

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

**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

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$8 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. General Accounting Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee. Legislators or committees should make their requests for

performance audits through the Chairman or any other member of the Committee. Copies of all completed performance audits are available from the Division's office.

LEGISLATIVE POST AUDIT COMMITTEE

Representative Lisa Benlon, Chair
Representative Richard Alldritt
Representative John Ballou
Representative Dean Newton
Representative Dan Thimesch

Senator Lynn Jenkins, Vice-Chair
Senator Anthony Hensley
Senator Dave Kerr
Senator Derek Schmidt
Senator Chris Steineger

LEGISLATIVE DIVISION OF POST AUDIT

800 SW Jackson
Suite 1200
Topeka, Kansas 66612-2212
Telephone (785) 296-3792
FAX (785) 296-4482
E-mail: LPA@lpa.state.ks.us
Website:
<http://skyways.lib.ks.us/ksleg/PAUD/homepage.html>
Barbara J. Hinton, Legislative Post Auditor



LEGISLATURE OF KANSAS

LEGISLATIVE DIVISION OF POST AUDIT

800 SOUTHWEST JACKSON STREET, SUITE 1200
TOPEKA, KANSAS 66612-2212
TELEPHONE (785) 296-3792
FAX (785) 296-4482
E-MAIL: lpa@lpa.state.ks.us

March 1, 2001

To: Members, Legislative Post Audit Committee

Representative Lisa Benlon, Chair
Representative Richard Alldritt
Representative John Ballou
Representative Dean Newton
Representative Dan Thimesch

Senator Lynn Jenkins, Vice-Chair
Senator Anthony Hensley
Senator Dave Kerr
Senator Derek Schmidt
Senator Chris Steineger

This report contains the findings, conclusions, and recommendations 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.

We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.

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. page 9
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. 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.

Federal regulations also have generous provisions for letting applicants or their surviving spouses "transfer" or give away assets without incurring real penalties. . . . page 12
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.

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.

Question 1 Conclusion: . . . page 13

Question 1 Recommendation: . . . page 13

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. . . . page 18
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.

Question 2 Conclusion: . . . page 19

Question 2 Recommendations: . . . page 19

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.

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

People who meet certain income guidelines and who don't have many assets can qualify for Medicaid funding to help them pay the cost of long-term care in a nursing home. Generally, all resources except for someone's primary residence and one automobile are to be considered available to help pay the cost of an applicant's nursing home care. This includes checking accounts, savings accounts, other real estate, and trust funds.

Federal law permits a husband and wife to shelter some of their resources when one of them needs nursing home care. The law is intended to help protect resources for the person who remains at home so he or she won't become destitute while the other spouse is in a nursing home, and to help the person needing nursing home care to qualify for Medicaid.

Last year, during subcommittee hearings on the Department of Social and Rehabilitation Services' (SRS) budget, legislators expressed concerns that some Kansans may be inappropriately sheltering their assets to qualify for Medicaid assistance with nursing home costs. Specifically, they were interested in knowing whether Kansas had more potential loopholes in this area than other states. This performance audit answers the following questions:

- 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?**
- 2. What efforts has SRS made to ensure that applicants meet financial eligibility requirements?**

To answer these questions, we reviewed State and federal laws and regulations governing Medicaid eligibility for nursing homes residents. We contacted officials from a sample of other states to

determine what their requirements are, and compared those requirements with what Kansas allows. We also interviewed several officials from SRS, the Department on Aging, and the federal Health Care Financing Administration. In addition, we interviewed SRS officials to determine what they do to ensure applicants are eligible for Medicaid.

A copy of the scope statement for this audit approved by the Legislative Post Audit Committee is included in Appendix A.

In conducting this audit, we followed all applicable government auditing standards. Our findings begin on page 9, following a brief overview.

Overview of Kansas' Medical Assistance Program for Long-Term Care

Medicaid Is a Joint Federal/State Program That Provides Funding for Low-Income People Who Need Medical Care

Medicaid covers a broad range of services and needy populations, including home and community-based services. However, this audit addresses only long-term care medical assistance for people needing help paying for nursing facility costs. To be eligible for Medicaid's long-term care assistance, applicants must meet certain medical and financial eligibility requirements set forth in State and federal regulations.

The Department on Aging is responsible for the overall administration of the Medicaid long-term care program, and for determining whether applicants need the intensive care provided in a nursing facility. But once that need has been established, the Department of Social and Rehabilitation Services (SRS) is responsible for determining whether applicants are financially eligible for Medicaid.

Glossary of Terms Commonly Used in Long-Term Care

Asset Conversion: Taking assets that would otherwise be countable and using them to purchase non-countable assets.

Assets: An applicant's income and resources.

Asset Transfer: Giving away or transferring one's assets for less than fair market value.

Countable Assets: The applicant's income and resources that are counted when determining Medicaid financial eligibility.

Income: The regular, monthly money received by an applicant.

Medicaid Estate Planning: A process in which people purposefully shelter their assets in order to qualify for Medicaid benefits, particularly coverage for long-term care.

Non-Countable Assets: The applicant's income and resources that aren't counted when determining Medicaid financial eligibility. Generally, the applicant is free to purchase and transfer non-countable assets without incurring a penalty (except for the home).

Resources: Real and personal property, including the home, real estate, automobiles, equipment, personal effects, and home furnishings.

Sheltering Assets: The act of converting or transferring assets in order to become Medicaid eligible.

Spend-down: The process of the applicant paying for medical and nursing home expenses or purchasing non-countable assets in order to become Medicaid eligible.

Spousal Impoverishment: The technical name for a federal and State provision that allows the spouse of a Medicaid applicant to retain sufficient income and resources to meet living expenses. Currently, the spouse of a Medicaid applicant can keep \$17,400 to \$87,000 of the couple's combined countable resources.

Trust: A legal arrangement in which money or other property is set aside to be managed by a trustee for the benefit of an individual specifically named as a beneficiary of the trust.

Applicants must meet a 3-part financial eligibility test to qualify for Medicaid assistance. Those tests are described below. When they're determined to be ineligible for Medicaid, it's often because applicants don't meet the resource or transfer tests. To become eligible, applicants could pay the cost of their own long-term care until they "spend-down" enough assets to qualify, or the applicant may be able to convert or transfer enough assets to become eligible.

3 Parts of the Financial Eligibility Test To Qualify for Medicaid Funding	If the Applicant Doesn't Meet This Test, What Can Be Done To Become Eligible?
<p>Income test: An applicant's monthly income must be less than the monthly cost of staying in the nursing facility. Income includes money received from such sources as wages, self-employment, pensions, and benefits.</p>	<p>If the applicant's monthly income is more than the monthly cost of staying in the nursing facility, not much can be done. Generally, this person would be expected to pay for his or her own long-term care costs.</p>
<p>Resources test: Single applicants can have only \$2,000 in "countable" assets. For Medicaid eligibility purposes, countable assets include cash, savings, investments, and some real estate, and are considered to be available to pay for an applicant's nursing home care. The value of non-countable resources—such as an applicant's primary residence—<u>isn't</u> considered when determining eligibility.</p>	<p>If applicants have more than \$2,000 in countable assets, State and federal regulations allow applicants to convert some of those assets into "non-countable" assets (i.e., an applicant could use cash to buy a prepaid burial plan, make improvements to his or her primary residence, or upgrade an automobile.)</p>
<p>Transfer test: Applicants who've given away cash, sold assets for less than fair market value, or created trusts during a 3-5 year period before applying for Medicaid generally aren't eligible for Medicaid assistance for a given "penalty period."</p>	<p>Generally, there's not much an applicant can do. If a "penalty" or ineligibility period applies, the applicant must wait for that period to run out.</p>

Some people use Medicaid estate planning to purposefully shelter their assets in order to qualify for Medicaid assistance for long-term care. Two of the methods described in the boxes above—**converting** countable assets into non-countable assets, and **transferring** assets—are common methods of Medicaid estate planning. Medicaid estate planning isn't illegal, and it can allow people who normally wouldn't qualify for Medicaid when they need long-term care to become eligible.

How Assets Are Classified When Determining Medicaid Eligibility In Kansas

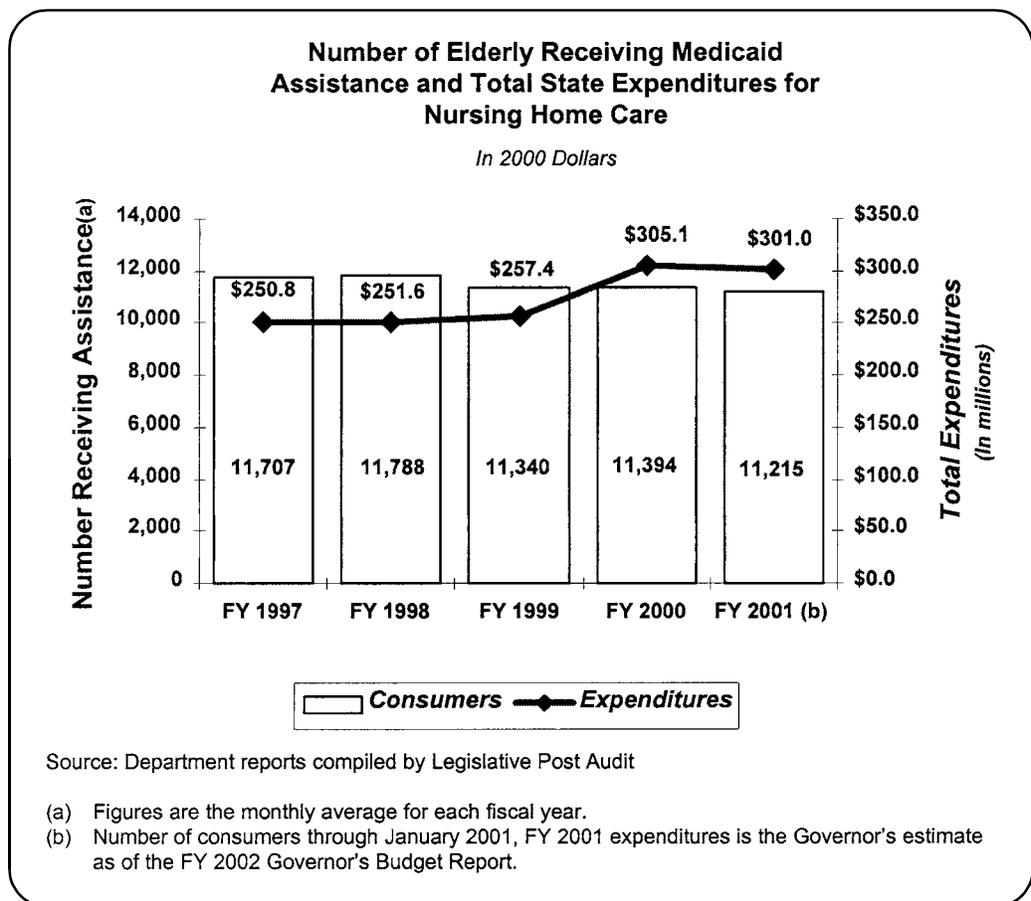
Assets that "Count" When Determining Medicaid Eligibility	Assets that Are "Non-Countable" When Determining Medicaid Eligibility
<p>! wages and income from self-employment</p> <p>! unearned income such as interest earnings, dividends, royalties, and capital gains</p> <p>! cash, savings, stocks, and bonds</p> <p>! real estate that isn't income producing or the primary residence</p> <p>! trusts without regard to their purpose, restrictions, or who has discretion on how the trust funds are to be used (unless specifically exempted by law). Trusts can either be revocable or irrevocable:</p> <p>revocable trusts: are considered available to the applicant, therefore the entire amount of the trust is countable along with any income the trust generates</p> <p>irrevocable trusts: Regardless of whether a trust is irrevocable—if any of the trust funds are available to the applicant or there's income generated by the trust—those funds are countable and available to pay for long-term care costs.</p>	<p>! home the primary residence of the applicant</p> <p>! one vehicle and any additional vehicles if used for such things as self-employment or equipped for a handicapped person</p> <p>! property essential for employment or self-employment, and other income-producing property that is generating income consistent with its fair market value</p> <p>! personal effects, such as jewelry, collectibles, etc.</p> <p>! household equipment and furnishings, such as appliances and furniture, etc.</p> <p>! trusts allowed by federal and State law, which includes those specifically created to provide for the financial needs of the blind and disabled</p> <p>! life insurance with face value not exceeding \$1,500</p> <p>! pre-paid burial plans revocable burial arrangements not exceeding \$1,500 and irrevocable burial arrangements up to \$3,500 (not including the headstone, burial plot, and other necessary accouterments to burial)</p> <p>! Veterans Administration (VA) aid and payments, which includes housebound allowance and payments resulting from unusual medical expenses</p>

Assets an Applicant Gets to Keeps Upon Entering Nursing Facility

	INCOME	RESOURCES
Single Individual	\$30 monthly	\$2,000
Married couple, both in long-term care	\$30 monthly (each)	\$2,000 (each)
Married couple with a spouse living at home	<p>! \$30 monthly for the spouse in long-term care</p> <p>! \$1,407 for the spouse at home, depending on the spouse's expenses it may be increased to \$2,175</p>	<p>! \$2,000 for the spouse in long-term care</p> <p>! \$17,400 to \$87,000 for the spouse at home, depending on the total amount of the couple's countable assets</p>

However, Medicaid estate planning can also help preserve an applicant's assets for the family and heirs, rather than using them to help pay for the applicant's long-term care. As a result, the State will have to pay for more long-term care costs than otherwise might be necessary.

Although we didn't attempt to determine how much Medicaid estate planning is taking place in Kansas, we did ask SRS field staff about the issue and their opinions were divided. Some thought Medicaid estate planning is common, others said it isn't. In addition, although national studies haven't been able to quantify the amount of Medicaid estate planning that takes place, they've concluded such planning is growing.

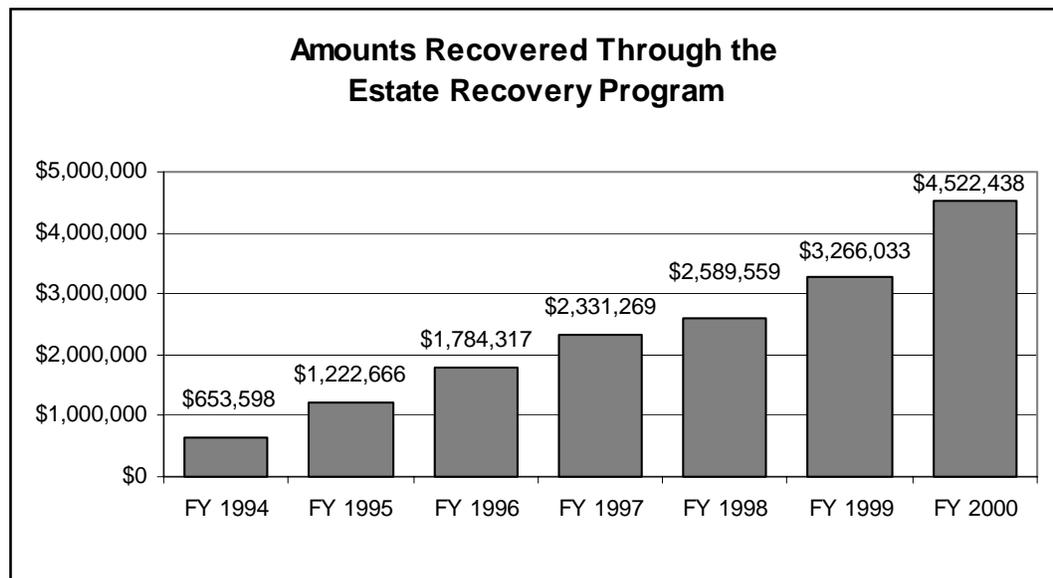


SRS' Estate Recovery Unit allows the State to recover property of deceased Medicaid beneficiaries. The 1992 Legislature established the Estate Recovery Program as a way to recover medical care costs from the estates of Medicaid recipients

who've died. In 1993, Federal law required all states to develop such a program. This same law allows SRS to file a claim to recover any assistance provided to recipients after June 30, 1992, provided the recipient:

- ! was 55 years of age or older or
- ! was receiving long-term institutional or home and community-based service care at the time of death

The Estate Recovery Program is prohibited from filing a claim if there's a surviving spouse. But, after the surviving spouse dies, a claim can be filed against that spouse's estate. To track the status of Medicaid recipients' spouses, SRS officials conduct a weekly computerized match comparing social security numbers from death certificates to social security numbers associated with recipients' cases. In addition, claims can't be filed if the deceased recipient has children under 21 or children that are blind or permanently disabled. However, on cases where SRS can file, its claims are considered to be "first-class" claims; that is, funeral expenses and taxes are the only expenses that can be paid before the State's medical assistance claim is settled.



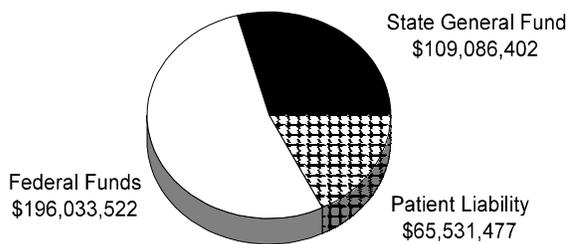
This audit focused on the specific requirements that allow applicants to shelter assets in order to qualify for Medicaid, as well as SRS' efforts to ensure that applicants are financially eligible.

Medicaid Long-Term Care AT A GLANCE

Authority: K.S.A. 75-5945 makes the Department on Aging responsible for administering the State's long-term care programs. This statute transferred the responsibility to Aging from SRS in 1997. However, SRS officials continue to determine whether applicants are financially eligible for Medicaid assistance for long-term care.

Budget: The program's funding comes from a combination of federal allocations for Title XIX (Medicaid) that are matched by the State. For the most recent year, the Department on Aging received and spent about \$305.1 million on nursing home care for the elderly.

FY 2000 Cost of Elderly Nursing Home Care



5-Year Historical Expenditures

In 2000 Dollars (in millions)

	<u>State General Fund</u>	<u>State and Federal Funds</u>
FY 1996	\$114.9	\$266.9
FY 1997	105.9	250.8
FY 1998	102.0	251.6
FY 1999	102.9	257.4
FY 2000	109.1	305.1
% Change From 1996 to 2000	-5.0%	14.3%

Total Cost: \$370,651,401

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. For example, a Kansan could "convert" cash or other assets that normally would have been used to pay for long-term care costs into an expensive car, farm land, livestock, or antiques. Neighboring states generally put a cap on the amounts that could be converted for these purposes. In addition, federal regulations have generous provisions which allow applicants to transfer assets without incurring meaningful penalties. These same regulations also allow the applicant's spouse to permanently shelter certain assets. These and other findings are discussed in the sections that follow.

Kansas' Eligibility Requirements Fall Within Federal Guidelines, But Give Applicants More Opportunities To Convert Their Assets Than Neighboring States Do

Federal regulations provide basic guidelines for analyzing applicants' assets to determine whether they are eligible for Medicaid. Those same regulations give states the flexibility to use various methods to determine which and how much of an applicant's assets are considered to be "countable" or "non-countable." Our review showed that Kansas' methods for evaluating an applicant's resources to determine eligibility fall within the federal guidelines.

We also compared Kansas' asset eligibility requirements with those used by Colorado, Nebraska, Iowa, Missouri, and Oklahoma. The table on the next page summarizes how Kansas' requirements compare with both federal guidelines and these other states. As the table shows, several Kansas' requirements—including those affecting applicants' most valuable assets—are more lenient than other states' requirements. As a result, an applicant in Kansas could "convert" a larger portion of his or her countable assets (for example cash, investments, etc.) into non-countable assets, and become eligible for Medicaid sooner than they would in other states.

Comparing Kansas' Medicaid Eligibility Requirements with Federal Guidelines and Surrounding States

(Boxes in gray are federal and state Medicaid eligibility requirements that are more restrictive than Kansas.)

Type of Asset	Kansas	Federal (a)	Colorado	Iowa	Missouri	Nebraska	Oklahoma
Resource Limits	Single applicants retain \$2,000 in countable resources. Married applicants retain \$3,000.	Same	Same	Same	Single applicants retain \$1,000 in countable resources, \$2,000 for married applicants. (b)	Same (c)	Same
Life Insurance	Up to \$1,500 total face value of all life insurance policies isn't counted.	Same	Same	Same	Same (d)	Same	Same
Burial Arrangements	Up to \$1,500 not counted for selected burial expenses and revocable burial agreements. Up to \$3,500 not counted for irrevocable burial arrangements.	No limit on the value of irrevocable burial trusts.	No value limit on irrevocable burial trusts.	No value limit on irrevocable burial trusts. (e)	Same (d)	Up to \$3,000 not counted for irrevocable burial trusts.	Up to \$7,500 not counted for irrevocable burial trusts.
Primary Residence (home)	Home isn't counted, regardless of value, as long as the applicant has the <u>intent</u> to return. (f)	Same	Same	Same	If the applicant leaves home before going to a nursing home, the home is non-countable for 2 years.	If there is an intent to return home, the applicant is given 6 months to return. (g)	Same
Vehicles	One auto not counted regardless of value and need.	Under certain criteria, up to \$4,500 of the value of the first vehicle isn't counted. (h)	Under certain criteria, up to \$4,500 of the value of the vehicle isn't counted. (h)	Under certain criteria, up to \$4,500 of the value of the vehicle isn't counted. (h)	Same	Same	Under certain criteria, up to \$4,500 of the value of the vehicle isn't counted. (h)
Income Producing Property	Not counted regardless of value	Up to \$6,000 not counted	Up to \$6,000 not counted	Up to \$6,000 not counted	Same	Up to \$6,000 not counted	Up to \$6,000 not counted
Personal Effects/ Home Furnishings	Not counted regardless of value	Up to \$2,000 not counted	Up to \$2,000 not counted	Up to \$2,000 not counted	Only items in use aren't counted.	Up to \$2,000 not counted	Up to \$2,000 not counted

(a) Federal regulations adopted the resource exemptions of the Supplemental Security Income program (SSI). Even though states may be more liberal or more restrictive than the SSI exemptions, they are permitted to be so only if approved by HCFA, or if they had more restrictive exemptions in place before the SSI exemptions were adopted, such as Missouri and Nebraska.

(b) Applies to aged and disabled populations only. For blind, the limits are \$2,000 for a single applicant, \$4,000 for married applicants.

(c) These limits apply only to those on the state's supplemental program to Medicaid.

(d) If the applicant has both a \$1,500 insurance policy and a \$1,500 revocable burial trust, only one isn't counted.

(e) The applicant must justify if over the cost of an average funeral in the state, \$7,280.

(f) Generally, a house also isn't counted if a spouse, child under 21, or a blind or disabled child is still residing there.

(g) If after 6 months the individual hasn't returned to the home, the home is counted. The 6 month period may be extended if the applicant can provide a physician's letter stating that the individual has a reasonable chance of returning home.

(h) One vehicle is totally non-counted if it's necessary for employment, medical treatment, or performance of essential daily activities, or it's modified for operation for a handicapped person.

In the table below, we've outlined a number of ways that Kansans could shelter cash or other assets that otherwise would have been available to help fund their long-term care. We've also shown how other states' requirements are more restrictive.

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...		
Buy a more expensive automobile. 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.
Buy income-producing property. 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.
Buy personal effects and furnishings. 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.
Buy pre-paid funeral arrangements. 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...		
Buy a more expensive house. 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.
Make home improvements. 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. We discuss this issue more on page 12.

***Federal Regulations
Also Have Generous
Provisions For Letting
Applicants or
Their Spouses “Transfer”
Or Give Away Assets
Without Incurring
Real Penalties***

We asked various officials with SRS and the Health Care Financing Administration if they knew of any “loopholes” that give non-needy applicants the ability to shelter assets or qualify for Medicaid for long-term care. One Financing Administration official told us there are enough loopholes in federal regulations to “drive a truck through.”

Our review of federal regulations identified one area that allows non-needy applicants to give away or transfer countable assets without incurring meaningful penalties, as described below:

! **Applicants can “time” their transfers to avoid penalties.** To determine an applicant’s eligibility for Medicaid, SRS is allowed to “look-back” at the 3-year period before that person applied. Generally, if an applicant has transferred or given away assets for less than their fair market value during those 3 years, he or she is ineligible throughout a subsequent “penalty” period. Currently in Kansas, the penalty is 1 month of ineligibility for every \$2,000 in assets transferred (the estimated monthly cost of a Kansas nursing home).

The loophole in this situation: the ineligibility period starts when the gift was made, not when the person applied for Medicaid. Thus, an applicant could give away \$2,000 to her daughter, apply for Medicaid 1 month later, and be eligible because the penalty period was already over. Likewise, an applicant who gave away \$20,000 to his children and applied for Medicaid at least 10 months later would be eligible because the 10-month penalty period would already be over.

We also found a way that spouses can shelter certain assets and prevent estate recovery from recouping the costs incurred from providing Medicaid to recipients. Here’s how that works:

! **A surviving spouse can prevent the State from being able to recover costs incurred from providing assistance to the institutionalized spouse.** The Medicaid recipient’s spouse can keep up to \$87,000 worth of the couple’s countable assets. In addition, all non-countable assets—such as the couple’s primary residence—are generally retained by the spouse in the community. Federal law prohibits SRS’ estate recovery unit from filing a claim if there is a surviving spouse. Therefore the surviving spouse could sell the house right away or, if he or she waits until the institutionalized spouse dies, give away the house or any other property acquired during his or her lifetime. If the spouse later needs Medicaid to help pay for long-term care, he or she won’t be penalized for selling the house as long as it’s sold 3 years before applying for assistance.

SRS officials told us they know some people use these techniques as part of their Medicaid estate planning to qualify for Medicaid assistance or shelter assets from estate recovery.

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 to his or her heirs.

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.

RECOMMENDATION To ensure that only needy applicants receive Medicaid assistance for long-term care, the Department of Social and Rehabilitation Services should review and adjust its eligibility requirements accordingly to bring them more in-line with other states in terms of caps, criteria, limits, and the like. The Department should seek legislative input as needed, and should report back to the Legislative Post Audit Committee and other appropriate committees regarding any changes it plans to make. If the Department determines that changes aren't needed, it also should provide the rationale for making those decisions.

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

Although SRS follows a number of best practices to ensure that applicants for Medicaid assistance for long-term care are eligible, the agency 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. In addition, SRS could routinely perform computer cross-matching with other State agencies' databases to determine whether applicants own additional real estate or motor vehicles. Finally, because SRS hasn't updated the figure it uses to calculate monthly penalties, the agency is most likely causing some applicants to wait too long to receive Medicaid benefits.

SRS Follows a Number of Best Practices To Ensure that Applicants Are Eligible, But the Agency Could Do More In 2 Key Areas

We identified a number of best practices we would have expected SRS to adopt and follow to ensure that applicants for Medicaid are eligible. Those practices are outlined in the box at the top of page 15.

SRS has adopted many of these best practices. For example, it uses a written application form, has a computerized tracking system to track applications, and has a process in place to ensure that an applicant's eligibility status is reviewed at least annually. However, the agency could improve its practices in 2 key areas, as summarized below.

SRS could take additional steps to ensure that applicants haven't made transfers or created trusts within 3-5 years of applying for Medicaid. Federal and State laws prohibit applicants from transferring assets within 3 years of applying for medical assistance. Also, if an applicant creates a trust within 5 years of applying for assistance, the assets in the trust generally are counted as available to help pay for long-term care. This 3-5 year time period commonly is referred to as the "look-back period."

Federal regulations require states to verify each applicant's current income, and to cross-match the applicant's unearned income information with computerized records at IRS. SRS

A Summary of Best Practices for Ensuring that Applicant's Are Eligible

(✓Indicates the practices where SRS needs to make improvement.)

Practices relating to the application process:

- ! identifying the potential target population and notifying them about eligibility information
- ! developing and using a written, uniform application form
- ! using a tracking system to record the actions taken on each application
- ! keeping management informed as to problems that may occur on applications

Practices relating to the eligibility determination process:

- ! establishing and following formal policies and procedures to document decisions made
- ! training staff and having management periodically review documentation to ensure that staff are applying policies and procedures correctly
- ! developing checklists for evaluating eligibility on a consistent basis
- ! determining eligibility based on well-defined criteria
- ! monitoring cases periodically to ensure that applicants continue to be eligible
- ! auditing cases by pulling a sample of approved cases and requesting additional information to verify the information provided in the application
- ✓ maintaining data in a way that can be used for reporting purposes. Such data would include the number of applicants, number determined eligible, number denied eligibility and the reasons why

Practices relating to the enforcement process:

- ✓ ensuring that the eligibility requirements are followed, including such areas as asset transfers and creation of trusts
- ! applying predetermined penalties when violations are found
- ✓ preparing written reports summarizing violations and keeping management informed
- ! conducting follow-up activities, as needed, to enforce requirements in a timely manner
- ! using a tracking system to identify when follow-up actions are needed

officials conduct these checks. However, when determining whether applicants have made transfers or created trusts during the 3-5 year look-back period, officials told us they generally rely on the self-reported information provided by the applicants. Officials in neighboring states told us they do the same thing.

We've identified some potential additional steps SRS could take to help determine whether applicants have made transfers or created trusts during the look-back period. In addition, these steps may also help SRS identify unreported assets. For example, SRS could require applicants to provide:

- ! **residential addresses for the past 3 to 5 years:** If applicants were required to provide this information, SRS officials may be able to determine whether the applicant has placed his or her home in a trust, or sold it for less than fair market value.
- ! **copies of income tax returns for the past 5 years:** Not only could this information be used to verify income, but it could also be used to determine whether an applicant has *unreported* investments.

Other Studies on Medicaid Estate Planning

During this audit, we found 2 national studies of Medicaid estate planning. The first was a 1993 audit completed by the U.S. General Accounting Office (GAO). Congress requested this audit because of concerns that many elderly Americans with substantial financial means were sheltering their assets through Medicaid estate planning, making them eligible for Medicaid assistance for long-term care. Through this audit, the GAO sought to determine 3 things:

- ! the prevalence of Medicaid estate planning for purposes of becoming Medicaid-eligible
- ! the value of assets sheltered through Medicaid estate planning
- ! the extent to which states are enforcing Medicaid requirements concerning Medicaid estate planning

The GAO reviewed a random sample of 403 Medicaid application files for nursing home benefits in Massachusetts—a state that was thought to have a lot of Medicaid estate planning activity. The auditors found:

- ! More than half the Medicaid applicants had either converted assets that were “countable” for Medicaid to those that weren’t countable, or had transferred assets to another party during the preceding 30 months. Converting or transferring these assets made them unavailable to pay for nursing home costs.
- ! Converting assets was the most common form of Medicaid estate planning. In 83% of these asset conversions, the applicant had set aside money for burial arrangements. Less common types of conversions included home repairs and automobile purchases.
- ! Asset transfers were far less frequent, but involved larger amounts of money, ranging in value from \$850 to \$351,300. Slightly more than 10 percent of the total cases involved assets transfers that included cash transfers, real estate transfers, and trusts.
- ! Of those applicants that transferred assets, half were denied eligibility or withdrew their applications.

After the GAO report was released, Congress took action to correct the problems identified by passing specific provisions in the Omnibus Budget Reconciliation Act of 1993. Among the more important changes, the Act:

- ! extended the “look-back” period to identify asset transfers and trusts. The look-back period was extended from 30 months to 3 years for transfers and from 30 months to 5 years for trusts.
- ! tightened rules regarding the use of trusts, making it very difficult to establish trusts for Medicaid estate planning purposes.
- ! required states to attempt to recoup the amounts paid to Medicaid beneficiaries for nursing home and other long-term care services from their estates.

Between 1991 and 1995, the Health Care Financing Administration commissioned 3 studies to identify Medicaid estate planning methods and analyze their impact on states. The studies were conducted by the MEDSTAT Group, a consulting firm specializing in health care. The last study, entitled, “Medicaid Estate Planning in the Aftermath of OBRA ‘93” details Medicaid estate planning opportunities created by the changes in federal law. Some of these opportunities are discussed on page 12 of the report.

- ! **copies of real estate deeds and local property tax bills:** This information could help determine whether the applicant owns real estate.
- ! **copies of bank statements for the past 3 years:** This information could help identify sources of income, and whether applicants have made transfers within the look-back period that may cause them to be ineligible for Medicaid.
- ! **copies of life insurance policies held in the past 3 years:** Life Insurance is considered to be a countable asset. Having the applicant provide copies of all policies could help identify this asset.

There's no guarantee applicants would provide all the information requested—applicants may only provide copies of documents they want SRS officials to see. By requesting the information, however, SRS could improve its chances of getting more complete information to help it identify transfers and trusts.

SRS also could take additional steps to ensure that applicants meet financial eligibility requirements. For example, federal regulations allow SRS to use information from other State agencies to ensure that applicants are eligible for Medicaid. SRS officials could:

- ! **cross-match the real estate information each applicant provides with information in the Computer-Assisted Mass Appraisal System.** CAMA is a computerized database with property and tax information maintained by the Department of Revenue. This cross-match could help determine whether the applicant owns any real estate in Kansas.
- ! **cross-match the applicant's information with the motor vehicle registration information.** The Department of Revenue also maintains a database about motor vehicle registration. This cross-match could verify whether the applicant owns any vehicles, and what type. Although SRS has access to this database, it's not routinely used to verify information applicants submit.

SRS doesn't systematically track and use statistical data about the long-term care medical assistance program. SRS officials told us they don't routinely gather information about the number of applicants, the number of applications denied or approved, or the penalties applied.

The population of Kansas is growing older, and the U.S. Census Bureau projects that by 2030, one of every 5 Americans will be 65 or older. SRS should be gathering and analyzing such

information for itself and for the Legislature so that appropriate plans can be made for 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. Kansas regulations require that, for every \$2,000 of “uncompensated” 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.

SRS hasn’t updated the average monthly cost for nursing home care it uses in calculating monthly penalties since 1993. Thus, it’s likely SRS has overpenalized some applicants. According to recent Department on Aging calculations, the current average monthly cost of nursing home care is about \$3,000. In addition, 4 out of the 5 neighboring states we surveyed revise their figures annually. Their average monthly costs of nursing home care currently are significantly more than \$2,000. The box below gives an example of how an applicant can be over-penalized.

**An Example of How an Applicant Could Be Made To
Wait “Too Long” for Medicaid Benefits**

Kansas regulations require that, for every \$2,000 of “uncompensated” transfers an applicant makes, he or she will be ineligible for 1 month. For example, if an applicant gives away \$100,000 before applying for Medicaid, SRS would calculate the applicant’s “penalty” for giving away that amount by dividing \$100,000 (the amount given away), by \$2,000 (the average monthly cost for nursing home care). In this case, a 50-month penalty would be imposed, and the applicant would have to wait that long before becoming eligible to receive Medicaid assistance for long-term care. However, because the monthly cost figure for nursing home care hasn’t been updated regularly, applicants making an inappropriate transfer are most likely being penalized longer than they should be. Here’s how: the monthly cost of nursing home care is currently closer to \$3,000. Thus, updating this figure would reduce the applicant’s penalty to 33 months (\$100,000 divided by \$3,000), making him or her eligible 17 months sooner.

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—SRS doesn't routinely compile information about the number of applications it receives or the number denied or approved, and it's using 1993 figures on the average monthly cost for nursing home care in various calculations—also need to be addressed.

- RECOMMENDATIONS**
1. To help 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, the Department of Social and Rehabilitation Services should do the following:
 - a. require applicants to provide additional documentation at the time they apply for Medicaid assistance, including recent residential addresses, copies of income tax returns, real estate deeds and local property tax bills, bank statements, and life insurance policies.
 - b. routinely and systematically conduct cross-matches with the CAMA and motor vehicle registration databases, as well as any other relevant databases maintained by other State agencies, to determine whether applicants own additional assets that could be used to help pay for their long-term care.
 2. To help ensure that SRS and the Legislature have relevant information to plan for the future needs of long-term care, SRS should routinely compile cumulative data about the number of people applying for Medicaid assistance for long-term care. At a minimum, that information should include the number of applicants and the number of applications denied and approved. The Department also should identify and compile information about the methods applicants are using to inappropriately shelter assets, and should provide that information to its staff.

3. To ensure that applicants who've inappropriately transferred assets don't have to wait longer than federal regulations require to receive Medicaid benefits, SRS should promptly and regularly up-date the figure it uses to calculate the penalty period that should be imposed. That figure should reflect the current average monthly cost of nursing home care for a private-pay patient, but the Department hasn't updated that figure since 1993.

APPENDIX A

Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on August 11, 2000. The topic was a staff suggestion approved by the Legislative Post Audit Committee.

SCOPE STATEMENT

Reviewing Efforts to Ensure that People Don't Illegally Use Trusts or Other Means To Hide or Transfer Assets to Qualify for Medicaid Funding In Nursing Homes

Persons who meet certain income guidelines and who don't possess assets exceeding a certain level can qualify for Medicaid funding to assist with the expenses of long-term care in a nursing home. Generally, all resources owned by the individual except the home and 1 automobile must be counted. This includes checking accounts, savings accounts, other real estate, and trust funds. Federal law now permits a husband and wife to transfer their resources when one of them needs nursing home care. The law is intended to help protect resources for the person who remains at home and help the person needing nursing home care to qualify for Medicaid, a maximum of \$84,120 can be transferred. Likewise, the law permits a husband and wife to divide their income when one of them needs nursing home care.

During subcommittee hearings on the Department of Social and Rehabilitation services budget, legislators expressed concerns that some Kansans may be inappropriately placing their assets in trust to qualify for Medicaid assistance with nursing home costs. Specifically, they were interested in knowing whether Kansas had more potential loopholes in this area than other states do.

A performance audit of this area would answer the following questions:

1. **How do Kansas' requirements for placing assets in trust to qualify for Medicaid funding in nursing homes compare with requirements in other states and at the federal level?** To answer this question, we'd review applicable State and federal laws and regulations governing eligibility for Medicaid funding for nursing home residents. We'd specifically look at the provisions related to placing assets in trust or transferring assets to qualify for funding. We'd contact a sample of other states to determine what their requirements are. We'd compare and contrast what Kansas allows with what the other states are doing, and we'd point out areas where Kansas appears to be more or less stringent. We'd also talk with officials at the Health Care Financing Administration to get their opinions of what Kansas is doing in this area, what problems they see with our system, and any suggestions they have for improvement. We'd conduct additional testwork as needed.
2. **What efforts has the Department of Social and Rehabilitation Services made to ensure that financial eligibility requirements are enforced?** In answering this question, we'd interview officials in the Department to determine what they do to ensure that nursing home residents are properly screened for program eligibility. We'd compare the Department's efforts to what officials in other states say they do, and point out any areas where the Department's procedures could be strengthened. We'd look at the results of any audits or reviews the Department has done, and

determine what steps they have taken to correct any abuses they have found. We'd conduct additional testwork as needed.

Estimated time to complete: 10-12 weeks (*Staff Note: 2000 House Substitute for SB326 currently contains a proviso that directs the Department to spend money from the "other medical assistance account" of the State General Fund for fiscal year 2001 to study these issues. See proviso language below.*)

2 Other medical assistance

\$206,835,693

3 Provided, That any unencumbered balance in the other medical assis-
4 tance account in excess of \$100 as of June 30, 2000, is hereby reappro-
5 priated for fiscal year 2001: Provided further, That expenditures shall be
6 made by the department of social and rehabilitation services from the
7 other medical assistance account of the state general fund for fiscal year
8 2001 to conduct a study of the current rules and regulations, administra-
9 tive policies and practices of the department of social and rehabilitation
10 services regarding the use of trusts to misrepresent an individual's net
11 worth when applying for medical assistance: And provided further, That
12 the secretary of social and rehabilitation services shall submit a report to
13 the legislature at the beginning of the 2001 regular session, setting forth
14 the results of such study.

APPENDIX B

Agency Response

On February 21, 2001, we provided a copy of the draft audit report to the Department of Social and Rehabilitation Services. The Department's response is included as this Appendix. After carefully reviewing the response, we made some minor clarifications to the draft audit that didn't affect any of our findings or conclusions.

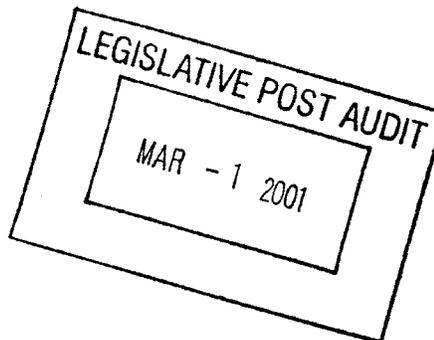


KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

JANET SCHALANSKY, SECRETARY

March 1, 2001



Ms. Barbara J. Hinton
Legislative Post Auditor
Legislative Division of Post Audit
Mercantile Bank Tower
899 Southwest Jackson Street, Suite 1200
Topeka, Kansas 66612-2212

Dear Ms. Hinton:

Thank you for the opportunity to provide comments regarding the draft copy of your 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." My staff felt that the audit was conducted in a cooperative and professional manner and that the overall findings reflect the fact that the Department's efforts to carry out federal and state laws in this area have been effective. As lawmakers, I know you are keenly aware of the difficult balance between requiring individuals to exhaust all resources to be eligible for Medicaid assistance in contrast to allowing individuals to retain / "shelter" some limited resources.

The asset requirements developed by the Department over the past several years represent a delicate balance between a number of competing elements including improving access to medical benefits, providing such benefits to persons who are entitled to them, maintaining the fiscal integrity of the Medicaid program, and simplification and consistency of rules in light of available staff resources. We feel we have been successful in this endeavor. As noted in our report to the Legislature responding to the proviso contained in 2000 House Substitute for SB 236 which requested we review similar issues, we have not seen any substantive increase in estate planning to qualify for Medicaid or other similar activities to take inappropriate advantage of our eligibility rules. This is not to say that the system developed is perfect or needs no further improvements. We continue to monitor activity at the local level and review the need for future changes in our program requirements.

The issues raised in your report speak to further restricting the eligibility criteria and process in certain areas. As we noted in the detailed response attached, the result of such restrictions can be decreased access to services by those who are eligible as well as to those who may be seeking to

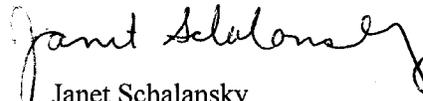
Ms. Barbara J. Hinton
March 1, 2001
Page Two

qualify for assistance through inappropriate means. We have attempted to construct our rules such that the majority of consumers who are eligible for benefits can access those benefits in a straightforward and streamlined manner while being equally vigilant to prevent access for those who are not eligible. We do remain open to recommendations in this area and through your study and our review process have taken a critical look at what we are doing and the results we are attempting to achieve.

Attached is a document in response to the draft material you provided. As you will note we concur with some of the recommendations but disagree with others.

Thank you again for the opportunity to provide input. If you have any questions, please feel free to contact Dennis Priest at 296-4717.

Sincerely,


Janet Schalansky
Secretary

JS:SCH:DP:jmm

Attachments

cc: Laura Howard
Candy Shively
Sandra C. Hazlett
Bob Day

**RESPONSE TO RECOMMENDATIONS
CONTAINED IN THE PERFORMANCE AUDIT,
MEDICAID FOR LONG TERM CARE**

RECOMMENDATION

To ensure that only needy applicants receive Medicaid assistance for long-term care, the Department of Social and Rehabilitation Services should review and adjust its eligibility requirements accordingly to bring them more in-line with other states in terms of caps, criteria, limits, and the like. The Department should seek legislative input as needed, and should report back to the Legislative Post Audit Committee and other appropriate committees regarding any changes it plans to make. If the Department determines that changes aren't needed, it also should provide the rationale for making those decisions.

RESPONSE

As noted in the report, there are federal regulations in place which prevent the state from restricting criteria further such as the transfer and trust provisions and areas where Kansas policy is very similar to the comparison states including the home, resource limits, and life insurance policies. Four areas mentioned where the State appears to have more liberal policies in place are vehicles, income-producing property, personal effects and furnishings, and pre-paid funeral arrangements.

In regards to vehicles, the agency has adopted a uniform policy across all programs and feels that the policy is appropriate. The \$4500 limit is based on longstanding policy in the Supplemental Security Income (SSI) program which has been little modified since the inception of the program in 1972 and unnecessarily limits the value of an automobile. Such a limit could result in ineligibility for some individuals who have no other assets. Although there is the possibility that the exemption could be used for purposes of estate planning, this has so far been more the exception than the rule. We continue to track this issue and look at the possibility of restricting the policy if there is an increase in inappropriate vehicle purchases.

A similar response is made in regards to income producing property. The \$6000 limit is again based on longstanding SSI policy that has not been updated since the inception of the program. The Department again found the SSI criteria unnecessarily restrictive and often prevented farming families as well as other small business owners who otherwise qualified from being able to access medical benefits. We have not seen any evidence that the exemption criteria currently in place has led to the new purchase of income-producing property solely for estate planning purposes. The Department feels it should continue monitoring the issue and consider if necessary, a limit in the value of property owned, probably in the range somewhere between the SSI criteria and the current full value exemption.

Regarding personal effects and furnishings, the current federal limitations which are again based on SSI policy have been viewed as overly restrictive, labor intensive, and non-productive in regards to eligibility. Valuing the cost of furnishings, household goods, keepsakes, etc. is often a cumbersome and time consuming process as well as costly to the State if independent appraisals are required. It is also very much a guestimate process even if resources are available in the community to determines values. The ultimate result can often have little effect on eligibility for most individuals leading to nonproductive use of staff time and adding to processing time. Most importantly, the chief reason the Department has historically exempted such property is that it can be demeaning to individuals and families. Again there is little evidence that such property has been newly purchased for estate planning purposes. However, the Department believes it important to continue monitoring the issue and to look at restricting criteria should evidence show there is more of an impact.

Finally, regarding pre-paid funeral agreements, state law places a \$3500 limit on the amount of money that can be placed in an irrevocable agreement. The \$1500 limitation for revocable agreements is still based on SSI policy and thus is the mandatory minimum requirement. The Department believes it important that individuals be able to purchase such agreements and does not view this as an estate planning or transfer issue. As the State has a Burial Assistance program which is entirely State funded and is available to persons receiving medical as well as other assistance, we would not want to increase demands on those limited funds by restricting the right of an individual to establish a reasonable burial fund.

Overall the Department believes its current asset criteria is effective but also believes it important to monitor activity and look at future modifications if increases in estate planning activity occur in light of those policies.

RECOMMENDATION

1. *To help 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, the Department of Social and Rehabilitation Services should do the following:*
 - a. *require applicants to provide additional documentation at the time they apply for Medicaid assistance, including recent residential addresses, copies of income tax returns, real estate deeds and local property tax bills, bank statements and life insurance policies.*
 - b. *routinely and systematically conduct cross-matches with the CAMA and motor vehicle registration databases, as well as any other relevant databases maintained by other State agencies, to determine whether applicants own additional assets that could be used to help pay for their long-term care.*

2. *To help ensure that SRS and the Legislature have relevant information to plan for the future needs of long-term care, SRS should routinely compile cumulative data about the number of people applying for Medicaid assistance for long-term care. At a minimum, that information should include the number of applicants and the number of applications denied and approved. The Department also should identify and compile information about the methods applicants are using to inappropriately shelter assets, and should provide that information to its staff.*
3. *To ensure that applicants who've inappropriately transferred assets don't have to wait longer than federal regulations required to receive Medicaid benefits, SRS should promptly and regularly up-date the figure it uses to calculate the penalty period that should be imposed. That figure should reflect the current average monthly costs of nursing home care for a private-pay patient, but the Department hasn't updated that figure since 1993.*

RESPONSE

The Department partly concurs and partly disagrees with the recommendations. In regards to the issue of additional documentation, the Department does not believe such a requirement would be productive for the majority of its consumers and would instead create a barrier for accessing needed services. The majority of the Department's consumers do not own a substantive amount of assets and as such, placing additional documentation requirements would create an undue and unnecessary burden on the family as well as potentially be perceived as intrusive. The Department already has fairly extensive documentation requirements as noted in the report including bank statements, deeds, and life insurance policies and the majority of its consumers have accurately reported the extent of their holdings and any transfer history. Requiring additional proof will not likely result in eligibility issues, would increase already lengthy processing time, burden staff as well as the consumers and their families, and increase the perception of stigma that can prevent access to needed services that the person is otherwise entitled to.

The audit report does emphasize the use of additional databases that can be accessed without the involvement of the family and possibly without an undue workload burden for staff. We agree with this direction. We have explored the use of the Computer-Assisted Mass Appraisal System (CAMA) in our Estate Recovery program and are interested in pursuing access for staff. The current system is not user-friendly and needs additional improvements before it could become a worthwhile tool for staff. We understand the Department of Revenue continues to refine the system and we will continue to explore its use as further changes are made. The Department does have current access to motor vehicle records but does not routinely use it for long-term care cases as most consumers only own one car and the currently policy exempts that car. Again we must balance routine use and the time that requires with the end result. As issues arise, we will look at more regular use of the database in the future. The Department has explored and continues to review other State agency databases in terms of usefulness and accessibility and is always interested in making such information available where it is productive and can save both consumer and staff time.

The report also recommends that SRS routinely compile cumulated data on persons applying for and accessing Medicaid long-term care services. We are unclear however as to the necessity of tracking approvals and denials as referenced in the recommendation. Because of the way the automated eligibility system is constructed, it would be difficult coding-wise to ascertain information specifically related to long-term care cases. What we would suggest and want to pursue is greater use of our Quality Assurance and Performance Evaluation group to monitor the extent to which applicants may be sheltering assets and what those methods are. This would establish a ongoing tracking mechanism and provide the type of information we cannot otherwise obtain from our automated systems. It could also then be shared with local management staff for training purposes.

The report also notes that the current property transfer division used to determine penalty periods needs updating. We agree and have determined it needs to be increased to \$3000. We plan on modifying the policy effective July 1, 2001 in order to revise the current policy manual instructions and do necessary staff training.

LPA OBSERVATION

On Page 12, in the discussion of loopholes in federal policy, it should be noted that the degree to which Kansas consumers have used either technique to qualify for Medicaid has been minimal. However, the potential for a surviving spouse to transfer away resources to avoid estate recovery does exist. One way several states have combated this potential is adoption of a lien provision for estate recovery purposes. Federal law allows liens to be placed on real estate owned by a medical assistance consumer who has entered long-term care. No lien can be imposed when any of the following persons reside in the consumer's residence: recipient's spouse, recipient's child under the age of 21, recipient's child who is blind or disabled, or a sibling with an equitable interest and who resided in the house for one year before the recipient's admission to a medical facility. Once the state has determined the property for a lien, the state would provide notice to the consumer and opportunity for a fair hearing. At the fair hearing, the issue, as required by federal law, would be whether the recipient can reasonably be expected to return home from the medical institution. Once a lien is allowed, the state would recover when the property is sold.

Lien authority could increase the success of the state's estate recovery efforts in two areas: homestead assertions and joint tenancy property. In 1997, the Kansas Court of Appeals determined that a surviving adult non-disabled child living in a deceased parent's home could assert homestead rights as a surviving family member of the deceased owner. This exempts the property from sale by creditors of a decedent's estate. Similarly, property owned in joint tenancy with rights of survivorship is automatically transferred to a survivor when one of the owners dies. A lien imposed under the proposed legislation would allow the state to recover under both of these circumstances.

