

Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices

Introduction and Purpose

This In Brief summarizes the findings of the AARP Public Policy Institute (PPI) issue paper, *Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices*. To recoup costs of long-term care and other related Medicaid services, Congress in the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) mandated that states implement estate recovery programs. In response, states have initiated legislative, regulatory and programmatic efforts to recover funds from the estates of certain beneficiaries.

In 1996, the American Bar Association (ABA) Commission on Law and Aging conducted a survey of state Medicaid estate recovery programs on behalf of PPI to examine their scope, variations and operation. Nearly nine years later, the ABA Commission has conducted an updated and expanded survey to assess current estate recovery programs. This report presents the study findings.

Key Findings

1. The financial impact of estate recovery on state budgets remains modest but not insignificant. The states recovered a total of \$347.4 million for the most recent state fiscal year (2003). The amount differed markedly among the states, ranging from about \$86,000 (Louisiana) to close to \$54 million (California). The median recovery, expressed as a percentage of annual Medicaid long-term expenses, is just over one-half percent of total long-term care costs, a relatively small recovery rate, but in total dollar amounts not insignificant. Oregon reported the highest recovery rate at 2.2%. Moreover, administrative costs in the few states reporting such costs were modest, reinforcing the cost effectiveness of the programs, however small in size. Nevertheless, the significant absence of data on the full administrative costs of operating estate recovery programs raises uncertainty about its financial impact.
2. Estate recovery amounts, measured per estate, are modest but not insignificant. The average and median recovery per estate amounted to \$8,116 and \$5,081 respectively. However, the tremendous variation in average recoveries and other factors make firm conclusions difficult. The average ranged from \$93 per estate in Kentucky to \$25,139 in Hawaii.
3. The scope of estate recovery efforts is expanding. The findings indicate a trend toward expansion of the scope of recoverable estate, as well as a broader variety of ownership types subject to recovery. Three states—Georgia, Michigan and Texas—did not have estate recovery programs at the time the survey was conducted, but two of these were implementing programs. Thirteen states were proposing changes to their programs at the time of the survey—generally to expand or facilitate recovery. However, the maximum potential for growth in estate recovery efforts is unknown.

4. Estate recovery policies and practices vary significantly among the states. The states show tremendous variation in every aspect of estate recovery, including definitions of the scope of estates and services recoverable, and policies and procedures on exemptions, deferrals, use of liens and notice.

5. State estate recovery notices vary widely in timing, frequency and clarity. Notices also vary in the extent to which they include vital information, such as a contact for further information, exceptions to recovery, the opportunity to request an itemized accounting, procedures for applying for a hardship waiver or the fact that a claim will not exceed the value of the estate. Contrary to federal law and guidance from the U.S. Centers for Medicare and Medicaid Services (CMS), only six of the 19 states using pre-death liens on the homes of living institutionalized beneficiaries reported giving notice upon a determination of permanent institutionalization.

6. The lack of basic data collection and research impairs assessment of estate recovery efforts. The only data element that all states report annually to CMS is the total amount of Medicaid recovery from estates. Besides that, most other data elements are spotty and inconsistent across the states, especially with regard to the number of estates against which recovery is made; the total administrative costs of estate recovery efforts; the sources of property from which recovery is made; the number of exemptions and deferrals; the number of hardship waivers; the number of contested recoveries and their outcomes; and the frequency and patterns of lien impositions and dispositions.

7. Policymakers have generally not examined the broader public policy issues posed by estate recovery. There has been practically no study of the impact of estate recovery on state budgets or on recipients and their families. Fully evaluating estate recovery requires taking into account a multitude of competing societal values – public vs. private responsibility for long-term care, the fair distribution of public burdens, the importance of inheritance, the promotion of programs to enhance the independence of elders, the pros and cons of estate planning and the protection of especially vulnerable populations. Moreover, estate recovery is part of a much larger Medicaid picture involving the related issues of eligibility, transfer of asset rules and the purchase of long-term care insurance as part of the Long-Term Care Partnership Program.

Conclusions

Today, state programs generally appear more well-established than they did in 1996. However, critical questions about estate recovery remain on whether:

- Recovery represents a fair and equitable mechanism for ensuring that Medicaid recipients pay a fair share of the cost of their long-term care, compared to other financing options;
- These programs are a barrier to receipt of Medicaid services;
- Estate recovery may contravene social policy on prevention of spousal impoverishment; and
- The costs justify the financial benefit to the states.