days after the death of the recipient; however, it will allow more time if it is needed. Family may request more time to pay funeral expenses.

Estate Definition

An estate is the real and personal property or interest therein of the testator, intestate, grantor, bargain or, vendor, or donor passing to individual legatees, devisees, heirs, next of kin, grantees, donees, venees, or successors and includes all personal property within or without the state and includes any funds remaining in an individual's prepaid burial trust after the individual's burial expenses are paid.

Estate Recovery and Surviving Spouses

Recovery includes recovery from the estate of a surviving spouse. Claims may be filed against the estate of a surviving spouse to recover Medicaid benefits received by the Medicaid recipient.

If a surviving spouse wishes to limit the amount of the surviving spouse's estate that will be available for reimbursement of medical assistance expenditures, the surviving spouse must file a petition for limitation. The petition must be made on a Department of Social Services form and filed with the department within six months of the death of the Medicaid recipient. The spouse must include all relevant verifications with the form.

If a petition is filed, DSS will determine the value of the surviving spouse's estate at the time of death of the medical assistance recipient. The value will limit the amount available to DSS for recovery of its medical assistance expenditures on behalf of the medical assistance recipient.



Questions?

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