

Medical Eligibility and the South Dakota Long-Term Care (LTC) Partnership Program

Introduction

The South Dakota LTC Partnership Program is a joint effort between private long-term care insurers, the Department of Social Services, and the Division of Insurance to encourage people to plan for their potential long-term care needs and expenses.

In order to participate in the South Dakota LTC Partnership Program a person must have purchased and received the benefits of a qualified Partnership policy. A qualified Partnership policy must meet all of the rules set out by the South Dakota Division of Insurance including a specific amount of inflation protection based on the person's age at the time he or she purchases the policy.

The South Dakota LTC Partnership Program benefits a person by protecting assets in an amount equal to the benefits utilized under a qualified Partnership program if the person ever applies for and qualifies for SD LTC Medicaid. The Department of Social Services will not count the protected value of the individual's assets when determining eligibility and if they are retained by the individual, DSS will not claim them during estate recovery.

This training will provide you with:

- A discussion of the general eligibility criteria for SD LTC Medicaid and the payment of LTC services.
- An explanation of the interaction between DSS and the South Dakota LTC Partnership Program.
- Information about how people can apply for SD LTC Medicaid.

The material presented here is a general guide to understanding payment of long-term care and the interaction between SD LTC Medicaid and the South Dakota LTC Partnership Program. LTC Medicaid eligibility policy is very complex and has many exceptions and special rules for various situations therefore this material should not be used to determine if an individual is eligible for South Dakota Medicaid. Inquiries about an individual who is enrolled in SD Medicaid must be made by that individual or the individual's authorized representative to the Long Term Care Benefits Specialist who maintains the individual's case. Inquiries about how eligibility policy would be applied to a specific individual's circumstances cannot be provided in advance of the individual filing an application and providing the information necessary to determine his or her eligibility.

Please refer specific questions regarding eligibility to your local Department of Social Services. <http://dss.sd.gov/offices/>

A. General Eligibility Criteria for LTC Medicaid

1. South Dakota Residence

Federal residence rules require that an applicant must be a South Dakota resident and must intend to remain in South Dakota. The state of residence for people who live in a LTC facility is the state in which they are physically present with intent to remain on the date of application for Medicaid.

2. Citizen and Immigration Status

To be eligible for SD LTC Medicaid, a person must be either a U.S citizen or a non-citizen with a qualified immigration status.

3. Eligible Population

Residents of medical institutions (includes nursing facilities) for over 30 consecutive days and individuals receiving Home and Community Based Services (HCBS) Waiver services.

4. Third Party Liability

Medicaid is typically the payer of last resort.

- People with other health care coverage or who have another party liable for their medical expenses will have medical costs paid by those sources first before Medicaid pays claims.
- People are required to cooperate with providing information regarding other payment sources. This includes long term care insurance.

5. Specific Requirements for LTC Medicaid

A person must:

- Be aged, blind or disabled
- Have a Medical Review Team (MRT) or Utilization Review Team (URT) review that determines the person requires a level of care provided in a LTC facility
 - The MRT or URT determines a person's need for long-term care in one of the following medical facilities:
 - A nursing facility
 - An intermediate care facility for persons who have intellectual disabilities
 - Assisted Living
 - Swing-bed
 - The MRT or URT determines if the person qualifies to receive home and community based services through waiver programs. These services are provided to individuals who would otherwise be institutionalized in a Medicaid funded hospital, nursing facility, or an intermediate care facility for persons who have intellectual disabilities. The waiver programs are:

- Developmentally Disabled - waiver for people with developmental disabilities providing service coordination, habilitation, supported employment services, nursing, and specialized medical equipment, supplies and drugs.
 - Family Support – services provided to eligible families of children or adults with a developmental disability such as Down’s syndrome, an intellectual disability, autism or cerebral palsy. The developmentally disabled individual lives in the family home on a full time basis.
 - Home & Community-Based Options and Person Centered Excellence (HOPE)- services provided to maintain eligible aged and physically disabled individuals at home, thus preventing or reducing unnecessary institutional care including homemaker services, private duty nursing, adult day care, emergency response systems, meals, specialized medical equipment and medication services in an assisted living arrangement.
 - Assistive Daily Living Services- a program specifically for persons who are diagnosed as having quadriplegia that may allow individuals to live independently in their own homes with the assistance of the following services: case management, consumer preparation, personal attendant and ancillary services.
- Be a resident of a LTC facility or qualify to receive home and community based services under one of the Medicaid waiver programs
 - A LTC facility does not include placements in facilities that are not Medicaid-certified.
 - Have home equity of \$595,000 (2020) or less unless a spouse, child under the age of 21, or blind or disabled child is lawfully residing in the home.
 - Not be in a penalty period for a transfer of income or assets for less than fair market value.
 - Penalty periods are assessed when a person or the person’s spouse, or someone acting on their behalf, transfer assets for less than fair market value during a specified period of time (called the look-back period) prior to a person requesting SD LTC Medicaid or anytime while the person is receiving SD LTC Medicaid.
Some Exceptions Exist – Transfer of the home to one of the following people will NOT prevent or delay LTC eligibility:
 - Spouse
 - Son or daughter under age 21
 - Son or daughter meeting Social Security Administration definition of disability or blindness
 - Son/daughter who lived in the home at least 2 years prior to parent entering a medical facility and who provided care to prevent earlier nursing home care
 - Brother/sister who has an equity interest in the home and who resided in the home at least 1 year prior to the individual entering a medical facility
 - The look back period for the transfer of assets is 60 months.
 - The penalty period is calculated by dividing the value of the assets transferred by the Statewide Average Payment for Skilled Nursing Care in effect at the time a person requests LTC Medicaid. This calculation results in a number of days during which the person is ineligible for SD LTC Medicaid to cover the cost of nursing home or waiver services.
 - The penalty period begins when the person applies for and is otherwise eligible to receive SD LTC Medicaid but for the penalty period, or the day after a prior penalty period has ended, whichever is later. For people receiving SD LTC Medicaid at the

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time of the transfer, the penalty period begins the month following the month in which the transfer occurred or the date after a prior period of ineligibility ends, whichever is later.

- Disclose any annuity interests, and if married, annuity interests of a spouse and name the State as a remainder beneficiary of any annuity owned by the person or person's spouse. This provision applies regardless of whether the annuity is irrevocable or treated as an asset, whether annuitized or not.
NOTE: Future payments from an annuity are countable assets.

6. Suitability of a Partnership Sale and Important Consumer Disclosures

- Purchase of a LTC Partnership policy is not a guarantee of eligibility for SD LTC Medicaid nor is it a guarantee of any ability to disregard assets for purposes of Medicaid eligibility.
- The Partnership program protects assets not income so the state's rules for income limits or contributions to costs of care in excess of a certain allowed amount still apply.

B. Financial Eligibility Criteria for People Requesting SD LTC Medicaid

1. Income

The Long Term Care gross income limit is \$2,349 (2020). If income is over this amount, an income trust established for the sole purpose of paying for care is required to meet the income eligibility requirements.

Examples of Income:

Social Security or SSI	Workman's Compensation
VA Benefits	Pensions/Income
Railroad Retirement	Unemployment Benefits
Some Interest/Dividends	Life Insurance Proceeds
Trust Income	Earnings / Rent Income
Inheritance	

Income not counted in the Gross Income Limits

County assistance
Income tax or sales tax refunds
Veteran's aid/attendance; some other VA payments
Dividends paid on life insurance policies
Irregular (receipt is unexpected) and infrequent income (received once a quarter from same source)
 If earned income – amount is less than \$30 a quarter
 If unearned income – amount is less than \$60 a quarter

2. Assets

Limit - \$2,000

Examples of Countable Assets:

Bank Accounts / Bonds	Contract for Deeds
Stocks / Annuities (whether annuitized or not)	Real Property
Certificate of Deposits	Available Trust Funds

Common Assets Not Counted in Limits:

- Most home property if the individual plans to return home or if it is occupied by the spouse
- Most household/personal items
- One vehicle used for transportation
- Certain pre-paid burial contracts

Asset treatment for married couples

If one spouse is entering a medical facility (hospital/nursing home) or has entered since September 30, 1989 and is expected to remain or has remained in a medical or nursing facility for 30 or more days, eligibility for LTC Medicaid allows for some assets to be "protected" for the community spouse.

"Protecting" assets is also available for couples when the spouse needing assistance chooses:

- To remain with the other spouse at home and is eligible for Medicaid waiver services;
- To be in an Assisted Living Facility and qualifies for Waiver Services; for example, based on the need for medication management; or
- To otherwise live in the community and is eligible to receive home and community based Medicaid Waiver services.

The "protected share" for the community spouse is:

- \$25,728
- 1/2 of the countable assets up to a maximum of \$128,640, or
- Amount specified by court order or through a fair hearing.

Examples:

- Combined assets of the couple are \$28,000.
The "protected share" is \$25,728. No eligibility until assets are "spent down".
- Combined assets of the couple are \$100,000.
The "protected share" is \$50,000. No eligibility until assets are "spent down".
- Combined assets of the couple are \$350,000.
The "protected share" is \$128,640. No eligibility until assets are "spent down".
- Combined assets of the couple are \$18,000.
The "protected share" for the community spouse is \$25,728 - there IS asset eligibility for the spouse in the medical/nursing facility or Waiver Program.

In addition to the protected share for the community spouse, the spouse in the nursing home or receiving waiver services may also have up to \$2000 in assets.

Establishing "Protected Share"

To determine the "protected share" of the couple's combined assets for the community spouse, a Resource Assessment is completed based on the following:

- Assets existing at 12:01 am on the day the spouse entered the medical facility (hospital; nursing home if not in hospital first; or began receiving Waiver Services).
- "Countable" assets of the couple, regardless of ownership.
(Prenuptial agreements are not recognized when looking at the total assets for couple.)

Common assets NOT counted in "Protected Share"

- Home property occupied by the community spouse.
- Most household goods/personal effects.
- One vehicle used for transportation.
- Certain prepaid burial contracts

Assessment of assets may be done when one spouse enters a hospital/nursing home even though there may be no immediate plans to apply for Medicaid assistance. (The advantage of NOT waiting is the ability to provide the necessary verification of the couple's assets the month the one spouse entered the hospital/nursing home.)

Examples:

A. Spouse entered a medical facility January 26, 2020, but does not apply for assistance until May 5, 2020.

- The couple's combined countable assets on January 26, 2020 were \$35,000. The protected share for the community spouse is \$25,728.
- The couple's combined countable assets in May 2020 are \$28,000. There IS asset eligibility as \$25,728 is protected for the community spouse and \$2,000 is allowed for the spouse in the nursing home.

B. Spouse entered a medical facility on February 12, 2020 but does not apply for assistance until April 2, 2020.

- The couple's combined countable assets on February 12, 2020 were \$90,000. The protected share for the community spouse is \$45,000.
- The couple's combined countable assets in April 2020 are \$40,000. There IS asset eligibility as \$45,000 is protected for the community spouse and \$2,000 is allowed for the spouse in the nursing home.
(They could have requested LTC Medicaid assistance earlier!)

C. Interaction between the LTC Partnership Program and SD LTC Medicaid

1. How Asset Protection Works Under the LTC Partnership

South Dakota's LTC Medicaid program accepts a LTC policyholder as a LTC Partnership participant when a person requests LTC Medicaid.

A person who qualifies for participation in the Partnership program does not have to exhaust the benefits of his LTC policy, but will only receive a dollar for dollar disregard of the benefits used up to the point of application for SD LTC Medicaid.

Once identified the Partnership provides the participant with the following benefits:

- DSS does not count the value of assets equal to the amount of benefits paid by the Partnership Policy toward the asset limit for Medicaid eligibility.
- DSS allows the person to transfer the disregarded assets to another person without penalty.
- DSS protects disregarded assets from estate recovery.

For example: A single individual has a Partnership Policy that has paid out \$100,000 in benefits. The individual will be eligible for LTC Medicaid when he/she has \$102,000 in assets instead of the \$2,000 limit.

After becoming eligible, the individual gives \$20,000 to his child. No penalty period is incurred due to this transfer. Upon the individual's death, the DSS Office of Recoveries and Fraud Investigation will only seek recovery if the estate is valued at over \$80,000.

2. Interaction of Partnership Protection with other Medicaid Rules

The LTC Partnership affects some Medicaid rules discussed above. Partnership participation affects the following:

Third party liability: Benefits under a Partnership policy that is available while a person is receiving Medicaid payment of LTC services are treated as third party liability.

Protected share under spousal impoverishment rules: The protected share for a married couple is completed before the evaluation of assets for protection under the LTC Partnership program. This allows the full protection under the LTC Partnership program to be applied to the assets considered available to the LTC spouse.

Transfers for less than fair market value: People who transfer assets protected under the Partnership program are not subject to penalty.

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D. How to Apply for SD LTC Medicaid.

A person may apply for any of the South Dakota health care programs by completing a South Dakota Application for Long Term Care or Related Medicaid (DSS EA 240)

- A person may request an application form by:
 - Visiting or calling their local office DSS Office. <http://dss.sd.gov/offices/>
- A person may download an application by visiting the following site:
<http://dss.sd.gov/formspubs/>
- The application can be faxed or sent to their local office.
- A person may request help from the DSS in completing the application process, which includes help filling out the application form and contacting third parties to get needed information and/or verifications.
- DSS will verify the benefits paid by a LTC Partnership Plan at the time of application for LTC Medicaid.