

21700 **Estate Recovery**

07-01-08

The Omnibus Budget Reconciliation Act of 1993 and Arkansas Act 415 of 1993 mandate recovery of medical payments correctly made from 8/13/93 and later from the estates of:

- Individuals of any age who were considered to be permanently institutionalized, who received medical services in a nursing or ICF/MR facility, and who were required to pay all but a minimal amount of income for their care, and for
- Individuals age 55 and older who received medical services in a nursing or ICF/MR facility or in a home and community based waiver program, whether or not they were considered to be permanently institutionalized.

Estate recovery will not be made from the estate of deceased individuals when:

- there is a surviving spouse, dependent children under age 21, or blind or disabled children (as determined by SSA disability guidelines),
- recovery will create an undue hardship for other surviving family members, or
- recovery is not cost effective.

* Estate recovery will not be made from assets which were protected as a result of the individual having a Qualified Long Term Care Insurance Partnership Policy. The maximum amount protected at estate recovery will be the amount protected when eligibility was established. If any of the protected assets have been spent or given away, only the amount remaining will be protected at estate recovery.

21705 **Definitions**

Estate - The term "estate" under Arkansas law, with respect to a deceased individual, means all real and personal property owned by the individual at his death.

Permanently Institutionalized - An individual is considered to be "permanently institutionalized" if a medical determination is made which indicates there is no reasonable expectation that the individual is likely to return home.

The date on which an individual was determined to be permanently institutionalized is irrelevant. If services were provided prior to the time a decision was made regarding permanent institutionalization, recovery will include assistance provided prior to the decision.

Intent to Return Home - When an individual who enters an institution states his intent to return home, the home may be excluded from countable resources in determining eligibility, even when a medical decision has been made that the individual is "permanently institutionalized".

Undue Hardship - Undue hardship may exist when the estate's asset is the sole asset of the survivors, the asset is their sole source of income, the income is not sufficient to meet their living expenses and also repay the debt to DHS, or there are other compelling circumstances (e.g., the estate assets cannot be readily converted to cash).

20000 Long Term Care Insurance Partnership Program 07-01-08

The Deficit Reduction Act of 2005, Pub. L. 109-171, Section 6021 allows for the expansion of a Qualified State Long Term Care (LTC) Partnership Program. This permits States to disregard as a resource when determining Medicaid eligibility an amount up to the total amount of benefits paid out of a LTC Insurance Partnership policy. The benefits will be disregarded in determining an individual's Medicaid eligibility for Facility Care as well as Home and Community Based Services. The Arkansas General Assembly passed Act 99 on February 13, 2007 to establish the Arkansas Long Term Care Partnership Program.

The Qualified State LTC Partnership Program encourages individuals to accept personal responsibility for their future long term care needs by purchasing insurance and reduces the incentive to transfer or hide assets that can be protected legally. It will help individuals better plan for long term care needs they may have in the future.

NOTE: Purchasing or owning a LTC Partnership policy does not guarantee Medicaid eligibility. Other eligibility factors must be met also.

20010 Asset Disregard 07-01-08

An asset disregard in an amount up to the amount of benefits paid out by a Qualified Long Term Care Insurance Partnership policy will be allowed when determining eligibility for Medicaid. This is a "dollar for dollar" calculation for asset protection. The benefits will be disregarded in determining an individual's Medicaid eligibility for Facility Care as well as Home and Community Based Services.

Example: An individual purchased a qualified policy with a benefit of \$100,000. Application is made for Medicaid and the policy has paid out \$90,000 in benefits. The policyholder's assets can be protected up to \$90,000.

Only certified "partnership qualified" LTC insurance policies provide this asset protection. The asset disregard cannot be allowed for a non-qualified LTC insurance policy.

20020 Policy Identifiers 07-01-08

The Arkansas Department of Insurance has established specific criteria that the qualified long term care insurance policy must meet. The criteria are:

1. The policy must cover a person who is a resident of the Qualified Partnership State when coverage first became effective.
2. The policy must meet the definition of a "qualified long term care insurance policy" established by the Internal Revenue Code of 1986.

3. The policy must not have been issued earlier than July 1, 2008.
4. The policy must include inflation protection which is established at the time of purchase. The inflation protection can be up to 5% but not less than 3%.

The assets to be protected will be designated during the initial application process and the value of the designated assets must be verified by the eligibility worker.

NOTE: Under the spousal impoverishment rule, only assets that belong to the institutionalized spouse (IS) are protected.

20021**Disclosure****07-01-08**

A statement disclosing partnership qualified status will not be included on the policy. A separate disclosure document will be sent to the individual by the insurance company after the purchase of the policy.

The content of the disclosure notice will include:

- The insured's name, policy number, date of issue,
- A statement that the disclosure form should be kept with the policy,
- An overview of asset disregard,
- Any policy changes that might affect partnership qualified status; and
- A website address for more information.

When an individual applying for Medicaid states that he or she has a Qualified LTC Partnership policy, the eligibility worker will request the disclosure notice or other documents so that contact can be made to the insurer to verify the amount of the policy and benefits paid to determine the amount of the asset disregard.

20030**Exchanges****07-01-08**

If an individual has an existing LTC insurance policy that does not qualify as a Partnership policy due to the effective/issuance date of the policy, individuals may exchange their current policies for partnership qualified policies through their insurance agents. If the policy is exchanged for another, the insurance company will provide the policyholder with a disclosure statement with a new effective/issuance date.

20040**Exhaustion of Benefits****07-01-08**

An individual who owns a Qualified Long Term Care Partnership policy can apply for Medicaid before the exhaustion of policy benefits.

The Qualified Partnership policy is treated as a third party liability and Medicaid will pay for services not covered. Medicaid will be payor of last resort.

20050**State Reciprocity****07-01-08**

If an individual purchased a qualified partnership policy in another state, it will be accepted in Arkansas. Qualified partnership policy status will be verified by the eligibility worker. The eligibility worker will request the disclosure notice or other documents so that contact can be made to the insurer to verify the amount of the policy and benefits paid to determine the amount of the asset disregard. The eligibility worker will request the individual to complete Consent for Release of Information form, so the insurer can release requested information.

20060**Transfer Protection****07-01-08**

A transfer of the protected assets will not be an uncompensated transfer and will not be subject to a penalty period. When disregarded assets are given away, the disregarded amount cannot be replenished nor can additional assets of the policyholder be eligible for protection.

EXAMPLE: Mrs. Jones, who bought and used a Qualified Partnership policy, applies for Medicaid after her long-term care insurance policy is depleted. Under her policy, she used \$100,000 in insurance benefits and is eligible for an asset disregard of \$100,000. The \$100,000 is set aside in a separate savings account. While on Medicaid, Mrs. Jones uses the funds in her account to buy gifts for family members, and to make other purchases. This is not considered an uncompensated transfer because what she spent was protected assets.

20070**Effect of Asset Disregard in Estate Recovery****07-01-08**

The initial amount of protected assets, if the policyholder still has ownership, will be disregarded from estate recovery when the policyholder dies. If a Qualified Partnership policyholder spends or transfers the disregarded assets prior to death, then only the disregarded amount remaining is exempt from estate recovery (Re. MS 21700).

EXAMPLE: Mrs. Jones was eligible for an asset disregard of \$100,000. At the time of her death, there is \$20,000 remaining in the account. During the estate recovery process, the state will allow an exemption of \$20,000 from the amount that would otherwise be eligible for estate recovery.

3330 **RESOURCES - AABD****07-01-08**

Resources are generally defined as those assets, including both real and personal property, which an individual, or couple, possesses. Resources include all liquid assets as well as those assets which are not presently in liquid form.

In order for assets to be considered as resources, property or an interest in property must have a cash value that is available to the individual upon disposition.

Countable resources will be determined on the first day of the month. When resource eligibility exists at the beginning of a month, it continues for the full month. A resource change that occurs during a month in which resource eligibility exists will not be considered for determination of countable resources until the first of the month following the change.

When an individual is ineligible at the beginning of a month due to excess resources, ineligibility due to resources exists for the full month.

Assets which have been received during the month and considered as income may not also be counted with resources during the same month (unless the income received is given away during the month it is received - Re. [MS 3336.6](#)). For example, if an individual had a checking account balance of \$1,950 as of June 1, the receipt of a \$300.00 SSA check during June would not cause the individual's \$2,000 resource limit to be exceeded during June even if the entire check was deposited in the checking account. The individual's resource eligibility would not be affected by the receipt of income during the month. It would only be affected if the income was retained to the extent that it caused the \$2,000 limit to be exceeded as of the beginning of July.

SSI lump sum benefits (never counted as income) will be excluded from resource consideration for 6 full months after the month of receipt (Re. [MS 3332.3 #6](#)). SSA lump sum payments also have the 6 month resource exclusion, but will count as income in the month of receipt-Re. [MS 3341](#). Interest earned on the excluded funds will be counted as income in the month accrued and, if retained, as a resource in the month following.

Each individual must be advised of how countable resources are determined and how resource changes can affect eligibility.

* **Asset Disregard for Long Term Care Insurance Partnership Policy**

An amount up to the amount of benefits paid out by a Qualified Long Term Care Insurance Partnership policy may be used as an asset disregard when determining eligibility for Medicaid (Re. MS 20000-20070 & 21700).

Example: An individual purchased a qualified policy with a benefit of \$100,000. Application is made for Medicaid and the policy has paid out \$90,000 in benefit. The policyholder's assets can be protected up to \$90,000.

Requests for Legal Opinions Regarding Resources

A legal opinion from the Office of Chief Counsel (OCC) will be requested when the worker, the ES Supervisor, and the DCO Program Support Specialist are unsure of whether a resource should be considered or disregarded.

If the equity value of the questionable resource, when combined with other resources, appears to exceed the resource limit, OCC will be contacted if:

1. Ownership of the resource is questionable, or