



PERFORMANCE AUDIT REPORT

**Medicaid for Long-Term Care: Reviewing the
Department of Social and Rehabilitation Services'
Efforts to Identify Inappropriate Means
Of Sheltering Assets To Qualify for Medicaid**

***Executive Summary
with Conclusions and Recommendations***

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
March 2001**

Legislative Post Audit Committee

Legislative Division of Post Audit

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LEGISLATURE OF KANSAS

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March 6, 20001

To: Members of the Kansas Legislature

This executive summary contains the findings and conclusions, together with a summary of our recommendations and the agency responses, from our completed performance audit, *Medicaid for Long-Term Care: Reviewing the Department of Social and Rehabilitation Services' Efforts to Identify Inappropriate Means of Sheltering Assets To Qualify for Medicaid.*

This report includes several recommendations for ensuring that only needy people receive Medicaid assistance for long-term care.

If you would like a copy of the full audit report, please call our office and we will send you one right away. We would be happy to discuss these recommendations or any other items in the report with you at your convenience.

A handwritten signature in black ink that reads "Barbara J. Hinton". The signature is written in a cursive, flowing style.

Barbara J. Hinton
Legislative Post Auditor

EXECUTIVE SUMMARY

LEGISLATIVE DIVISION OF POST AUDIT

Question 1: How Do Kansas' Requirements Allowing the Sheltering of Assets To Qualify for Medicaid Funding for Long-Term Care Compare With Federal Requirements and Those of Other States?

Kansas' eligibility requirements fall within federal guidelines, but give applicants more opportunities to shelter their assets than neighboring states do. *Federal regulations provide basic guidelines for analyzing applicants' assets to determine whether they are truly needy and eligible for Medicaid. Kansas' eligibility requirements fall within these federal guidelines, but are more lenient than in other states. For example, a Kansan could "convert" cash or other assets that normally would have been used to pay for long-term care costs into such "non-countable" items as an expensive car, farm land, livestock, or antiques. As the box on the next page shows, neighboring states generally put a cap on the amounts that could be converted for these purposes. As a result, Kansans could become eligible for Medicaid sooner than they would in other states.*

... page 9

Federal regulations also have generous provisions for letting applicants or their surviving spouses "transfer" or give away assets without incurring real penalties. *One federal Health Care Financing Administration official told us there are enough loopholes in federal regulations to "drive a truck through." For example, applicants who transfer or give away assets 3 years before they apply for Medicaid generally are ineligible throughout a subsequent penalty period. But because the ineligibility period starts when the gift or transfer was made, applicants can time such transfers so the penalty period is over by the time they apply.*

... page 12

Another example: normally the State files a claim against the estates of Medicaid recipients who've died to help recover some of its costs. If there's a surviving spouse, that claim can't be filed until the surviving spouse dies. But under federal regulations, surviving spouses could give away or transfer their non-countable assets like the house, car, or other personal property, thus sheltering them permanently from the State.

**A Summary of the Methods Kansans Can Use To Shelter
Assets That Otherwise Could Be Used To Help Pay for Long-Term Care,
and How Those Methods Compare to Neighboring States**

Method used to convert the assets from countable to non-countable...	Why it's an opportunity to shelter countable assets...	What neighboring states do...
Methods of sheltering assets where Kansas seems to be more liberal...		
<u>Buy a more expensive automobile.</u> An applicant could sell his or her current automobile, and use countable assets (such as cash), to buy a more expensive automobile.	At least 1 automobile is considered non-countable, regardless of value.	3 other states cap the non-countable value of the first automobile at \$4,500. If the vehicle's market value is worth more, that amount is countable, and available to help pay the cost of long-term care.
<u>Buy income-producing property.</u> For example, an applicant could purchase farm land, farm or business equipment, business inventory, or livestock using countable assets.	Although the <u>income</u> from this property is countable, the property's fair market value is non-countable, regardless of value.	4 other states cap the non-countable value of income-producing property at \$6,000. If the property's market value is worth more, that amount is countable.
<u>Buy personal effects and furnishings.</u> An applicant could purchase antiques, household goods, appliances, etc.	Family keepsakes, household good, jewelry, clothing, books, antiques, memorabilia etc., are non-countable regardless of value.	All 5 other states surveyed are more restrictive in this area. 4 states cap the non-countable value of personal property at \$2,000. The other state counts the value of the items if they aren't in use.
<u>Buy pre-paid funeral arrangements.</u> An applicant can pre-pay for funeral expenses or enter into an irrevocable burial arrangement.	Up to \$1,500 can be spent on funeral expenses, and applicants can enter into irrevocable burial arrangements of up to \$3,500.	Only 1 other state surveyed is more restrictive in this area. 3 states had no limit on the amount of irrevocable burial arrangements.
Methods of sheltering assets where Kansas seems to be the same as other states surveyed...		
<u>Buy a more expensive house.</u> An applicant could sell his or her existing residence, and use countable assets, such as cash, to buy a more expensive home.	The primary residence is considered non-countable, or unavailable to help pay the cost of long-term care, regardless of value.	All states surveyed give applicants this opportunity.
<u>Make home improvements.</u> An applicant can make improvements to his or her primary residence.	Since the primary residence is non-countable, applicants can make house repairs, renovations, and add-on's, regardless of value.	All states surveyed allow applicants this opportunity.

An applicant's spouse can shelter certain assets from estate recovery. Under the federal regulations, if an applicant has a spouse, the spouse can retain the couple's non-countable assets and may be able to permanently shelter them from SRS' estate recovery efforts.

Question 1 Conclusion: *Medicaid assistance for long-term care is intended to help needy people who otherwise couldn't afford such care. When it comes to determining whether people are eligible—that is, whether their income and any other assets fall below a certain level—Kansas' requirements are more lenient than the requirements in neighboring states. Kansans have more ways to legally shelter more of their assets and still be considered eligible. As a result, some non-needy applicants could become eligible for Medicaid sooner, and the State would pay more for their long-term care than it otherwise would have. Although the State should be able to recover some of those costs when it files a claim against the estate after a person dies, there's not much it can do if there's a surviving spouse who decides to give away or transfer those assets.* page 13

We can't say the extent to which non-needy people are sheltering their assets to become eligible for Medicaid assistance in Kansas. But as our population ages, the costs for long-term care increase, and Medicaid estate planning becomes more prevalent, it's likely that more and more people will look seriously at such options.

Question 1 Recommendation: *To ensure that only needy applicants receive Medicaid assistance for long-term care, SRS should review and adjust its eligibility requirements to bring them more in-line with other states. The Department should seek legislative input as needed and should report back to the Legislative Post Audit Committee and other committees regarding the changes it plans to make. If the Department determines that changes aren't needed, it also should provide the rationale for making those decisions.* page 13

In its response, SRS stated that its current asset criteria are effective, but that it's important to monitor Medicaid estate planning activity and modify criteria as needed.

Question 2: What Efforts Has SRS Made To Ensure That Applicants Meet Financial Eligibility Requirements?

SRS follows a number of best practices to ensure that applicants are eligible, but it could do more in 2 key areas. . . . page 14
SRS has adopted many of the best practices we considered necessary to help ensure that applicants for Medicaid are eligible, but it could be doing more to ensure that applicants haven't inappropriately sheltered assets before applying for assistance. For example, SRS could require applicants to provide additional documentation to verify their financial need. There's no guarantee

applicants will provide all the information requested, but this step could improve SRS' chances of identifying inappropriate transfers or trusts. In addition, SRS could routinely perform computer cross-matching with other agencies' databases to determine whether applicants own additional real estate or motor vehicles.

We also noted that SRS doesn't systematically gather and analyze statistical data about the long-term care medical assistance program—such as the total number of applicants and the applications approved or denied. Without such information, SRS and the Legislature can't make informed decisions about the future needs of long-term care.

SRS may be making some applicants wait too long for Medicaid benefits. *If an applicant gives away cash during the 3-year period before applying for Medicaid, he or she may be determined to be ineligible for a certain period of time. Kansas regulations require that, for every \$2,000 in such transfers an applicant makes, he or she will be ineligible for 1 month. Federal regulations require the monthly penalty amount to be based on the State's average monthly private-pay cost of nursing home care. Because SRS hasn't updated the monthly penalty amount since 1993—it should be about \$3,000, not \$2,000—it's likely some applicants have been over-penalized.* . . . page 18

Question 2 Conclusion. *The Department of Social and Rehabilitation Services has some good procedures in place for ensuring that applicants meet financial eligibility requirements for Medicaid-funded long-term care. Still, it could take other-cost effective steps to help ensure that applicants are providing complete information about the assets they own or have sold or put in trust over the previous 3-5 years. Potential problems we identified in 2 other areas also need to be addressed. First, SRS doesn't routinely compile information about the number of applications it receives or the number denied or approved. In addition, it's using 1993 figures on the average monthly cost of nursing home care to calculate penalty periods.* . . . page 19

Question 2 Recommendations. *To ensure that applicants for Medicaid assistance for long-term care provide complete information about the assets they own or have recently sold or placed in trust, we recommend that SRS require applicants to provide additional documentation at the time they apply for assistance. In addition, SRS should routinely and systematically conduct cross-matches with the CAMA and motor vehicle registration databases, and any other relevant databases to determine whether applicants own additional assets that could be used to help pay for their long-term care.* . . . page 19

In its response, SRS partly concurred and disagreed with the recommendations. The Department agreed to explore the use of additional databases to cross-match eligibility cases, but believes that requiring applicants to provide more information when applying for Medicaid would create a barrier for accessing needed services. In addition, the Department stated that it would be difficult and unnecessary to routinely compile statistical data about Medicaid long-term care services. However, the Department agreed that the figure used to determine transfer penalties needs to be updated from \$2,000 to \$3,000.

APPENDIX A: *Scope Statement* . . . page 21

APPENDIX B: *Agency Response* . . . page 24

This audit was conducted by Laurel Murdie, John Curran, and Lisa Hoopes. Cindy Lash was the audit manager. If you need any additional information about the audit's findings, please contact Ms. Murdie at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.