67:11:01:03. Federal poverty level. For programs under Title 67, the department uses the federal poverty level established in ~~76 Fed. Reg. 3,637 (January 20, 2011)~~ 79 Fed Reg. 3,593 (January 22, 2014).

Source: 21 SDR 162, effective March 23, 1995; 22 SDR 188, effective July 8, 1996; 24 SDR 11, effective August 4, 1997; 25 SDR 13, effective August 9, 1998; 26 SDR 109, effective March 5, 2000; 26 SDR 168, effective July 1, 2000; 28 SDR 1, effective July 18, 2001; 28 SDR 178, effective July 3, 2002; 30 SDR 26, effective September 3, 2003; 30 SDR 193, effective June 13, 2004; 32 SDR 33, effective August 31, 2005; 32 SDR 163, effective March 23, 2006; 34 SDR 322, effective July 1, 2008; 35 SDR 234, effective April 1, 2009; 37 SDR 182, effective March 25, 2011.

General Authority: SDCL 25-4-45.3, 28-1-61, 28-6-1(6), 28-6A-12, 28-7A-3, 28-7A-24.

Law Implemented: SDCL 25-4-45.3, 28-1-60, ~~28-1-71~~, 28-6-1(6), 28-6A-2, 28-7A-3, 28-7A-20.

Cross-References:

Work activities -- Combined work and education, § 67:10:06:13.01.

~~Cost sharing for respite care services, § 67:40:18:12.~~

Eligibility requirements, § 67:46:01:02.

Computation of community spouse's maintenance allowance and excess shelter allowance, § 67:46:07:12.

Eligibility requirements, § 67:46:10:04.

Household required to participate in child care costs, § 67:47:01:08.

Family pays costs when lump sum income exceeds federal poverty level, § 67:47:01:08.01.

~~Family required to participate in TCC costs, § 67:47:03:13.~~

~~Family pays costs when lump sum income exceeds federal poverty level, § 67:47:03:14.~~

~~Sales tax on food refund program, ch 67:57:01.~~

67:46:01:02. Eligibility requirements. The following individuals are eligible for medical assistance:

(1) A ~~low income family~~ parent/caretaker relative eligible for Medicaid under the provisions of chapter 67:46:12;

(2) A person who is a recipient of a money payment under the SSI program;

(3) A person under age 21 who would be a recipient of a money payment under the SSI program if not subject to paragraphs (A) and (B) of 42 U.S.C. 1382(c)(7);

~~(3)~~ (4) A person who is in a hospital or intermediate care facility and would be eligible for a money payment under the ~~AFDC or~~ SSI program upon leaving the facility;

~~(4)~~ (5) A person under the age of 21 who is in the custody of the department and who meets the income ~~and resource~~ requirements of ~~the AFDC program~~ § 67:46:12:15;

~~(5)~~ (6) A person under the age of 21 who meets the ~~AFDC~~ income ~~and resource~~ requirements of § 67:46:12:15, is in foster care, and whose financial responsibility has been assumed in full or in part by the department;

~~(6)~~ (7) A person who is eligible under the provisions of chapters 67:46:02 to 67:46:06, inclusive;

~~(7)~~ (8) A person who is eligible for transitional medical benefits under the provisions of chapter 67:46:13;

~~(8)~~ (9) A child in a subsidized adoption;

~~(9)~~ (10) A person who is currently receiving social security, who was entitled to and received social security and SSI concurrently after April 1977, who was terminated from SSI, and who currently would be eligible for SSI if the social security cost of living allowances back to the time of SSI ineligibility are disregarded;

~~(10) A child under the age of 18 who was receiving an SSI payment on August 22, 1996, but who lost SSI eligibility due to a change in the definition of childhood disability under the provisions of Pub. L. No. 104-193 (Personal Responsibility and Work Opportunity Reconciliation Act of 1996) § 211 (110 Stat. 2188) and who, except for the enactment of Pub. L. No. 104-193, would continue to be paid SSI;~~

(11) A pregnant woman who meets the ~~AFDC~~ income ~~and resource~~ requirements under the provisions of chapter 67:46:12; ~~of an assistance unit composed of the pregnant woman, her unborn child, and, if living in the home, the pregnant woman's spouse and any other family member who is applying for or receiving medical-only assistance under this section. At the family's option, any other household member who could have been included in an AFDC assistance unit may be included in the determination. Eligibility continues throughout the pregnancy without regard to income changes;~~

(12) A woman who applied for Medicaid while pregnant and who was eligible for and received Medicaid on the date the pregnancy ended. Eligibility continues to the end of the month 60 days after the pregnancy ends ~~if the AFDC resource limit is not exceeded~~. Coverage is limited to postpartum care and family planning services;

~~(13) A person who was eligible for and received medical benefits under chapter 67:46:12 in at least three of the last six months and became ineligible because of an increase in child support payments paid in behalf of a member of the assistance unit. Eligibility for medical assistance continues for four months beginning with the month of ineligibility;~~

~~(14) A dependent child of a minor parent who is ineligible for AFDC because of the deeming of the income of the minor parent's parent or the income of a sibling of the child;~~

~~(15)~~ (13) A child under age 19 whose family income ~~is less than 140 percent of the federal poverty level established in § 67:11:01:03. Persons considered in the determination include the child and any parents of the child living in the household as well as any other family member who is applying for or receiving medical-only assistance under this section. At the family's option, any other household member who could have been included in an AFDC assistance unit may be included in the determination. Income is determined according to AFDC eligibility criteria~~ meets the income requirements under the provisions of chapter 67:46:12;

~~(16)~~ (14) A child under age 19, ~~whose family income is less than 200 percent of the federal poverty level established in § 67:11:01:03 and~~ who is eligible for the nonmedicaid children's health insurance program covered under the provisions of chapter 67:46:14;

~~(17)~~ (15) A pregnant woman whose family ~~resources calculated according to chapter 67:46:05 do not exceed $7,500 and whose family income is less than 138 percent of the federal poverty level established in § 67:11:01:03~~ meets the income requirements as established under the provisions of chapter 67:46:12. Eligibility continues throughout the pregnancy and to the end of the month 60 days after the pregnancy ends without regard to income changes. Services payable are limited to those services that are related to pregnancy, postpartum care, or family planning~~. Persons considered include the pregnant woman, her unborn child, and, if living in the home, the pregnant woman's spouse and any other family member who is applying for or receiving medical-only assistance under this section. At the family's option, any other household member who could have been included in the AFDC assistance unit may be included in the income determination. Income is determined according to AFDC eligibility criteria~~;

~~(18)~~ (16) A person determined to be a qualified Medicare beneficiary under the provisions of chapter 67:46:11, with benefits limited to the part A and B premium, deductible, co-payments, and coinsurance charges;

(17) A person determined to be a Special Low-Income Medicare beneficiary under the provisions of chapter 67:46:11 whose income is at least 100 percent, but less than 120 percent of the federal poverty level, and who is not otherwise eligible for Medicaid. Benefits are limited to payment of part B Medicare premiums;

~~(19)~~ (18) A person determined to be a qualified Medicare beneficiary under the provisions of chapter 67:46:11 whose income is at least 120 percent, but less than 135 percent of the federal poverty level, and who is not otherwise eligible for Medicaid. Benefits are limited to payment of part B Medicare premiums. ~~and the limitations established in Pub. L. No. 105-33, § 4732 (111 Stat. 520) (August 5, 1997)~~ The department may discontinue services provided under the provisions of this chapter if the department exhausts its financial resources for providing the services;

~~(20)~~ (19) A person who is eligible for and is receiving services under the home and community-based services waiver program in chapter 67:44:03 or the home and community-based services program in chapter 67:54:04;

~~(21)~~ (20) A disabled widow or a disabled widower who is at least age 50 but less than age 65, who was terminated from SSI due to receipt of social security benefits under Title II of the Social Security Act, as amended to January 1, ~~2010~~ 2014, who is not on Medicare part A, and who would continue to be eligible for SSI if the Title II benefits are disregarded;

~~(22)~~ (21) A disabled adult who became disabled or blind before age 22 and was terminated from SSI due to entitlement to social security benefits as an adult disabled child, but who would remain SSI-eligible if the social security benefits are disregarded;

~~(23)~~ (22) A child born ~~after December 31, 1990,~~ to a woman eligible for and receiving Medicaid on the date of the child's birth. Eligibility continues for up to one year as long as the child remains a resident of the state;

~~(24)~~ (23) A child under age 21 who is under the jurisdiction of the South Dakota Department of Corrections, is not an inmate of a public institution, does not reside with a parent, and meets the ~~AFDC~~ income ~~and resource~~ requirements as established under the provisions of chapter 67:46:12;

~~(25)~~ (24) A child under age ~~21~~ 26 who, on the child's eighteenth birthday, was in foster care under the responsibility of the state; and

~~(26)~~ (25) A woman under age 65 who was screened for breast and cervical cancer by the Department of Health's All Women Count Program and who is in need of treatment for breast or cervical cancer or a precancerous condition of the breast or cervix, ~~in~~ is not covered under creditable coverage, and is not otherwise eligible for medical services.

For purposes of this rule, a qualified alien who arrived in the United States after August 21, 1996, and who meets the eligibility requirements contained in this section must also meet the requirements of § 67:46:01:10.

Source: SL 1975, ch 16, § 1; 2 SDR 88, effective July 1, 1976; 4 SDR 35, effective December 22, 1977; 7 SDR 23, effective September 18, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 12 SDR 4, effective July 21, 1985; 12 SDR 112, effective January 16, 1986; 13 SDR 193, effective June 22, 1987; 14 SDR 140, effective

May 1, 1988; 15 SDR 2, effective July 17, 1988; 15 SDR 171, effective May 15, 1989; 15 SDR 191, effective June 11, 1989; 17 SDR 8, effective July 23, 1990; 17 SDR 53, effective October 16, 1990; 17 SDR 187, effective June 3, 1991; 17 SDR 187, effective June 3, 1991; 17 SDR 200, effective July 1, 1991; transferred from § 67:16:01:02, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 20 SDR 92, effective December 21, 1993; 21 SDR 67, effective October 13, 1994; 21 SDR 162, effective March 23, 1995; 22 SDR 32, effective September 11, 1995; 23 SDR 152, effective March 14, 1997; 24 SDR 24, effective August 31, 1997; 24 SDR 104, effective January 29, 1998; 25 SDR 13, effective August 9, 1998; 26 SDR 168, effective July 1, 2000; 29 SDR 84, effective November 22, 2002; 30 SDR 193, effective June 13, 2004; 36 SDR 215, effective July 1, 2010.

General Authority: SDCL 28-6-1(6).

Law Implemented: SDCL 28-6-1(6).

Cross-References:

Federal poverty level, § 67:11:01:03.

Subsidized adoption regulations, ch 67:14:14.

Medicaid entitlement for certain newborns, ~~Pub. L. No. 98-369, § 2362, 98 Stat. 1105~~ 42 C.F.R. § 435.117.

Institutionalized individuals, 42 C.F.R. § ~~435.1008~~ 435.1009.

Definition of "public institution," 42 C.F.R. § ~~435.1009~~ 435.1010.

Group care centers for minors, ch 67:42:07.

Residential treatment centers, ch 67:42:08.

State option of Medicaid coverage for adolescents leaving foster care, Pub. L. No. 106-169, § 121, (113 Stat. 1829).

John H. Chafee foster care independence program, Pub. L. No. 106-109, § 477(a)(5), (113 Stat. 1824).

State option of Medicaid coverage for adolescents leaving foster care, 42 U.S.C. § ~~1396(a)(A)(ii)(XVII)~~ 1396a(a)(10)(A)(ii)(XVII).

State option of Medicaid coverage for certain breast or cervical cancer patients, 42 U.S.C. § ~~1396(a)(A)(ii)(XVII)~~ 1396a(a)(10)(A)(ii)(XVIII).

Definition of "creditable coverage," 42 U.S.C. § ~~300gg(c)~~ 300gg-3(c).

67:46:03:09. Residency determinations -- Individuals under age 21 not residing in a long-term care facility. The state of residence for individuals under age 21 who are not residing in a long-term care facility is one of the following:

(1) For an individual who is emancipated from the individual's parents or married and who is capable of indicating intent, the state of residence is the state where the individual is living ~~with the intention to remain;~~ and

(a) Intends to reside, including without a fixed address; or

(b) Has entered the state with a job commitment or seeking employment, whether or not currently employed.

~~(2) For an individual whose Medicaid eligibility is based on blindness or disability, the state of residence is the state in which the individual is living; or~~

~~(3)~~ (2) For any other individual, the state of residence is: ~~determined according to the regulations governing residence under the AFDC program.~~

(a) The state where the individual resides, including without a fixed address; or

(b) The state of residency of the parent or caretaker, with whom the individual resides, and where the parent or caretaker is living and

(i) Intends to reside, including without a fixed address; or

(ii) Has entered the State with a job commitment or seeking employment, whether or not currently employed.

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.05, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Assistance applications and eligibility, ~~ch~~ chapter 67:12:01; State residence, 42 C.F.R. 435.403 (July 12, 2006).

67:46:03:13. Residency determinations -- Individuals aged 21 and over not residing in a long-term care facility. The state of residence for individuals aged 21 and over who are not residing in a long-term care facility is one of the following:

(1) The state where the individual is living ~~as long as the individual intends to remain there permanently or for an indefinite period;~~ and

(a) intends to reside, including without a fixed address; or

(b) has entered the state with a job commitment or seeking employment, whether or not currently employed.

(2) The state where the individual is living if the individual is incapable of stating intent for residency~~; or~~.

~~(3) The state where the individual is living, whether or not the individual is currently employed, and which the individual entered with a job commitment or seeking employment.~~

Source: 11 SDR 86, effective December 30, 1984; transferred from § 67:16:18:04.09, effective August 23, 1992.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: State residence, 42 C.F.R. 435.403 (July 12, 2006).

67:46:04:13. Department to refer certain individuals to Social Security Administration to apply for SSI. The department shall refer an individual to the Social Security Administration to apply for SSI if the individual's income minus $20 is less than one of the following:

(1) The standard $30 SSI payment if the individual is living in a medical or nursing facility; or

(2) The SSI standard benefit amount of ~~$698~~ 721 if the individual is not institutionalized but living in an adult foster care home or an assisted living facility.

Source: 2 SDR 74, effective May 13, 1976; 4 SDR 35, effective December 22, 1977; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 170, effective June 21, 1982; 9 SDR 133, effective April 27, 1983; 15 SDR 2, effective July 17, 1988; 16 SDR 203, effective May 27, 1990; transferred from § 67:16:19:08, effective August 23, 1992; 20 SDR 92, effective December 21, 1993; 21 SDR 162, effective March 23, 1995; 22 SDR 188, effective July 8, 1996; 24 SDR 67, effective November 26, 1997; 26 SDR 99, effective January 30, 2000; 28 SDR 178, effective July 3, 2002; 30 SDR 193, effective June 13, 2004; 31 SDR 107, effective February 1, 2005; 33 SDR 124, effective January 2, 2007; 34 SDR 271, effective April 17, 2008; 35 SDR 234, effective April 1, 2009; 38 SDR 123, effective January 23, 2012.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: 42 U.S.C. § 1382(b)(1), 1974; Long-term care residency requirements and beginning of eligibility, § 67:46:03:03.

67:46:07:03. Determination of spousal share. The spousal share of resources may not exceed the greatest of the following:

(1) ~~Twenty one thousand nine hundred twelve dollars~~ Twenty-three thousand four hundred forty eight dollars;

(2) One-half of the value of the total aggregate nonexempt resources of the community spouse and the institutionalized spouse up to $~~109,560~~ 117,240;

(3) An amount determined in a fair hearing; or

(4) An amount determined by the circuit court under SDCL 25-7-1 to 25-7-5, inclusive.

Pursuant to subdivision (3) or (4) of this section, the hearing officer or the court may increase the spousal share of resources if it is determined to be inadequate to support the community spouse.

Source: 16 SDR 203, effective May 27, 1990; transferred from § 67:16:32:03, effective August 23, 1992; 30 SDR 166, effective July 1, 2004; 31 SDR 107, effective February 1, 2005; 33 SDR 124, effective January 2, 2007; 34 SDR 271, effective April 17, 2008; 35 SDR 234, effective April 1, 2009.

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18~~, 28-6-19~~.

Cross-References:

Community spouse resource allowance defined, 42 U.S.C. § 1396r-5(f)(2).

Fair hearings, ch 67:17:02.

67:46:07:12. Computation of community spouse's maintenance allowance and excess shelter allowance. The community spouse's monthly minimum maintenance allowance is 150 percent of the federal poverty income level established in § 67:11:01:03 for two persons divided by 12.

The excess shelter allowance is determined by subtracting 30 percent of the minimum maintenance allowance from the community spouse's shelter costs. Shelter costs include rent or mortgage costs, trailer parking space fees, taxes and insurance on the premises, and condominium or cooperative maintenance charges for the couple's principal residence. Shelter costs also include the standard food stamp utility allowance for heating, cooling, or electricity if these services are not included in the rent, mortgage, or maintenance payment. If the costs of heating, cooling, and electricity are included in the rent, the standard food stamp utility allowance may not be made for charges for excess utility use.

Rent, mortgage, taxes, insurance, and condominium and cooperative maintenance charges paid less frequently than monthly are prorated for the period of intent.

The combined spousal allowances may not exceed ~~$2,739~~ 2,931 unless a greater allowance is provided for under a court order of support or if through the fair hearing process it is determined that a greater amount of need exists because of circumstances resulting in financial duress.

These deductions are not permissible if the institutionalized spouse does not make the income available to the community spouse.

Source: 16 SDR 203, effective May 27, 1990 and July 1, 1990; transferred from § 67:16:32:12, effective August 23, 1992; 19 SDR 141, effective March 25, 1993; 20 SDR 92, effective December 21, 1993; 20 SDR 170, effective April 21, 1994; 21 SDR 162, effective

March 23, 1995; 31 SDR 107, effective February 1, 2005; 33 SDR 124, effective January 2, 2007; 34 SDR 271, effective April 17, 2007; 35 SDR 234, effective April 1, 2009

General Authority: SDCL 28-6-1, 28-6-18.

Law Implemented: SDCL 28-6-1, 28-6-18.

Cross-Reference: Standard utility allowance, § 67:13:01:02.

67:46:11:10. Resource limit. The maximum resource limit for a QMB or SLMB is $~~4,000~~ 7,160 for a single individual and $~~6,000~~ 10,750 for an individual with a spouse effective January 1, 2014. The resource limit is adjusted on January 1 of each year, based upon the change in the annual consumer price index since September of the previous year. For a married couple living together, their combined resources are considered available to each other and shared equally.

Source: 15 SDR 171, effective May 15, 1989; transferred from § 67:16:30:10, effective August 23, 1992; 19 SDR 141, effective March 25, 1993.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:46:12

~~MEDICAID COVERAGE FOR CERTAIN LOW-INCOME FAMILIES~~

MODIFIED ADJUSTED GROSS INCOME (MAGI) MEDICAID ELIGIBILITY STANDARDS

Section

67:46:12:01 Definitions.

67:46:12:02 Medicaid eligibility ~~for Medicaid – LIF~~ Parent/caretaker relative.

67:46:12:03 to 67:46:12:05 Repealed.

~~67:46:12:06 Determining family size~~ Repealed.

~~67:46:12:07 Consideration of income and resources~~ Repealed.

67:46:12:08 Income limit – Parent/caretaker relative.

~~67:46:12:09 Resource limit~~ Repealed.

67:46:12:10 Medicaid eligibility - Pregnant woman.

67:46:12:11 Income limit – Pregnant woman.

67:46:12:12 Medicaid eligibility – Children.

67:46:12:13 Income limit – Children.

67:46:12:14 Medicaid eligibility – Other reasonable classifications of children.

67:46:12:15 Income limit - Other reasonable classifications of children.

67:46:12:01. Definitions. Terms used in this chapter mean:

~~(1) "AFDC," the aid to families with dependent children program as it existed on July 16, 1996, under article 67:12;~~

~~(2)~~ (1) "Caretaker relative," ~~a parent, grandparent, brother, sister, stepparent, stepsibling, uncle, aunt, first cousin, first cousin once removed, nephew, or niece and persons of preceding generations denoted by grand, great, great-great, or great-great-great. The term includes blood relatives and those of half-blood. It also includes spouses of such relatives, even after the marriage is terminated by death or divorce;~~ a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care (as may, but is not required to, be indicated by claiming the child as a tax dependent for Federal income tax purposes), and who is one of the following:

(a) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(b) The spouse of such parent or relative, even after the marriage is terminated by death or divorce.

~~(3)~~ (2) "Dependent child," a child who has not attained 18 years of age or has not attained 19 years of age and is a full-time student in a secondary school, and is expected to complete the program before reaching the age of 19~~, and who has been deprived of support or care of a parent because of the parent's death, continued absence from the home, or physical or mental incapacity, or who is a child of unemployed parents and is living with the parents in a residence maintained by the parents as their home~~;

~~(4) "Family" or "family members," an individual or a group of related individuals living in the same home whose needs were recognized in the LIF Medicaid group;~~

~~(5) "LIF," a Medicaid coverage group consisting of low-income families eligible for Medicaid under the AFDC program as it existed on July 16, 1996; and~~

~~(6) "PWE" or "principal wage earner," the parent who earned the most gross income in the 24 months immediately preceding the month of application, regardless of when the relationship between the two parents began.~~

(3) “Parent,” a natural or biological, adoptive or step parent;

(4)“Pregnant woman,” a woman during pregnancy and the post-partum period, which begins on the date the pregnancy ends, extends 60 days, and ends on the last day of the month in which the 60-day period ends; and

(5) “Family Size/Household,” an individual’s family size has the same meaning as determined under the provisions of 42 C.F.R. § 435.603 (July 15, 2013).

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Definitions and use of terms, 42 C.F.R. § 435.4 (March 23, 2012), Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

67:46:12:02. Medicaid eligibility ~~for Medicaid – LIF~~ Parent/caretaker relative. If a dependent child is living with a parent/caretaker relative, ~~both are~~ the parent/caretaker relative may be eligible for ~~LIF~~ Medicaid if the following criteria is met:

(1) They meet the general eligibility requirements of chapter 67:46:01;

(2) They meet the residency requirements of ~~§ 67:10:01:09~~ §§ 67:46:03:04 through 67:46:03:15; and

~~(3) Except for §§ 67:10:02:06 and 67:10:02:07, the child is deprived of parental support or care according to chapter 67:10:02; and~~

~~(4)~~ (3) They meet the requirements contained in this chapter.

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

~~**67:46:12:06. Determining family size.** When determining family size, the department includes the parent living in the home with the dependent child and any blood-related brothers and sisters living in the home who also meet the definition of a dependent child.~~

~~If a caretaker relative is not a parent, the caretaker has the option of being included in the family size.~~

~~If the family contains dependent children who have the same caretaker relative but who are not blood-related brothers or sisters, the caretaker relative has the option of including the dependent children in the family size~~ Repealed.

~~**Source:** 24 SDR 24, effective August 31, 1997.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

~~**67:46:12:07. Consideration of income and resources.** When determining whether the family is eligible for assistance under this chapter, the department considers the income and resources of the family unit established under the provisions of § 67:46:12:06.~~

~~If the caretaker relative is not a parent but has chosen to be included in the family unit, that caretaker relative's income and resources are considered when determining eligibility.~~

~~If the caretaker relative has chosen to include other non-related dependent children in the family unit, their income and resources are considered when determining eligibility~~ Repealed.

~~**Source:** 24 SDR 24, effective August 31, 1997.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

67:46:12:08. Income limit – Parent/caretaker relative. To be eligible for assistance under this chapter a parent/caretaker relative's ~~family's gross~~ income, based on family size determined under the provisions of 42 C.F.R. § 435.603 (July 15, 2013), may not exceed the following amounts plus five percent of the current years federal poverty guidelines for that family size:

FAMILY SIZE	MONTHLY GROSS INCOME LIMIT
1	$ 563
2	703
3	796
4	885
5	977
6	1,070
7	1,160
8	1,249
9	1,340
10	1,431

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Definitions and use of terms, 42 C.F.R. § 435.4 (March 23, 2012), Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

~~**67:46:12:09. Resource limit.** To be eligible for assistance under this chapter, a family's resources calculated according to chapter 67:10:04 may not exceed $2,000~~ Repealed.

~~**Source:** 24 SDR 24, effective August 31, 1997; 31 SDR 107, effective February 1, 2005.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

67:46:12:10. Medicaid eligibility - Pregnant woman. A pregnant woman is eligible for Medicaid if the following criteria is met:

(1) She meets the general eligibility requirements of chapter 67:46:01;

(2) She meets the residency requirements of §§ 67:46:03:04 through 67:46:03:15;

(3) She meets the requirements contained in this chapter.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:12:11. Income limit – Pregnant woman. To be eligible for assistance under this chapter, a pregnant woman's income, based on family size, may not exceed the following amounts:

(1) For limited coverage for a pregnant woman as defined in ARSD 67:46:01:02(17) 138% of federal poverty guidelines for the current year.

(2) For a pregnant woman as defined in ARSD 67:46:01:02(11) the following amounts plus five percent of the current year's federal poverty guidelines for that family size:

FAMILY SIZE	MONTHLY GROSS INCOME LIMIT
1	$ 358
2	448
3	507
4	563
5	622
6	680
7	738
8	795
9	852
10	910

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

67:46:12:12. Medicaid eligibility – Children. A child is eligible for Medicaid if the following criteria is met:

(1) With the exception of 67:46:01:14, the child meets the general eligibility requirements of chapter 67:46:01;

(2) The child meets the residency requirements of §§ 67:46:03:04 through 67:46:03:15;

(3) The child meets the requirements contained in this chapter.

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

67:46:12:13. Income limit – Children. To be eligible for assistance under this chapter a child's family income, based on family size, may not exceed 182% of the current year's federal poverty guidelines for that family size.

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

67:46:12:14. Medicaid eligibility – Other reasonable classifications of children. A child under age 21 is eligible for Medicaid assistance if the child:

(1) Is in an adoption that is subsidized in full or part by a public agency;

(2) Resides in a nursing or intermediate care facility;

(3) Is under the custody of the department;

(4) Is in foster care and the department is assuming full or partial financial responsibility;

(5) Is under the jurisdiction of the department of corrections and is not an inmate of a public institution under the provisions of 42 CFR 435.1008.

(6) Is adjudicated under the guardianship of the South Dakota Human Services Center and is receiving inpatient treatment for drug or alcohol dependency; or

(7) Is adjudicated under the guardianship of the South Dakota Human Services Center and is receiving inpatient psychiatric treatment.

The child must also meet the requirements in Chapter 67:46:01, residency requirements in §§ 67:46:03:04 through 67:46:03:15, and have income within limits specified in § 67:46:12:15.

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

67:46:12:15. Income limit - Other reasonable classifications of children.

FAMILY SIZE	MONTHLY GROSS INCOME LIMIT
1	$ 382
2	484
3	561
4	636
5	713
6	790
7	865
8	940
9	1016
10	1092

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

67:46:13:01. Definitions. Terms used in this chapter mean:

(1) "~~LIF~~ Parent/caretaker relative," a Medicaid coverage group consisting of low income families eligible for Medicaid under the provisions of chapter 67:46:12; and

(2) "TMB" or "transitional medical benefits," continued medical coverage immediately following ineligibility for ~~LIF~~ parent/caretaker relative Medicaid.

Source: 24 SDR 24, effective August 31, 1997; 36 SDR 215, effective July 1, 2010.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Medicaid eligibility - Parent/caretaker relative, § 67:46:12:02.

67:46:13:02. Initial eligibility for transitional medical benefits. ~~A family~~ An individual that becomes ineligible for ~~LIF~~ parent/caretaker relative Medicaid and any dependent child in the parent/caretaker relative's household is eligible for TMB if the following conditions exist:

(1) The ~~family~~ individual was receiving ~~LIF~~ Medicaid under the provisions of chapter 67:46:12 in the immediately preceding month but became prospectively ineligible because the parent/caretaker relative had increased income from employment; and

(2) The ~~family~~ individual received ~~LIF~~ Medicaid under the provisions of chapter 67:46:12 ~~in at least two other months in the six-month period preceding ineligibility~~ in any 3 or more months during the 6-month period immediately before the month in which the parent/caretaker relative became ineligible.

Source: 24 SDR 24, effective August 31, 1997; 36 SDR 215, effective July 1, 2010.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:13:03. TMB limited to 12 consecutive months. Transitional medical benefits may begin the first month the ~~family~~ parent/caretaker relative is ineligible for ~~LIF~~ Medicaid under the provisions of chapter 67:46:12 and is limited to the 12 consecutive months immediately following ineligibility for Medicaid.

Source: 24 SDR 24, effective August 31, 1997; 36 SDR 215, effective July 1, 2010.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:13:04. Continuing eligibility for TMB. Eligibility for TMB continues for 12 consecutive months if the family continues to reside in the state and a dependent child who was a member of the ~~TMB unit~~ family at the time the family was determined first eligible for TMB continues to live with the family.

Source: 24 SDR 24, effective August 31, 1997; 36 SDR 215, effective July 1, 2010.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Refence: Definitions, § 67:46:12:01.

67:46:13:11. Ineligibility for fraud. If a court of law finds that a member of a ~~LIF~~ Medicaid ~~unit~~ household committed fraud resulting in mistaken eligibility for Medicaid for one of the six months preceding the current period of Medicaid ineligibility, all members of the ~~LIF~~ Medicaid ~~unit~~ household in which the fraud was committed are ineligible for continued medical coverage under this chapter.

Source: 24 SDR 24, effective August 31, 1997.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

CHAPTER 67:46:14

CHILDREN'S HEALTH INSURANCE (CHIP-NM)

Section

67:46:14:01. Definitions. Terms used in this chapter mean;

(1) "Caretaker," the adult who lives with and provides care and control of a child eligible for services under this chapter. The caretaker may include the child's parent or parents;

(2) "Child," an individual who has not attained the age of 19;

(3) "CHIP-MN," the nonmedicaid children's health insurance program for children eligible under the provisions of this chapter;

(4) "Group health plan," a plan of, or contributed to by, an employer, including a self-employed person, or employee organization to provide health care, directly or otherwise, to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. A group health plan includes self-insured plans and plans of incorporated or unincorporated organizations that are organized and operated for educational, religious, charitable, or other purposes and that hold funds exclusively for its members and use those funds to meet the health care needs of its members;

(5) "Health insurance," benefits consisting of medical care provided directly, through insurance or reimbursement, or otherwise, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer; and

(6) "Health insurance issuer," an insurance company, insurance service, or insurance organization, including a health maintenance organization, that is required to be licensed to engage in the business of insurance in South Dakota. A health insurance issuer does not include a group health plan.

(7) “Family size/Household,” an individual’s family size/household has the same meaning as determined under the provisions of 42 C.F.R. § 435.603.

Source: 26 SDR 168, effective July 1, 2000.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

67:46:14:02. Eligibility requirements for CHIP-NM. A child is eligible for CHIP-NM if the child meets the following criteria:

(1) Does not meet the financial eligibility criteria for the state's Medicaid program;

(2) Is a member of a CHIP-NM ~~unit~~ family whose ~~gross~~ income, ~~minus allowable deductions~~ as defined in 42 C.F.R. § 435.603, does not exceed ~~200~~ 209 percent of the federal poverty ~~level for a unit of a comparable size~~ guidelines;

(3) Is not a member of a CHIP-NM unit in which the child's parent or legal guardian is an employee of a public agency and eligible to participate in the state health insurance benefit plan;

(4) Is not covered under health insurance or a group health plan;

(5) Has not had insurance under a group health plan in the three-month period immediately prior to the date of application for CHIP-NM;

(6) Except for §§ 67:46:01:05, ~~67:46:01:12,~~ and 67:46:01:13, meets the requirements of chapter 67:46:01;

(7) Is not a resident of a public institution or patient in an institution for mental diseases;

(8) Meets the residency requirements of ~~§ 67:10:01:09~~ §§ 67:46:03:04 through 67:46:03:15; and

(9) Meets the other requirements of this chapter.

Source: 26 SDR 168, effective July 1, 2000; 28 SDR 4, effective July 1, 2001.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-References: Federal poverty level, § 67:11:01:03; Determining size of CHIP-NM ~~unit~~ family, § 67:46:14:05.

67:46:14:04. Good cause for dropping insurance under a group health plan. Good cause for dropping insurance under a group health plan exists if the insurance is dropped for reasons beyond the caretaker's control. Reasons for dropping the insurance include circumstances such as the following:

(1) The cost of the insurance to cover the parent's children exceeds five percent of the CHIP-NM ~~unit's~~ family's gross income;

(2) The parent providing the primary insurance is fired;

(3) The parent providing the primary insurance voluntarily quits a job and has not started a new job;

(4) The parent providing the primary insurance is laid off;

(5) The parent providing the primary insurance becomes disabled;

(6) The parent providing the primary insurance dies;

(7) The parent providing the primary insurance starts a new job and there is a lapse in insurance or the new employer does not provide dependent coverage; or

(8) The employer discontinued the insurance.

Source: 26 SDR 168, effective July 1, 2000.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

67:46:14:05. Determining size of CHIP-NM ~~unit~~ family. ~~The following individuals must be included in determining the size of the CHIP-NM Unit:~~

~~(1) The child living in the home for whom CHIP-NM is being requested;~~

~~(2) Other children living in the home for whom CHIP-NM is being requested and who have the same caretaker as the child in subdivision (1) of this section;~~

~~(3) If living in the home, the natural or adoptive parent or parents or stepparent. An Indian stepparent in Indian country who is under the exclusive jurisdiction of a tribe for purposes of determining the domestic relations rights of the family has the option of being included in the unit; and~~

~~(4) If the child for whom CHIP-NM is being requested is married and that child's spouse is also living in the home, the child's spouse.~~

~~If neither of the child's parents is living in the home, the department may establish a separate unit for that child and any of the child's siblings under the age of 19. In determining the size of this separate unit, include the child, the child's siblings under the age of 19, and, if the child is married and the child's spouse is living in the home, the child's spouse.~~

~~In any case, the caretaker has the option of excluding any of a child's siblings from the unit; however, any sibling opted out of the unit may not constitute a separate CHIP-NM unit.~~

~~In considering the size of the CHIP-NM unit, recipients of SSI are not considered part of the unit.~~

A CHIP-NM family size/household is determined as defined in 42 C.F.R. § 435.603.

Source: 26 SDR 168, effective July 1, 2000.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Application of modified adjusted gross income (MAGI), 42 C.F.R. § 435.603 (July 15, 2013).

~~**67:46:14:06. Consideration of income.** In determining whether a child is eligible for assistance under this chapter, the department shall consider the earned and unearned income of the CHIP-NM unit~~ Repealed.

~~**Source:** 26 SDR 168, effective July 1, 2000.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

~~**67:46:14:07. Unit members to take advantage of all income.** Each member of the unit must take advantage of all income to which the member is entitled, such as social security, workers' compensation, and unemployment compensation. Failure or refusal to do so affects the unit's eligibility status~~ Repealed.

~~**Source:** 26 SDR 168, effective July 1, 2000.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

~~**67:46:14:08. Income exempt from consideration.** The following income is not considered available to meet the unit's needs and is exempt from consideration:~~

~~(1) That income considered exempt under the provisions of § 67:10:03:03;~~

~~(2) The first $50 of current child and spousal support paid to the unit. The amount may not exceed the support paid. If two or more absent parents provide support for the same household, only the first $50 of the total of the support payments is exempt from consideration;~~

~~(3) The actual amount of alimony or child support paid by a member of the unit under a court order to maintain, in whole or in part, children or a former spouse in another household;~~

~~(4) Income earned by a child under age 19 who is living with a caretaker~~ Repealed.

~~**Source:** 26 SDR 168, effective July 1, 2000.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

~~**67:46:14:09. Consideration of unearned income.** Unearned income is considered when received by the unit~~ Repealed.

~~**Source:** 26 SDR 168, effective July 1, 2000.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

~~**67:46:14:10. Earned income from self-employment.** Net earned income from self-employment is considered available to the unit. Income from rental property is not considered earned income from self-employment unless an individual in the unit is involved in the management of the rental business at least 20 hours a week.~~

~~Self-employment income that represents a household's annual income shall be annualized over a 12-month period even if the income is received within only a short period of time during that 12 months. Self-employment income that is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover. Self-employment income that is received on a monthly basis is considered when received.~~

~~To determine the annualized amount, apply the deductions allowed in § 67:46:14:11 and divide the amount by 12.~~

~~If the averaged amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the department shall calculate the self-employment income on anticipated earnings and not on the basis of prior income~~ Repealed.

~~**Source:** 26 SDR 168, effective July 1, 2000; 30 SDR 193, effective June 13, 2004.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

~~**67:46:14:11. Deductions from self-employment.** To determine net income from self-employment, subtract the costs of producing the income from the gross income. Costs of producing the income include the cost of merchandise and building or equipment rental, but do not include depreciation, personal shelter expenses, or the purchase of capital assets, such as a building, equipment, machinery, or property. Personal expenses, such as income tax, social security tax, lunches, and transportation to and from work are not considered a cost of producing income~~ Repealed.

~~**Source:** 26 SDR 168, effective July 1, 2000.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

~~**67:46:14:12. Deductions for employment-related child care expenses.** In calculating gross income, the department shall allow a deduction for employment-related child care expenses. The allowable deduction is limited to the actual amount paid up to $500 a month for the unit~~ Repealed.

~~**Source:** 26 SDR 168, effective July 1, 2000.~~

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

67:46:14:13. Members of CHIP-NM ~~unit~~ family must cooperate with department. The department may request information from members of the unit concerning the existence of actual or potential third-party liability coverage or a third-party payment source for medical expenses. For purposes of this rule, third-party liability coverage or a third-party payment source includes the obligation of an entity other than the medical assistance program for either partial or full payment of the medical cost of injury, disease, or disability.

The individual or caretaker must also provide the department with the necessary verifications to establish initial or continuing eligibility or information necessary for federal reporting requirements or quality control efforts. Failure or refusal to supply the necessary information results in the denial of an application or the termination of current benefits.

An alien who fails or refuses to obtain the cooperation of the alien's sponsor is ineligible for assistance.

Source: 26 SDR 168, effective July 1, 2000.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Acceptance of assistance as assignment and subrogation of support rights and insurance proceeds -- Liability of insurer or attorney, SDCL 28-6-7.1.