

Medicaid Estate Recovery

Introduction

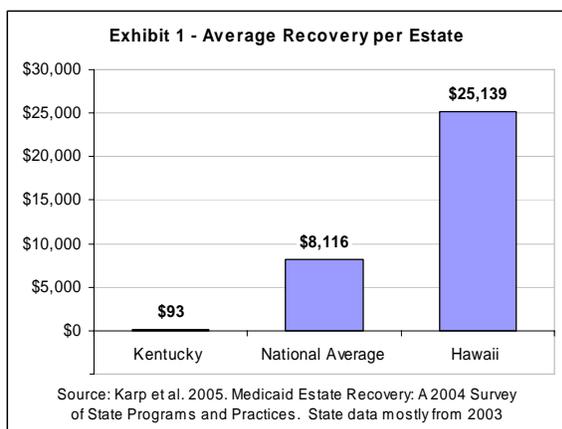
The federal government requires all states to implement Medicaid estate recovery programs to recoup costs of long-term care and other related Medicaid services.

Currently, 49 states plus the District of Columbia have estate recovery programs. (Georgia is included within the 49 states because it is currently implementing a program.) Michigan is the only state that does not have one.

Financial Recoveries

States recovered \$347.4 million in fiscal year 2003. However, the total each state collected varied greatly, ranging from a low of about \$86,000 in Louisiana to a high of nearly \$54 million in California. Revenues as a percentage of state long-term care Medicaid expenses ranged from .01% in Louisiana to 2.2% in Oregon, with only eight states above 1%.

Estate recovery amounts are modest, averaging \$8,116 per estate. The states, however, vary widely in the average recovery per estate, averaging between the lowest in Kentucky and the highest in Hawaii (see exhibit).



Enrollees Subject to Recovery

States primarily seek recovery from the estates of certain enrollees:

- individuals in nursing facilities, intermediate care facilities for the mentally retarded, or other medical institutions, and
- individuals who were age 55 or older when they received Medicaid coverage.

Exemptions and Deferrals. Federal law requires states to exempt or defer estate recovery in certain situations:

- when there is a surviving spouse;
- when there is a surviving child who is under age 21, blind, or disabled; and,
- in some cases, when a sibling or caretaker adult child lives in the home.

Because deferrals can last a long time, in certain circumstances some states exempt the estate from recovery, while others negotiate settlements or use a combination of exemptions, deferrals, and negotiated settlements.

Liens. Some states put liens on the homes of Medicaid enrollees to secure the state's interest in the property. In 2003, 13 states used liens if there was a deferral of recovery after the death of the enrollee, such as when a family member lived in the home. Nineteen states used pre-death liens when an enrollee was permanently institutionalized and unlikely to return home.

Recoverable Service Costs

Federal law requires states to recover payments for nursing facility care, home and

community-based services, and related hospital and prescription drug services.

States may choose to recover for any other items or services under the state Medicaid plan for those enrollees who received services at age 55 or older. Some states have expanded estate recovery by opting to recover for additional items, such as physician services, hospice care, and technology assistance for those age 55 and older.

Consumer Protections

Hardship Waivers. Federal law requires states to waive recovery in situations where it would cause undue hardship for survivors. For example, most states grant hardship waivers if the estate is an income-producing asset, such as a working farm or ranch, in which case recovery would cause a loss of livelihood for the survivors.

Other hardships can include the property serving as the primary residence of the survivors or the homestead being of modest value. Some states consider whether the survivor would become eligible for public and/or medical assistance if the estate were recovered and whether the survivor made substantial personal or financial contributions to the care of the enrollee, so the enrollee could remain at home.

Notices. The federal government requires states to provide a general notice of estate recovery at the time of Medicaid application and a specific notice before seeking recovery. It also requires that the notice(s) include certain vital information: the action the state intends to take, the reason for the action, the individual's right to and how to obtain a hearing, procedures for applying for a hardship waiver, and the amount to be recovered.

In practice, while states generally give some form of notice at the time of Medicaid application and upon the death of the enrollee, they vary as to whether and when they provide notice in between, such as when placing a lien. Also, notices differ widely in readability, print size, and how easy they are to understand as well as whether they include key consumer protection information.

Conclusion

Both the financial impact of estate recovery on state budgets and the estate recovery amounts, measured per estate, are modest but not insignificant. Moreover, states are expanding the scope of estate recovery efforts. Thus, it is critical that estate recovery programs have adequate consumer safeguards, such as reasonable hardship waivers and adequate and timely notices, so Medicaid enrollees and their families are informed and treated fairly.

Acknowledgment: This fact sheet is based largely on a national study of Medicaid estate recovery programs by the American Bar Association Commission on Law and Aging for the AARP Public Policy Institute.

Sources: *The Policy Book, AARP Public Policies 2005*, [AARP]; Centers for Medicare and Medicaid Services, *State Medicaid Manual*, §3810; Karp et al. *Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices*, 2005 [AARP Public Policy Institute]; Mullen, F. *Questions and Answers on Medicaid Estate Recovery for Long-Term Care under OBRA '93*, 1996 [AARP Public Policy Institute].

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